



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 07, 2019

TIME: 8:56 AM

WSR 19-16-147

Agency: Department of Ecology AO #18-10

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-02-085 ; 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 is proposing to amend the Oil Spill Contingency Plan Rule (Chapter 173-182 WAC). This chapter requires regulated vessels, facilities, and pipelines that handle or transport oil to have an approved plan in place for responding to oil spills. Oil spill contingency plans include information about how to make notifications and contract for the appropriate equipment and trained personnel to respond to spills that may occur.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
Tuesday September 17, 2019	1:00 pm	Courtyard Seattle-Everett Downtown 3003 Colby Avenue Everett, WA 98201	Presentation, question and answer session followed by the hearing.
Thursday September 19, 2019	1:00 pm	Ramada by Wyndham Spokane Airport 8909 West Airport Drive Spokane, WA 99224	Presentation, question and answer session followed by the hearing.
Tuesday September 24, 2019	1:00 pm	Webinar and in-person at: Hilton Vancouver Washington 301 W. 6 th Street Vancouver, WA 98660	Presentation, question and answer session followed by the hearing. We are also holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions: https://global.gotomeeting.com/join/424089589 For audio, call U.S. toll number 1-646-749-3122 and enter access code 424089589. Or to receive a free call back, provide your phone number when you join the event online

Date of intended adoption: December 18, 2019 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Sonja Larson

Address: Department of Ecology
Spill Prevention, Preparedness, and Response Program
PO Box 47600
Olympia, WA, 98504-7600

Email: Submit comments by mail, online, or at the hearing(s).

Fax: N/A

Other: Online: <http://cs.ecology.commentinput.com/?id=V6ATc>

By (date) October 6, 2019

Assistance for persons with disabilities:Contact Ecology's ADA Coordinator

Phone: 360-407-6831

Fax: N/A

TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711.

Email: ecyADACoordinator@ecy.wa.gov

Other: N/A

By (date) September 15, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Ecology is proposing to amend the Oil Spill Contingency Plan Rule (Chapter 173-182 WAC) to implement Engrossed Second Substitute Senate Bill (E2SSB) 6269 passed in Chapter 262 laws of 2018, amending chapters 82.23B, 88.46, and 90.56 RCW. This rulemaking will:

- Establish requirements for review and approval of Spill Management Teams including entities providing wildlife rehabilitation and recovery services.
- Enhance requirements for readiness for spills of oils that, depending on their chemical properties, environmental factors (weathering), and method of discharge, may submerge or sink.
- Update drill requirements to reflect legislative direction.
- Update planning standards to align vessel and facility requirements and ensure best achievable protection is maintained in contingency plans.
- Enhance planning standards for oiled wildlife response.
- Make other edits to address inconsistent or unclear direction in the rule, or other administrative edits.

Reasons supporting proposal: Rule revisions are needed to address legislative direction that came out of the 2018 session that requires a rule update by December 31, 2019. Legislative direction from E2SSB 6269 directed Ecology to update our contingency plan rule to enhance preparedness for spills of non-floating oils, require facilities to participate in large scale multi-plan holder drills, and require spill management teams to apply to and be approved by Ecology in order to be cited in contingency plans.**Statutory authority for adoption:** RCW 90.56.005, RCW 90.56.050, RCW 88.46.060 and RCW 88.46.120, RCW 88.46.068, RCW 88.46.0601 and RCW 90.56.2101**Statute being implemented:** RCW 90.56.210 Contingency plans.**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**Name of proponent:** (person or organization) Department of Ecology Private Public Governmental**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Sonja Larson	Department of Ecology – Lacey, WA	(360) 407- 6682
Implementation:	Linda Pilkey-Jarvis	Department of Ecology – Lacey, WA	(360) 407- 7447
Enforcement:	Linda Pilkey-Jarvis	Department of Ecology – Lacey, WA	(360) 407- 7447

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: Sonja Larson
Address: PO Box 47600, Olympia, WA. 98504-7600
Phone: (360) 407- 6682
Fax: N/A
TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711. To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call Ecology at 360-407-6831 or visit <https://ecology.wa.gov/accessibility>
Email: sonja.larson@ecy.wa.gov
Other: N/A

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). 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"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (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 _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If 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 analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

