

WSR 24-03-115

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 22-14—Filed January 19, 2024, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-09-044.

Title of Rule and Other Identifying Information: Ecology is formally proposing a new chapter of rule, chapter 173-187 WAC, Financial responsibility. Additionally, the existing chapter 317-50 WAC, Financial responsibility for small tank barges and oil spill response barges, will be incorporated into the new rule. After the new rule is adopted, the previous rule will be repealed. For more information on this rule making, visit our website here <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-187>.

Hearing Location(s): On Tuesday, February 27, 2024, at 1:00 p.m., webinar hearing via Zoom. Presentation and question and answer session, followed by the hearing. This is an online meeting that you can attend from any computer using internet access. Join online <https://waecy-wa-gov.zoom.us/j/83417472748>. For call in only, use your phone to call 253-205-0468 and enter meeting ID 834 1747 2748;

On Wednesday, February 28, 2024, at 6:00 p.m., webinar hearing via Zoom. Presentation and question and answer session, followed by the hearing. This is an online meeting that you can attend from any computer using internet access. Join online <https://waecy-wa-gov.zoom.us/j/83015033443>. For call in only, use your phone to call 253-215-8782 and enter meeting ID 830 1503 3443; and

On Thursday, February 29, 2024, at 10:00 a.m., webinar hearing via Zoom. Presentation and question and answer session, followed by the hearing. This is an online meeting that you can attend from any computer using internet access. Join online <https://waecy-wa-gov.zoom.us/j/87923319517>. For call in only, use your phone to call 253-215-8782 and enter meeting ID 879 2331 9517.

Date of Intended Adoption: June 13, 2024.

Submit Written Comments to: Diana Davis, Washington State Department of Ecology, Northwest Regional Office, Spill Prevention, Preparedness, and Response Program, P.O. Box 330316, Shoreline, WA 98133-9716 (United States mail); or parcel delivery services: Washington State Department of Ecology, Northwest Regional Office, Spill Prevention, Preparedness, and Response Program, 15700 Dayton Avenue North, Shoreline, WA 98133 by March 8, 2024. Please submit comments by mail, online via ecology's online comment tool, or at the public hearings, online <https://sppr.ecology.commentinput.com/?id=Njtx23iVBu>.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, TTY or Washington relay service call 711 or 877-833-6341, email ecyadacoordinator@ecy.wa.gov, by February 23, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will implement updates to chapter 88.40 RCW, Transport of petroleum products—Financial responsibility, as required under E2SHB 1691. 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. Additionally, the existing chapter 317-50 WAC, Financial responsibility for small tank barges and oil spill response barges, will be incorporated into the new rule. After the new rule is adopted, the previous rule will be repealed.

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 (COFR).
- 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.
- Repeal chapter 317-50 WAC.

Reasons Supporting Proposal: E2SHB 1691, codified in chapter 88.40 RCW, directs ecology to adopt rules regarding financial responsibility requirements for oil handling facilities and vessels. This new chapter will establish a process to ensure regulated entities meet financial responsibility requirements and to establish a process for requesting a Washington state COFR. Regulated entities must demonstrate financial responsibility for response cleanup costs and, as necessary, compensate the state and affected federally recognized Indian tribes, counties, and cities for damages that might occur during a spill.

Chapter 88.40 RCW outlines the amount of financial responsibility a vessel must demonstrate and provides authorization to establish a process for verification of protection and indemnity (P&I) club membership. P&I clubs are mutual insurance associations that serve the vessel community and that provide risk pooling for their members. They provide insurance type protection for oil pollution risk, as well as other risks that are common for the vessel industry. The rule-making process will be used to establish financial responsibility requirements for regulated facilities and vessels. 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. The proposed rule also outlines a phase-in schedule for vessels and facilities and ongoing compliance timelines to meet the requirements in the rule.

