



# Financial Responsibility Rulemaking Chapter 173-187 WAC

Diana Davis, Financial Responsibility Unit Supervisor

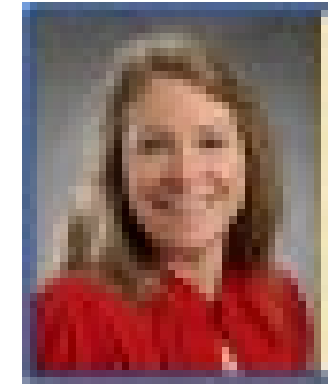
Workshop #5: Financial Responsibility - Certification Process – September 12, 2023



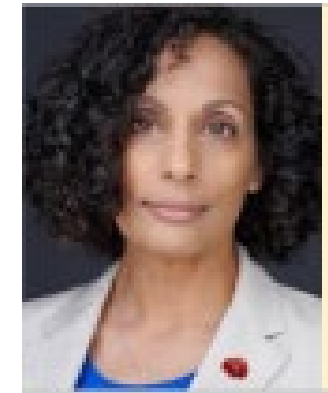


# Ecology's Financial Responsibility Team

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# Agenda

Welcome - Introductions

Rule Introduction

- Overview
- Timeline
- Scope
- Certificate process overview
- Documentation requirements
- Certificate process examples
- Timelines
- Renewal
- Notification of changes / revocation
- Next Steps



# Rulemaking Overview

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

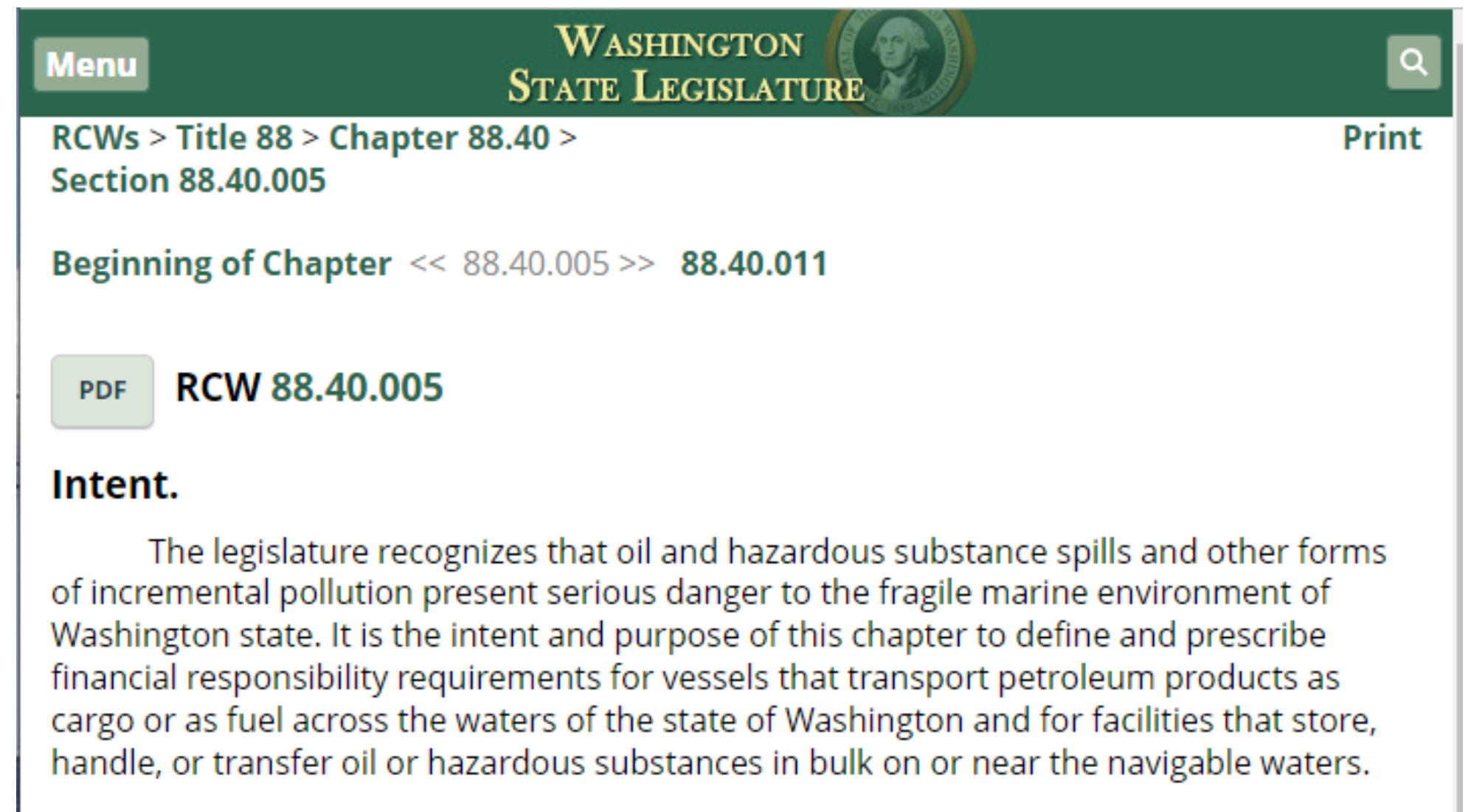
Financial Responsibility is used to ensure that vessel and facility owners and operators have adequate financial resources to pay cleanup costs and damages resulting from oil spills.