**WA Department of Ecology
Small Business Economic Impact Statement:**

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 non-profit or 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 of the proposed rule. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the Regulatory Analyses (Ecology publication no. 19-08-017, July 2019)

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES

Baseline

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 proposed rulemaking, the baseline includes (but is not limited to):

- The existing rule, chapter 173-182 WAC, Oil spill contingency plan.
- The authorizing laws:
 - Chapter 88.46 RCW, Vessel oil spill prevention and response
 - Chapter 90.48 RCW, Water pollution control
 - Chapter 90.56 RCW, Oil and hazardous substance spill prevention and response
 - ESSB 6269, amending chapters 82.23B, 88.46, and 90.56 RCW. Relevant amendments primarily relate to planning for spills of potentially sinking oils.

Proposed rule amendments

Part I: Purpose, applicability, authority, and definitions

Purpose, applicability, and definitions

The proposed amendments add SMTs and WRSPs to the purpose and applicability of the rule. They also add corresponding definitions of SMT and WRSP.

Expected impact

In and of themselves, the proposed amendments to this section do not have an impact. The impacts of including SMTs and WRSPs in the rule arise from various requirements set out in amendments to other sections of the rule, and are discussed in corresponding sections of this document.

Part II (A): General planning, information, and timing

Phase-in of requirements

The proposed amendments replace baseline phase-in timing of requirements with new phased in timing for plan holders, SMTs, and WRSPs.

Expected impact

Phasing in requirements would allow plan holders, SMTs, WRSPs, and PRCs (as relied upon to meet planning requirements) additional time to meet new or altered requirements in the proposed amendments, compared to immediate compliance at the effective date of the rule. We do not expect amendments to this section to result in costs, as compared to the baseline.

Part II (B): Contingency plan format and content

Binding agreement plan submission and signatory requirements

The proposed amendments expand the binding agreement requirements to the plan submitter, who is not necessarily the plan holder as under the baseline. The signatory may be an authorized:

- Representative of a nonprofit corporation established to provide oil spill contingency plan coverage.
- Owner, operator, or a designee with authority to bind the owners and operators of the facilities or vessels covered by the plan.
- Resident agent of the vessel(s) submitting the plan.
- Representative(s) of a company contracted to the vessel or facility and approved by Ecology to provide containment and clean-up services.

Expected impact

These proposed amendments are likely to result in plan update costs. They would also result in benefits arising from more options in management of contingency plans, such as improved management of response, and potential reduced overall costs for plan holders that choose external plan submitters.

Plan general content

The proposed amendments expand contact information requirements for all plans to include relevant SMT or WRSP information. The phone numbers for PRCs, SMTs, or WRSPs must be one at which they can be reached 24 hours a day.

Expected impact

These proposed amendments are likely to result in plan update costs. They are also likely to result in improved efficiency of response, including certainty that PRCs, SMTs, and WRSPs are under contract and can be reached at any time.

Field document requirements

The proposed amendments add a form to the field document, to document notifications.

Expected impact

The proposed amendments are likely to result in plan update costs, as well as the benefit of ensuring responders complete notifications and document them appropriately.

Listing of SMT personnel and timing

The proposed amendments require a table in the plan, listing personnel or the contracted SMT filling ICS roles. Three people trained to fill each of the following roles:

- Responsible Party Incident Commander
- Public Information Officer
- Liaison Officer
- Safety Officer
- Planning Section Chief
- Operations Section Chief
- Logistics Section Chief
- Finance Section Chief

One person capable of filling each of the roles:

- Air Operations Branch Director
- Wildlife Branch Director
- Situation Unit Leader
- Resources Unit Leader
- Documentation Unit Leader
- Environmental Unit Leader

PRCs, SMTs, or WRSPs used to fill roles must have applications on file with the state, and be contracted. A person may fill up to two roles. Position and planning process descriptions in the incident management handbook may be referenced.

A combination of training and experience in drills and spills may be used to describe SMT personnel capabilities within response roles.

The plan must include a narrative description of estimated team arrival timeframes to the state.

Expected impact

The proposed amendments would likely result in additional costs, either to the plan holder for training additional internal staff, or in the form of contracting costs to retain an external SMT and WRSP. They are also likely to result in improved response efficiency, and less potential environmental, property, or human health damage.

