

WSR 24-13-065

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 22-14—Filed June 14, 2024, 8:16 a.m., effective July 15, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of ecology (ecology) is adopting new chapter 173-187 WAC, Financial responsibility. The adopted rule implements updates to chapter 88.40 RCW, Transport of petroleum products—Financial responsibility, as required under E2SHB 1691. The adopted rule ensures that vessel and facility owners and operators have adequate financial resources to pay cleanup and damage costs arising from an oil spill. Additionally, the existing chapter 317-50 WAC, Financial responsibility for small tank barges, and oil spill response barges, has been incorporated into the new rule and has been repealed.

The new rule:

- Defines the entities subject to financial responsibility requirements.
- Establishes required levels of financial responsibility for oil handling facilities and pipelines.
- Specifies the procedures and timelines for obtaining or renewing a certificate of financial responsibility.
- Establishes requirements for acceptable evidence of financial responsibility, including self-insurance.
- Outlines the process for ensuring timely updates to changes in financial status.
- Defines the processes governing the suspension, revocation, and reissuance of certificates of financial responsibility considering potential liabilities incurred by a covered entity after an oil spill or other incident.
- Incorporates and updates financial responsibility requirements currently included in chapter 317-50 WAC, Financial responsibility for small tank barges and oil spill response barges.
- Repeals chapter 317-50 WAC.

Citation of Rules Affected by this Order: New chapter 173-187 WAC; and repealing chapter 317-50 WAC.

Statutory Authority for Adoption: Chapter 88.40 RCW, Transport of petroleum products—Financial responsibility.

Adopted under notice filed as WSR 24-03-115 on January 19, 2024.

Changes Other than Editing from Proposed to Adopted Version: The following content describes the changes between the rule proposal language and the adopted language and provides ecology's reasons for making them.

Minor grammatical edits were made throughout the chapter to improve clarity.

WAC 173-187-040 Definitions.

- The word "discharge" was replaced with "spill" for clarity and to use consistent terminology throughout the chapter.

WAC 173-187-100 Financial responsibility amounts for vessels.

- The word "rule" was replaced with "chapter" for clarity and to use consistent terminology throughout the chapter.

WAC 173-187-110 Financial responsibility amounts for facilities.

- The word "rule" was replaced with "chapter" for clarity and to use consistent terminology throughout the chapter.

WAC 173-187-120 Request for an alternative financial responsibility calculation.

- The word "calendar" has been added to clarify the number of days an alternate financial responsibility calculation must be submitted before submitting a request for a certificate of financial responsibility (COFR) and the number of days in which ecology will approve or disapprove the alternate financial responsibility calculation request.
- A new subsection was added to clarify that a new COFR will be required if the alternate financial responsibility calculation is revoked.

WAC 173-187-200 Demonstrating financial responsibility.

- The phrase "An owner or operator of more than one vessel or facility subject to financial responsibility..." was replaced by "An owner or operator of more than one vessel or facility that is required to obtain a Washington COFR" to add clarity based on a comment that was received. This is appropriate as all covered vessels are subject to financial responsibility, but those that are members of protection and indemnity clubs are not required to obtain a Washington COFR and are not affected by this section of rule.

WAC 173-187-210 Procedures for vessels to be verified as a member of an international protection and indemnity (P&I) club.

- The word "international" was deleted as it is redundant. The definition of P&I club and the title of this subsection include the word "international," so it does not need to be repeated throughout the subsection.
- The words "or operator" were added for clarity and to use consistent terminology throughout the chapter.

WAC 173-187-220 Procedures for applying for a Washington certification of financial responsibility (COFR).

- The adopted rule was updated to provide information about how to access ecology forms but no longer requires use of these forms as they have not been subject to the public review and comment process. Forms that may be used to support proof of financial responsibility have been created, published, and are available on ecology's financial responsibility web page, for use at the discretion of the applicant. The rule provides information about these forms but does not require the use of any specific form. Additional language was added to denote:
 - o Published form ECY 070-751 may be used to document an owner's or operator's attestation that their COFR application is accurate and complete.
 - o Published form ECY 070-758 may be used to document an owner's or operator's delegation of authority to an authorized representative.
 - o The requirement to complete and attach the certificate of insurance agreement that is available on the financial responsibility website has been removed. Published form ECY

- 070-752 may be used to document a certificate of insurance agreement.
- o Published form ECY 070-754 may be used to document a surety bond agreement.
 - o The requirement to complete and attach the standby trust agreement that is available on the COFR website when proving financial responsibility with a surety bond, guarantee, or letter of credit has been removed. Published form ECY 070-753 may be used to document the establishment of a standby trust fund. The requirement to fund the standby trust fund in accordance with ecology's instructions has been removed. All requirements for funding the standby trust fund must be included in the surety bond, guarantee, letter of credit, or certificate of deposit agreement.
 - o Published form ECY 070-757 may be used to document a guarantee agreement.
 - o Published form ECY 070-756 may be used to document a letter of credit agreement. When using a certificate of deposit to prove financial responsibility, the applicant will be required to establish a standby trust fund to receive all funds if the certificate of deposit is liquidated.
 - o The requirement to complete and attach the self-insurance letter that is available on the COFR website when proving financial responsibility with self-insurance has been removed. Published form ECY 070-755 may be used to document the self-insurance calculations and agreement.