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Responsibility for Small Tank Barges and Oil Spill Response Barges, will be incorporated into the new rule and then repealed.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 shows 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. The main content area displays "Beginning of Chapter << 88.40.005 >> 88.40.011". Below this, there is a "PDF" button and the text "RCW 88.40.005". The "Intent." section follows, containing a paragraph: "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 – Certification Process

All facilities and vessels that are covered in this rule will be required to have a certificate or verification

Vessels must submit an application for:

- certificate of financial responsibility or
- verification of P&I Club membership

Facilities must submit an application for:

- certificate of financial responsibility

Certificates expire 2 years after issuance

Verifications are valid for the term of P&I coverage

If the owner / operator has multiple facilities / vessels they may:

- have 1 certificate / verification cover all of their facilities / vessels
- have multiple certificates / verifications which cover a subset of their facilities / vessels



# Financial Responsibility – Documentation Requirements

These are the financial responsibility instruments:

- Evidence of insurance
- Surety bonds
- Guarantee
- Letter of credit
- Certificates of deposit
- Protection and indemnity club membership
- Certificate of financial responsibility from another state or from the federal government
- Self-Insurance



# Financial Responsibility – Insurance

When insurance is used to prove financial responsibility:

- the applicant may satisfy the requirement through one or more insurance policies
- the insurance provider must be authorized to do business in Washington and have an AM Best rating of B+
- an insurance binder or certificate of insurance must be attached to the application and include:
  - name and address of the insurer
  - name and address of the insured
  - effective date and term of coverage
  - description of the covered facilities / vessels
  - language to indicate the policy covers oil pollution
  - value of coverage and deductible amount



# Financial Responsibility – Surety Bond

When a Surety bond is used to demonstrate financial responsibility:

- the surety company must be listed as acceptable sureties on Federal bonds in Circular 570 of the US Dept of the Treasury
- the bond must be subject to and governed by the laws of the State of Washington
- the bond document must be attached to the certificate application and shall not contain terms or conditions which limit the surety company's obligation to pay for costs and damages arising from an oil spill, and
- an applicant utilizing a surety bond to demonstrate financial responsibility will be required to establish a standby trust fund





# Financial Responsibility – Guarantee

When a Guarantee is used to prove financial responsibility, the documentation must include:

- a guarantee document that is executed and signed by the guarantor and includes a designated agent, located in the State of Washington, for service of process by the guarantor. This document must be attached to the certificate application
- indicate the expiration date of the guarantee or that it is a “continuing” guarantee
- the maximum amount of financial responsibility that the guarantor is providing
- the applicant must establish a stand-by trust fund and all payments made by the guarantor to satisfy oil spill pollution costs shall be deposited directly into the trust fund