Part II(C): Planning standards

Potentially sinking oil planning standards

The proposed amendments delete planning standards for pipelines carrying crude oils or diluted bitumen, and expand the Group 5 planning standards to all plan holders handling or transporting oils that may weather and sink.

The plan holder or contracted PRC must have capable personnel and equipment to respond to a spill of these oils within the timeframes in the table below. The plan must also detail the process for identifying if the oil handled has the potential to submerge or sink and include a description of the process for detecting, delineating, and recovering non-floating oils in the areas that may be impacted.

Expected impact

The proposed amendments are likely to result in plan update costs, and potential costs of contracting with a PRC to meet the new required equipment and response capabilities. It is also likely to result in benefits from reduced potential damages to water column species and sediments, as well as reduced or avoided cleanup costs resulting from oils sinking.

Dispersant planning standards

The proposed amendments expand planning requirements to all plan holders carrying, handling, storing, or transporting Group 2, 3, or 4 persistent oils that are known to be dispersible.

Expected impact

The proposed amendments are likely to result in plan update costs, as well as benefits related to appropriate use of dispersants by all plan holders and alignment with the Northwest Area Contingency Plan (NWACP) Dispersant Policy.

In situ burning planning standards

The proposed amendments add personal protective equipment to the list of equipment that must be at the locations listed in the plan. They also add personnel resources to the description of resources used to monitor equipment effectiveness.

Expected impact

The proposed amendments are likely to result in plan update costs, as well as benefits related to preparedness for in situ burning for all oil types, and additional protection for personnel, and increased alignment with the Northwest Area Contingency Plan (NWACP) In situ Burning Policy.

Compliance documentation requirements

The proposed amendments remove the requirement to identify personnel by resource type, quantity, home base, and provider. The proposed amendments add options for documentation supporting requests for alternative notification mobilization, and travel time, to include actual performance during drills or planned equipment moves. They also expand the situations under which alternate response times can be tested, to include training exercises and planned drills.

Expected impact

These proposed amendments are not likely to result in costs. Ecology provides plan holders with the spreadsheet that documents compliance. There are also likely benefits from removing some documentation requirements.

Transfer site planning standards

The proposed amendments add:

- A two-hour planning standard for a safety assessment of the spill by trained crew and appropriate air monitoring, with 1,000 feet of boom.
- A four-hour planning standard for at least an additional 200 feet of boom and temporary storage of at least 196 barrels with the ability to collect, contain, and separate collected oil from water. The additional boom should be capable of encountering oil at advancing speeds of at least 2 knots in waves. This boom shall be of a type appropriate for the operating environment.

Expected impact

The proposed amendments are likely to result in additional equipment costs or contracting costs (if current contracted PRC lacks required assets) and response benefits if plan holders do not have access to equipment that does not meet the proposed planning standards.

Part II (D): Response and protection for sensitive areas

Descriptions of sensitive areas and protection

The proposed rule adds that identification of sensitive resources will not be limited to surface and shoreline species at risk from floating oil spills, but will also include water column and benthic species at risk from sunken, submerged, or non-floating oil spills. Non-floating oils considerations include identification of:

- Waterway depths.
- Water density.
- Sediment load.
- Sea floor or river bottom types.
- Response options based on those factors.

Expected impact

Ecology will do this through a formal Geographic Response Plan (GRP) update process. We therefore expect the proposed amendments to result in only minor plan update costs of ensuring the plan references the appropriate GRP(s), and identifying if the plan holder can appropriately deal with non-floating oil spills. Likely benefits include more comprehensive preparedness for sunken, submerged, and non-floating oils and increased stakeholder input on the resources at risk described in GRPs.

Shoreline sensitive areas planning standards

The proposed amendments remove the facility shoreline-planning standard, and include all plan holders under the shoreline-planning standard applied to only vessels under the baseline.

Expected impact

Ecology determined that the facility shoreline planning standard requirements in the baseline are insufficient. Therefore, a facility meeting the baseline standard is not likely to have a plan that would provide best achievable protection and would not be approved. Consequently, we do not expect significant costs or benefits from these proposed amendments, as an approvable plan would provide similar protection to what is required for vessels under the baseline. However, we do expect some benefit to come from making it more clear up-front what is necessary to include in the sensitive areas component of a plan so Ecology can approve the plan.

Air monitoring for human protection planning standards

The proposed amendments apply the baseline requirements to all plan holders, instead of only pipelines.