WAC 173-187-230 Phase-in schedule for vessels and facilities.

- Deleted the redundant word "Class."

WAC 173-187-250 Issuance of Washington COFRs.

- Deleted the option to submit a COFR application through United States mail. All COFR applications must be submitted via ecology's web based application, which will ensure all required information is provided, improve the quality of applications, and improve processing timeliness.

WAC 173-187-300 Significant changes to Washington COFRs require notification.

- A minor revision to improve plain talk readability was made.
- The word "facility" was added to clarify that if a facility name is changed, a new COFR will be required.
- The sentence "The holder of a Washington COFR for more than one vessel or facility must notify ecology within 10 calendar days if it experiences a spill or spill from a vessel or facility in another jurisdiction ..." was replaced with "The holder of a Washington COFR must also notify ecology within 10 calendar days if it experiences a spill in Washington or in another jurisdiction ..." to improve clarity and to use plain talk to describe this notification requirement.
- The unnecessary word "covered" was removed.
- The word "calendar" has been added to clarify to the number of days after which a COFR may be suspended or revoked due to ecology's determination that the COFR holder is likely to no longer have the financial resources to comply with the financial responsibility requirements.

- The word "international" was deleted as it is redundant. The definition of P&I club and the title of this subsection include the word "international," so it does not need to be repeated throughout the subsection.

A final cost-benefit analysis is available by contacting Diana Davis, Department of Ecology, Spill Prevention, Preparedness, and Response Program, Northwest Regional Office, P.O. Box 330316, Shoreline, WA 98133-9716, phone 425-758-0483, Washington relay service or TTY call 711 or 877-833-6341, email Diana.Davis@ecy.wa.gov, website <https://apps.ecology.wa.gov/publications/SummaryPages/2408014.html>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 11, Amended 1, Repealed 9.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 6, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 10, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 14, 2024.

Laura Watson
Director

OTS-5055.6

Chapter 173-187 WAC FINANCIAL RESPONSIBILITY

PART I: GENERAL REQUIREMENTS

NEW SECTION

WAC 173-187-010 Purpose. (1) The purpose of this chapter is to ensure that owners and operators of facilities and covered vessels have adequate financial resources to pay cleanup and damage costs arising from an oil spill.

(2) The required amounts of financial responsibility in no way restrict or set financial limitations on any duty, obligation, or liability of the responsible party.

NEW SECTION

WAC 173-187-020 Applicability. (1) This chapter applies to owners and operators of onshore facilities, offshore facilities, and covered vessels required to meet financial responsibility requirements under chapter 88.40 RCW.

(2) This chapter does not apply to owners or operators of:

(a) Railroads, motor vehicles, or other rolling stock while transporting oil over the highways or rail lines of the state;

(b) Covered vessels owned or operated by the federal government or by a state or local government;

(c) Onshore or offshore facilities owned or operated by the federal government or by the state or local government;

(d) Tribal vessels; or

(e) Vessels temporarily transiting waters of the state of Washington through international maritime routes that do not call on United States ports.

NEW SECTION

WAC 173-187-030 Authority. Chapter 88.40 RCW provides authority for the financial responsibility requirements established by this chapter.

NEW SECTION

WAC 173-187-040 Definitions. (1) "Authorized representative" means a person who has the authority, or delegated authority, to submit and attest to information relevant to the certificate of financial responsibility process.

(2) "Barge" means a vessel that is not self-propelled.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of 300 or more gross tons.

(5) "Class 1 facility" means a facility as defined in RCW 88.40.011 as:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from any vessel with an oil carrying capacity over 250 barrels or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Retail motor vehicle motor fuel outlet;

(iii) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330;

(iv) Underground storage tank regulated by ecology or a local government under chapter 70A.355 RCW; or

(v) Marine fuel outlet that does not dispense more than 3,000 gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(6) "Class 2 facility" means a motor vehicle, portable device or other rolling stock, while not transporting oil over the highways or rail lines of the state, used to transfer oil to a nonrecreational vessel.

(7) "Class 3 facility" means a structure that:

(a) Transfers oil to a nonrecreational vessel with a capacity of 10,500 or more gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oils;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Boatyard, railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 70A.355 RCW; or a motor vehicle motor fuel outlet; or a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(8) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(9) "Ecology" means the state of Washington department of ecology.

