



Financial Responsibility Rulemaking Chapter 173-187 WAC

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Workshop #2: Financial Responsibility for Vessels – July 13, 2023



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Agenda

Welcome - Introductions

Rule Introduction

- Overview
- Timeline
- Scope
- Where are we with rule making
- Financial Responsibility for Covered Vessels
- Certificate process overview



Rulemaking Overview

Ecology is initiating a rulemaking to create a new rule, Chapter 173-187 WAC - Financial Responsibility.

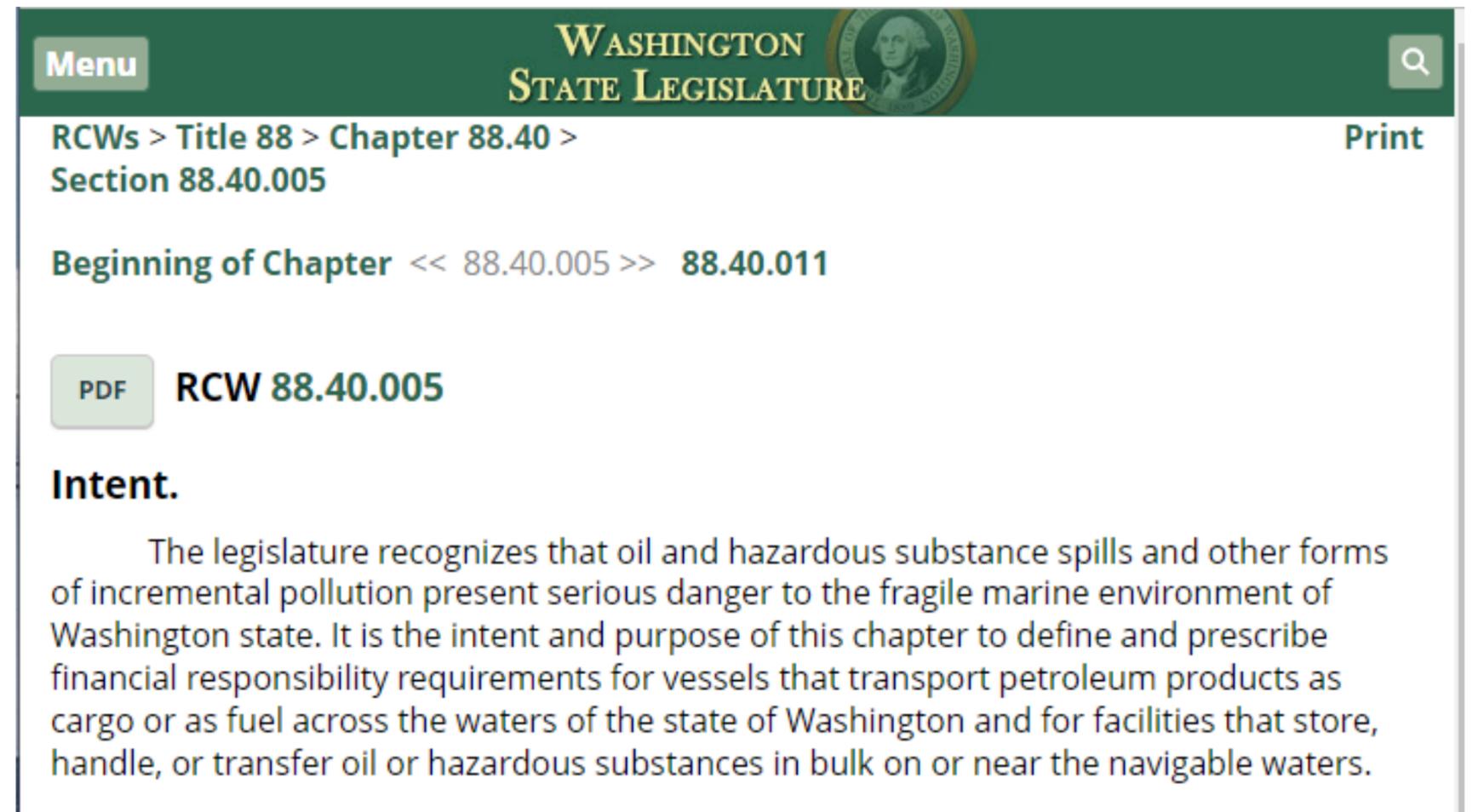
Financial Responsibility is used to ensure that vessel and facility owners and operators have adequate financial resources to pay cleanup costs and damages resulting from oil spills.

