



# PROPOSED RULE MAKING

## CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: January 03, 2023

TIME: 12:02 PM

WSR 23-02-052

Agency: Department of Ecology AO #21-03

- Original Notice
- Supplemental Notice to WSR \_\_\_\_\_
- Continuance of WSR \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR 21-16-091 ; or
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or
- Proposal is exempt under RCW \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) Ecology proposes to amend Chapter 173-180 WAC, Facility oil handling standards and Chapter 173-184 WAC, Vessel oil transfer advance notice and containment requirements. Chapter 173-180 WAC establishes oil spill prevention and oil transfer requirements for regulated oil handling facilities. Chapter 173-184 WAC establishes oil transfer requirements for vessels delivering oil in bulk on or over waters of the state. For more information on this rulemaking, visit our website here <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-180-173-184>

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
Wednesday February 8, 2023	1:00 p.m.	Webinar hearing via Zoom	<p>Presentation, question and answer session, followed by the hearing.</p> <p>We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.</p> <p>Join online: <a href="https://waecy-wa.gov.zoom.us/j/87198002821">https://waecy-wa.gov.zoom.us/j/87198002821</a> For call in only, use your phone to call 253-215-8782 and enter meeting ID 871 9800 2821.</p>
Tuesday February 14, 2023	9:00 a.m.	Webinar hearing via Zoom	<p>Presentation, question and answer session, followed by the hearing.</p> <p>We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.</p> <p>Join online: <a href="https://waecy-wa.gov.zoom.us/j/87113425365">https://waecy-wa.gov.zoom.us/j/87113425365</a> For call in only, use your phone to call 253-215-8782 and enter meeting ID 871 1342 5365.</p>
Thursday February 16, 2023	5:00 p.m.	Webinar hearing via Zoom	<p>Presentation, question and answer session, followed by the hearing.</p> <p>We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.</p> <p>Join online: <a href="https://waecy-wa.gov.zoom.us/j/82099932616">https://waecy-wa.gov.zoom.us/j/82099932616</a> For call in only, use your phone to call 253-205-0468 and enter meeting ID 820 9993 2616.</p>

**Date of intended adoption:** June 6, 2023 (Note: This is **NOT** the effective date)

**Submit written comments to:**

Name: Brittany Flittner

Address: US mail:

Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
PO Box 47600, Olympia, WA 98504-7600 (US mail).

Parcel delivery services:

Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
300 Desmond Dr. SE, Lacey, WA 98503

Email: N/A

Fax: N/A

Other: Please submit comments by mail, online via Ecology's online comment tool, or at the public hearings.

Online: <https://sppr.ecology.commentinput.com/?id=6Mx2s>

By (date) March 5, 2023

**Assistance for persons with disabilities:**

Contact Ecology ADA Coordinator

Phone: 360-407-6831

Fax: N/A

TTY: For TTY or Washington Relay Service, call 711 or 877-833-6341

Email: [ecyadacoordinator@ecy.wa.gov](mailto:ecyadacoordinator@ecy.wa.gov)

Other: N/A

By (date) February 6, 2023

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** This rulemaking will amend both chapters to implement updates to RCW 88.46.165. The rulemaking will also include necessary administrative updates, and will expand on existing requirements and establish new requirements as described below.

In Chapters 173-180 and 173-184 WAC:

- Make changes to address inconsistent or unclear direction in the rule(s), and make any corrections needed.
- Evaluate and update codes and standards throughout the rule(s).
- Update and clarify enforcement provisions for expired plans, manuals, reports, and programs requiring re-approval for Class 1 and 2 facilities and delivering vessels.
- Update submittal requirements, recordkeeping requirements, and compliance schedules throughout the rule(s).
- For Rate A deliverers:
  - Clarify safe and effective determination and Boom Reporting Form submission requirements.
  - Expand Safe and Effective Threshold Determination Report content requirements and align report and review requirements.
- Expand advance notice of oil transfer reporting requirements for Class 1, 2, and 3 facilities and delivering vessels.

In Chapter 173-180 WAC:

- Clarify and expand plan content and drill requirements for Class 2 facility Oil Transfer Response Plans.
- For Class 1 facilities:
  - Establish facility out of service and decommissioning requirements.
  - Establish seismic protection requirements for transfer pipelines and storage tanks.
  - Clarify and expand plan preparation and plan content requirements for Prevention Plans, including secondary containment permeability and facility spill risk analysis criteria.
  - Clarify training and certification requirements.

In Chapter 173-184 WAC:

- Update advance notice reporting timeframe requirements for delivering vessels.
- Update and clarify pre-booming and safe and effective threshold determination requirements for lightering operations, and for short-term transfer location approval requests for Rate A deliverers.

**Reasons supporting proposal:** Rule amendments are needed to align both rules with statutory changes made in the 2019 legislative session. Through Engrossed Substitute House Bill (ESHB) 1578, codified in RCW 88.46.165, the Legislature expanded advance notice of oil transfer reporting requirements for Class 1, 2, and 3 facilities and for vessels delivering oil in bulk on or over waters of the state. Expanding advance notice reporting requirements allows Ecology to better prepare for and respond to spills that may impact waters of the state.

Additionally, these chapters have not been updated since 2007. Administrative updates are needed to provide clear direction to the regulated community. Consistent standards provide ease of compliance with Ecology's rules and ensure our rules are not overly burdensome. Updates are also needed to streamline process requirements with advances in technology.