Expected impact

The proposed amendments are likely to result in plan update costs for plan holders other than pipelines (which already must meet the standard under the baseline). They are also likely to result in benefits of vessels and facilities planning for comprehensive protection for responders, at-risk populations, and nearby communities.

Wildlife planning standards

The proposed amendments replace the baseline requirements with a set of more specific requirements in planning to respond to and care for impacted or at-risk wildlife. This includes contact information for contracted PRCs or WRSPs that maintain the required equipment, personnel, permits, materials, and supplies, for conducting wildlife response operations. Plans must describe equipment, personnel, and resources including:

- Equipment and personnel for initial impact assessment and wildlife reconnaissance via air, land, or water in the spill area.
- Equipment and personnel for whale reconnaissance (if the plan holder operates or transits in areas where spills may impact whales).
- Contact information for providers of aircraft for reconnaissance and deterrence of whales, including Southern Resident Killer Whales.
- Contact information for persons or organizations that can identify Southern Resident Killer Whales and support field reconnaissance activities.
- Equipment and personnel for deterring wildlife in areas the plan holder operates or transits.
- Equipment and personnel for monitoring and deterrence of Southern Resident Killer Whales.
- Equipment and supplies for mobile field stabilization activities.
- Wildlife rehabilitation facilities, space, and equipment suitable to conduct wildlife rehabilitation activities, sufficient to meet Washington Department of Fish and Wildlife (WDFW) requirements in WAC 220-450-100. Plan holders must have contracted access to (within 24-hour distance) specified equipment.

Plan holders must have contracted access to a WRSP with:

- Personnel that are appropriately trained to staff and manage the wildlife response within an incident command structure. At least one person must be able to arrive in state within 12 hours of spill notification.
- Personnel to conduct and manage field aspects of a wildlife response including impact assessment, reconnaissance, deterrence, capture, stabilization, and rehabilitation. At least two people must be able to arrive within 12 hours of spill notification. An additional seven support personnel must be able to arrive within 24 hours of spill notification.

Expected impact

The proposed amendments are likely to result in plan update costs, as well as the costs of meeting the planning standard by acquiring access to resources (either through purchase or contract with a WRSP). They are also likely to result in benefits of significantly improved and coordinated response to oiled wildlife, resulting in potential reduced mortality and illness in affected animal populations, including threatened and endangered populations.

Part II (E): Plan evaluation

Plan evaluation requirements

The proposed amendments limit resources that may be counted toward planning standards to those held by PRCs, the plan holder, or via contract, mutual aid agreement, or letter of intent.

Expected impact

The proposed amendments are likely to result in minor plan update costs, as well as the benefit of having contractual obligations for required resources included in plans.

5-year review cycle contents

The proposed amendments add to the list of spills operations, tools, and technologies, by including improvements in equipment and techniques used for wildlife response.

Expected impact

We do not expect this proposed amendment to result in immediate costs, as future improvements in equipment and techniques used for wildlife response are unknown. If and when those improved tools become available, there may be future purchasing or contract costs, and wildlife benefits associated with new requirements.

Notice requirements

The proposed amendments add a requirement for SMT and WRSP applications to undergo public notice, review, and comment periods.

Expected impact

Under the baseline, it is not possible to be an approved SMT or WRSP. We anticipate those who want to become approved SMTs and WRSPs will do so when there is a net benefit to them, including costs associated with application notice, review, and comment periods. Additionally, the prices they charge for services are likely to reflect these setup costs for approval under the proposed amendments. The proposed amendments are also likely to result in benefits of sufficient public review of potential personnel, structures, and assets used to respond to spills, helping determine whether they meet environmental, property, and public health protection standards held by the public.

Part III: Drill and equipment verification program

Drill participation requirements

The proposed amendments add SMTs and WRSPs to the parties required to participate plan holder drills and equipment verification programs.

Expected impact

The proposed amendments are likely to result in personnel and equipment costs to SMTs and WRSPs. If these resources are held through contract, these costs are likely to be passed on to plan holders as part of retainer fees for contracts with SMTs and WRSPs. The proposed amendments are also likely to result in benefits of SMTs and WRSPs having experience with drills and having their processes tested to ensure they are sufficiently effective and protective.

