



# PROPOSED RULE MAKING

**CR-102 (July 2022)**  
**(Implements RCW 34.05.320)**  
 Do **NOT** use for expedited rule making

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**DATE: January 19, 2024**

**TIME: 11:36 AM**

**WSR 24-03-115**

**Agency:** Department of Ecology AO #22-14

- Original Notice**
- Supplemental Notice to WSR** \_\_\_\_\_
- Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR 23-09-044 ; or**
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**
- Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject) 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 After the new rule is adopted, the previous rule will be repealed.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 rulemaking, visit our website here <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-187>

**Hearing location(s):**

<b>Date:</b>	<b>Time:</b>	<b>Location: (be specific)</b>	<b>Comment:</b>
Tuesday, February 27, 2024	1:00 p.m.	Webinar hearing via Zoom	<p>Presentation, question and answer session, followed by the hearing.</p> <p>We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.</p> <p>Join online: <a href="https://waecy-wa.gov.zoom.us/j/83417472748">https://waecy-wa.gov.zoom.us/j/83417472748</a>            For call in only, use your phone to call 253-205-0468 and enter meeting ID 834 1747 2748:</p>
Wednesday, February 28, 2024	6:00 p.m.	Webinar hearing via Zoom	<p>Presentation, question and answer session, followed by the hearing.</p> <p>We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.</p> <p>Join online: <a href="https://waecy-wa.gov.zoom.us/j/83015033443">https://waecy-wa.gov.zoom.us/j/83015033443</a>            For call in only, use your phone to call 253-215-8782 and enter meeting ID 830 1503 3443</p>
Thursday, February 29, 2024	10:00 a.m.	Webinar hearing via Zoom	<p>Presentation, question and answer session, followed by the hearing.</p> <p>We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.</p> <p>Join online: <a href="https://waecy-wa.gov.zoom.us/j/87923319517">https://waecy-wa.gov.zoom.us/j/87923319517</a>            For call in only, use your phone to call 253-215-8782 and enter meeting ID 879 2331 9517</p>

**Date of intended adoption:** June, 13, 2024 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Diana Davis

Address: Washington State Department of Ecology,  
Northwest Regional Office  
Spill Prevention, Preparedness, and Response Program  
PO Box 330316, Shoreline, WA 98133-9716 (US mail).

Parcel delivery services:

Washington State Department of Ecology, Northwest  
Regional Office  
Spill Prevention, Preparedness, and Response Program  
15700 Dayton Avenue N., Shoreline, WA 98133

Email: N/A

Fax: N/A

Other: 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>:

By (date) March 8, 2024

**Assistance for persons with disabilities:**

Contact Ecology ADA Coordinator

Phone: 360-407-6831

Fax: N/A

TTY: For TTY or Washington Relay Service, call 711 or 877-  
833-6341

Email: [ecyadacoordinator@ecy.wa.gov](mailto:ecyadacoordinator@ecy.wa.gov)

Other: N/A

By (date) February 23, 2024

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** This rulemaking will implement updates to Chapter 88.40 RCW Transport of Petroleum Products – Financial Responsibility, as required under Engrossed Second Substitute House Bill (E2SHB) 1691. The rulemaking 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.
- 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 re-issuance 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:** Engrossed Second Substitute House Bill (E2SHB) 1691, codified in RCW 88.40, 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 certificate of financial responsibility. 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.

RCW 88.40 outlines the amount of financial responsibility a vessel must demonstrate and provides authorization to establish a process for verification of protection & 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 rulemaking 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.

**Is rule necessary because of a:**

Federal Law?  Yes  No

Federal Court Decision?  Yes  No

State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** N/A

**Type of proponent:**  Private  Public  Governmental  
**Name of proponent:** (person or organization) Department of Ecology

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Diana Davis	Shoreline, WA	425-758-0483
Implementation:	Diana Davis	Shoreline, WA	425-758-0483
Enforcement:	Diana Davis	Shoreline, WA	425-758-0483

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name: N/A  
 Address: N/A  
 Phone: N/A  
 Fax: N/A  
 TTY: N/A  
 Email: N/A  
 Other: N/A

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Diana Davis  
 Address: Washington State Department of Ecology, Northwest Regional Office  
 Spill Prevention, Preparedness, and Response Program  
 PO Box 330316, Shoreline, WA 98133-9716  
 Phone: 425-758-0483  
 Fax: N/A  
 TTY: For TTY or Washington Relay Service, call 711 or 877-833-6341  
 Email: [Diana.Davis@ECY.WA.GOV](mailto:Diana.Davis@ECY.WA.GOV)  
 Other: N/A

No: Please explain:

**Regulatory Fairness Act and Small Business Economic Impact Statement**  
 Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**  
 This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.  
 Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

- |   |   |
|---|---|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations)         | <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)             | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions:** *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)): 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 rulemaking, and whether or how the proposed rule differs from the baseline.