Broader policy changes are also needed. As oil spill risk continues to change and new risks emerge, Ecology's rules must adapt to address these risks and ensure we are requiring the necessary safeguards to prevent, prepare for, and respond to spills. Ecology has worked closely with the regulated community over the years to implement and enforce the requirements of these two rules. Rule amendments are essential to address gaps identified and provide stronger oil spill protection to the waters of the state.

Expanding requirements for Class 1 facilities is necessary to address gaps identified in oil spill prevention standards. Specifying criteria for reporting secondary containment permeability will allow facilities and Ecology to determine whether they are meeting existing standards. Providing criteria for facility spill risk analyses will improve the quality and consistency of risk assessments. Addressing requirements for seismic protection of storage tanks and transfer pipelines will ensure safeguards are in place to help prevent spills during seismic events. Establishing decommissioning requirements provides oil spill prevention measures during the entirety of a facility's life cycle.

Expanding Oil Transfer Response Plan requirements for Class 2 facilities provides an additional layer of oil spill preparedness, as oil transfers for these facilities occur broadly throughout the state. Routine exercise of response equipment and notification procedures strengthens the state's readiness when a spill occurs.

Facilities and delivering vessels must ensure safeguards are maintained before and during oil transfer operations. Ecology's requirements take into consideration each aspect of the transfer, minimizing the risk and impact of a spill. This includes ensuring containment measures are in place, effective communication is being practiced, and recovery equipment is readily available in case of an incident. Rule updates are necessary for oil transfer operations to implement lessons learned through years of implementation and provide oil spill prevention improvements in areas where gaps have been identified.

Updating the advance notice reporting timeframe requirements for oil transfer information to Ecology will allow inspectors time to prepare for and conduct oil transfer inspections. Oil transfer inspections provide enhanced protection to the waters of the state.

**Statutory authority for adoption:**

RCW 88.46.160 – Refueling, bunkering, or lightering operations – Availability of containment and recovery equipment – Rules.

RCW 88.46.165 – Oil transfers – Scope of rules – Reporting volumes of oil transferred.

Chapter 90.56 RCW – Oil and hazardous substance spill prevention and response.

RCW 90.56.005 – Findings – Purpose.

RCW 90.56.050 – Rules.

RCW 90.56.200 – Prevention plans.

RCW 90.56.220 – Facility operation standards.

RCW 90.56.230 – Operations manuals.

**Statute being implemented:**

RCW 88.46.160 – Refueling, bunkering, or lightering operations – Availability of containment and recovery equipment – Rules.

RCW 88.46.165 – Oil transfers – Scope of rules – Reporting volumes of oil transferred.

RCW 90.56.200 – Prevention plans.

RCW 90.56.220 – Facility operation standards.

RCW 90.56.230 – Operations manuals.

**Is rule necessary because of a:**

Federal Law?  Yes  No

Federal Court Decision?  Yes  No

State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** N/A

**Type of proponent:**  Private  Public  Governmental

**Name of proponent:** (person or organization) Department of Ecology

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Brittany Flittner	Lacey, WA	360-584-4490
Implementation:	Brian Kirk & Matt Bissell	Lacey, WA	425-395-5800 360-280-7061

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No  
If yes, insert statement here:  
  
The public may obtain a copy of the school district fiscal impact statement by contacting:  
Name: N/A  
Address: N/A  
Phone: N/A  
Fax: N/A  
TTY: N/A  
Email: N/A  
Other: N/A

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**  
 Yes: A preliminary cost-benefit analysis may be obtained by contacting:  
Name: Brittany Flittner  
Address: Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
PO Box 47600, Olympia, WA 98504-7600  
Phone: 360-584-4490  
Fax: N/A  
TTY: For TTY or Washington Relay Service, call 711 or 877-833-6341.  
Email: Brittany.flittner@ecy.wa.gov  
Other: N/A  
 No: Please explain:

**Regulatory Fairness Act and Small Business Economic Impact Statement**  
Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**  
This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):  
 This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.  
Citation and description:  
 This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.  
 This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570](#)(2) because it was adopted by a referendum.  
 This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(3). Check all that apply:  

<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b) (Internal government operations)	<input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e) (Dictated by statute)
<input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c) (Incorporation by reference)	<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f) (Set or adjust fees)
<input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d) (Correct or clarify language)	<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

  
 This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(4) (does not affect small businesses).  
 This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.  
Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions: Check one.**  
 The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)): Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA; Chapter 19.85 RCW) based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The Small Business Economic Impact Statement (SBEIS) below includes a summary of the baseline for this rulemaking, and whether or how the proposed rule differs from the baseline. We identify relevant RFA exemptions (if any) for each set of requirements.
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

This Small Business Economic Impact Statement (SBEIS) presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by Ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the Regulatory Fairness Act (chapter 19.85 RCW) as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the regulations in the absence of the rule. The SBEIS only considers costs to “businesses in an industry” in Washington State. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the “baseline” in this document. It includes only existing laws and rules at federal and state levels.