Additionally, an existing Chapter 317-50 WAC – Financial Responsibility for Small Tank Barges and Oil Spill Response Barges, will be incorporated into the new rule and then repealed.



Why are we conducting rulemaking at this time?

Through Engrossed Second Substitute House Bill (E2SHB) 1691, codified in RCW 88.40, the Legislature directed Ecology to adopt rules regarding financial responsibility requirements for oil handling facilities and vessels.



The screenshot displays the Washington State Legislature website. At the top, there is a green header with the text "WASHINGTON STATE LEGISLATURE" and a search icon. Below the header, the breadcrumb trail reads "RCWs > Title 88 > Chapter 88.40 > Section 88.40.005". A "Print" button is visible in the top right corner. Below the breadcrumb trail, there is a navigation link "Beginning of Chapter << 88.40.005 >> 88.40.011". A "PDF" button is located next to the section title "RCW 88.40.005". Underneath, the "Intent." section is highlighted, followed by a paragraph of text: "The legislature recognizes that oil and hazardous substance spills and other forms of incremental pollution present serious danger to the fragile marine environment of Washington state. It is the intent and purpose of this chapter to define and prescribe financial responsibility requirements for vessels that transport petroleum products as cargo or as fuel across the waters of the state of Washington and for facilities that store, handle, or transfer oil or hazardous substances in bulk on or near the navigable waters."



Rulemaking Timeline

Dates	Activity
April 17, 2023	CR-101, rule announcement
June – October 2023	Conduct outreach with tribes, stakeholders, and interested parties to develop the rule language
January 2024	Propose the rule (file the CR-102 form)
June 2024	Adopt Rule (file the CR-103 form)
July 2024	Rule effective



Rulemaking Scope

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.



Scope Continued

- Outline the process for ensuring timely updates to changes in regulated industry 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 WAC Chapter 317-50 – Financial Responsibility for Small Tank Barges and Oil Spill Response Barges, and repeal that chapter.**
- Make other changes to clarify language and make any corrections needed.



Financial Responsibility for Vessels

- Barges
- Tank Vessels
- Cargo and Passenger Vessels
- Special Passenger Vessels
- Fishing Vessels



Financial Responsibility for Barges

Barge: a vessel that is not self-propelled

This rule includes barges of any size that transport hazardous substances in bulk as cargo

Financial Responsibility (the greater of):

- \$5,000,000, or
- \$300/gross ton



Preliminary Draft Rule Language - Barges

173-187-110 Financial Responsibility Requirements

(1) The owner or operator of any barge that transports hazardous substances in bulk as cargo, using any port or place in the state of Washington or the navigable waters of the state shall demonstrate financial responsibility in the amount of the greater of \$5,000,000, or \$300 per gross ton of such vessel.



Financial Responsibility for Tank Vessels

Tank vessel: a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue. For the purpose of this rule, tank vessels must operate on the waters of Washington State and transfer oil in a port or place subject to the jurisdiction of the state.

Financial Responsibility

- \$1,000,000,000



Preliminary Draft Rule Language – Tank Vessels

(2)(a) Except as provided in (b) of this subsection, the owner or operator of a tank vessel that carries oil as cargo in bulk shall demonstrate financial responsibility to pay at least \$1,000,000,000.

(b) The owner or operator of a tank vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The owner or operator of a tank vessel will be required to prove membership in such an organization



Financial Responsibility for Cargo and Passenger Vessels

Cargo vessel: a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of three hundred or more gross tons.

Passenger vessel: a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.*

Financial Responsibility:

- \$300,000,000

*For the purposes of this group, we do not include passenger vessels that transport passengers and vehicles between Washington state and a foreign country. This type of vessel will be addressed on a following slide.



Preliminary Draft Rule Language – Cargo and Passenger Vessels

(3)(a) The owner or operator of a cargo vessel or passenger vessel that carries oil as fuel shall demonstrate financial responsibility to pay at least \$300,000,000.

(b) The owner or operator of a cargo vessel or passenger vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The owner or operator of a cargo vessel or passenger vessel will be required to prove membership in such an organization.



Financial Responsibility for Special Passenger Vessels

Passenger vessels that transport passengers and vehicles between Washington state and a foreign country

Financial Responsibility (the greater of):

- \$500,000, or
- \$600/gross ton



Preliminary Draft Rule Language – Special Passenger Vessels

The owner or operator of a passenger vessel that transports passengers and vehicles between Washington state and a foreign country shall demonstrate financial responsibility to pay the greater of at least \$600 per gross ton or \$500,000.

