

Department of Environmental Conservation  
Division of Spill Prevention & Response



18 AAC Chapter 75 – Article 2 Financial Responsibility for  
Oil Discharges

Proposed Regulation Revisions

September 29, 2015

Bill Walker  
Governor

Larry Hartig  
Commissioner

Public Comment period ends  
October 29, 2015, 5:00 p.m.

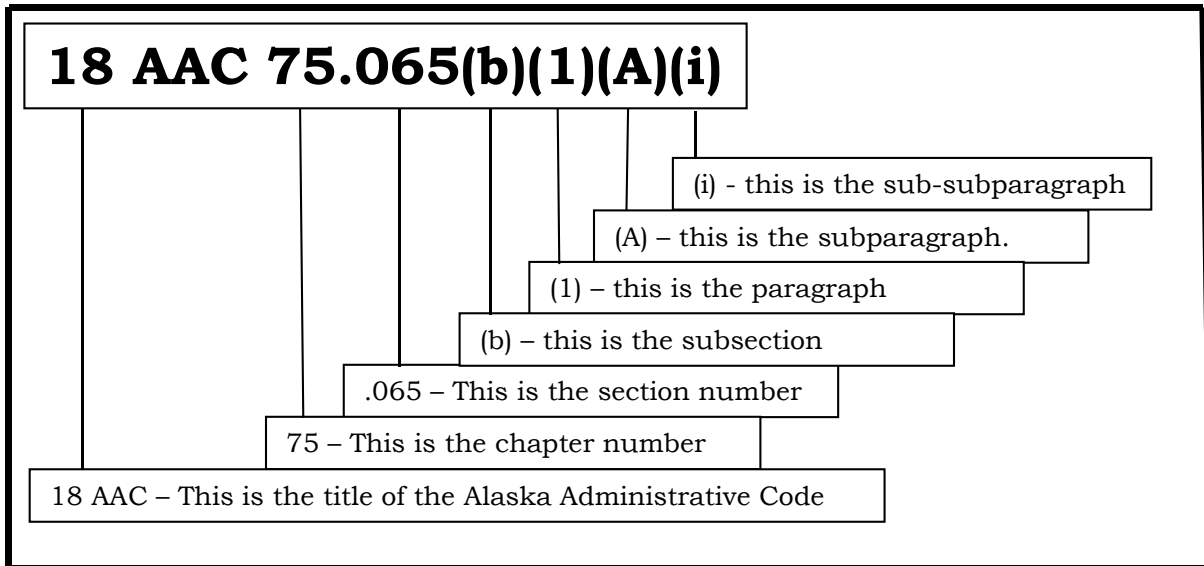
Please see public notice for  
details about how to comment

### Background and changes addressed

This packet is being proposed to update the language in selected sections of the regulations within Title 18 Chapter 75, Article 2. The focus is to update the financial responsibility self-insurance and guaranty procedures for regulated oil facilities.

### Understanding the changes

Reading and understanding state regulations can be confusing. To assist you in understanding this draft, please note that state regulations are laid out in the following manner:



**Figure 1. Alaska Regulatory Numbering System**

In the following text, the proposed changes follow the formatting requirements of the “Drafting Manual for Administrative Regulations,” 20<sup>th</sup> Edition, August 2013, as promulgated by the State of Alaska Department of Law. The draft changes are indicated as follows:

Lead-in text explains the changes to the text that follows.

[CAPITALIZED TEXT IN BRACKETS] indicates current regulatory text proposed to be deleted.

**Bolded and underlined** indicates proposed new text that amends the regulation. When an entire section or subsection is new, it is only indicated by the lead in line.

[...] indicates unchanged chunks of regulatory text.