(10) "Fishing vessel" means a self-propelled commercial vessel of 300 or more gross tons that is used for catching or processing fish.

(11) "Gross tons" means tonnage as determined by the United States Coast Guard under 33 C.F.R. Sec. 138.30.

(12) "Hazardous substances" means any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 102(a) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

(a) Wastes listed as F001 through F028 in Table 302.4; and

(b) Wastes listed as K001 through K136 in Table 302.4.

(13) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(14) "Nonpersistent or group 1 oil" means:

(a) A petroleum-based oil, such as gasoline, diesel, or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

(i) At least 50 percent, by volume, distills at a temperature of 340°C (645°F); and

(ii) At least 95 percent, by volume, distills at a temperature of 370°C (700°F).

(b) A nonpetroleum oil with a specific gravity less than 0.8.

(15) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(16) "Oil" or "oils" means oil of any kind that is liquid at 25 degrees Celsius and one atmosphere of pressure and any fractionation thereof including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil,

diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 102(a) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(17) "Oil spill response barge" means a barge dedicated solely to oil spill response activities.

(18) "Onshore facility" means any facility, as defined in subsections (5), (6), and (7) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(19) (a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(20) "Passenger vessel" means a ship of 300 or more gross tons with a fuel capacity of at least 6,000 gallons carrying passengers for compensation.

(21) "Persistent oil" means:

(a) Petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further classified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60°F, as follows:

(i) Group 2 - Specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

(ii) Group 3 - Specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

(iii) Group 4 - Specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

(iv) Group 5 - Specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

(b) A nonpetroleum oil with a specific gravity of 0.8 or greater. These oils are further classified based on specific gravity as follows:

(i) Group 2 - Specific gravity equal to or greater than 0.8 and less than 0.85;

(ii) Group 3 - Specific gravity equal to or greater than 0.85 and less than 0.95;

(iii) Group 4 - Specific gravity equal to or greater than 0.95 and less than 1.0; or

(iv) Group 5 - Specific gravity equal to or greater than 1.0.

(22) "P&I club" means an international protection and indemnity mutual organization.

(23) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(24) "Spill" means an unauthorized discharge of oil into the waters of the state.

(25) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

Articulated tug barges (ATBs), tank barges, and tank ships are considered tank vessels.

(26) "Transfer" means any movement of oil in bulk to or from a nonrecreational vessel or transmission pipeline.

(27) "Transmission pipeline" means all parts of a pipeline whether interstate or intrastate, through which oil moves in transportation, including mainline, laterals, valves, and other appurtenances such as pumping units, and fabricated assemblies associated with pumping units metering and delivery stations and fabricated assemblies therein, and breakout tanks.

(28) "Washington certificate of financial responsibility (COFR)" means an official written acknowledgment issued by ecology that an owner or operator of a covered vessel or facility, or the owner of the oil, has demonstrated to the satisfaction of ecology that the relevant entity has the financial ability to pay for costs and damages caused by an oil spill.

(29) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(30) "Worst case spill" means:

(a) For a Class 1 offshore facility, the largest possible spill considering storage, production, and transfer capacity complicated by adverse weather conditions; or

(b) For a Class 1 onshore facility, the entire volume of the largest above ground storage tank on the facility site complicated by adverse weather conditions, unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, production, and transfer capacity; or

(c) For a Class 2 facility, the entire contents of the container(s) in which the oil is stored or transported; or

(d) For a Class 3 facility, the entire volume of the largest above ground storage tank on the facility site complicated by adverse weather conditions, unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, production, and transfer capacity; or

(e) For pipelines, the size of the worst case spill is dependent on the location of pump stations, key block valves, geographic considerations, response zones, or volume of the largest breakout tank. For each it is the largest volume determined from the following three different methods, complicated by adverse weather conditions:

(i) The pipeline's maximum time to detect the release, plus the maximum shutdown response time multiplied by the maximum flow rate per hour, plus the largest line drainage volume after shutdown.

For planning purposes, the total time to detect the release and shutdown the pipeline should be based on historic discharge data or, in the absence of such historic data, the operator's best estimate. At

a minimum, the total time to detect and shut down the pipeline must be equal to or greater than 30 minutes;

(ii) The maximum historic discharge from the pipeline; and

(iii) The largest single breakout tank or battery of breakout tanks within a single secondary containment system.

Each operator shall determine the worst case spill and provide the methodology, including calculations, used to arrive at the volume.

(31) "Verification of financial responsibility" means a verification by ecology that a covered vessel is a current member of an international protection and indemnity (P&I) club.

NEW SECTION

WAC 173-187-050 Enforcement. Any violation of this chapter may be subject to enforcement and penalties under chapter 88.40 RCW, RCW 90.56.300 and 90.56.310.