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

Statute Being Implemented: Chapter 88.40 RCW, Transport of petroleum products—Financial responsibility.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Diana Davis, Shoreline, Washington, 425-758-0483.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Diana Davis, Washington State Department of Ecology, Northwest Regional Office, Spill Prevention, Preparedness, and Response Program, P.O. Box 330316, Shoreline, WA 98133-9716, phone 425-758-0483, TTY or Washington relay service call 711 or 877-833-6341, email Diana.Davis@ECY.WA.GOV.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA, chapter 19.85 RCW) based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The small business economic impact statement (SBEIS) below includes a summary of the baseline for this rule making, and whether or how the proposed rule differs from the baseline.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment; the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

This information is excerpted from ecology's complete set of regulatory analyses for this rule making. For complete discussion of the

likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated regulatory analyses document (**Ecology publication no. 24-08-001, January 2024**).

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES:

Baseline: The baseline for our analyses generally consists of existing laws and rules. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule.

For this rule making, the baseline includes federal financial responsibility (FR) standards, and the state laws that authorize this rule making.

Under federal law (33 C.F.R. Part 138):

- Standards setting the amount of financial liability for facilities and vessels and responsibility required for vessels as defined in the Oil Pollution Act (OPA) of 1990.
- The Delaware River Protection Act of 2006, which increased liability limits.
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), passed in 1980, which establishes separate, additional liability limits under its authority.

State law:

- The authorizing law that directs this rule making, chapter 88.40 RCW.
- The existing rule pertaining to oil barges, chapter 317-50 WAC.

Proposed: The proposed rule would:

- 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 COFR.
- 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.

1. Define the entities subject to FR requirements:

Baseline: Under chapter 88.40 RCW, FR requirements apply to the owners and operators of onshore facilities, offshore facilities, and covered vessels with the following exceptions:

- (a) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;
- (b) Retail motor vehicle motor fuel outlet;
- (c) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330;
- (d) Underground storage tank regulated by ecology or a local government under chapter 70A.355 RCW;

(e) 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.

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

(g) Onshore or offshore facilities owned or operated by the federal government or by the state or local government.

The statute also defines multiple terms including, but not limited to:

(1) A "barge" means a vessel that is not self-propelled.

(2) A "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.

(3) A "covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

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

(5) A "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.

(6) A "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: (i) Operates on the waters of the state; or (ii) transfers oil in a port or place subject to the jurisdiction of this state. Articulated tug barges, tank barges, and tank ships are considered tank vessels.

Proposed: FR requirements apply to the owners and operators of onshore facilities, offshore facilities, and covered vessels. This includes the following entities, which are defined in the proposed rule:

- A "Class 1 facility" is defined as 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.
- A "Class 2 facility" refers to mobile tank units; including any 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.
- A "Class 3 facility" refers to small marine terminals; including any structure that (i) 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; (ii) does not transfer oil in bulk to or from a tank vessel or pipeline; and (iii) 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; motor vehicle motor fuel outlet; or facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

Chapter 88.40 RCW provides exclusions for railroads, motor vehicles, or other rolling stock while transporting oil over the highways or rail lines of the state and covered vessels and facilities owned or operated by the federal government or by a state or local government.

The proposed WAC 173-187-020 adds the following exceptions to covered vessels: Tribal vessels and vessels temporarily transiting waters of the state of Washington through international maritime routes that do not call on United States ports.

Expected impact: Defining Class 1, 2, and 3 facilities establishes the framework for FR requirements addressed in the next section.

International vessels not calling on United States ports fall outside Washington state's jurisdiction and are expected to spend little time in Washington waters. They are recognized under international law as conducting "innocent passage." However, vessels engaging in "willful and serious pollution" would violate the standard of innocent passage.

2. Establish required levels of FR for oil handling facilities and pipelines:

Baseline: RCW 88.40.025 specifies that "an onshore or offshore facility shall demonstrate financial responsibility in an amount determined by the department as necessary to compensate the state and affected federally recognized Indian tribes, counties, and cities for damages that might occur during a reasonable worst-case spill of oil from that facility into the navigable waters of the state. The department shall adopt a rule that considers such matters as 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." Under OPA, responsible parties (RP) must pay for all cleanup costs. However, that federal regulation also places a limit of liability at \$725,710,800 for onshore facilities.

