



DEPARTMENT OF
ECOLOGY
State of Washington

Rule Implementation Plan

Chapter 173-187 WAC, Financial Responsibility

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Implementation Plan
Chapter 173-187 WAC,
Financial Responsibility

Spill Prevention, Preparedness, and Response Program

Washington State Department of Ecology

Olympia, Washington

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Purpose

The Washington State Department of Ecology (Ecology) provides the information in this implementation plan to meet agency and Administrative Procedure Act (RCW 34.05.328) requirements related to rule adoptions.

Introduction

On June 14, 2024, Ecology adopted a new Chapter of rule, Chapter 173-187 WAC Financial Responsibility and repealed the existing Chapter 317-50 WAC Financial Responsibility for Small Tank Barges and Oil Spill Response Barges (AO # 22-14). The purpose of this rule implementation plan is to inform those who must comply with Chapter 173-187 WAC about how Ecology intends to:

- Implement and enforce the rule.
- Inform and educate persons affected by the rule.
- Promote and assist voluntary compliance for the rule.
- Evaluate the rule.
- Train and inform Ecology staff about the new or amended rule.

Also included in this plan is information about:

- Supporting documents that may need to be written or revised because of the new rule or amended rule.
- Other resources where more information about the rule is available.
- Contact information for Ecology employees who can answer questions about the rule implementation.

Implementation and Enforcement

Chapter 173-187 WAC (financial responsibility) establishes proof of financial responsibility requirements for regulated oil handling facilities, tank vessels and tank barges of any size, and non-tank vessels (such as cargo and large fish processing vessels) over 300 gross tons and involved in commerce that carry oil as fuel.

Ecology adopted the new rule, Chapter 173-187 WAC on June 14, 2024.

The adopted rule implements updates to Chapter 88.40 RCW. The rule also establishes new requirements as described below.

Chapter 173-187 WAC:

- 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.

Two existing Spill, Prevention, Preparedness, and Response Program (Spills Program) staff will implement and enforce the rule. As the rule phase-in timeline continues, two additional staff will be hired to continue rule implementation and to audit applications and back-up information provided by regulated facilities and vessels. Existing staff will prioritize tasks to implement the rules, such as informing stakeholders and developing guidance, and will communicate with the regulated community during rule implementation.

The adopted rule will go into effect on July 15, 2024, 31 days after the rule is adopted, and facilities and vessels will be required to submit applications for a Certificate of Financial Responsibility (COFR), as described in the compliance schedule section of the rule: WAC 173-187-230.

Based on the compliance schedule:

- Owners and operators of all Class 1 facilities as defined in Chapter 173-187 WAC must submit an application for a COFR within 9 months of the rule effective date.

- Owners and operators of all Class 2 and 3 facilities as defined in Chapter 173-187 WAC must submit an application for a COFR within 15 months of the rule effective date.
- Owners and operators of all covered vessels as defined in Chapter 173-187 WAC that are not members of Protection and Indemnity (P&I) clubs must submit an application for a COFR within 21 months after the rule effective date.
- If a facility or vessel is not in compliance, they may be subject to enforcement and penalties.

Certificate of Financial Responsibility (COFR) applications:

- The COFR application must be submitted on Ecology’s COFR application website, via Secure Access Washington (SAW). The application form and all attached documents must be in English and all monetary terms must be in United States currency. All fields in the application form must be completed.
- A document that provides instructions for completing the COFR application will be available on Ecology’s COFR website. Formal agreement documents that may be used at the discretion of the applicant will also be available on this website. All applications must include documentation of the proof of financial responsibility.
- If Surety Bond, Guarantee, Letter of Credit, or Certificate of Deposit methods are used to prove financial responsibility, a stand-by trust fund must be established with an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state of Washington. A Stand-by Trust Fund Agreement that may be used at the discretion of the applicant will be available on Ecology’s COFR website.
- All COFR applications must include an attestation document that provides confirmation that the information contained in the application is true, correct, and complete. This document must be signed by the owner or operator of the facility. An example of this document that may be used at the discretion of the applicant will be available on Ecology’s COFR website. Alternatively, the attestation may be signed by a delegate of the owner or operator of the facility or vessel. If this is the case, a delegation of authority form that may be used at the discretion of the applicant will be available on Ecology’s COFR website. The delegation of authority document must be signed by the owner or operator of the facility or vessel and must be included with the COFR application.

Compliance post-rule implementation:

Regulated facilities and vessels that enter Washington state waters after the rule effective date must comply with the rule before beginning operations or entering Washington state waters.

- Covered vessels:
 - That are members of P&I clubs that enter Washington state waters are not required to take action associated with this rule, unless Ecology requests verification of P&I club membership.