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_\_\_\_\_

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

This Small Business Economic Impact Statement (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 Regulatory Fairness Act (chapter 19.85 RCW) 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 rulemaking. 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 rulemaking, the baseline includes federal FR standards, and the state laws that authorize this rulemaking.

Under federal law (33 CFR 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 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 rulemaking, Chapter 88.40 RCW.
- The existing rule pertaining to oil barges, Chapter 317-50 WAC.

### **Proposed rule**

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 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 re-issuance 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 financial responsibility 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 the department or a local government under Chapter 70A.355 RCW;
- (e) Marine fuel outlet that does not dispense more than three thousand 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 (ATBs), 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 two hundred fifty 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; and (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; 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.

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 rule, 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 U.S. 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 U.S. 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 financial responsibility 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 the 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 certificate of financial responsibility.**

### **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 protection and indemnity (P&I) club membership, possessing a Coast Guard issued certificate of financial responsibility (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: 9 months after the effective rule date.
- Class 2 and 3 facilities: 15 months after the effective rule date.
- Vessels: 21 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: 65 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 responsible party (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 1 COFR that covers multiple vessels or facilities is reduced cost of compliance.

The benefit 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 2 years is reduced administrative effort than having the COFR expire after 1 year.

#### **4. Establish requirements for acceptable evidence of financial responsibility, 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 the department.

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 7 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 required 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 re-issuance of certificates of financial responsibility 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 with 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 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.**

**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 rulemaking 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 thousand per barrel of the barge's total capacity (or allowed capacity if assigned a load line under 46 CFR Parts 42 or 44), whichever is greater. For barges certified to carry nonpersistent oil, it requires \$2 million, or \$1.5 thousand per barrel of the barge's total capacity (or allowed capacity if assigned a load line under 46 CFR 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**

Chapter 173-187-100 WAC 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 non-persistent 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 financial responsibility 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 financial responsibility**

Ecology estimates for entities, acquiring, compiling, and submitting the evidence of FR to 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 5 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, 5 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 PV is \$179,904.34

**Updates to changes in financial status**

Ecology estimates the updates in changes in financial status, or responding to its requests for vessels to verify they are maintaining FR to take roughly 2 hours annually. Ecology anticipates this work 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 NPV 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 8 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 over 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 present value (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 5 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 we estimate 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 thousand dollars 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	Present Value (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	Present Value (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 ten 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: Compliance costs per employee for Class 1 facilities

Type of cost (or total cost)	Small Businesses	Largest 10% 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

Average compliance costs for small businesses that own Class 2 facilities was \$222 per employee and average compliance costs for the largest 10% of businesses that own Class 2 facilities was \$0.20 per employee. Average compliance costs for small businesses that own Class 3 facilities was \$1022 per employee and average compliance costs for the largest 10% 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

The RFA (19.85.030(2) RCW) 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:

- Reducing, modifying, or eliminating substantive regulatory requirements;
- 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 rulemaking. 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 rulemaking.

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 rulemaking does not include inspection frequency nor a schedule of fines for non-compliance.

#### **Modifying regulatory requirements.**

There are several ways in which the rule reduces regulatory requirements for facilities or that 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 1 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 9 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 rulemaking (“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 rulemaking directly to state, regional, and local emergency and air quality bodies.
- Notice of rulemaking 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 shows 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 GDP was estimated at \$761 billion. \$284 million is equivalent 0.04% 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% 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 state-wide 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 in 2045. Industries that are most impacted are listed in table 4 below.

Table 44: 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

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Diana Davis

Address: Washington State Department of Ecology, Northwest Regional Office  
 Spill Prevention, Preparedness, and Response Program  
 PO Box 330316, Shoreline, WA 98133-9716


Phone: 425-758-0483

Fax: N/A

TTY: For TTY or Washington Relay Service, call 711 or 877-833-6341

Email: [Diana.Davis@ECY.WA.GOV](mailto:Diana.Davis@ECY.WA.GOV)

Other: N/A

<p><b>Date:</b> 1/19/24</p> <hr/> <p><b>Name:</b> Heather Bartlett</p> <hr/> <p><b>Title:</b> Deputy Director</p>	<p><b>Signature:</b></p> 
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