Proposed: WAC 173-187-040 adopts the definition of facility from RCW 88.40.011 and defines three classes of facilities described above to be as consistent as possible with chapter 173-180 WAC, Facility oil handling standards. WAC 173-187-110 specifies the FR amounts for each facility class.

- Class 1 facilities will be required to establish FR of \$12,500 per barrel times the worst case spill volume up to a maximum of \$300 million.
- Class 2 facilities will be required to establish FR of \$12,500 per barrel times 30 percent of the entire contents of the container(s) in which oil is stored or transported, up to a maximum amount of \$5 million.
- Class 3 facilities will be required to provide FR proof of \$12,500 per barrel times the volume of the largest facility tank, up to a maximum of \$5 million.

Expected impact: Regulated facilities will incur costs of either purchasing insurance or otherwise demonstrating FR. A major benefit would be meeting the intent of the legislature as reflected in chapter 88.40 RCW. The public would also receive the benefit of knowing that oil handling facilities have demonstrated financial resources to pay for oil spill cleanup and damage costs.

3. Specify the procedures and timelines for obtaining or renewing a COFR:

Baseline: Procedures and timelines for obtaining a Washington COFR do not currently exist. Chapter 88.40 RCW specifies FR amounts for vessels over 300 gross tons and allows ecology to set requirements

for smaller vessels. It also allows for ecology to set FR requirements for facilities by rule. Under existing state law, the only FR requirements for vessels are in chapter 317-50 WAC, which applies to tank barges 300 gross tons or less or oil spill response barges. Their options for demonstrating current FR requirements include demonstrating P&I club membership, possessing a Coast Guard issued COFR, an insurance policy, or demonstration of ability to meet the required amount of FR to the Office of Marine Safety.

Proposed: Requirements under chapter 317-50 WAC will be incorporated into the proposed rule and then the chapter will be repealed. Chapter 88.40 RCW covers vessels over 300 gross tons including tank barges, and specifies FR requirements for them. The owner or operator of a vessel or facility that is required to demonstrate FR under this chapter, or their authorized representative, must apply for a Washington COFR based on guidance located on ecology's website. Alternatively, vessels may be verified as a member of a P&I club. Anyone who owns or operates more than one vessel or facility that is subject to FR requirements may obtain a single COFR that applies to multiple vessels or facilities based on the vessel or facility that represents the greatest financial risk for a spill.

The proposed rule specifies a phase-in timeline for the owners or operators of existing facilities and vessels operating in Washington to submit an application for a COFR. The proposed phase-in timeline details that:

- Class 1 facilities: Nine months after the effective rule date.
- Class 2 and 3 facilities: Fifteen months after the effective rule date.
- Vessels: Twenty-one months after the effective rule date or demonstrate P&I club membership.

The proposed rule specifies the timeline to submit an application for a COFR, for the owners or operators of facilities and vessels that begin operating in Washington after the effective date of the rule. The proposed timeline specifies that:

- Class 1, 2, and 3 facilities: Sixty-five days before beginning operation in the state.
- Vessels: At least 10 calendar days before entering the waters of the state, for any vessel that cannot demonstrate P&I club membership. The rule specifies conditions under which an expedited application review can take place in less than 10 days.

The proposed rule also specifies a timeline for COFR renewal. Washington COFRs expire two years after the issuance date. The RP must submit an application to renew their COFR between 30 and 90 calendar days before the expiration date.

Expected impact: The benefit of a web-based application process is simplicity and a streamlined COFR application process. A vessel's P&I club membership can be verified without any required action on the part of the vessel owner or operator, agent, or multi-vessel contingency plan holder. The benefit of allowing the owner or operator of multiple vessels or facilities to obtain one COFR that covers multiple vessels or facilities is reduced cost of compliance.

The benefits of the phase-in timeline for obtaining a COFR after the effective date of the proposed rule include allowing businesses time to determine and implement the method(s) of proving FR that provide the most benefit for their company, the best coverage with the least cost. The benefit of having the COFR expire after two years is

reduced administrative effort compared to having the COFR expire after one year.