# Financial Responsibility – Letter of Credit

When a Letter of Credit is used to prove financial responsibility, the documentation 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
- be irrevocable in favor of the State of Washington, be subject to and be governed by the laws of the State, must be effective on or before the approval date of the certificate of financial responsibility, and must specifically note the effective date and the expiration date
- the applicant must establish a stand-by trust fund and all payments by the issuing institution to cover oil spill pollution costs shall be deposited directly into the trust fund



# Financial Responsibility – Certificate of Deposit

When certificates of deposit (CD) are used to prove financial responsibility, the CD:

- may satisfy all or part of the required financial responsibility
- must be deposited in a financial institution that is regulated and examined by state and federal banking agencies and that is a member of the Federal Deposit Insurance Corporation
- must be irrevocable in favor of the State of Washington with an automatically renewable term that is stated on the CD and it must be effective on or before the approval date of the certificate of financial responsibility.



# Financial Responsibility – Protection & Indemnity Club Membership

Protection and indemnity (P&I) club membership is similar to insurance and is used by the vessel industry to provide protection against a variety of losses.

- Ecology will **verify** financial responsibility based on P&I Club membership
- The P&I Club Certificate of Entry must be attached to the applicant's verification submittal
- The P&I Club Certificate of Entry must list all covered vessels, the term of coverage, the names of the insured parties (owner or operator of the vessel), the covered risks and limitations of coverage, and applicable deductible amounts
- If the P&I Club coverage includes a deductible of greater than 1% of oil pollution coverage, the owner or operator of the vessel will be required to submit proof of supplemental coverage





# Financial Responsibility – Certificate from another State

A certificate that provides evidence of compliance with another state's financial responsibility requirements or federal financial responsibility requirements may be used to prove financial responsibility

If the certificate of another jurisdiction is used, the amount of financial responsibility must be the same as or greater than required by Washington

If the other jurisdiction's amount of financial responsibility is less than Washington's requirement, the owner or operator of the vessel / facility will be required to submit proof of supplemental coverage



# Financial Responsibility – Self-Insurance

- Self-Insurance requires a company to demonstrate sufficient liquidity and financial strength to pay the clean-up and damage costs of a worst-case oil spill with company assets
- This method of proving financial responsibility requires a greater amount of coverage than if other financial responsibility instruments were used.
- Requirements include:
  - tangible net worth greater than \$20,000,000 plus 2 times the amount of required self-insurance
  - US assets (not including petroleum inventory) at least 90% of total assets or 2 times the amount of required self-insurance
  - proof of required level of solvency or credit rating
  - submission of certified audited financial statements



Certificate Process  
-  
Example  
-  
Class 2 Facility  
(Tank Truck)



<b>Facility</b>	Vessel	Facility Type:				
		Class 1	<b>Class 2</b>	Class 3		
Facility / Vessel Name:	Tank Truck company					
Facility / Vessel Address:	1234 West Ave.					
Facility / Vessel City / State / Country:	Bellingham, WA, USA					
Facility / Vessel Zip Code:	98227					
		Financial Responsibility Type:				
Owner / Operator / Responsible Party Name:	Andrea Little	<b>Insurance</b>	Surety Bond	Guarantee	Self-Insurance	Other State Certificate
Owner / Operator / Responsible Party Address:	1234 West Ave.					
Owner / Operator / Responsible Party City:	Bellingham					
Owner / Operator / Responsible Party State:	Washington					
Owner / Operator / Responsible Party Zip Code:	98227					
Owner / Operator / Responsible Party Phone:	360 203 5217					
Owner / Operator / Responsible Party Email:	<a href="mailto:Andrea.Little@Tanktruck.com">Andrea.Little@Tanktruck.com</a>					
Submitter Name (if different than Owner / Operator / Responsible Party):	N/A	<b>Submit Button</b>				
Relationship to Owner / Operator / Responsible Party	N/A					
Submitter Address:	N/A					
Submitter City:	N/A					
Submitter State:	N/A					
Submitter Zip Code:	N/A					
Submitter Phone:	N/A					
Submitter Email:	N/A					
Financial Responsibility Amount (rate times 50% of WCSV):	\$625,000					
Worst Case Spill Volume (barrels)	100					
Rate	\$12,500 per barrel					

