

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. Form number ECY 070-751 may be used.

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. Form number ECY 070-758 may be used.

(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. Form number ECY 070-752 may be used.

(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. Form number ECY 070-754 may be used.

(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. Form

number ECY 070-753 may be used. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund.

(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. Form number ECY 070-757 may be used. 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. Form number ECY 070-753 may be used. Under the terms of the guarantee, all payments made thereunder must be deposited by the guarantor directly into the standby trust fund.

(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. Form number ECY 070-756 may be used.

(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. Form number ECY 070-753 may be used. 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.

(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.

(v) An applicant utilizing a certificate of deposit to demonstrate evidence of financial responsibility must establish a standby trust fund. Form number ECY 070-753 may be used. Under the terms of the certificate of deposit, all payments made thereunder must be deposited by the issuing institution directly into the standby trust fund.

(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.

(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; 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.

(ii) Documentation required. A self-insurance letter, form number ECY 070-755 may be used, 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 quarter 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.

[Statutory Authority: Chapter 88.40 RCW. WSR 24-13-065 (Order 22-14), § 173-187-220, filed 6/14/24, effective 7/15/24.]