4. Establish requirements for acceptable evidence of FR, including self-insurance:

Baseline: Under RCW 88.40.030, acceptable methods to demonstrate FR include: Evidence of insurance; surety bonds; guaranty; letter of credit; certificates of deposit; protection and indemnity club membership; a certificate providing evidence of compliance with the requirements of another state's FR requirements or federal FR requirements if the state or federal government requires a level of FR the same as or greater than that required under this chapter; or other evidence of financial responsibility deemed acceptable by ecology.

In addition to the options above, the owner or operator of a vessel or facility may demonstrate financial responsibility through qualification as a self-insurer. Self-insurance requires that the applicant demonstrate the security of their financial position. This demonstration may include assets, cash flow, equity, liabilities, and bond ratings. The self-insurance requirements must be no less protective than other jurisdictions with similar programs in jurisdictions that Washington imports from, or exports to, significant volumes of oil.

Proposed: WAC 173-187-220 describes the FR methods specified in RCW 88.40.030, including providing details about evidence required to demonstrate FR for each method, such as the documents that must be submitted and further definitions of the methods that may be used. For self-insurance, WAC 173-187-220 (6)(g)(ii) lists the required documentation that an owner or operator of a facility must provide when using the self-insurance option. If entities choose this option, audited annual financial statements and quarterly financial statements, as typically filed with the Securities and Exchange Commission, must be submitted to ecology.

Expected impact: There will be administrative costs associated with compiling and submitting this documentation. The benefit will be assurance to the public and ecology that FR requirements have been adequately established and documented.

5. Outline the process for ensuring timely updates to changes in financial status:

Baseline: Chapter 88.40 RCW does not list changes in financial status that must be reported to ecology.

Proposed: Proposed WAC 173-187-300 defines significant changes relevant to a vessel or facility's COFR that require notification to ecology within seven days. These changes include but are not limited to:

- A change in ownership or operational control.
- That a method of demonstrating FR will be terminated or any coverage thereunder will cease.
- Any FR coverage amount that will be changed or adjusted.

If there is a change in applicant name, vessel name change, if the Washington COFR expires, or there is any change in the FR coverage amount, a new Washington COFR will be necessary.

The holder of a Washington COFR for more than one covered 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 which significantly impacts its FR status in Washington. Ecology may request the owner or operator of a vessel that has been verified to be a member of an international P&I club to provide evidence that

it is able to maintain required levels of FR under chapter 173-187 WAC if it has an oil spill.

Expected impact: Small administrative costs are likely to result from this aspect of the rule. Assessing in a timely manner that owners or operators of vessels or facilities can still meet their financial obligations benefits the public and ecology. Were an entity to undergo organizational changes, or face liability for a spill, its ability to demonstrate ongoing FR may be affected. This may place its status outside of the specifications of this proposed rule, which carries out the legislative intent of chapter 88.40 RCW.

6. Define the processes governing the suspension, revocation, and reissuance of certificates of FR considering potential liabilities incurred by a covered entity after an oil spill or other incident:

Baseline: RCW 88.40.040(3) states that 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.

It also states: "The holder of a certificate of financial responsibility for more than one covered vessel or facility must notify [ecology] if it experiences a spill or spill from a vessel or facility 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 certificate." If a Washington COFR holder incurs an oil spill or discharge or other potential liability in another jurisdiction, ecology may reevaluate the validity of the COFR. Ecology must reevaluate the validity of a COFR if the damages exceed 25 percent of the resources specified in the COFR. Ecology may suspend or revoke a COFR if ecology determines that, because of a spill, discharge, or other action or potential liability, the holder of the COFR is likely to no longer have the financial resources to still meet its Washington COFR requirements.

Proposed: In the event of a spill occurrence in another jurisdiction, ecology must be notified within 10 days. All other requirements under this section can be found in the statute, RCW 88.40.040.

Expected impact: Ecology considers 10 days a reasonable time frame. It should allow staff to perform this requirement within their regular schedules. We expect it to produce no significant additional costs. Notification of a spill within another jurisdiction within 10 days provides ecology with enough time to monitor the incident and assess whether the liabilities incurred threaten the entity's COFR qualifications.