*Notational information for example purposes only*



Certificate  
Process  
-  
Example  
-  
Multiple  
Facilities  
(Tank Truck  
and Marine  
Terminal)

<b>Facility</b>	Vessel	Facility Type:			
		Class 1	<b>Class 2</b>	Class 3	
Facility / Vessel Name:	Marine Fuel Company				
Facility / Vessel Address:	600 Western Ave.	Facility #1 address	600 Western Ave., Seattle, WA 98103		
Facility / Vessel City / State / Country:	Seattle, WA, USA	Facility #1 WCSV (bls)	155		
Facility / Vessel Zip Code:	98103	Facility #2 address	600 Western Ave., Seattle, WA 98103		
		Facility #2 WCSV (bls)	45		
Owner / Operator / Responsible Party Name:	Doug Smith	Facility #3 address	1815 Shilshole, Seattle, WA 98177		
Owner / Operator / Responsible Party Address:	600 Western Ave.	Facility #3 WCSV (bls)	55		
Owner / Operator / Responsible Party City:	Seattle				
Owner / Operator / Responsible Party State:	Washington	Financial Responsibility Type:			
		<b>Insurance</b>	Surety Bond	Guarantee	Self-Insurance
Owner / Operator / Responsible Party Zip Code:	98103				Other State Certificate
Owner / Operator / Responsible Party Phone:	206 555 1517				
Owner / Operator / Responsible Party Email:	<a href="mailto:Dsmith@MarineFuel.com">Dsmith@MarineFuel.com</a>				
		Attach documentation Here:			
Submitter Name (if different than Owner / Operator / Responsible Party):	N/A	Certificate of Insurance			
Relationship to Owner / Operator / Responsible Party	N/A	PDF with Owner / Operator / Responsible Party Attestation			
Submitter Address:	N/A				
Submitter City:	N/A				
Submitter State:	N/A	<b>Submit Button</b>			
Submitter Zip Code:	N/A				
Submitter Phone:	N/A				
Submitter Email:	N/A				
Financial Responsibility Amount (rate times 50% of worst case spill volume)		\$968,750			
Worst Case Spill Volume (barrels)		155			
Rate		\$12,500 per barrel			

Notational information for example purposes only





Certificate Process  
 - Example  
 - Class 1 Facility (Large Marine Terminal)

Facility	Vessel	Facility Type:			
		Class 1	Class 2	Class 3	
Facility / Vessel Name:	Large Marine Fuel Station				
Facility / Vessel Address:	6751 Harbor Way				
Facility / Vessel City / State / Country:	Tacoma, WA, USA				
Facility / Vessel Zip Code:	98405				
		Financial Responsibility Type:			
Owner / Operator / Responsible Party Name:	Lesley Keene	Insurance	Surety Bond	Guarantee	Self-Insurance Other State Certificate
Owner / Operator / Responsible Party Address:	6751 Harbor Way				
Owner / Operator / Responsible Party City:	Tacoma				
Owner / Operator / Responsible Party State:	Washington	Attach documentation Here:			
Owner / Operator / Responsible Party Zip Code:	98405	Self-Insurance form: solvency / equity / US asset declaration			
Owner / Operator / Responsible Party Phone:	253 667 2525	Audited financial statements certified by CPA			
Owner / Operator / Responsible Party Email:	<a href="mailto:lkeene@LargeMarineFuel.com">lkeene@LargeMarineFuel.com</a>	PDF with Owner / Operator / Responsible Party Attestation			
Submitter Name (if different than Owner / Operator / Responsible Party):	N/A	Submit Button			
Relationship to Owner / Operator / Responsible Party	N/A				
Submitter Address:	N/A				
Submitter City:	N/A				
Submitter State:	N/A				
Submitter Zip Code:	N/A				
Submitter Phone:	N/A				
Submitter Email:	N/A				
Financial Responsibility Amount (rate times WCSV, max \$300,000,000):	\$300,000,000				
Worst Case Spill Volume (barrels)	75000				
Rate	\$12,500 per barrel				

