Chapter 317-50 WAC

FINANCIAL RESPONSIBILITY FOR SMALL TANK BARGES AND OIL SPILL RESPONSE BARGES

WAC

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WAC 317-50-010 Purpose. This chapter allows owners and operators of small tank barges to reduce their financial responsibility under RCW 88.40.020 (2)(b) without compromising protection of the state's marine environments and public health and safety. This chapter also exempts tank barges dedicated solely to oil spill response activities from the requirement to possess financial responsibility under RCW 88.40.020.

[Statutory Authority: RCW 88.40.020 (2)(b), 88.40.020(5) and 88.40.030. 97-10-096, § 317-50-010, filed 5/7/97, effective 6/7/97.]

WAC 317-50-020 Application. This chapter applies to any tank barge in state waters that is 300 gross tons or less or that is an oil spill response barge.

[Statutory Authority: RCW 88.40.020 (2)(b), 88.40.020(5) and 88.40.030. 97-10-096, § 317-50-020, filed 5/7/97, effective 6/7/97.]

WAC 317-50-030 Definitions. Unless the context clearly requires otherwise, the definitions in chapter 317-05 WAC and the following apply to this section:

(1) "Financial responsibility" means demonstrated capability to meet state and federal financial liability requirements for actual costs of oil spill removal, natural resource damages, and necessary expenses.

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

(3) "Nonpersistent oil" means a petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions where:

(a) At least 50 percent by volume distill at a temperature of 340 degrees Celsius (645 degrees Fahrenheit); and

(b) At least 95 percent by volume distill at a temperature of 370 degrees Celsius (700 degrees Fahrenheit).

(4) "Persistent oil" means a petroleum-based oil that does not meet the distillation criteria for nonpersistent oil.

(5) "Small tank barge" means a tank barge three hundred gross tons or less.

(6) "State waters" means the navigable waters of the state as defined in WAC 317-05-020(10).

(7) "Tank barge" means a tank vessel without a means of self-propulsion or a self-propelled tank vessel less than forty meters (one hundred and thirty feet) in overall length.

(8) "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.

A ship is constructed or adapted to carry oil in bulk as cargo or cargo residue if authorized to do so under the ship's certification or classification. A vessel carries oil as cargo or cargo residue if the oil is carried for dispensing to other vessels or equipment off the vessel, or for delivery from point to point, regardless of whether direct compensation for carriage is involved. A vessel being used to collect spilled oil from the water, and that may have some recovered oil storage capacity, does not carry oil as cargo.

[Statutory Authority: RCW 88.40.020 (2)(b), 88.40.020(5) and 88.40.030. 97-10-096, § 317-50-030, filed 5/7/97, effective 6/7/97.]

WAC 317-50-040 Financial responsibility for small tank barges. (1) An owner or operator of a small tank barge covered by an oil spill prevention plan on file with the office in compliance with chapter 317-21 WAC shall possess financial responsibility in the amount determined under subsection (2) of this section. If the owner's or operator's oil spill prevention plan is disapproved by the office or voluntarily withdrawn, the owner or operator shall possess financial responsibility in the amount of at least five hundred million dollars ($500,000,000).

(2) Financial responsibility for a small tank barge is the greater of two million dollars ($2,000,000) or:

(a) For tank barges certified to carry persistent oil, $3000 per barrel of the barge's total capacity, or if assigned a load line under 46 C.F.R. Parts 42 or 44, per barrel of allowed capacity; or

(b) For tank barges certified to carry nonpersistent oil, $1,500 per barrel of the barge's total capacity, or if assigned a load line under 46 C.F.R. Parts 42 or 44, per barrel of allowed capacity.

[Statutory Authority: RCW 88.40.020 (2)(b), 88.40.020(5) and 88.40.030. 97-10-096, § 317-50-040, filed 5/7/97, effective 6/7/97.]

WAC 317-50-050 Evidence of financial responsibility for small tank barges. Evidence of financial responsibility for a small tank barge may be one or a combination of the following:

(1) A current and valid certificate of enrollment in a Protection and Indemnity Mutual Association.