7. Incorporate and update FR requirements currently included in chapter 317-50 WAC, Financial responsibility for small tank barges and oil spill response barges, and repeal that chapter:

Baseline: Under the authorizing statute, RCW 88.40.020, the FR for tank vessels greater than 300 gross tons is \$1 billion. The statute does not specify the FR for tank vessels of 300 gross tons or less, but does allow rule making to establish a standard that is less than \$1 billion. Chapter 317-50 WAC currently requires demonstrated FR for tank barges of 300 gross tons or less. For barges certified to carry persistent oil, it requires \$2 million, or \$3,000 per barrel of the barge's total capacity (or allowed capacity if assigned a load line under 46 C.F.R. Parts 42 or 44), whichever is greater. For barges certified to carry nonpersistent oil, it requires \$2 million, or \$1,500 per barrel of the barge's total capacity (or allowed capacity if assigned a load line under 46 C.F.R. Parts 42 or 44), whichever is greater. Oil spill response barges are exempt from this requirement.

Tank vessels designated as oil spill response vessels are also exempt from this requirement.

Proposed: WAC 173-187-100 mandates demonstrated FR for tank vessels, including tank barges, of 300 gross tons or less of \$5 million or \$3,000 per barrel of the barge's total capacity, whichever is greater, regardless of whether it carries mostly persistent or nonpersistent oil. Oil spill response barges are exempt from this requirement.

This is the only vessel FR requirement in the proposed chapter 173-187 WAC that is not defined by chapter 88.40 RCW.

Expected impact: Only one vessel is known to fall into this category. It is a member of a P&I club and is covered for oil pollution risks up to the required amounts, and therefore is not required to demonstrate FR pursuant to RCW 88.40.020 (2)(c). We do not expect this element of the proposed rule to result in costs or benefits, as compared to the baseline.

COSTS OF COMPLIANCE: EQUIPMENT AND SUPPLIES: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of equipment or supplies.

COSTS OF COMPLIANCE: LABOR: Providing evidence of FR: Ecology estimates that for entities, acquiring, compiling, and submitting the evidence of FR will take 16 hours for the initial application. Self-insuring entities may need two additional hours per quarter to submit required financial documents to ecology. Annual submission of insurance or another method of demonstration by facilities may take two hours per year. Assuming an average of five hours per year ongoing, we calculate the following cost across 47 estimated entities covered by the proposed rule. The estimated cost assumes an executive secretary will be performing this work for 16 hours per year at \$35.74, making the amount per entity total \$571.84 initially. On an ongoing basis, five hours per year at \$35.74 equals \$178.70 per year. Across 47 entities, Class 1, 2, 3 combined, the initial cost totals \$26,876.48, followed by \$8,398.90 in subsequent years. The 20-year present value (PV) is \$179,904.34.

Updates to changes in financial status: Ecology estimates the updates to changes in financial status, or responding to its requests for vessels to verify they are maintaining FR, to take roughly two hours annually. Ecology anticipates this work to be done by an executive secretary at a pay rate of \$35.74 per hour. At \$35.74 per hour over roughly 4,200 vessels and facilities, assuming 10 percent of them incur changes each year that require ecology to be notified, the estimated annual cost totals \$30,022 per year. The net PV through 20 years is then $21 \times 0.916 \times \$30,022/\text{year} = \$577,503$.

COSTS OF COMPLIANCE: PROFESSIONAL SERVICES: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services.

COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS: Where applicable, ecology estimates administrative costs (overhead) as part of the cost of labor and professional services above.

COSTS OF COMPLIANCE: OTHER: Ecology estimates there are eight Class 1 entities that will be required to demonstrate the \$300 million level of maximum FR. Eleven entities would face lower requirements. Seven Class 1 entities have California COFRs and will be able to use that demonstration of FR for part or all of ecology's requirements under the proposed rule. We estimate the annual cost for entities required to demonstrate \$300 million in FR to be \$4.2 million per year in the low-cost scenario, and \$9.7 million in the high-cost scenario. Companies

having to demonstrate the availability of \$220 million of resources outside of the formal insurance market is the largest cost driver for these entities, comprising nearly half of the total cost in the low-cost scenario, and nearly 80 percent of the total cost in the high-cost scenario.

