



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: June 14, 2024

TIME: 8:16 AM

WSR 24-13-065

Agency: Department of Ecology AO #22-14

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: Ecology is adopting a new chapter of rule, Chapter 173-187 WAC Financial Responsibility. The adopted rule implements updates to Chapter 88.40 RCW Transport of Petroleum Products – Financial Responsibility, as required under Engrossed Second Substitute House Bill (E2SHB) 1691. The adopted rule ensures that vessel and facility owners and operators have adequate financial resources to pay cleanup and damage costs arising from an oil spill. Additionally, the existing Chapter 317-50 WAC – Financial Responsibility for Small Tank Barges and Oil Spill Response Barges has been incorporated into the new rule and has been repealed.

The new rule:

- Defines the entities subject to financial responsibility requirements.
- Establishes required levels of financial responsibility for oil handling facilities and pipelines.
- Specifies the procedures and timelines for obtaining or renewing a certificate of financial responsibility.
- Establishes requirements for acceptable evidence of financial responsibility, including self-insurance.
- Outlines the process for ensuring timely updates to changes in financial status.
- Defines the processes governing the suspension, revocation, and re-issuance of certificates of financial responsibility considering potential liabilities incurred by a covered entity after an oil spill or other incident.
- Incorporates and updates financial responsibility requirements currently included in Chapter 317-50 WAC – Financial Responsibility for Small Tank Barges and Oil Spill Response Barges.
- Repeals Chapter 317-50 WAC.

Citation of rules affected by this order:

New: Chapter 173-187 WAC
 Repealed: Chapter 317-50 WAC
 Amended:
 Suspended:

Statutory authority for adoption: Chapter 88.40 RCW Transport of Petroleum Products – Financial Responsibility

Other authority: N/A

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 24-03-115 on 01/19/2024 (date).

Describe any changes other than editing from proposed to adopted version: The following content describes the changes between the rule proposal language and the adopted language and provides Ecology’s reasons for making them.

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

WAC 173-187-040 Definitions

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

WAC 173-187-100 Financial responsibility amounts for vessels

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

WAC 173-187-110 Financial responsibility amounts for facilities

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

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

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

WAC 173-187-200 Demonstrating financial responsibility

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

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

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

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

- The adopted rule was updated to provide information about how to access Ecology forms but no longer requires use of these forms as they have not been subject to the public review and comment process. Forms that may be used to support proof of financial responsibility have been created, published and are available on Ecology’s Financial Responsibility webpage, for use at the discretion of the applicant. The rule provides information about these forms but does not require the use of any specific form. Additional language was added to denote:
 - Published form ECY 070-751 may be used to document an owner’s or operator’s attestation that their COFR application is accurate and complete.
 - Published form ECY 070-758 may be used to document an owner’s or operator’s delegation of authority to an authorized representative.
 - The requirement to complete and attach the certificate of insurance agreement that is available on the financial responsibility website has been removed. Published form ECY 070-752 may be used to document a certificate of insurance agreement.
 - Published form ECY 070-754 may be used to document a surety bond agreement.
 - The requirement to complete and attach the standby trust agreement that is available on the COFR website when proving financial responsibility with a surety bond, guarantee, or letter of credit has been removed. Published form ECY 070-753 may be used to document the establishment of a standby trust fund. The requirement to fund the standby trust fund in accordance with ecology’s instructions has been removed. All requirements for funding the standby trust fund must be included in the surety bond, guarantee, letter of credit or certificate of deposit agreement.
 - Published form ECY 070-757 may be used to document a guarantee agreement.
 - Published form ECY 070-756 may be used to document a letter of credit agreement. When using a certificate of deposit to prove financial responsibility, the applicant will be required to establish a standby trust fund to receive all funds if the certificate of deposit is liquidated.
 - The requirement to complete and attach the self-insurance letter that is available on the COFR website when proving financial responsibility with self-insurance has been removed. Published form ECY 070-755 may be used to document the self-insurance calculations and agreement.

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

- Deleted the redundant word “Class.”

WAC 173-187-250 Issuance of Washington COFRs

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

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

- A minor revision to improve plain talk readability was made.
- The word “facility” was added to clarify that if a facility name is changed a new COFR will be required.
- The sentence “The holder of a Washington COFR for more than one vessel or facility must notify ecology within 10 calendar days if it experiences a spill or spill from a vessel or facility in another jurisdiction . . .” was replaced with “The holder of a Washington COFR must also notify ecology within 10 calendar days if it experiences a spill in

Washington or in another jurisdiction . . . “ to improve clarity and to use plain talk to describe this notification requirement.

- The unnecessary word “covered” was removed.
- The word “calendar” has been added to clarify to the number of days after which a COFR may be suspended or revoked due to Ecology’s determination that the COFR holder is likely to no longer have the financial resources to comply with the financial responsibility requirements.

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

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Web site: <https://apps.ecology.wa.gov/publications/SummaryPages/2408014.html>

Other: N/A

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>11</u>	Amended	<u>1</u>	Repealed	<u>9</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>6</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted on the agency’s own initiative:

New	<u>10</u>	Amended	<u>1</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>3</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Signature:

Date Adopted: June 14, 2024

Name: Laura Watson

Title: Director

A handwritten signature in black ink, appearing to read 'L. Watson', is written over the signature line.