(2) A current and valid Master Certificate of Financial Responsibility issued by the US Coast Guard under 33 C.F.R. §138.110 and a copy of the letter of insurance, enrollment or

other summary of coverage provided by the guarantor for which the Master Certificate is issued.

(3) A copy of a policy issued by the Water Quality Insurance Syndicate (WQIS) or a certificate of insurance evidencing placement with WQIS issued by a licensed broker that includes at a minimum:

(a) The term of the policy;

(b) The amount of deductible or similar retention of liability; and

(c) A description of the coverage limits in relation to a vessel oil spill.

(4) The office may consider other evidence of financial responsibility if the owner or operator demonstrates the financial ability to meet state and federal financial liability for the actual costs for removal of oil spills, for natural resource damages, and necessary expenses. Acceptable evidence is a written opinion, based on Generally Accepted Accounting Principles in the United States (GAAP), signed by an independent certified public accountant licensed to practice in the United States that the coverage meets the standards of 33 C.F.R. §138.80 for the amount required by WAC 317-50-040(2).

[Statutory Authority: RCW 88.40.020 (2)(b), 88.40.020(5) and 88.40.030. 97-10-096, § 317-50-050, filed 5/7/97, effective 6/7/97.]

WAC 317-50-060 Submitting evidence of financial responsibility. (1) A small tank barge owner or operator shall submit evidence that demonstrates financial responsibility under WAC 317-50-040 for each barge entering or operating in Washington waters. The evidence must be included in the oil spill prevention plan submitted under chapter 317-21 WAC and on file with the office twenty-four hours before the barge enters Washington waters.

(2) The following are considered significant changes for the purpose of updating a barge's oil spill prevention plan under WAC 317-21-530:

(a) A change in the term or amount of coverage;

(b) A change in the type of coverage;

(c) Termination of coverage;

(d) A new coverage provider; and

(e) A change that may affect the opinion of the independent certified public accountant submitted to the office under WAC 317-50-050(4).

[Statutory Authority: RCW 88.40.020 (2)(b), 88.40.020(5) and 88.40.030. 97-10-096, § 317-50-060, filed 5/7/97, effective 6/7/97.]

WAC 317-50-070 Enforcement. A small tank barge owner or operator who fails to comply with the provisions of this chapter and any order or directive issued by the office requiring compliance with this chapter may be subject to any or all of the following:

(1) Assessment of a civil penalty of up to $100,000 per day for each day the owner or operator's barge is found without evidence of financial responsibility required under this chapter;

(2) Disapproval of the owner's or operator's oil spill prevention plan under chapter 317-21 WAC;

(3) Referral for prosecution under RCW 88.46.080;

(4) Denial of entry into state waters.

[Statutory Authority: RCW 88.40.020 (2)(b), 88.40.020(5) and 88.40.030. 97-10-096, § 317-50-070, filed 5/7/97, effective 6/7/97.]

WAC 317-50-080 Financial responsibility for oil spill response barges. (1) A tank barge used solely as an oil spill response barge is not required to possess evidence of financial responsibility under RCW 88.40.020 if the owner or operator submits to the office a letter certifying that:

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

(b) The owner or operator is an approved response contractor under WAC 317-10-090; and

(c) The owner or operator is indemnified by plan holders for whom the owner or operator is a primary response contractor for liabilities that may arise under state and federal law.

(2) The letter must be in writing, on letterhead and signed by the chief executive officer of the owner or operator, or authorized representative. Identifying information for each tank barge covered by the letter must be provided and include at least the vessel's name, Lloyd's number or official number, country of registry, and gross tonnage.

(3) Any change in status of ownership, charter arrangement, classification, or use must be reported to the office within 10 working days of the change.

[Statutory Authority: RCW 88.40.020 (2)(b), 88.40.020(5) and 88.40.030. 97-10-096, § 317-50-080, filed 5/7/97, effective 6/7/97.]

WAC 317-50-900 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

[Statutory Authority: RCW 88.40.020 (2)(b), 88.40.020(5) and 88.40.030. 97-10-096, § 317-50-900, filed 5/7/97, effective 6/7/97.]