- In aggregate, that is summing all Class 1 entities, the combined annual cost totals \$49.9 million dollars in the low-cost scenario, and \$101.5 million in the high-cost scenario.
- Using a real discount rate of 0.9 percent over the next 20 years, the PV for this aspect of the rule totals \$0.91 billion in the low-cost scenario, and \$1.85 billion in the high-cost scenario.

Class 2 facilities' (tanker trucks) FR requirements fall within the regular insurance markets. Ecology estimates their coverage can be purchased with provisions and deductibles for 0.9 percent of the covered amount. There are 19 such facilities. Two entities have California COFRs that will meet the proposed rule's requirements, and they will incur no additional costs. The 17 remaining entities would pay an average premium of \$4,605 per year, ranging from \$2,400 to \$8,000. This totals \$87,509 per year, with a PV over 20 years of \$1.47 million.

Class 3 facilities' (marine terminals) FR requirements are also covered by the regular insurance markets. As discussed above, ecology estimates their coverage can be purchased with provisions and deductibles for 0.9 percent of the covered amount. There are five such facilities, which would pay an average premium of \$18,374 per year. The resulting PV over 20 years using a real discount rate of 0.9 percent is \$1.77 million. These facilities vary widely in size, and the annual premiums are estimated to range from under \$1,870 per year to \$45,000 per year. This calculation uses the proposed rule's \$12,500 of coverage needed per barrel of oil. The premiums are estimated based upon the size of potential worst-case spills at the facilities, and the amount of FR required, \$208,000 at the low end, and \$5 million at the high end. Two facilities would be able to be covered by COFRs for other facilities owned by the same entity.

Table 1: Summary of Low-Cost Estimates to Entities.

Class Level	Average annual cost per entity	Summed Annual Cost for Entities in Class	PV over 20 years
Class 1 Entities	\$2.6 million	\$49.9 million	\$0.91 billion
Class 2 Entities	\$4.0 thousand	\$76.6 thousand	\$1.39 million
Class 3 Entities	\$18.4 thousand	\$91.8 thousand	\$1.67 million

Table 2: Summary of High-Cost Estimate to Entities.

Class Level	Average annual cost per entity	Summed Annual Cost for Entities in Class	PV over 20 years
Class 1 Entities	\$5.3 million	\$101.5 million	\$1.85 billion
Class 2 Entities	\$4.0 thousand	\$76.6 thousand	\$1.39 million
Class 3 Entities	\$18.4 thousand	\$91.8 thousand	\$1.67 million

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES: We calculated the estimated per-business costs to comply with the proposed rule, based on the costs estimated in Chapter 3 of this document. In this section, we estimate compliance costs per employee.

The average affected small business among Class 1, 2, and 3 facilities likely to be covered by the proposed rule employs between 11 and 18 people. The largest 10 percent of affected businesses that own

Class 1 facilities employ an average of 74,150 people. Based on cost estimates in Chapter 3, we estimated the following compliance costs per employee.

Table 33 [3]: Compliance costs per employee for Class 1 facilities.

Type of cost (or total cost)	Small Businesses	Largest 10 Percent of Businesses
Average employment	11	74,150
Average Compliance Costs (low)	\$2,600,000	\$2,600,000
Average Compliance Costs (high)	\$5,300,000	\$5,300,000
Cost per employee (low)	\$236,364	\$35
Cost per employee (high)	\$481,818	\$71

The average compliance cost for small businesses that own Class 2 facilities was \$222 per employee and the average compliance cost for the largest 10 percent of businesses that own Class 2 facilities was \$0.20 per employee. The average compliance cost for small businesses that own Class 3 facilities was \$1,022 per employee and the average compliance cost for the largest 10 percent of businesses that own Class 3 facilities was \$58 per employee.