For comparison purposes, a complete copy of the current 18 AAC 75 regulations can be found online at: <http://dec.alaska.gov/commish/regulations/index.htm>

18 AAC 75.245(a) is amended to read:

**18 AAC 75.245. Self-insurance.** (a) In order to demonstrate financial responsibility through self-insurance, an applicant shall maintain in the United States, working capital and net worth, each in an amount at least equal to the applicable amount required under 18 AAC 75.235(a), or a lesser amount necessary to supplement other forms of proof which, when combined, are at least equal to the applicable amount required under 18 AAC 75.235(a). In determining working capital or net worth, the department will consider all current contractual requirements to which the applicant is bound. For the purposes of this subsection,

(1) "working capital" means the amount of current assets located in the United States, **other than those assets that are petroleum inventory that may be affected by an oil discharge from a facility covered by the self-insurance,** less all worldwide current liabilities; and

(2) "net worth" means the amount of all assets located in the United States, less all worldwide liabilities.

18 AAC 75.245(b)(1) is amended to read:

(1) annual audited financial statements for consolidated holdings in the United States for the fiscal year ending immediately before each initial or renewal application, certified by an independent certified public accountant, **If the financial statements do not specify what portion of its working capital and net worth are located in the United States, they must be supplemented by an affidavit from the applicant's chief financial officer or treasurer, or a sworn statement by the certified public accountant who prepared the audit, certifying that the working capital and net worth located in the United States are each in an amount equal**

**to the applicable amount required under 18 AAC 75.235(a):**

18 AAC 75.245(c)(2) is amended to read:

(2) if the applicant's United States Securities and Exchange Commission forms do not specify what portion of its working capital and net worth are located in the United States, [EACH FORM] **they** must be supplemented by an affidavit from the applicant's chief financial officer or treasurer, or a sworn statement by the certified public accountant who prepared the form, certifying that the working capital and net worth located in the United States are each in an amount equal to the applicable amount required under 18 AAC 75.235(a).

18 AAC 75.245(d) is repealed:

(d) Repealed \_\_/\_\_/\_\_\_\_. [INSTEAD OF THE AFFIDAVIT OR SWORN STATEMENT REQUIRED UNDER (B)(2) AND (C)(2) OF THIS SECTION, THE APPLICANT MAY FILE A QUARTERLY AFFIDAVIT SHOWING THAT SUFFICIENT LIQUID ASSETS AND CASH FLOW, OTHER THAN THOSE ASSETS WITH A HIGH EXPOSURE TO DAMAGE IN A POLLUTION INCIDENT, ARE IMMEDIATELY AVAILABLE TO RESPOND TO CLAIMS IN THE REQUIRED SELF-INSURED AMOUNT WITHOUT PLACING THE APPLICANT IN AN INSOLVENT POSITION.]

18 AAC 75.245(f) is amended to read:

(f) The affidavits or sworn statement required under (b)(2), [(c)(2), AND (d)] of this section must be signed as follows:

(1) in the case of a corporation, by the treasurer or chief financial officer;

(2) in the case of a partnership, by a general partner;

(3) in the case of a sole proprietorship, by the proprietor;

(4) in the case of a municipal, state, federal, or other public facility, by an authorized public official or employee; [AND]

(5) in the case of a combined application, by a representative of each party to the application;[.]

**(6) in the case of a joint venture, by the operator; and**

**(7) in the case of a limited liability company, by a member.**

18 AAC 75.245 is amended by adding a new subsection to read:

(k) A self-insurer must submit a renewal application no later than four calendar months after the end of the applicant's fiscal year. The initial application to demonstrate self-insurance may be submitted at any time. (Eff. 5/14/92, Register 122; am 11/26/94, Register 132; am 12/8/95, Register 136; am 11/27/2002, Register 164; am \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 46.03.020 AS 46.04.045 AS 46.04.070  
AS 46.04.040 AS 46.04.055

18 AAC 75.260(b) is amended to read:

(b) The issuer of the guaranty contract must meet the financial, **application**, and reporting requirements of 18 AAC 75.245. (Eff. 5/14/92, Register 122; am 11/26/94, Register 132; am \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 46.03.020 AS 46.04.045 AS 46.04.070  
AS 46.04.040 AS 46.04.055