Drill type and frequency requirements

The proposed amendments change attributes of the baseline drills:

- Tabletop drills also include SMTs.
- Ecology-initiated unannounced drills may include verification of Ecology-approved alternative vessel speeds.
- Credit for ERTV deployment drills may be achieved for an emergency call-out of the ERTV.
- Wildlife deployment drills must be separate drills.
- The tank vessel multi plan holder deployment drill is expanded to the multi plan holder large-scale equipment deployment drill. This drill must still be performed once in each three-year cycle, and may additionally involve responses to potentially non-floating oils. It may address spills of potentially non-floating oils, and Southern Resident Killer Whales monitoring and deterrence. This drill must be scheduled at least 90 days in advance.

Expected impact

The proposed amendments are likely to result in additional costs of drills, for additional response involving SMTs, or personnel and equipment for response to threatened wildlife or non-floating oils. In the multi plan holder deployment drill, plan holders share costs rather than incur them individually. By including these elements in drills, the proposed amendments are likely to result in benefits of effective and more-practiced and efficient response related to wildlife and non-floating oils, and in general.

Including approved alternative vessel speeds in drills ensures that those speeds are appropriate, and can confirm the alternative vessel speeds requested by plan holders.

Allowing credit for the ERTV deployment for an emergency call-out of the ERTV reduces drill costs for plan holders. In lieu of conducting a drill the entity that manages the ERTV submits an after action report on behalf of all vessel plan holders.

Drill credit allowance

The proposed amendments limit how often a plan holder can use drill credits earned from response to an actual spill to once per three-year cycle, but allows plan holders to request credit for additional spill response. Ecology may grant additional credit to the plan holder if lessons were learned or key response components were successfully demonstrated.

Expected impact

We do not expect the proposed amendments to result in significant costs or benefits, since they establish a limit of using a spill for credit to once per three-year cycle, but allow extension beyond it under certain circumstances. We consider this a clarification.

Part IV: Primary response contractor, spill management team, and wildlife response service provider standards

PRC application and application-revision requirements

The proposed amendments specify that safety training must include a determination that *response* equipment and *personal protective* equipment are appropriate for incident conditions.

Expected impact

This proposed amendment is primarily a clarification, since the baseline states that training must include determination that equipment is appropriate for conditions. Beyond improved clarity, we do not expect this proposed amendment to result in significant costs or benefits.

SMT and WRSP application and application-revision requirements

The proposed amendments add requirements and processes for SMT or WRSP applications – and changes to those applications – to become state-approved.

Expected impact

The proposed amendments are likely to result in application costs for SMTs and WRSPs, as well as benefits of ensuring that approved SMTs and WRSPs are capable of providing appropriate services and equipment to meet planning standards when they are under contract to plan holders.

COSTS OF COMPLIANCE: EQUIPMENT

Transfer site planning standard

The proposed amendments are likely to result in additional equipment costs or contracting costs and response benefits if plan holders do not have access to equipment that does not meet the proposed planning standards. Based on identified equipment availability, one transfer site and one planning area do not meet the 4-hour planning standard.

Access to the required additional 200 feet of boom and temporary storage of at least 196 barrels could be acquired through an existing PRC contract (if applicable), additional PRC contracting, or purchase. Purchase would likely be the most costly approach, and we expect plan holders will choose the least-cost approach. Depending on the types of equipment chosen, this could cost between \$80 thousand and \$250 thousand. Acquisition of a NOFI Current Buster 2 system, for example, could cost \$152 thousand.

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

Application costs

SMTs and WRSPs would incur expenditures related to updating their applications with Ecology. We reached out to SMTs and WRSPs for input on costs, but did not receive responses in time for this preliminary analysis. As an estimate, we assumed applications take a General and Operations Manager 16 hours. At the median wage in Washington of \$60.63, this proposed amendment would result in a one-time cost of \$970. For the identified 46 potential SMTs and four WRSPs, this total cost would be \$49 thousand.

COSTS OF COMPLIANCE: PROFESSIONAL SERVICES

Plan update costs

Ecology anticipates that plan holders will incur costs for updates to their Oil Spill Contingency Plans. Costs for updates vary based on the risk and complexity of the covered parties operations.

Based on conversations with planning consultants currently working with Washington plan holders, we estimate the high-end range of plan update costs to be between \$40 thousand and \$55 thousand each. This cost range reflects two senior-level planners and between two and three months of work. Expenditures and time consumed are likely to be significantly less for covered parties with capacity to make plan updates in-house.