NEW SECTION

WAC 173-187-060 Severability. If any provision of this chapter is held invalid, the remainder of the chapter is not affected.

PART II: FINANCIAL RESPONSIBILITY AMOUNTS FOR VESSELS AND FACILITIES

NEW SECTION

WAC 173-187-100 Financial responsibility amounts for vessels.

(1) The owner or operator of any vessel that is covered by this chapter must demonstrate financial responsibility as defined in the table below:

Vessel Type	Financial Responsibility Amounts
Barges that transport hazardous substances in bulk as cargo	\$5,000,000 or \$300 per gross ton, whichever is greater
Tank vessels, including tank barges	\$1,000,000,000
Tank vessels, including tank barges, 300 gross tons or less	\$5,000,000 or \$3,000 per barrel of the barge's total capacity, whichever is greater
Cargo vessel	\$300,000,000
Passenger vessel	\$300,000,000
Passenger vessels that transport passengers and vehicles between Washington and a foreign country	\$500,000 or \$600 per gross ton, whichever is greater
Fishing vessel that carries predominantly nonpersistent oil	\$1,334,000 or \$133.40 per each barrel of total oil storage capacity, whichever is greater

Vessel Type	Financial Responsibility Amounts
Fishing vessel that carries predominantly persistent oil	\$6,670,000 or \$400.20 per each barrel of total oil storage capacity, whichever is greater

(2) A tank barge used solely as an oil spill response barge is not required to possess evidence of financial responsibility if the owner or operator submits to ecology a letter signed by an authorized representative that identifies the barge's name, official number, country of registry, and gross tonnage and certifies that:

(a) The barge is used exclusively for oil spill response activities and will not be used to carry oil in bulk in commerce; and

(b) The owner or operator is an approved primary response contractor under chapter 173-182 WAC.

If either certification becomes inaccurate, the owner or operator must notify ecology and must immediately comply with this chapter.

NEW SECTION

WAC 173-187-110 Financial responsibility amounts for facilities.

The owner or operator of any facility that is covered by this chapter must demonstrate financial responsibility as defined in the table below:

Facility Type	Financial Responsibility Amounts	Maximum Amount Required
Class 1 facility (oil handling facilities including refineries and marine terminals)	\$12,500 per barrel times worst case spill (WCS) volume	\$300,000,000
Class 1 facility (offshore facilities)	\$12,500 per barrel times worst case spill (WCS) volume	\$300,000,000
Class 1 facility (pipelines)	\$12,500 per barrel times worst case spill (WCS) volume	\$300,000,000
Class 2 facility (mobile tank units)	\$12,500 per barrel times 30 percent of the entire contents of the container(s) in which the oil is stored or transported	\$5,000,000
Class 3 facility (small marine terminals)	\$12,500 per barrel times the volume of the largest facility tank	\$5,000,000

NEW SECTION

WAC 173-187-120 Request for an alternative financial responsibility calculation. (1) A facility may submit to ecology a request for an alternative calculation to determine financial responsibility required under this chapter.

(a) The request must demonstrate financial responsibility capable of covering the response costs and damages that could occur during a reasonable worst case spill of oil from that facility into the navigable waters of the state.

(b) The request must include a detailed report justifying the alternative calculation. The report should include, but is not limited to:

(i) The worst case amount of oil that could be spilled, as calculated in the applicant's oil spill contingency plan approved under chapter 90.56 RCW, or as defined in this chapter;

- (ii) The cost of cleaning up the spilled oil;
 - (iii) The type and frequency of operations at the facility;
 - (iv) The damages that could result from the spill;
 - (v) The facility's proximity to navigable waters of the state and how a spill could be prevented from reaching such waters;
 - (vi) The spill prevention and preparedness measures for the facility including spill response procedures, response equipment, personnel, training, maintenance systems, contracted response resources, monitoring and shut down systems, pipeline drain times, tank conditions, secondary containment systems, and third-party inspection information.
- (2) Requests for an alternative must be submitted no less than 65 calendar days prior to submitting an application for a Washington COFR. Ecology will approve or disapprove the request for an alternative financial responsibility calculation no later than 65 calendar days from the submittal date.
- (3) Requests for an alternative shall be subject to a 30 calendar day public review and comment period which includes, but is not limited to, interested local and tribal governments and other stakeholders.
- (4) Ecology may revoke an approved alternate financial responsibility calculation at any time in response to new information or after operational or engineering changes that alter the conditions of the approval.
- (5) If an alternate financial responsibility calculation is revoked, a new Washington COFR will be required.

