



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

March 16, 2016

To: Memo to the rule file

From: Shon Kralej, Ph.D., Economist, Department of Ecology

RE: SBEIS is not required for proposed Chapter 173-185 WAC, Oil Movement by Rail and Pipeline Notification Rule

SBEIS Exemption

The Regulatory Fairness Act (RFA; Chapter 19.85 RCW) requires Ecology to complete a Small Business Economic Impact Statement (SBEIS) for proposed rules that impose more than minor costs on businesses in an industry (RCW 19.85.030(1)(a)). The proposed rule imposes costs on businesses in an industry, but Ecology determined that those costs are not more than minor, as defined by the RFA. RCW 19.85.020(2) defines "minor cost" as a cost per business that is less than the greater of:

- One hundred dollars, or
- Three-tenths of one percent of annual revenue or income

Or is less than one percent of annual payroll (if it is greater).

As required by the Administrative Procedure Act (APA; Chapter 34.05 RCW) Ecology developed a Preliminary Cost-Benefit and Least Burdensome Alternative Analyses document for proposed Chapter 173-185 WAC, Oil Movement by Rail and Pipeline Notification Rule (Publication No. 16-08-009). In the Cost-Benefit Analysis (CBA), we determined that the proposed rule is likely to impose the following costs on businesses, as compared to the baseline (regulatory context in the absence of the proposed rule, including the authorizing statute).

- \$20 to \$80 per year, per business, on facilities that receive deliveries of crude oil by railroad car, or pipelines that transport crude oil through the state.

As this is less than \$100, it inherently meets the RFA definition of "minor cost". Note that costs per business under \$100 will always meet the definition, as the other possible media of comparison are only potentially used if costs are greater than \$100. Since only minor costs are imposed due to the proposed rulemaking, according to RCW 19.85.030 (1)(a), an SBEIS is not required.

Readers of the CBA may note that it compares costs and benefits of all of the rule requirements, rather than just the costs and benefits over the baseline. This is because it was not possible to confidently break out just the benefits associated with the difference between the proposed rule and baseline. The CBA, does, however, also discuss discretionary costs (the costs in excess of what would be required under the baseline), and those are the relevant costs for determining whether the SBEIS is required.

Documentation of Small Business and Local Government Involvement

Ecology typically uses the SBEIS to document how it involved small businesses and local governments in its development of the proposed rule. Since there is no SBEIS in this case, we choose to document this information here.

Ecology involved small businesses and local governments, using:

- Rule development phase announcements:
 - Letter to tribes
 - Spills listserv (mailing list for those interested in Spills program work (including rulemakings))
 - Press release
 - WAC Track listserv
- Rule workshop announcements:
 - Spills listserv
 - Press release
 - Email to Tribes
 - Interested parties
 - Washington Environmental Council
 - Western States Petroleum Association
 - Association of Washington Cities
 - OR Department of Environmental Quality
 - Planning Association of Washington
 - Washington Public Ports Association
 - Washington State Association of Counties
 - CA DFW Office of Spill Prevention and Response
 - ID Department of Environmental Quality
 - Utilities and Transportation Commission
 - U.S. DOT, Pipeline and Hazardous Materials Safety Administration (PHMSA)
 - Federal Railroad Administration (FRA)
 - Environmental Protection Agency (EPA)
 - The Pipeline Safety Trust
 - Citizens Committee on Pipeline Safety
 - Pacific States/BC Task Force
 - Industry
 - BP Refinery
 - Tesoro Anacortes Refinery

- Shell Puget Sound Refinery
- Phillips 66 Refinery
- U.S. Oil & Refining
- Kinder Morgan Transmountain Pipeline, LLC
- BP Northwest Pipelines District (BP Olympic Pipe Line Company)
- Other entities regulated by the Spills Program
- Local Emergency Planning Committee (LEPC) contacts – County Emergency Managers
- Public workshops – two workshops, one with webinar
 - Olympia attendees (1/26/16)
 - Scott McCreery – BP
 - Conor Keeney – Tesoro
 - Mike Zollitsch – Oregon DEQ
 - Jake McLean – MSRC
 - Lance Lindgren – TRG
 - J.M. Havner – Seattle Fire Department
 - Shayne Cothorn – DNR
 - Barb Scavezze – Self & Oly for Climate Crisis Group
 - Spokane attendees (1/27/16):
 - Lisa Jameson – DEM
 - Ann Murphy – League of Women Voters
 - Justin Piper – BNSF Railway

Additional Notes

As part of the CBA, Ecology determined that the proposed rule does not impact any small business (businesses with fewer than 50 employees, as defined by the RFA). It would therefore not have been possible to determine whether or not the proposed rule would impose disproportionate burden on small businesses, if an SBEIS had been required.