If all 32 contingency plans need to be updated, at a cost of between \$40 thousand and \$55 thousand each, this translates to a total one-time cost of between \$1.3 million and \$1.8 million.

Internal or retainer costs

Plan holders would incur additional costs for training additional internal spill management staff, or retaining contracts with SMTs and WRSPs under the updated planning standards. We assume plan holders will choose the least-cost option that meets their planning and spill response needs. Currently, very few plan holders have retainer contracts with WRSPs.

Retainer fees are typically levied at a company-wide level (rather than by specific facility) and vary widely among plan holders. Retainer fees are highly variable, ranging between \$500 annually for the smallest, least complex plan holders, to over \$1.5 million annually for multi-national plan holders with complex operations.

Drill costs

The proposed rule includes additional requirements related to drills that will likely result in personnel and equipment costs to SMTs and WRSPs.

High-end costs for drills could range between \$800 thousand and \$1.2 million. Tabletop drills typically last for less than two days and cost between \$10 thousand and \$100 thousand.

Since the proposed amendments require that large-scale multi plan holder drills may include deployment of equipment used to respond to non-floating oils, we assumed this annual (one per year in one of the three regions, each three-year cycle) drill would double in cost. The proposed language would require separate wildlife-focused drills. This may result in additional expenses of up to \$30 thousand per drill.

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

Ecology calculated the estimated per-entity costs to comply with the proposed rule amendments, based on the costs estimated in Chapter 3. In this section, Ecology summarizes compliance cost per employee at affected businesses of different sizes.

Separating across various types of potentially impacted parties (using employment at the highest ownership level):

- There are no small-business plan holders covered by the proposed amendments.
- The average small-business PRC employs about 16 people, while the largest 10 percent employs 10 thousand people.
- The average small-business SMT employs about 10 people, while the largest 10 percent employs 10 thousand people.
- Only one private business WRSP is potentially impacted by the proposed amendments.

We note that aside from application and application-revision related costs, the proposed amendments require only plan holders to have or have access to assets and personnel. The costs of assets that may need to be acquired, therefore, fall on the plan holders, even if access is acquired through contract with a SMT, PRC, or WRSP. Contracted parties providing personnel or response equipment are likely to pass voluntary costs (to be able to act as contracted parties for contingency plans) on to plan holders with whom they contract. Therefore, for the purposes of Regulatory Fairness Act compliance, and to better reflect compliance cost burden in a competitive context, we have limited the costs examined for the remainder of this chapter to application costs incurred by SMTs. Again, this is because:

- Likely compliance costs differ by multiple orders of magnitude across the related, though not inter-competitive, markets affected by the proposed amendments.
- While plan holders are likely to incur significant costs as a result of the proposed amendments, there are no small-business plan holders covered by the proposed amendments.
- There are no direct costs to PRCs as a result of the proposed amendments.
- Only one potentially impacted WRSP is a private business, so costs are inherently not disproportionate for WRSPs.

Business size	Average Employment	Cost per employee	
		Low	High
Small business	10	\$97.01	\$242.52
Largest 10 percent of businesses	10000	\$0.10	\$0.24

We conclude that the proposed rule amendments are likely to have disproportionate impacts on small businesses within the SMT industry. This is the case even if we assume that small businesses would have less equipment and personnel to document or describe in

applications, and would incur only low-end costs for less time, while the largest businesses incurred only high-end costs. Therefore, Ecology must include elements in the proposed rule amendments to mitigate this disproportion, as far as is legal and feasible.

CONSIDERATION OF LOST SALES OR REVENUE

Businesses that would incur costs could experience reduced sales or revenues if the amendments would significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether additional lump-sum costs significantly affect marginal costs), and the specific attributes of the markets in which they sell goods, including the degree of influence of each firm on market prices, as well as the relative responsiveness of market demand to price changes.

We used the REMI PI+ model for Washington State to estimate the impact of the proposed rule 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. This analysis was limited to the SMT industries likely to be disproportionately affected by the proposed rule, as well as the WRSP industries including a single private small business. We assumed application expenditures would be incurred as production costs, as part of normal business operations.