PART III: FINANCIAL RESPONSIBILITY - APPLYING FOR A WASHINGTON CERTIFICATE OF FINANCIAL RESPONSIBILITY (COFR)

NEW SECTION

- WAC 173-187-200 Demonstrating financial responsibility.** (1) The owner or operator of a vessel required to document financial responsibility under this chapter must:
- (a) Obtain a Washington COFR; or
 - (b) Be verified by ecology to be a current member of a P&I club.
- (2) The owner or operator of a facility required to demonstrate financial responsibility under this chapter must obtain a Washington COFR.
- (3) An owner or operator of more than one vessel or facility that is required to obtain a Washington COFR under this chapter may obtain a single Washington COFR that applies to all of the owner's or operator's vessels and facilities. Ecology will base the terms of such Washington COFR upon the vessel or facility that represents the greatest financial risk in the event of a spill. Alternatively, the owner or operator may obtain separate Washington COFRs that each apply to a subset of the owner's or operator's vessels or facilities, provided

that each vessel or facility of the owner or operator is covered by at least one valid Washington COFR.

NEW SECTION

WAC 173-187-210 Procedures for vessels to be verified as a member of an international protection and indemnity (P&I) club. (1)

Ecology will verify, through its available means, that the vessel is currently a member of a P&I club.

(2) If ecology is unable to verify the vessel is a member of a P&I club, the vessel owner or operator must, upon request by ecology, provide the vessel's P&I club certificate of entry demonstrating the required levels of financial responsibility to ecology within 10 calendar days of receiving the request.

(3) If a vessel owner or operator does not provide ecology the vessel's P&I club certificate of entry including financial coverage information within 10 calendar days of the request, they are subject to enforcement and penalties as described in WAC 173-187-050.

(4) If a vessel is not a member of a P&I club, the vessel owner or operator must obtain a Washington COFR with required financial amounts issued by ecology following the process in WAC 173-187-220 and the timelines in WAC 173-187-230 and 173-187-240.

NEW SECTION

WAC 173-187-220 Procedures for applying for a Washington certificate of financial responsibility (COFR). (1)

The owner or operator of a vessel or facility that is required to demonstrate financial responsibility under this chapter, or their authorized representative, must apply for a Washington COFR based on guidance located on ecology's website.

(2) Applications and associated materials must meet the following format requirements:

(a) All documents must be in English and all monetary terms must be in United States currency; and

(b) All fields in the application form must be completed with the requested information or the phrase "not applicable."

(3) The application must include the following:

(a) Proof of financial responsibility provided by one or more of the financial responsibility instruments described in subsection (6) of this section;

(b) Evidence of dollar amounts; and

(c) Effective date and term of coverage.

(4) All applications, including renewal applications, must include a statement which attests to the accuracy and completeness of the application and is signed by the owner, operator, or authorized representative of the owner or operator, whose title must be indicated on the attestation. Form number ECY 070-751 may be used.

An authorized representative must have delegated authority to attest to the accuracy of the application and to bind the owner or operator to the financial responsibility amounts required under this chapter. If an authorized representative submits an application for a Washington COFR on behalf of an owner or operator, delegation of au-

thority must be included with the application. Form number ECY 070-758 may be used.

(5) The submitted application for financial responsibility shall bind the owner or operator of the vessel or facility to the financial responsibility amounts required under this chapter.

(6) The owner or operator of a vessel or facility must demonstrate financial responsibility through one or more of the following methods. If multiple methods are used, the total demonstrated financial responsibility must be greater than or equal to the required amount.

(a) Evidence of insurance:

(i) The owner or operator of a vessel or facility may demonstrate financial responsibility through one or more insurance policies. The applicant must provide proof of insurance issued by an insurer who is authorized to sell insurance in Washington under a certificate of authority issued by the Washington state insurance commissioner or that is procured through a licensed surplus line broker in accordance with chapter 48.15 RCW. The insurer providing coverage must also have a current AM Best rating of at least B+.

(ii) Submit a certificate of insurance signed by an authorized representative of the insurer. Form number ECY 070-752 may be used.

(iii) In addition to the certificate of insurance, the applicant must submit proof of insurance in the form of a binder or a copy of the policy. If a binder is submitted to meet the requirements of this subsection, a copy of the underlying insurance policy must also be provided to ecology within 90 calendar days of submitting an application.

(iv) The proof of insurance must include:

(A) Name and address of insured;

(B) Name and principal characteristics of vessels or facilities covered;

(C) Name and address of insurer(s);

(D) Policy number(s);

(E) Effective date and term of coverage;

(F) All conditions and limitations of the policy or certificate which may affect coverage in the event of an oil spill;

(G) An attestation that the policy covers damages for oil pollution claims and the unlawful discharge of oil;

(H) Evidence of dollar amounts of the insurance policy or certificate of insurance;

(I) Amount of deductibles and/or self-insured retention; and

(J) Language that termination or cancellation of this policy, insofar as it serves as proof of the insured's financial responsibility for damages for oil pollution claims and the unlawful discharge of oil, must not become effective until 30 calendar days after a notice of termination or cancellation has been submitted to ecology. However, this policy must only remain in effect for 10 calendar days after a notice of termination or cancellation for failure to pay the premium by the due date has been submitted to ecology, and the notice was issued after the date the premium was due.

(v) A deductible provision in any policy of insurance, binder, or certificate is acceptable if:

(A) The applicant demonstrates supplemental coverage for the amount of the deductible by means of other acceptable insurance, surety, guarantee, self-insurance, letter of credit, certificate of deposit, or other proof of financial responsibility approved by ecology if

the deductible is greater than one percent of the policy coverage amount; and

(B) The deductible provision provides for a loss reimbursement plan that contains language guaranteeing that the insurer will be responsible for the payment of all claims on a first dollar basis.

(vi) No later than 30 calendar days following the expiration of a policy period, an applicant using insurance as evidence of financial responsibility must submit a certificate of insurance, or other written documentation acceptable to ecology evidencing that the renewal of the applicant's insurance policy occurred on or before the previous policy's expiration date. Failure to submit the certificate of insurance or other acceptable written documentation within 30 calendar days following the expiration of the current policy period, may result in the revocation of the Washington COFR.

(b) Surety bonds:

(i) The owner or operator of a vessel or facility may demonstrate financial responsibility with a surety bond for the amount required, in full or in part. Form number ECY 070-754 may be used.

(ii) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States Department of the Treasury.

(iii) Under the terms of the bond, the bond must be subject to and governed by the laws of the state of Washington.

(iv) The bond must not contain additional terms or conditions which limit the surety company's obligation to pay for costs and damages arising due to damages for oil pollution claims and/or the unlawful discharge of oil. The bond must possess an underwriting limitation of risk at least equal to the amount of the bond.

(v) An applicant utilizing a surety bond to demonstrate evidence of financial responsibility must establish a standby trust fund. Form number ECY 070-753 may be used. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund.

(vi) Termination or cancellation of a surety bond that serves as proof of financial responsibility hereunder may not become effective until 60 calendar days after a notice of termination or cancellation has been submitted to ecology. The surety remains liable for any discharge occurring before the effective date of termination or cancellation.

(c) Guarantee:

(i) The owner or operator of a vessel or facility may demonstrate financial responsibility with a guarantee for the amount required, in full or in part.

(ii) The guarantee document must be executed and signed by the guarantor and must have a designated agent, located in the state of Washington, for service of process by the guarantor. Form number ECY 070-757 may be used. The guarantor must be subject to and governed by the laws of the state of Washington.

(iii) The guarantee must indicate the expiration date of the guarantee or that it is a "continuing" guarantee.

(iv) The guarantee must indicate the maximum amount of financial responsibility that the guarantor is providing.

(v) The guarantee must not contain additional terms or conditions which limit the guarantee's obligation to pay for costs and damages arising due to damages for oil pollution claims and/or the unlawful discharge of oil.

(vi) The issuer of the guarantee must meet the financial, application, and reporting requirements of (g) of this subsection.

(vii) An applicant utilizing a guarantee to demonstrate evidence of financial responsibility must establish a standby trust fund. Form number ECY 070-753 may be used. Under the terms of the guarantee, all payments made thereunder must be deposited by the guarantor directly into the standby trust fund.

(viii) Termination or cancellation of a guarantee that serves as proof of financial responsibility may not become effective until 60 calendar days after a notice of termination or cancellation has been submitted to ecology. The guarantor remains liable for any discharge occurring before the effective date of termination or cancellation.

(d) Letter of credit:

(i) The owner or operator of a vessel or facility may demonstrate financial responsibility with a letter of credit, in favor of the state of Washington, for the amount required, in full or in part.

(ii) The letter of credit must be irrevocable in favor of the state of Washington, must be subject to and be governed by the laws of the state of Washington, must be effective on or before the approval date of the Washington COFR, and must specifically note the effective date and the expiration date. Form number ECY 070-756 may be used.

(iii) The letter of credit must be issued by a financial institution that has the authority to issue letters of credit, and that is regulated and examined by state and federal banking agencies.

(iv) The letter of credit may not be used as collateral and may not be drawn upon by the owner or operator of the facility or vessel except to cover oil spill clean-up or damage costs.

(v) The letter of credit must not contain additional terms or conditions which limit the issuing institution's obligation to pay for costs and damages arising due to damages for oil pollution claims and/or the unlawful discharge of oil.

(vi) An applicant utilizing a letter of credit to demonstrate evidence of financial responsibility must establish a standby trust fund. Form number ECY 070-753 may be used. Under the terms of the letter of credit, all payments made thereunder must be deposited by the issuing institution directly into the standby trust fund.

(e) Certificates of deposit:

(i) The owner or operator of a vessel or facility may demonstrate financial responsibility with a certificate of deposit, in favor of the state of Washington, for the amount required, in full or in part.