We conclude that the proposed rule is likely to have disproportionate impacts on small businesses, and therefore ecology must include elements in the proposed rule to mitigate this disproportion, as far as is legal and feasible.

MITIGATION OF DISPROPORTIONATE IMPACT: RFA states that:

"Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques including those suggested by small businesses or small business advocates."

We considered all of the above options, the goals and objectives of the authorizing statutes (see Chapter 6), and the scope of this rule making. We limited compliance cost-reduction methods to those that: Are legal and feasible, meet the goals and objectives of the authorizing statute, and are within the scope of this rule making.

As part of the proposed rule, ecology allows for modifications in regulatory requirements, simplifications in reporting, and a delayed compliance timetable to reduce costs to small businesses. Details of these mitigation methods are outlined in the following subsections. The scope of this rule making does not include inspection frequency nor a schedule of fines for noncompliance.

Modifying regulatory requirements: There are several ways in which the rule reduces regulatory requirements for facilities or allows facilities to take actions to reduce or modify their regulatory requirements while achieving the objectives of the underlying statute.

The rule adopts alternative FR levels for different classes of facilities. Class 2 and 3 facilities tend to be smaller in scale than Class 1 facilities. FR for Class 2 and 3 facilities is limited to \$5 million in contrast to the \$300 million maximum for Class 1 facilities.

Facility owners or operators may request alternative FR calculations. As discussed in the least-burdensome alternative analysis (see Chapter 6), this allows for flexibility in meeting the intent of the statute. Covered entities may choose to comply with the regulation by making investments that reduce their worst-case spill volume or provide information that allows additional factors to be accounted for in determining the worst-case spill volume. Reducing a facility's worst-case spill volume may reduce their FR requirements.

The rule creates several avenues for the owners or operators of facilities to demonstrate FR. This added flexibility may reduce the burden of compliance for some facilities, particularly smaller facilities that may not be able to completely self-insure.

As discussed in the least-burdensome alternative analysis (see Chapter 6), ecology considered the following alternative regulatory requirements, but they were not included in the rule due, at least in part, to the additional compliance burden they would have imposed. The alternatives were: Requiring higher levels of FR; requiring a higher credit rating for insurance companies; requiring the state of Washington to be listed as additional insured or certificate holder; and requiring Class 2 facilities to prove FR for the entire contents of their oil storage or transportation container.

Additional reductions or modifications to the rule's regulatory requirements were considered, but these alternatives would have compromised the ability of the rule to meet the intent of the underlying statute.

Simplifying or reducing reporting requirements: As discussed in the least-burdensome alternative analysis (see Chapter 6), ecology considered the following alternative reporting requirements, but they were not included in the rule due, at least in part, to the additional compliance burden they would have imposed: Requiring vessel owners/operators or their agent to verify P&I club membership and require verification at least 10 days before entering state waters; and setting COFR expiration at one year.

Delaying compliance timetables: The rule institutes timelines for the phase-in of FR requirements. One of the purposes of this phase-in is to allow smaller entities additional time to apply for COFRs. Owners and operators of Class 1 facilities have nine months from the effective rule date to submit a COFR application. Owners and operators of other facilities and vessels have 15 months and 21 months, respectively.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION: Ecology involved small businesses and local governments in its development of the proposed rule using:

- Notice of rule making (proposal statement of inquiry; form CR-101), emails, updates, and workshop invitations directly to likely impacted entities, as well as entities that would not be impacted by the rule.
- Notice of rule making directly to state, regional, and local emergency and air quality bodies.
- Notice of rule making directly to 54 associations and organizations representing.

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE: The proposed rule likely impacts the following industries, with associated NAICS codes. NAICS definitions and industry hierarchies are discussed at <https://www.census.gov/naics/>.

(321113) Sawmills, (324110) Petroleum Refineries, (424710) Petroleum Bulk Stations and Terminals, (424720) Petroleum and Petroleum Product Merchant Wholesalers (except bulk stations and terminals), (441222) Boat Dealers, (457120) Other Gasoline Stations, (483211) Inland Water Freight Transportation, (486110) Pipeline Transportation of Crude Oil, (486210) Pipeline Transportation of Natural Gas, (486910) Pipeline Transportation of Refined Petroleum Products, (493190) Other Warehousing and Storage, (541611) Administrative Management and General Management Consulting Services, (551112) Offices of Other Holding Companies, (562900) Remediation and Other Waste Management Services, and (562910) Remediation Services.