Since we did not have comprehensive data for all potentially impacted SMTs and WRSPs, we ran 42 simulations reflecting possible combinations of identified SMT and WRSP NAICS codes (at the level the REMI model aggregates them). The REMI model results do not indicate a significant impact to output or prices as a result of these production costs in any of the model runs. As such, we do not expect there to be any losses of sales or revenue in the SMT or WRSP industries as a result of the proposed amendments.

MITIGATION OF DISPROPORTIONATE IMPACT

The RFA (19.85.030(2) RCW) states that:

"Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW [19.85.040](#), the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- a) Reducing, modifying, or eliminating substantive regulatory requirements;
- b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- c) Reducing the frequency of inspections;
- d) Delaying compliance timetables;
- e) Reducing or modifying fine schedules for noncompliance; or
- f) Any other mitigation techniques including those suggested by small businesses or small business advocates."

Ecology considered all of the above options, and included the following legal and feasible elements in the proposed rule amendments that reduce costs. In addition, Ecology considered the alternative rule contents discussed in Chapter 6, and excluded those elements that would have imposed excess compliance burden on businesses. This includes elements suggested by stakeholders, such as allowing plan holders to list either individuals or names of SMTs in the IRC table. See Chapter 6 for discussion.

Since the disproportionate compliance cost impact arises from application costs for SMTs, we were limited in options to reduce this disproportion. We were also limited numerically by the diverse nature of SMTs, with one SMT identified as a small business (within our employment data), while others were owned by larger, sometimes multinational, companies.

The options suggested in the RFA rely primarily on factors that are not applicable to application costs. These include substantive regulatory requirements, recordkeeping and reporting, and inspections. The proposed amendments do, however, phase in application time for SMTs, by allowing six months from the rule effective date.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION

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

- Letters to tribes (mailing).
- Spills Program listserv (email announcement of CR 101).
- WAC Track listserv (email announcement of CR 101).
- Email to state approved vessel and facility plan holders.
- Rule development workshops with 160 stakeholders invited (March 6, March 28, April 11, April 18, and May 7). Invitees attending at least one workshop included representatives from various covered parties, SMTs, WRSPs, PRCs, governments, tribes, animal welfare groups, and environmental groups
- Email to state-approved PRCs.
- Northwest Area Contingency Plan Distribution listserv
- Direct email or other contact with representatives from over 130 interested parties, including covered parties, SMTs, WRSPs, PRCs, governments, tribes, and environmental groups.

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE

The proposed rule is likely to impact the following NAICS codes. 2212, 2389, 2371, 5419, 2389, 4481, 3241, 6113, 3241, 5417, 4412, 8133, 3366, 5615, 4832, 4247, 5617, 4861, 4471, 5619, 4882, 4821, 5629, 4883, 4861, 8113, 5629, 4883, 9261, 5629, 9999, 9281, 9119, 9999.

IMPACT ON JOBS

Ecology used the REMI PI+ model for Washington State to estimate the impact of the proposed rule on jobs in the state, 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.

We used the REMI PI+ model for Washington State to estimate the impact of the proposed rule 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. This analysis was limited to the SMT industries likely to be disproportionately affected by the proposed rule, as well as the WRSP industries including a single private small business. We assumed application expenditures would be incurred as production costs, as part of normal business operations.

Since we did not have comprehensive data for all potentially impacted SMTs and WRSPs, we ran 42 simulations reflecting possible combinations of identified SMT and WRSP NAICS codes (at the level the REMI model aggregates them). The REMI model results indicated that the proposed amendments would result in:

- Up to one job lost in 2020 in the Washington economy under low-cost assumptions. This lost job would be maintained through 2022, after which there would be no difference in employment from the baseline forecast.
- Under high-cost assumptions, up to 3 jobs in the Washington economy would be lost in 2020, and this job loss would diminish to zero in 2023, after which there would be no difference in employment from the baseline forecast.

These prospective changes in overall employment in the state are the sum of multiple small increases and decreases across all industries in the state.

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

Name: Sonja Larson

Address: PO Box 47600, Olympia, WA 98504-7600

Phone: (360) 407 - 6682

Fax: N/A

TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711. To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call Ecology at 360-407-6831 or visit <https://ecology.wa.gov/accessibility>.

Email: sonja.larson@ecy.wa.gov

Other: N/A

Date: August 5, 2019

Name: Polly Zehm

Title: Deputy Director

Signature:

