

WSR 23-09-044
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF ECOLOGY

[Order 22-14—Filed April 17, 2023, 8:26 a.m.]

Subject of Possible Rule Making: The department of ecology (ecology) is initiating a rule making to create new chapter 173-187 WAC, Financial responsibility. Additionally, existing chapter 317-50 WAC, Financial responsibility for small tank barges and oil spill response barges, will be incorporated into the new rule and then repealed.

This rule making will implement updates to chapter 88.40 RCW as required under E2SHB 1691 and will incorporate the requirements of existing chapter 317-50 WAC, which will be repealed. The rule making will ensure that vessels and facility owners and operators have adequate financial resources to pay cleanup and damage costs arising from an oil spill.

The new rule will:

- Define the entities subject to financial responsibility requirements.
- Establish required levels of financial responsibility for oil handling facilities and pipelines.
- Specify the procedures and timelines for obtaining or renewing a certificate of financial responsibility.
- Establish requirements for acceptable evidence of financial responsibility, including self-insurance.
- Outline the process for ensuring timely updates to changes in financial status.
- Define 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.
- Incorporate and update financial responsibility requirements currently included in chapter 317-50 WAC, Financial responsibility for small tank barges and oil spill response barges, and repeal that chapter.
- Make other changes to clarify language and make any corrections needed.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 88.40 RCW, Transport of petroleum products—Financial responsibility.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Through E2SHB 1691, codified in chapter 88.40 RCW, the legislature directs ecology to adopt rules regarding financial responsibility requirements for oil handling facilities and vessels. Under the new rule, regulated entities must demonstrate financial responsibility for response cleanup costs and as necessary to compensate the state and affected federally recognized Indian tribes, counties, and cities for damages that might occur during a spill. The main goal of the rule is to establish a process to implement Washington state certificates of responsibility.

The financial responsibility amounts for vessels are detailed in the law. However, the rule-making process will be used to establish financial responsibility requirements for regulated facilities. The law directs consideration of 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, the cost of cleaning up the spilled oil, the frequency of operations at the facility, the damages that could result from the spill, and the commercial availability and affordability of financial responsibility.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Federal and state agencies that issue certificates of financial responsibility: United States Coast Guard National Pollution Funds Center, Environmental Protection Agency, Oregon Department of Environmental Quality, California Department of Fish and Wildlife Office of Spill Prevention and Response, and Alaska Department of Environmental Conservation Spill Prevention and Response. Ecology will notify and solicit input from these federal and state agencies and other stakeholders throughout this rule-making process.

Process for Developing New Rule: Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (chapter 34.05 RCW).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Sonja Larson, Department of Ecology, Spill Prevention, Preparedness, and Response Program, P.O. Box 47600, Olympia, WA 90504, phone 360-480-2263, Washington relay service or TTY call 711 or 877-833-6341, email sonja.larson@ecy.wa.gov, website <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-187>. For updates about this rule making, join our listserv SPILLS-PROGRAM@LISTSERV.ECOLOGY.WA.GOV.

Additional comments: Interested parties can stay informed about the rule making and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

April 17, 2023

Carlos Clements

Spill Prevention, Preparedness, and Response Program Manager