This information is excerpted from Ecology's complete set of regulatory analyses for this rulemaking. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated Regulatory Analyses document (**Ecology publication no. 23-08-001, January 2023**)

**COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES**

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rulemaking, the baseline includes:

- Chapter 88.46 RCW – Vessel Oil Spill Prevention and Response
- Chapter 90.56 RCW – Oil and Hazardous Substance Spill Prevention and Response
- Chapter 173-180 WAC – Facility Oil Handling Standards
- Chapter 173-184 WAC – Vessel Oil Transfer Advance Notice and Containment Requirements
- Chapter 51-50 WAC – State Building Code Adoption and Amendment of the 2021 Edition of the International Building Code
- Chapter 173-182 WAC – Oil Spill Contingency Plan
- Chapter 173-185 WAC – Oil Movement by Rail and Pipeline Notification
- Chapter 317-40 WAC – Bunkering Operations
- 29 CFR Part 1910 – Occupational Safety and Health Standards
- 33 CFR Part 154 – Facilities Transferring Oil or Hazardous Material in Bulk
- 33 CFR Part 155 – Oil or Hazardous Material Pollution Prevention Regulations for Vessels
- 33 CFR Part 156 – Oil and Hazardous Material Transfer Operations
- 40 CFR Part 112 – Oil Pollution Prevention
- 40 CFR Part 302 – Designation, Reportable Quantities, and Notification
- 46 CFR Part 69 – Measurement of Vessels
- 49 CFR Part 130 – Oil Spill Prevention and Response Plans
- 49 CFR Part 195 – Transportation of Hazardous Liquids by Pipeline
- International Building Code, Chapter 16 (adopted by Chapter 51-50 WAC)
- International Fire Code, Chapter 57
- National Fire Protection Association, Flammable and Combustible Code, No. 30
- National Preparedness for Response Exercise Program

**PROPOSED RULE AMENDMENTS**

## **Chapter 173-180 WAC (Facilities)**

### **Recordkeeping**

#### *Baseline*

The baseline rule includes requirements for recordkeeping and sets a requirement to keep most records for three years. It specifies records that must be kept for other durations, including but not limited to equipment lifetime for design, construction, and repair records, and five years for training and certification records.

#### *Proposed*

The proposed rule would:

- Expand the types of equipment records facilities must keep for the lifetime of the equipment, to include certain inspection and testing records.
- Add a five-year retention requirement for inspection, maintenance, and repair records for secondary containment.
- Add a requirement for Class 4 facilities to keep oil transfer personnel training records for five years.

### **Transfer equipment testing standards**

#### *Baseline*

Under the baseline, under WAC 173-180-205, testing of oil transfer equipment must be completed annually using one of a set of specified methods.

#### *Proposed*

The proposed rule would add the option of using another method of equal or higher standards than those listed under the baseline. This method would need to be approved by Ecology.

### **Advance Notice of Transfer**

#### *Baseline*

Class 1, 2, and 3 facilities transferring more than 100 gallons of oil must notify Ecology at least 24 hours before the transfer (or, if 24 hours is not possible, as soon as is possible before the transfer), using the Advance Notice of Transfer (ANT) form. Chapter 88.46 RCW additionally specifies the following must be included in the ANT:

- Region.
- Gravity as measured by American Petroleum Institute (API) standard.
- Type of crude oil.

Chapter 173-185 WAC requires API gravity and sulfur content.

#### *Proposed*

The proposed rule would:

- Add a requirement to resubmit the ANT if the start time of the transfer changes by more than six hours.
- Remove the option to submit an ANT by fax.
- Add the following information to the contents of the ANT:
  - Specifying the name of the delivering facility and receiving vessel must be the documented name.
  - Details of oil product type if it is crude oil:
    - Region of origin.
    - Gravity as measured by API standard, or specific gravity.
    - Sulfur content.
    - Viscosity.

### **Equivalent Compliance Plan**

#### *Baseline*

Under the baseline, owners or operators must submit a paper and electronic copy of their Equivalent Compliance Plan to Ecology. The baseline rule also specifies submittal and approval process requirements, as well as conditional approval.

#### *Proposed*

The proposed rule would remove the requirement to submit a paper copy and only require owners and operators to submit one electronic copy of the plan to Ecology. It would also clarify the submittal and approval process, and elements of conditional approval. Finally, it would add specification of potential restrictions under conditional approval, as well as timing of the conditional approval requirements.

### **Oil transfer procedure**

#### *Baseline*

Under the baseline, all oil transfer operations must be performed based on the facility's approved operations manual. Among the requirements for oil transfer procedures:

- Deliveries providing oil to vessels without fixed containment must use back pressure shutoff nozzles and provide sufficient portable containment for each tank vent.
- The Persons in Charge (PICs) must verify that designated tanks are receiving oil at the expected rate.

#### *Proposed*

Under the proposed rule, deliveries providing oil to vessels without fixed containment would no longer be required to use back pressure shutoff nozzles, as this requirement is unfeasible for most vessels, and backpressure shutoff nozzles are ineffective for most vessels. The amendments would also clarify that the facility and vessel PICs should also verify that the designated tanks are receiving or discharging oil at the expected rate, and that no other tanks are receiving or discharging oil.

### **Seismic requirements – storage tanks**

#### *Baseline*

The baseline sets out requirements for storage tanks, including fire protection codes, and design and manufacturing standards.

*Proposed*

The proposed rule would add seismic protection requirements for storage tanks at Class 1 facilities. It would require tanks installed before the effective date of the proposed rule to install and maintain one or more of the following:

- Flexible mechanical devices between tanks and pipe connections.
- Foundation driven pilings.
- Anchored storage tanks.
- Another equally protective measure approved by Ecology.

It would also require newly constructed tanks to meet baseline building and fire code requirements as well as specific design and manufacturing standards. These new tanks would also need to be designed to meet specific seismic design and inspection requirements from the:

- API, including API Standard 650 – Welded Steel Tanks for Oil Storage.
- American Society of Civil Engineers.
- International Building Code and Washington Building Code adopting it.