(ii) The certificate of deposit must be held by a financial institution that has the authority to hold certificate of deposit, that is regulated and examined by state and federal banking agencies and that is a member of the Federal Deposit Insurance Corporation or National Credit Union Administration.

(iii) The certificate of deposit must be irrevocable in favor of the state of Washington with an automatically renewable term, must be subject to and be governed by the laws of the state of Washington, and must be effective on or before the approval date of the Washington COFR. The initial term and the automatic renewal term must be stated on the certificate of deposit.

(iv) The certificate of deposit may not be used as collateral and may not be drawn upon by the owner or operator of the facility or vessel except to cover oil spill clean-up or damage costs.

(v) An applicant utilizing a certificate of deposit to demonstrate evidence of financial responsibility must establish a standby trust fund. Form number ECY 070-753 may be used. Under the terms of

the certificate of deposit, all payments made thereunder must be deposited by the issuing institution directly into the standby trust fund.

(f) A certificate evidencing compliance with the requirements of another state's financial responsibility requirements or federal financial responsibility requirements, if the state or federal government requires a level of financial responsibility the same as or greater than that required under this chapter. If this method is used to provide financial responsibility, the applicant must provide documentation of the financial responsibility instruments provided to the other state or federal agency.

(g) Self-insurance:

(i) Must satisfy one of two tests:

(A) Test one

Solvency ratio:

(I) Total liabilities to net worth less than 1.5, or cash and cash equivalents at end of year or quarter minus \$20,000,000 to total liabilities greater than 0.1; and

(II) Worldwide owner's equity minus intangible assets (i.e., tangible net worth) greater than \$20,000,000 plus two times the amount of self-insurance that is required; and

(III) United States assets, not including assets that are petroleum inventory that may be affected by an oil spill from a facility covered by the self-insurance, equal to or greater than 90 percent of total assets or at least two times the amount of required self-insurance.

(B) Test two

(I) A current credit rating of BBB- stable or better from Standard and Poor's, Baa or better by Moody's, or commercial paper rate of A1, A2, or the equivalent; and

(II) Worldwide owner's equity minus intangible assets (i.e., tangible net worth) greater than \$20,000,000 plus two times the amount of self-insurance that is required; and

(III) United States assets, not including assets that are petroleum inventory that may be affected by an oil spill from a facility covered by the self-insurance, equal to or greater than 90 percent of total assets or at least two times the amount of required self-insurance.

(ii) Documentation required. A self-insurance letter, form number ECY 070-755 may be used, signed by a financial officer, a general partner, the proprietor of a sole proprietorship, or an authorized representative of the applicant, stating:

(A) They are a financial officer, general partner, proprietor, or authorized representative of the organization or business entity;

(B) That the letter supports the use of a financial test to demonstrate financial responsibility by self-insurance pursuant to this section; and

(C) Whether the applicant, parent entity of the applicant, or a subsidiary of the applicant is the owner or operator of the vessels or facilities described in the application or is the owner of the oil.

(iii) The proof of financial responsibility required under this section must be supported by the following, which must be submitted with the application for approval, and which must be later supplemented as described:

(A) 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 cer-

tified public accountant. If the financial statements do not specify what portion of the applicant's assets are located in the United States, the statements 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 assets located in the United States are in an amount equal to the applicable amount required under this chapter; or

(B) A self-insuring applicant may provide ecology with a copy of the applicant's Form 10K as filed with the United States Securities and Exchange Commission for the fiscal year preceding application or renewal, and each Form 10Q subsequently filed with that commission, subject to the following conditions:

(I) If the applicant's fiscal year ended six months or more before initial application, the applicant's Form 10Q for the first quarter of the current fiscal year must also be submitted with the initial application; and

(II) If the applicant's United States Securities and Exchange Commission forms do not specify what portion of its assets are located in the United States, those forms 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 assets located in the United States are in an amount equal to the applicable amount required under this chapter.

(C) Each quarter:

(I) The applicant must submit Form 10Q within two calendar months after the quarter ends; and

(II) Along with the Form 10Q, the applicant must submit subsequent quarterly affidavits attesting that the amounts of assets located in the United States are equal to the applicable amount required under this chapter; and

(D) Each year:

(I) The applicant must submit Form 10K within four calendar months after the applicant's fiscal year ends; and

(II) Along with the Form 10Q, the applicant must submit a subsequent affidavit attesting that the amounts of assets located in the United States are equal to the amount required under this chapter; and

(E) The applicant must notify ecology within seven calendar days if, at any time, the applicant fails to meet the self-insurance test criteria.

(h) Other evidence of financial responsibility deemed acceptable by ecology.

NEW SECTION

WAC 173-187-230 Phase-in schedule for vessels and facilities.

(1) Within nine months of the rule effective date, owners and operators of existing Class 1 facilities must submit an application to request a Washington COFR.