Notational information for example purposes only



# Verification of Financial Responsibility Process

- Example - Cargo Ship



Facility	Vessel	Vessel Type:					
		Barge	Tanker	Cargo	Passenger	Fishing	
Facility / Vessel Name:	Moving Lots of Stuff						
Facility / Vessel Address:	6571 Weston Rd						
Facility / Vessel City / State / Country:	Cambridge, MA, USA						
Facility / Vessel Zip Code:	87253						
		Financial Responsibility Type:					
Owner / Operator / Responsible Party Name:	George Townsend	Insurance	Surety Bond	Guarantee	Self-Insurance	Other State Certificate	P & I Club Membership
Owner / Operator / Responsible Party Address:	3517 Watertown						
Owner / Operator / Responsible Party City:	Miami						
Owner / Operator / Responsible Party State:	Florida	Attach documentation Here:					
Owner / Operator / Responsible Party Zip Code:	45273	P&I Club membership certificate of insurance / entry					
Owner / Operator / Responsible Party Phone:	888 376 6948	PDF with Owner / Operator / Responsible Party Attestation					
Owner / Operator / Responsible Party Email:		PDF with delegation of authority to authorize agent submittal					
Submitter Name (if different than Owner / Operator / Responsible Party):	Joe Agent	Submit Button					
Relationship to Owner / Operator / Responsible Party	Agent						
Submitter Address:	5555 Golden Ave.						
Submitter City:	Vancouver						
Submitter State:	WA						
Submitter Zip Code:	98555						
Submitter Phone:	360 431 6565						
Submitter Email:	<a href="mailto:Jagent@Agents.com">Jagent@Agents.com</a>						
Financial Responsibility Requirement:	\$300,000,000						

Notational information for example purposes only

# Financial Responsibility – Timeline Requirements

For the initial certificate / verification submittal:

- class 1 facilities will be required to submit their application within 6 months of rule adoption
- class 2 & 3 facilities will be required to submit their application within 12 months of rule adoption
- vessels will be required to submit their application within 18 months of rule adoption

# Financial Responsibility – Timeline Requirements

For new certificate / verification requests after initial phase in period:

- class 1, 2 & 3 facilities will be required to submit their application at least 10 days before beginning operations in the state
- vessels:
  - will be required to submit their application at least 10 days before entering Washington waters, or
  - if 10 days notice is not possible, the application / verification request must be submitted at least 24 hours before entering Washington waters and include an attachment that describes the circumstances that prevented 10 days advance notice



# Financial Responsibility – Timeline Requirements

For certificate / verification renewals:

- vessel or facility must submit an application to renew their certificate or verification at least 30 calendar days, but no more than 90 calendar days, before the expiration date of the existing certificate or the verification
- If the financial responsibility instrument is about to expire, prior to the expiration the applicant must provide updated documentation





# Financial Responsibility – Notification of Changes / Revocation

Owners / operators must notify Ecology if the covered entity experiences a significant change that affects financial responsibility. Significant changes include, but are not limited to:

- change in ownership / operator
- change in / cancellation of financial responsibility instrument
- change in location / address of facility
- change in financial strength for self-insurers
- oil spill incident

Ecology may suspend or revoke a certificate or verification if the covered entity no longer has the financial resources to prove financial responsibility