**Seismic requirements – transfer pipelines**

*Baseline*

The baseline sets out requirements for transfer pipelines, including federal codes, access restrictions, inspection requirements, and requirements for buried pipelines.

*Proposed*

The proposed rule would add seismic protection requirements for transfer pipelines at Class 1 facilities. It would require pipelines installed before the effective date of the proposed rule to install and maintain one or more of the following:

- Flexible mechanical devices between tanks and pipe connections.
- Flexible mechanical devices between pipe connections.
- Pipeline supports that protect against seismic motion.
- Automatic isolation shutoff valves triggered by seismic events.
- Another equally protective measure approved by Ecology.

The proposed rule also specifies the relevant baseline requirements (federal codes) for pipelines that are replaced, moved, or constructed after the effective date of the rule. It adds seismic protection design standards and includes requirements for one or more of the protection measures listed above.

**Operations manual submittal**

*Baseline*

Under the baseline, Class 1 facilities must submit their operations manual to Ecology, for re-approval, 120 days before beginning oil transfer operations. Class 2 facilities must submit plans for initial approval 90 days before conducting oil transfers, and 180 days before for re-approval.

*Proposed*

The proposed rule would require Class 1 and 2 facilities to submit all operations manuals (initial approval and re-approval) to Ecology 120 days before oil transfer operations.

It would also remove the option to submit a physical manual.

**Substantial change in operations**

*Baseline*

Under the baseline, Class 1 and 2 facilities must notify Ecology before any significant change. The baseline rule lists examples of significant change, including but not limited to:

- Change in type of oil handled.
- Substantial change in oil handling capacity.
- Noncompliance with the Federal Oil Pollution Act of 1990.
- Substantial change in spill prevention technology, or facility technology, operations, or personnel procedures.

*Proposed*

The proposed rule would classify failure to notify Ecology of a significant change as noncompliance.

It would also define a substantial change in oil handling capacity as at least five% for Class 1 facilities.

**Follow-up training**

*Baseline*

Under the baseline, Class 1 and 2 facilities must develop follow-up remedial training for personnel clearly responsible for causing an oil spill while functioning in their position, unless they no longer occupy that position.

*Proposed*

The proposed rule would eliminate the use of “remedial” and “clearly” while adding clarity that the training must address the causes of the spill and measures to prevent it happening again, as part of the continuing education program for Class 1 facilities.

**Training and certification program**

*Baseline*

Under the baseline, Class 1 and 2 facilities must develop and implement their training and certification program at least 90 days prior to oil transfer operations.

*Proposed*

The proposed rule amendments would require earlier implementation of 120 days before oil transfer operations. Amendments to this section also include clarifications without material change to requirements.

### **Prevention Plan**

#### *Baseline*

The baseline rule specifies requirements for Class 1 facility Prevention Plans, including formatting, contents, and submittal. Contents include facility information and baseline secondary containment requirements, and requirements for spill risk analysis. Submittal is required 65 days before beginning operations or plan expiration.

#### *Proposed*

The proposed rule would:

- Add name and contact information of the facility's supervising, management, and operations personnel.
- Specify Prevention Plan details regarding secondary containment permeability.
- Formally define specific elements of the baseline risk analysis requirement.
- Require plan submittal 120 days before the expiration date of the existing plan.

The proposed rule would also remove the baseline requirement option for submittal of a paper copy of the Prevention Plan to only an electronic submittal requirement.

### **Oil Transfer Response Plan**

#### *Baseline*

The baseline rule specifies requirements Class 2 facility Oil Transfer Response Plans (OTRPs), including formatting, contents, and submittal. Contents includes the requirements of 33 C.F.R Part 154. Submittal of two physical copies and one electronic copy of the plan is required.

#### *Proposed*

The proposed rule amendments list the specific requirements of the baseline federal requirements, and include adding the following additions to the OTRP:

- Cross-reference table.
- Written statement binding the plan submitter to its use.
- Description of the number of tanks on the largest truck or container.
- For baseline transfer location listing:
  - Clarified facility location description, of street address or GPS location.
  - Prior notification to Ecology of locations not listed in the plan.
  - Transfer rates used at each listed facility.
- Written statement that drill records will be kept for three years and made available to Ecology.

The proposed rule would also remove the baseline requirement for submittal of paper copies of the OTRP to only an electronic submittal requirement.

### **Drill requirements**

#### *Baseline*

The baseline includes drill requirements for Class 2 facilities, based in the National Preparedness for Response Exercise Program (NPREP) Guidelines.

#### *Proposed*

The proposed rule amendments would:

- Add drill credit for a spill.
- Specify requirements of tabletop and deployment drills to be designed with Ecology.

### **Out of service requirements**

#### *Baseline*

The baseline does not include Washington State-specific out of service requirements for storage tanks and transfer pipelines at Class 1 facilities. Storage tanks and transfer pipelines may be placed in caretaker status under 33 C.F.R. Part 154 or permanently closed as defined in 40 C.F.R. Part 112.

#### *Proposed*

The proposed rule would require owners or operators of out of service storage tanks or transfer pipelines to meet the following:

- If not decommissioning the equipment, continue to comply with rule requirements for active equipment.
- If decommissioning the equipment:
  - Transfer pipelines must be oil-free, certified gas-free, and blanked at both ends.
  - Marine transfer hoses must be oil-free, certified gas-free, and removed from the dock.
  - Storage tanks must be oil-free, certified gas-free, and disconnected.
    - Piping connections must be blanked.
    - Connected piping must be air-gapped.
    - Electrified devices must be de-energized.