CONSIDERATION OF LOST SALES OR REVENUE, IMPACT ON JOBS: We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule on directly affected markets, accounting for dynamic adjustments throughout the economy. The results of the REMI E3+ model show that the rule would impact a variety of industries, costing the Washington economy an estimated \$140 million to \$284 million in output at its peak (total amount of goods and services produced by Washington businesses) across all sectors. In the first quarter of 2023, Washington state's annual gross domestic product (GDP) was estimated at \$761 billion. \$284 million is equivalent 0.04 percent of the state's GDP.

Output losses are projected to be highest in the few years immediately following the rule implementation, with losses of \$123 million in the low-cost scenario and \$250 million in the high-cost scenario in the first year of the rule. These losses increase by 14 percent over the next two years, peaking in 2027 at \$140 million and \$284 million for the low- and high-cost scenarios, respectively. By 2045, the output loss is projected to have declined under the low- and high-cost scenarios to \$92 million and \$190 million, respectively.

REMI results project an immediate statewide loss of 459 full-time equivalent positions (FTEs) under the low-cost scenario, and a loss of 934 FTEs under the high-cost scenario, in the year 2025. This loss increases over the next two years, peaking in 2027 with a loss of 550 and 1120 FTEs, under the low-cost and high-cost scenarios, respectively. The statewide loss in FTEs is lessened after 2027 so that in 2045 the statewide projected loss is reduced to 273 FTEs in the low-cost scenario, and 565 FTEs in the high-cost scenario. Industries that are most impacted are listed in Table 4 below.

Table 44 [4]: Impacts on jobs.

Industry	2027 Impact (low)	2027 Impact (high)	2045 Impact (low)	2045 Impact (high)
Whole state	-550	-1120	-273	-565
Construction	-127	-259	-19	-39
State and local government	-48	-108	-32	-66
Wholesale trade	-44	-89	-20	-42
Warehousing and storage	-40	-82	-25	-51
Retail trade	-27	-56	-12	-25
Petroleum and coal products manufacturing	-4	-8	-2	-4

A copy of the statement may be obtained by contacting Diana Davis, Washington State Department of Ecology, Northwest Regional Of-

Office, Spill Prevention, Preparedness, and Response Program, P.O. Box 330316, Shoreline, WA 98133-9716, phone 425-758-0483, TTY or Washington relay service call 711 or 877-833-6341, email Diana.Davis@ECY.WA.GOV.

January 19, 2024
Heather R. Bartlett
Deputy Director

OTS-5055.4

**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 discharge 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 rule 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
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 rule 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 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 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:

ted 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.

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 subject to financial responsibility requirements 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 owners or operators 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 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 an international 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.

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 authority must be included with the application.

(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 using the form provided on ecology's website.

(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.

(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. The trust agreement form will be available on ecology's website and the completed form must be attached to the Washington COFR application. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with ecology's instructions.

(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. 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. The trust agreement form will be available on ecology's website and the completed form must be attached to the Washington COFR application. Under the terms of the guarantee, all payments made thereunder must be deposited by the guarantor directly into the standby trust fund in accordance with ecology's instructions.

(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.

(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. The trust agreement form will be available on ecology's website and the completed form must be attached to the Washington COFR application. 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 in accordance with ecology's instructions;

(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;

(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; or

(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;

(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, available on ecology's website and 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 certified 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 quar-

ter 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 Class 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. If the applicant submitted their Washington COFR application on ecology's website, the Washington COFR will be emailed to the applicant. If the applicant submitted their Washington COFR application via United States mail, the Washington COFR will be mailed 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 REQUIREMENTS

NEW 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) That 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 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 for more than one covered 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 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 days after its determination.

(c) Ecology may request the owner or operator of a vessel that has been verified to be a member of an international 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.