Workshop	Topic	Key Audience	Join online	Join by phone	Access code
Workshop #1 June 15, 2023 1:00pm - 3:30pm	Rule overview and introductions (why are we doing this now?)	All	<a href="https://waecy-wa-gov.zoom.us/join/https://waecy-wa-gov.zoom.us/meeting/register/tZYlcOquqz8rHNM2OKS6lsyXrP1E_fc70wCH">https://waecy-wa-gov.zoom.us/meeting/register/tZYlcOquqz8rHNM2OKS6lsyXrP1E_fc70wCH</a>	(253) 215 8782	828 7365 4167
Workshop #2 July 13, 2023 1:00pm - 3:30pm	Financial responsibility requirements for covered vessels, tank vessels and tank barges of any size. Non-tank vessels, such as cargo and large fish processing vessels over 300 gross tons and involved in commerce, that carry oil as fuel.	Vessels, P&I Club, Agents, umbrella plans	<a href="https://waecy-wa-gov.zoom.us/join/https://waecy-wa-gov.zoom.us/meeting/register/tZUqcu2rqTssEtSxMXhQAWEXf1IkAmwwZGnk">https://waecy-wa-gov.zoom.us/meeting/register/tZUqcu2rqTssEtSxMXhQAWEXf1IkAmwwZGnk</a>	(253) 205 0468	817 5437 0680
Workshop #3 July 27, 2023 1:00pm - 3:30pm	Financial responsibility for large oil handling facilities, that transfer oil over waters of the state, to or from vessels and pipelines. This includes refineries, oil terminals and pipelines.	Facilities	<a href="https://waecy-wa-gov.zoom.us/join/https://waecy-wa-gov.zoom.us/meeting/register/tZlpcu-oqzLqGNZySz7WZ6FhJatzbVNvqD2n">https://waecy-wa-gov.zoom.us/meeting/register/tZlpcu-oqzLqGNZySz7WZ6FhJatzbVNvqD2n</a>	(253) 205 0468	864 5605 9022
Workshop #4 August 15, 2023 1:00pm - 3:30pm	Financial responsibility for small facilities that transfer oil to commercial vessels with a fuel capacity greater than 10,500 gallons. These include tank trucks during transfers over waters of the state, not while transporting oil over the road, and marine terminals.	Tank trucks and small facilities	<a href="https://waecy-wa-gov.zoom.us/join/https://waecy-wa-gov.zoom.us/meeting/register/tZYlcuurrTgoHtGQC1kB3dsBjo7ifOd0zg6P">https://waecy-wa-gov.zoom.us/meeting/register/tZYlcuurrTgoHtGQC1kB3dsBjo7ifOd0zg6P</a>	(253) 215 8782	828 5233 3245
Workshop #5 September 12, 2023 1:00pm - 3:30pm	Financial responsibility certification process, documentation, timelines, renewal, revocation, and updates	All	<a href="https://waecy-wa-gov.zoom.us/join/https://waecy-wa-gov.zoom.us/meeting/register/tZwtcuGrrz0pE9Ph9GKdW5lg69VNAmay9Tfi">https://waecy-wa-gov.zoom.us/meeting/register/tZwtcuGrrz0pE9Ph9GKdW5lg69VNAmay9Tfi</a>	(253) 215 8782	880 5831 6397
Workshop #6 October 5, 2023 1:00pm - 3:30pm	Final rule workshop	All	<a href="https://waecy-wa-gov.zoom.us/join/https://waecy-wa-gov.zoom.us/meeting/register/tZlvduGhqjMiEtWjH1i08dF613SyuC7CFrq6">https://waecy-wa-gov.zoom.us/meeting/register/tZlvduGhqjMiEtWjH1i08dF613SyuC7CFrq6</a>	(253) 205 0468	862 1894 8888

# Rulemaking Website

<https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-187>



# Rulemaking Status

Preliminary rule language was emailed to stakeholders on August 11 and comments were due back to Ecology by August 25

Several comments were received from stakeholders that addressed process and suggested preliminary rule edits.

The COFR team is considering the comments and is in the process of making revisions to the preliminary rule language

## Next Steps

The last COFR workshop will be held on October 5th from 1:00 to 3:30. The agenda for that meeting has not been finalized. An invitation to register for the workshop along with an agenda will be emailed to stakeholders around September 21.

Preliminary draft rule language is expected to be emailed to stakeholders around September 18. If you have comments on the preliminary language, please respond via e-mail.

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