The owner or operator would also need to notify Ecology 30 days before a decommissioning or return to service.

### **Chapter 173-184 WAC (Vessels)**

#### **Recordkeeping**

##### *Baseline*

The baseline rule does not include recordkeeping requirements.

##### *Proposed*



The proposed rule would set three-year records retention requirements and require records to be made available to Ecology upon request.

### **Advance Notice of Transfer**

#### *Baseline*

The baseline rule sets Advance Notice of Transfer (ANT) requirements for delivering vessels, including timing, format, and contents. ANT submission is required at least 4 hours before transfer, and a fax or by Ecology form is required.

Chapter 88.46 RCW additionally specifies that the following must be included in the ANT:

- Region.
- Gravity as measured by American Petroleum Institute (API) standard.
- Type of crude oil.

Chapter 173-185 WAC requires API gravity and sulfur content.

#### *Proposed*

The proposed rule would:

- Add a requirement to resubmit the ANT if the start time of the transfer changes by more than six hours.
- Require ANT submission at least 24 hours in advance or the timeframe set forth by the applicable U.S. Coast Guard Captain of the Port, whichever is greater.
- Remove the option to submit an ANT by fax.
- Add the following information to the contents of the ANT:
  - Specifying the name of the delivering vessel and receiving vessel or facility must be the documented name.
  - Details of oil product type if it is crude oil:
    - Region of origin.
    - Gravity as measured by API standard, or specific gravity.
    - Sulfur content.
    - Viscosity.

### **Prebooming requirements**

#### *Baseline*

Under the baseline, Rate A deliverers must preboom transfers when it is safe and effective to do so and identifies determination of safe and effective.

#### *Proposed*

The proposed rule would require that:

- Vessels use threshold values specified in rule for locations that are not covered in the Safe and Effective Threshold Determination Report.
- Vessels to use threshold values specified in the rule for lightering transfers.

### **Both rules (Facilities and vessels)**

#### **Definitions**

#### *Baseline*

The baseline rule and statute contain definitions relevant to the baseline rule requirements.

#### *Proposed*

The proposed rule amendments would:

- Add definitions from the baseline statute.
- Add definitions needed to implement new proposed requirements.

### **Noncompliance**

#### *Baseline*

Under the baseline, facilities and vessels that violate relevant chapters may be subject to enforcement and penalties under the authorizing statute.

#### *Proposed*

The proposed rule amendments would add that in response to noncompliance with any requirement, Ecology may conditionally approve or disapprove any approved plan or report.

### **Compliance schedules**

#### *Baseline*

The baseline inherently does not include compliance deadlines for new rule requirements, beyond any added to the rule in a previous rulemaking.

#### *Proposed*

The proposed rules include compliance schedules for existing facilities and vessels:

- 30 days to meet ANT requirements.
- 60 days to meet Rate A prebooming requirements.
- By the current Safe and Effective Threshold Determination Report's expiration date to meet associated requirements.
- Within 10 years from rule effective date or by the next scheduled internal API Standard 653 inspection, whichever is later, for Class 1 facility storage tanks constructed before the effective date to meet seismic protection measures.
- Within 10 years from rule effective date or by the next scheduled API Standard 570 inspection, whichever is later, for Class 1 facility transfer pipelines constructed before the effective date to meet seismic protection measures.
- By the current Prevention Plan's expiration date to meet associated requirements.
- 12 months to meet Oil Transfer Response Plan requirements.

- Drill program requirements begin after Oil Transfer Response Plan requirements are met. They also include requirements for new facilities and vessels, and new owners or operators, to meet the new requirements before beginning operations.

**Electronic submission**

*Baseline*

Under the baseline, requirements for reports and plans variously include submission of physical copies by mail or submission by fax, as well as occasional electronic submission.

*Proposed*

The proposed amendments throughout the rule would make all records submittable electronically, through an online format or using email. Submitting via fax or a paper copy is no longer an option.

**Conditional approval**

*Baseline*

The baseline includes conditional approval for all plans, reports, manuals, and programs.

*Proposed*

The proposed rule amendments establish a clear and consistent process and set of requirements for conditional approval.

**Rate A prebooming and alternative measures**

*Baseline*

Under the baseline, Rate A deliverers must preboom transfers when it is safe and effective to do so and identifies determination of safe and effective.

*Proposed*

The proposed rules would require:

- Boom Reporting Forms to include all observed and forecasted conditions that exceed values in the Safe and Effective Threshold Determination Report.
- Rate A deliverers transferring at anchor to submit follow-up Boom Reporting Forms every four hours if environmental conditions continue to exceed safe and effective values.
- During simultaneous or multiple transfers, it is appropriate to preboom if it is safe and effective, pumping is complete for volatile other products, and at least three hours remain in the transfer.
- Rate A deliverers transferring at a terminal to submit follow-up Boom Reporting Forms every six hours if environmental conditions continue to exceed safe and effective values.

**Safe and Effective Threshold Determination Report**

*Baseline*

Under the baseline, delivering facilities and vessels conducting Rate A transfers must prepare a Safe and Effective Threshold Determination Report. The baseline rule includes required format, contents, submittal, and approval.

*Proposed*

The proposed rules would add specific elements required to be included in the report, including pertaining to:

- Transfer attributes.
- Threshold value analysis.
- Boom attributes.
- Deliverer abilities.
- Determination methodology.
- Monitoring equipment.
- Determination under special circumstances.
- Reevaluation of determination.
- How alternative measures will be met.