(2) Within 15 months of the rule effective date, owners and operators of existing Class 2 and 3 facilities must submit an application to request a Washington COFR.

(3) Within 21 months of the rule effective date, owners and operators of vessels regulated by this rule must submit an application to request a Washington COFR or be verified as a member of a P&I club.

NEW SECTION

WAC 173-187-240 Submittal timeline. (1) Owners and operators of facilities that are beginning new operations in the state after the effective date of this rule are required to submit a completed and signed application for a Washington COFR at least 65 calendar days before beginning operations.

(2) (a) After the phase-in schedule described in WAC 173-187-230, owners and operators of vessels that are not members of P&I clubs must submit a completed and signed application for a Washington COFR, including attachments to prove financial responsibility, to ecology at least 10 calendar days before entering the waters of the state.

(b) Ecology will accept Washington COFR applications received less than 10 calendar days before the vessel enters the waters of the state and will expedite the review of the application, if:

(i) The application is received at least 24 hours before the vessel enters the waters of the state; and

(ii) The applicant demonstrates that unanticipated circumstances prevent the applicant from submitting an application at least 10 calendar days in advance.

NEW SECTION

WAC 173-187-250 Issuance of Washington COFRs. (1) Ecology will review applications and issue Washington COFRs for vessels and facilities within 30 calendar days of receipt of a complete application.

(2) If ecology approves the application for financial responsibility, it will issue a Washington COFR to the applicant stating that the proof of financial responsibility requirements have been met for each vessel or facility identified in the application and the Washington COFR will be emailed to the applicant.

(3) Washington COFRs expire two years after the issuance date.

(4) The effective date and the expiration date will be marked on the Washington COFR.

(5) The original Washington COFR, or a copy of the original Washington COFR, demonstrating financial responsibility must be available for inspection by ecology upon request.

NEW SECTION

WAC 173-187-260 Washington COFR renewals. The owner or operator of the vessel or facility must submit an application to renew their Washington COFR at least 30 calendar days, but no more than 90 calendar days, before the expiration date of the Washington COFR.

PART IV: FINANCIAL RESPONSIBILITY - NOTIFICATION REQUIREMENTSNEW SECTION

WAC 173-187-300 Significant changes to Washington COFRs require notification. (1) If the owner or operator of a vessel or facility becomes aware of a significant change after ecology has issued a Washington COFR, they must notify ecology of the change within seven calendar days after becoming aware of the significant change. Ecology may suspend or terminate a Washington COFR if the owner or operator can no longer demonstrate financial responsibility based on the significant change. Significant changes include, but are not limited to:

- (a) A change in ownership or operational control;
- (b) A method of demonstrating financial responsibility will be terminated or any coverage thereunder will cease;
- (c) Any financial responsibility coverage amount that will be changed or adjusted.

(2) If there is a change in applicant name, vessel or facility name change, if the Washington COFR expires, or there is any change in the financial responsibility coverage amount, a new Washington COFR will be necessary.

(3) The holder of a Washington COFR under this chapter must notify ecology of an oil spill or discharge in state waters consistent with chapters 90.48 and 90.56 RCW.

(a) The holder of a Washington COFR must also notify ecology within 10 calendar days if it experiences a spill in Washington or in another jurisdiction for which it may be liable and which may incur damages that exceed 15 percent of the financial resources reflected by the Washington COFR.

(b) Upon notification of an oil spill or discharge or other potential liability by the owner or operator of a vessel or facility that holds a Washington COFR under (a) of this subsection, ecology may reevaluate the validity of the Washington COFR under this chapter. Ecology must reevaluate the validity of a Washington COFR under this chapter upon notification of a spill for which the Washington COFR holder may be liable and which may incur damages that exceed 25 percent of the financial resources reflected by the Washington COFR. Ecology may suspend or revoke a Washington COFR if ecology determines that, because of a spill, discharge, or other action or potential liability, the holder of the Washington COFR is likely to no longer have the financial resources to both pay damages for the oil spill or discharge or other action or potential liability and have resources remaining available in an amount sufficient to meet the requirements of this chapter, effective 10 calendar days after its determination.

(c) Ecology may request the owner or operator of a vessel that has been verified to be a member of a P&I club to provide evidence that it is able to maintain required levels of financial responsibility required under this chapter if it has an oil spill.

OTS-5056.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 317-50-010	Purpose.
WAC 317-50-020	Application.
WAC 317-50-030	Definitions.
WAC 317-50-040	Financial responsibility for small tank barges.
WAC 317-50-050	Evidence of financial responsibility for small tank barges.
WAC 317-50-060	Submitting evidence of financial responsibility.
WAC 317-50-070	Enforcement.
WAC 317-50-080	Financial responsibility for oil spill response barges.
WAC 317-50-900	Severability.