(b) The owner or operator of a cargo vessel or passenger vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The owner or operator of a cargo vessel or passenger vessel will be required to prove membership in such an organization.



Financial Responsibility for Fishing Vessels

Fishing Vessel: a self-propelled commercial vessel of three hundred or more gross tons that is used for catching or processing fish

Fishing vessels that predominately carry nonpersistent products:

Financial Responsibility (the greater of):

- \$1,334,000, or
- \$133.40 per barrel of total oil storage capacity

Fishing vessels that predominately carry persistent products:

Financial Responsibility (the greater of):

- \$6,670,000, or
- \$400.20 per barrel of total oil storage capacity



Preliminary Draft Rule Language – Fishing Vessels

(4) The owner or operator of a covered fishing vessel while on the navigable waters of the state must demonstrate financial responsibility in the following amounts:

(a) For a fishing vessel carrying predominantly nonpersistent product, \$133.40 for each barrel of total oil storage capacity, persistent and nonpersistent product, on the vessel or \$1,334,000, whichever is greater; or

(b) for a fishing vessel carrying predominantly persistent product, \$400.20, for each barrel of total oil storage capacity, persistent product and nonpersistent product, on the vessel or \$6,670,000, whichever is greater.



Preliminary Draft Rule Language – Application Timeline

(5) In order to demonstrate financial responsibility as required under this section, for new applications, not subject to the phase-in period specified in section 173-187-330, or renewal applications, the owner or operator of a

(a) nontank vessel, must submit a completed and signed application, which must be received by the department at least 15 days, but no earlier than 90 days, before operations are proposed to begin; the department will accept an application received less than 15 days before operations are proposed to begin and expedite the review of the application, if the

(A) application is received at least five days before operations are proposed to begin; and

(B) applicant demonstrates that unanticipated circumstances prevent the applicant from meeting the 15-day deadline under this paragraph;

(b) tank vessel, must submit a completed and signed application, which must be received by the department at least 30 days, but no earlier than 90 days before operations are proposed to begin



Exceptions

We have some exceptions to the rule for vessels:

- Vessels owned or operated by federal, state, or local government
- Vessels in need of support to avoid injury to the vessel's crew or passengers
- Non-tank vessels under 300 gross tons
- Tank barges that are dedicated solely to oil spill response activities



Incorporation of WAC Chapter 317-50

These portions of WAC Chapter 317-50 – *Financial Responsibility for Small Tank Barges and Oil Spill Response Barges* will be **incorporated** into our new rule:

- Tank barges dedicated to oil spill responses continue to be exempt from the rule
- Financial responsibility values for small tank barges
- Financial responsibility values for small tank barges will be revised from \$2,000,000 to \$5,000,000
- Submitting evidence of financial responsibility will be required
- Enforcement provisions will be included in the new rule



Rulemaking Status

Several chapters of rule language have been drafted and are in the peer review stage. They include:

Financial Responsibility for Vessels

Includes information about the types of vessels the rule applies to and the amounts of financial responsibility each vessel category must carry



Rulemaking Status

Financial Responsibility – Documentation – Certificate

Includes:

- Details about the Certificate – what it covers, what it means, maximum term
- Certificate application process
- Certificate renewal process
- Initial application phase in – applies to facilities and vessels



Certificate Process

Certification Process

- Owners / operators of vessels that are covered in this rule will submit an application within the prescribed time period.
- Initial application phase in. Vessel owners / operators will be in the second wave for complying with the rule



Certificate Process

Certification Process

- Evidence of financial responsibility can be provided with one or more source and includes:
 - Insurance coverage
 - Protection and Indemnity (P&I) Club membership
 - Guaranty
 - Surety Bond
 - Letter of credit
 - Certificate of Financial Responsibility from another state or federal
 - Self-insurance



Next Steps

The next Workshop will be held on July 27th from 1:00 to 3:30. It will focus on financial responsibility requirements for large oil handling facilities, such as refineries, oil terminals, and pipelines.

Like this workshop, the agenda and preliminary draft versions of the rule language (if it is available) will be shared with that workshop's registered attendees prior to the workshop.

Please feel free to provide your thoughts and comments verbally here or in writing to Diana (Diana.Davis@ECY.WA.GOV) via email and we will take them into consideration as we work through the rulewriting process.





Questions?

Thank you