**Changes without material impact**

*Baseline*

Experience with implementing the baseline rules and associated statutes has helped Ecology identify areas in which the organization and clarity of the rule can be improved. Ecology reduced complexity and redundancy throughout both rules.

*Proposed*

The proposed rule amendments make multiple changes that have no material impact on rule requirements. These include:

- Clarifying language.
- Updating codes and standards.
- Combining sections pertaining to the same subject matter.
- Combining sections pertaining to the same entities.
- Correcting typographical, formatting, or other errors that do not affect the rule's contents.

**COSTS OF COMPLIANCE: EQUIPMENT**

**FACILITIES**

**Seismic protection costs, storage tanks**

Statistic	Flexible Mechanical Devices	Footing Anchor	Pile Foundation
<i>Minimum*</i>	\$44,285	\$0	\$0
<i>Median</i>	\$211,538	\$1,340,680	\$6,479,776

<i>Maximum</i>	\$1,351,610	\$8,709,317	\$111,828,292
<i>Total for 23 facilities</i>	\$8,659,766	\$52,810,327	\$474,497,083

\* Zero reflects cases in which one or more facilities have already installed this type of seismic protection.

**Seismic protection costs, transfer pipelines**

<i>Descriptive Statistic</i>	Emergency Valves	Sliding Plates
<i>Minimum</i>	\$230,546	\$164,970
<i>Median</i>	\$396,894	\$513,889
<i>Maximum</i>	\$1,341,731	\$13,614,624
<i>Total for 23 facilities</i>	\$12,436,183	\$38,641,144

We estimated Class 1 facilities would incur an equivalent statewide annual cost of \$29,000 to \$58,000 for decommissioning.

**COSTS OF COMPLIANCE: SUPPLIES**

Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of supplies.

**COSTS OF COMPLIANCE: LABOR**

**FACILITIES**

We assumed the proposed rule amendments would result in an additional hour every three months, spent ensuring records are being retained as required. Using the median hourly wage for “Information and records clerks, all other” of \$23.58 per hour (2022-dollars), this would result in a statewide annual cost of \$12,358.

We assumed the proposed rule amendments would result in a share of ANTs being resubmitted. As we could not identify precisely what this share would be, we estimated between 5% and 25% would be resubmitted due to a time change of greater than six hours. There are currently over 12,200 ANTs submitted each year, on average. We assumed the proposed amendments would result in 0.25 hours per resubmitted ANT. Using the median hourly wage for “Petroleum Pump System Operators, Refinery Operators, and Gaugers” of \$51.81 (2022-dollars), this would result in a statewide annual cost of between \$8,000 and \$40,000.

We assumed the proposed rule amendments would result in ten additional minutes (0.167 hours) of additional effort to complete the crude oil information required for an ANT, for an annual average of 263.2 crude oil ANTs. Using the median hourly wage for “Petroleum Pump System Operators, Refinery Operators, and Gaugers” of \$51.81 (2022-dollars), this would result in a statewide annual cost of \$2,273.

We assumed the proposed rule amendments would result in an additional 0.1 hour per ANT to make additional verifications. On average, there are currently 2,400 ANTs submitted each year this clarification may apply to. Using the median hourly wage for “Petroleum Pump System Operators, Refinery Operators, and Gaugers” of \$51.81 (2022-dollars), this would result in an annual cost of \$12,400.

These proposed amendments would result in costs associated with:

- Providing additional information regarding personnel and contact information:
  - We estimated costs for 23 Class 1 facilities. We assumed the proposed rule amendments would result in an additional hour updating Prevention Plan contents (excluding the items below) in line with the proposed rule amendments. Using the median hourly wage for “Petroleum engineers” of \$64.27 per hour (2022-dollars), this would result in a one-time cost of \$1,478 in each planning cycle.
- Potential additional analysis and documentation of secondary containment permeability, depending on interpretation of baseline requirements:
  - We assumed the proposed rule amendments could result in an additional 16 hours of labor. Using the median hourly wage for “Petroleum engineers” of \$64.27 per hour (2022-dollars), and adding overhead costs (reflecting external labor costs) to estimate a loaded hourly wage of \$116.95 this would result in a one-time cost of \$23,651 in each planning cycle. We also examined higher costs associated with wages, overhead, and consultant markup, using a loaded hourly wage of \$400, resulting in a one-time cost of \$147,200 in each planning cycle.
  - If this analysis identifies needed changes to secondary containment permeability, a facility may incur additional costs. These costs would vary, depending on the identified needs. If no such changes are identified, no additional costs would be incurred.
- Potential additional risk analysis, depending on interpretation of baseline requirements:
  - We assumed the proposed rule amendments could result in an additional 120 hours of labor. Using the median hourly wage for “Petroleum engineers” of \$64.27 per hour (2022-dollars), and adding overhead costs (reflecting external labor costs) to estimate a loaded hourly wage of \$116.95 this would result in a one-time cost of \$177,000 in each planning cycle. We also examined higher costs associated with wages, overhead, and consultant markup, using a loaded hourly wage of \$400, resulting in a one-time cost of \$1.1 million in each planning cycle.

We assumed the proposed rule amendments could result in an additional four hours of labor toward response plans. Using the median hourly wage for “Petroleum engineers” of \$64.27 per hour (2022-dollars), this would result in a one-time cost of \$5,913 in each planning cycle.