- That are not members of P&I clubs must submit an application for a COFR no less than 10 calendar days prior to arrival in Washington state waters.
- Facilities (Class 1, 2, or 3) that begin operations in the state after the implementation period must submit a COFR request no less than 65 calendar days prior to commencing operations.

Notification requirements:

- The owner or operator of a regulated facility or vessel must provide Ecology with seven calendar days notification of a significant change that is relevant to their COFR. Significant changes include (but are not limited to):
 - Change in ownership or operational control.
 - A method of demonstrating financial responsibility will be terminated or any coverage will cease.
 - The financial responsibility coverage amount will be changed/adjusted
- The holder of a Washington COFR must notify ecology within 10 calendar days if it experiences a spill in Washington or 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.

Ecology will work with facilities and covered vessels to answer any questions regarding these requirements and be available for assistance as needed and requested. Guidance materials and contact information for assistance will be available on Ecology’s website.

Enforcement

Per RCW 88.40.060, “Violations of the requirements of the rule are subject to criminal penalties as provided in RCW 90.56.300 and civil penalties as provided in RCW 90.56.310.”

Informing and Educating Persons Affected by the Rule

Throughout the rulemaking process, Ecology staff communicated with the regulated community, interested stakeholders, Tribes, and the public through emails, phone calls, meetings, workshops, and public hearings to inform them about the rule development and to receive input.

Notices of rule adoption will be sent immediately after the rule is adopted to entities subject to the rule, Tribes, interested stakeholders, federal and state agencies, environmental groups, Ecology's mailing list of interested parties, and members of the public who provided contact information with their comments for the rule.

Additionally, the Spills Program will use a combination of outreach materials to inform and educate persons affected by the rule, including:

- Updates to Ecology's website to notify users of the rule adoption and to direct them to the COFR application website and Ecology's COFR information website, which will include published supporting documents and contact information.
- Outreach to regulated facilities and vessels with links to the COFR application website and Ecology's COFR information website. On Ecology's COFR information website regulated facilities and vessels will be able to find:
 - Guidance documents.
 - Training links that will provide instruction for completing and submitting the COFR application, including when and how to use proof of financial responsibility agreements.
 - Contact information if additional information or technical assistance is needed.
- Offering workshops to demonstrate the use of the COFR application website and to answer questions about the new requirements.
- Providing information and education to the regulated community and the public as we interact with them.

Promoting and Assisting Voluntary Compliance

Educating stakeholders about the newly established requirements will help to promote voluntary compliance. Ecology staff responsible for implementing this rule will work directly with regulated facilities and vessels to assist with compliance. These individuals are developing the tools and backup documents needed for successful implementation of the rule.

Ecology will promote voluntary compliance by maintaining close communication with regulated facilities and vessels as the rule becomes effective. Training opportunities and technical assistance will be provided to help regulated entities and others understand the requirements of the rule. Ecology will also clarify expectations for the new requirements during trainings and when providing technical assistance. Staff will answer questions and direct people to useful information and resources on our webpages as needed and requested.

Evaluating the Rule

To evaluate whether the new rule is achieving the purpose for which it was adopted, Ecology will monitor regulated facility compliance to ensure applications for a COFR are submitted within the prescribed timelines. Ecology will verify P&I club membership for vessels arriving in the waters of the state. If a vessel's P&I membership cannot be verified, Ecology will contact the vessel to provide instructions on how to prove financial responsibility or submit a request for a COFR. Any vessel that is not a member of a P&I club is responsible for submitting a COFR application prior to entering waters of the state.

Ecology will monitor compliance for:

- Submission of an application for a COFR from all Class 1 facilities within 9 months of the rule effective date. Ecology will review the application forms for completeness, review and verify the submitted proof of financial responsibility documents, and document compliance in the COFR database. Ecology may request additional information if the application is incomplete or if the proof of financial responsibility doesn't meet the requirements.
- Submission of an application for a COFR from all Class 2 and class 3 facilities within 15 months of the rule effective date. Ecology will review the application forms for completeness, review and verify the submitted proof of financial responsibility documents, and document compliance in the COFR database. Ecology may request additional information if the application is incomplete or if the proof of financial responsibility doesn't meet the requirements.
- Ecology will verify P&I club membership for vessels with near-term arrivals into the waters of the state. After verifying P&I club membership, Ecology will document the verification and the termination date of current year P&I club membership.

We will continue to evaluate feedback we receive on the rules from the regulated community and use that feedback to improve our guidance and training as needed.