We assumed the proposed rule amendments could result in an additional 16 hours of labor. Using the median hourly wage for “Health and safety engineers, except mining safety engineers and inspectors” of \$53.31 per hour (2022-dollars), this would result in a one-time cost of \$22,177 in each planning cycle toward drill requirements.

Using the median hourly wage for “Petroleum engineers” of \$64.27 per hour (2022-dollars), this would result in an annual cost of \$148 to \$296 for out of service notification.

**VESSELS**

We assumed the proposed rule amendments would result in an additional hour quarterly ensuring records are being retained as required. Using the median hourly wage for “Information and records clerks, all other” of \$23.58 per hour (2022-dollars), this would result in an annual cost of \$283.

Due to data attributes, costs to vessels related to ANTs are reflected in the estimate in the previous section.

**FACILITIES AND VESSELS**

The proposed rule amendments would result in additional costs to resubmit the Boom Reporting Forms.

**Resubmittal**

There are currently over 12,200 ANTs submitted each year, on average. We assumed between 25% and 50% of those were Rate A transfers impacted by the proposed rule amendments in their use of Boom Reporting Forms. We assumed 50% of Boom Reporting Forms would need to be resubmitted due to ongoing conditions that exceed safe and effective values. Using the median hourly wage for “Petroleum engineers” of \$64.27 per hour (2022-dollars), this would result in a statewide annual cost of between \$159,000 and \$318,000.

The 20-year present value of this cost estimate is between approximately \$2.9 million and \$5.8 million.

**Multiple transfers**

We were not able to identify or make reasonable assumptions about the frequency with which circumstances would arise during which additional prebooming is done under the proposed rule amendments relating to multiple simultaneous transfers. In such cases, additional labor would be required to preboom.

We conservatively assumed all Class 1 facilities, and 3 delivering vessel companies would be impacted by these proposed amendments, totaling 26 entities. We assumed facilities and vessels would need an additional 16 hours of labor to complete the additional requirements. Using the median hourly wage for “Petroleum engineers” of \$64.27 per hour (2022-dollars), this would result in a cost of \$27,000 in each planning cycle.

**COSTS OF COMPLIANCE: PROFESSIONAL SERVICES**

Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services.

**COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS**

Where applicable, Ecology estimates administrative costs (“overhead”) as part of the cost of labor and professional services, above.

**COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES**

**20-year present value compliance costs per employee**

WAC Chapter	Amendment Category	Average Employment – Small Businesses	Average Employment – Largest 10% of Businesses	PV Cost per Employee – Small Businesses (high)	PV Cost per Employee – Largest 10% of Businesses (high)
173-180	Recordkeeping	9	13,060	\$24,620	\$17
173-180	Oil transfer procedure	14	31,500	\$15,882	\$7
173-180	Seismic – Tanks	n/a	n/a	---	---
173-180	Seismic – Transfer pipelines	n/a	n/a	---	---
173-180	Follow-up training	n/a	n/a	---	---
173-180	Prevention plan	n/a	n/a	---	---
173-180	OTRP	n/a	n/a	---	---
173-180	Drills	17	31,500	\$4,845	\$3
173-180	Out of service	n/a	n/a	---	---
173-184	Recordkeeping	n/a	n/a	---	---
173-184	Prebooming	n/a	n/a	\$0	\$0
Both rules	ANT	16	23,166	\$47,874	\$33
Both rules	Prebooming	16	23,166	\$362,257	\$250

**CONSIDERATION OF LOST SALES OR REVENUE**

We used the REMI E3+ model for Washington State to estimate the impact of the proposed rule amendments on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for: inter-industry impacts; price, wage, and population changes; and dynamic adjustment of all economic variables over time.

Many of the likely affected businesses operate in a variety of industries. To reflect this, we ran multiple REMI model scenarios, varying assumptions about which industries incur costs, as well as the size of costs (based on ranges estimated in Chapter 3), to develop a range of estimated impacts across the state. Across 24 modeled scenarios:

- The lowest impacts resulted from low-end estimates of costs, and most costs being borne by the petroleum manufacturing industry except those costs isolated by their applicability to wholesale or water transportation industries. This resulted in statewide aggregate impacts of:
  - Output losses of \$4 million in 2023, rising to \$21 million by 2027, and falling thereafter.
  - No significant impact to prices.
- The highest impacts resulted from high-end estimates of costs, and most costs being borne by the petroleum manufacturing industry, with a higher proportion of costs that are applicable to them being borne by marinas and marine services. This resulted in statewide aggregate impacts of:
  - Output losses of \$86 million in 2023, rising to \$0.5 billion by 2027, and falling thereafter.
  - Small impacts on prices, up to a maximum of 0.04% in 2027.

We note that baseline state output is forecast to be over \$1.2 trillion by 2027, of which the highest impact scenario impact of \$0.5 billion is approximately 0.04%.

**MITIGATION OF DISPROPORTIONATE IMPACT**

We considered all of the above options, the goals and objectives of the authorizing statutes (see Chapter 6), and the scope of this rulemaking. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.
- Are within the scope of this rulemaking.

Ecology was not able to reduce substantive regulatory requirements beyond eliminating requirements that were not effective in achieving the objectives of the authorizing statutes, as they are necessary to implement the statutes, but multiple elements of the proposed rule amendments make the rules more consistent across the regulatory requirements faced by covered facilities and vessels, reducing the compliance burden of undertaking different actions or making different assumptions in compliance. This includes clear and streamlined processes and reporting requirements (including electronic submission of reports, manuals, and plans).

During this rulemaking, Ecology also considered requiring universal inspections by Ecology outside of already required inspections. This would have increased compliance burden (costs) and was excluded from the proposed rule amendments. Ecology delayed compliance timetables, using compliance schedules, allowing businesses additional time to take necessary actions to comply with the proposed rule amendments.

Regarding noncompliance, the proposed rule amendments clarify and streamline conditional approval requirements. This allows businesses to avoid noncompliance, to continue operations and avoid business losses, and take necessary actions to meet the objectives of the authorizing statutes.

As discussed in the Least-Burdensome Alternative Analysis (see Chapter 6), Ecology also considered the following alternative rule contents, but did not include it in the proposed rule amendments due at least in part to the additional compliance burden it would impose:

- A smaller percentage to define substantive change in oil handling capacity.
- Requiring prebooming equipment that is appropriate for “above average” environmental conditions.
- Requiring facilities to include nonfloating oil identification in their Prevention Plans.
- Prohibiting transfers that are not preboomed.
- Requiring all oil transfers, regardless of transfer rate, to preboom when it is safe and effective to do so.
- Prohibiting transfers that are not preboomed, unless resources are staged for a worst-case spill.
- Requiring facilities and vessels to use data that can be independently verified, in their safe and effective threshold determinations.
- Limiting transfer locations to locations with approved Safe and Effective Threshold Determination Reports.
- Prohibiting transfers that occur outside of daylight hours.
- Prohibiting transfers in anchorage areas when they are not preboomed and there are not resources available for a worst-case spill.
- Prohibiting transfers in anchorage areas when resources are not available for a worst-case spill, regardless of prebooming.
- Removing the baseline timeframe set forth by the US Coast Guard (USCG) Captain of the Port from the advance notice requirements for delivering vessels.
- Including refined products in the proposed advance notice requirements.
- Requiring unannounced drills for Class 2 facilities.
- Keeping the baseline requirement for certified personnel to carry proof of training program certification.
- Expanding secondary containment requirements.

- Requiring facilities to use a prescribed process for risk assessments.
- More stringent seismic protection measures.
- Defining a storage tank or transfer pipeline as out of service after 120 days of being offline.

**SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION**

We involved small businesses and local governments in its development of the proposed rule amendments, using:

- Notice of rulemaking (“Proposal Statement of Inquiry”, form CR-101), emails, updates, and workshop invitations directly to likely impacted entities, as well as entities that would not be impacted by the proposed rule amendments.
- Notice of rulemaking directly to state, regional, and local emergency and air quality bodies.
- Notice of rulemaking directly to 63 associations and organizations representing.

**NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE**

2111 Oil and Gas Extraction; 2131 Support Activities for Mining; 2211 Electric Power Generation, Transmission and Distribution; 2379 Other Heavy and Civil Engineering Construction; 2389 Other Specialty Trade Contractors; 3117 Seafood Product Preparation and Packaging; 3211 Sawmills and Wood Preservation; 3219 Other Wood Product Manufacturing; 3241 Petroleum and Coal Products Manufacturing; 3366 Ship and Boat Building; 4244 Grocery and Related Product Merchant Wholesalers; 4247 Petroleum and Petroleum Products Merchant Wholesalers; 4412 Other Motor Vehicle Dealers; 4413 Automotive Parts, Accessories, and Tire Retailers; 4451 Grocery and Convenience Retailers; 4831 Deep Sea, Coastal, and Great Lakes Water Transportation; 4832 Inland Water Transportation; 4872 Scenic and Sightseeing Transportation, Water; 4883 Support Activities for Water Transportation; 4885 Freight Transportation Arrangement; 5416 Management, Scientific, and Technical Consulting Services; 5417 Scientific Research and Development Services; 5614 Business Support Services; 5615 Travel Arrangement and Reservation Services; 5621 Waste Collection; 5622 Waste Treatment and Disposal; 5629 Remediation and Other Waste Management Services; 7139 Other Amusement and Recreation Industries; 7211 Traveler Accommodation; 7212 RV (Recreational Vehicle) Parks and Recreational Camps.

**IMPACT ON JOBS**


Many of the likely affected businesses operate in a variety of industries. To reflect this, we ran multiple REMI model scenarios, varying assumptions about which industries incur costs, as well as the size of costs (based on ranges estimated in Chapter 3), to develop a range of estimated impacts across the state. Across 24 modeled scenarios:

- The lowest impacts resulted from low-end estimates of costs, and most costs being borne by the petroleum manufacturing industry except those costs isolated by their applicability to wholesale or water transportation industries. This resulted in statewide aggregate employment loss of:
  - 10 full-time employee (FTE) equivalents in 2023.
  - 44 FTE equivalents in 2027, falling thereafter.
- The highest impacts resulted from high-end estimates of costs, and most costs being borne by the petroleum manufacturing industry, with a higher proportion of costs that are applicable to them being borne by marinas and marine services. This resulted in statewide employment losses of:
  - 204 FTEs equivalents in 2023.
  - 1,049 FTE equivalents in 2027, falling thereafter.

We note that baseline state employment is forecast to be over 5 million FTE equivalents by 2027, of which the highest impact scenario impact is approximately 0.02%.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

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<b>Date:</b> January 3, 2023	<b>Signature:</b> 
<b>Name:</b> Heather Bartlett	
<b>Title:</b> Deputy Director	