Training and Informing Ecology Staff

Specific staff will be responsible for implementing this new rule. The COFR rule lead will be the COFR team supervisor. Two new employees will be added to the team in the months leading up to rule adoption or shortly after rule adoption.

The COFR team supervisor will document the processes and procedures for the staff and provide them with training. As the rule is implemented, the team will work together to process the first set of COFR applications. The team will discuss issues and work together to effectively implement the rule. Further refinement of process documentation and development of desktop procedures will provide additional training.

The COFR team supervisor has begun preparing documents needed to implement the new rule. Information and presentations about the new rule have been shared with other Spills Program managers, supervisors, and teams throughout the rule development and proposal stages.

List of Supporting Documents that May Need to be Written or Revised

The following supporting materials will be updated and made available on the COFR information website at [Financial responsibility for oil spills - Washington State Department of Ecology](#). These forms may be used, but will not be required:

- Proof of Financial Responsibility – Instructions, ECY 24-08-008: This document provides instructions on how to complete the COFR application form.
- Proof of Financial Responsibility – Attestation Form, ECY 070-751: This provides an attestation of the completeness and accuracy of the application inputs and must be signed by the owner or operator or designated representative of the facility or vessel. This form may be used but is not required.
- Proof of Financial Responsibility – Delegation of Authority Form, ECY 070-758: This document may be used if a designated representative of the owner or operator of the facility or vessel signs the attestation. The owner or operator of the facility (i.e. the Binding Agreement Signatory for the Contingency Plan) or vessel (i.e. CEO) must sign the delegation of authority. This form may be used but is not required.
- Proof of Financial Responsibility – Certificate of Insurance Form, 070-752: This document may be used when an insurance policy is used to prove financial responsibility. The agreement provides detailed information about the insurance policy, coverage term and amounts, and lists the covered facilities and/or vessels. The agreement must be completed and signed by a representative of the insurance provider. This form may be used but is not required.
- Proof of Financial Responsibility – Surety Bond Agreement Form, ECY 070-754: This document may be used when a surety bond is used to prove financial responsibility. The agreement provides detailed information about the surety bond, coverage term and amounts, and lists the covered facilities and / or vessels. The agreement must be completed and signed by the COFR applicant and a representative of the surety company. This form may be used but is not required.
- Proof of Financial Responsibility – Guarantee Agreement Form, ECY 070-757: This document may be used when a guarantee is used to prove financial responsibility. The agreement provides detailed information about the relationship between the COFR applicant and the Guarantor, the coverage limit amount, the terms under which the guarantee may be terminated, and lists the covered facilities and/or vessels. The agreement must be completed and signed by the Guarantor and requires a notary. This form may be used but is not required.

- Proof of Financial Responsibility – Letter of Credit Agreement Form, ECY 070-756: This document may be used when a letter of credit is used to prove financial responsibility. The agreement provides detailed information about the letter of credit, coverage term and amounts, and lists the covered facilities and/or vessels. The agreement must be completed and signed by a representative of the issuing institution. This form may be used but is not required.
- Proof of Financial Responsibility – Chief Financial Officer Letter Agreement Form, ECY 070-755: This document may be used when self-insurance or a guarantee is used to prove financial responsibility. The letter provides detailed information about the amount of financial responsibility that will be covered by self-insurance, lists the covered facilities and/or vessels, and provides financial information that satisfies the financial test requirements. The letter must be completed and signed by the chief financial officer, general partner, proprietor of a sole proprietorship, or authorized representative of the facility or vessel or the chief financial officer, general partner, proprietor of a sole proprietorship, or authorized representative of the Guarantor. This form may be used but is not required.
- Proof of Financial Responsibility – Standby Trust Agreement Form, ECY 070-753: This document may be used when a surety bond, a guarantee, a letter of credit, or a certificate of deposit is used to prove financial responsibility. The agreement provides detailed information about the responsibilities of the grantor, trustee, and beneficiary, the conditions under which the trust will be funded, the types of costs that the trust may and may not be used to pay, the term of the trust, and lists the covered facilities and/or vessels. The agreement must be completed and signed by the Guarantor and the trustee and requires the signature of a witness. This form may be used but is not required.

Other guidance documents may be developed as we receive feedback from program staff and the regulated community on their needs.

More Information

For more information, please see the following Ecology webpages:

- Chapter 173-187 WAC rulemaking page: <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-187>
- Financial responsibility for oil spills – Washington State Department of Ecology: <https://ecology.wa.gov/regulations-permits/guidance-technical-assistance/financial-responsibility-for-oil-spills>
- Rules directing our work – Washington State Department of Ecology: <https://ecology.wa.gov/about-us/who-we-are/our-programs/spills-prevention-preparedness-response/rules-directing-our-work>

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