



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: September 02, 2020

TIME: 10:46 AM

WSR 20-18-101

Agency: Department of Ecology AO # 19-09

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 20-03-022 ; 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 Chapter 173-185 WAC, Oil Movement by Rail and Pipeline Notification. This chapter establishes reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state. The rule also describes reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public.

For more information on this rulemaking visit: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-185>

Hearing location(s):

Date:	Time:	Location:	(be specific) Comment:
Wednesday October 7, 2020	1:00 pm	Webinar hearing	<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 and see instructions: https://watech.webex.com/watech/onstage/g.php?MTID=e9733cf508d11e3b6406ce4b0505662a6 For audio call US Toll number 1-415-655-0001 and enter access code 288 324 996. Or to receive a free call back, provide your phone number when you join the event.</p>
Tuesday October 13, 2020	10:00 am	Webinar hearing	<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 and see instructions: https://watech.webex.com/watech/onstage/g.php?MTID=eaac583e6d742f4b82d9c4235344e697d For audio call US Toll number 1-415-655-0001 and enter access code 280 854 750. Or to receive a free call back, provide your phone number when you join the event.</p>
Tuesday October 20, 2020	6:00 pm	Webinar hearing	<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 and see instructions: https://watech.webex.com/watech/onstage/g.php?MTID=e1df768c4dbfc1d0f11fe351529601b11</p>

For audio call US Toll number 1-415-655-0001 and enter access code 284 828 617. Or to receive a free call back, provide your phone number when you join the event.

Date of intended adoption: January 19, 2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Kim Morley

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

Fax: N/A

Other: Online: <http://sppr.ecology.commentinput.com/?id=WcU9V>

By (date) November 1, 2020

Assistance for persons with disabilities:

Contact Ecology 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: ecyADAcordinator@ecy.wa.gov

Other: N/A

By (date) October 5, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The rulemaking will implement sections of Engrossed Substitute House Bill (ESHB) 1578 and Engrossed Substitute Senate Bill (ESSB) 5579, both passed in 2019 and codified in RCW 90.56.565.

This rulemaking will:

- Expand advance notice reporting requirements for facilities that receive crude oil by rail to include type and vapor pressure of crude oil.
- Expand biannual notice requirements for pipelines that transport crude oil through the state to include gravity and type of crude oil.
- Describe how required information will be provided to the Utilities and Transportation Commission (UTC).
- Make other changes to clarify language and make any corrections needed.

Reasons supporting proposal: In 2016, Ecology adopted Chapter 173-185 WAC to enhance crude oil spill preparedness and response in Washington State. The rule established reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state. Additionally, the rule describes reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public. The rule was adopted as a result of 2015 legislative direction to provide a better understanding of the changing risk picture for crude oil transported by rail and pipeline in Washington State. The rule supports our understanding of the risks associated with changes in both the volume and properties of crude oil moving through Washington.

Timely notice of crude oil movement information is necessary for emergency responders and planners to effectively prepare for and respond to oil spills and other incidents associated with transporting crude oil by rail and pipeline. Providing adequate information about the dates, routes, and properties of crude oil can help protect people living and working near railroads and pipelines, the economy, and the environment.

Rule amendments are needed to incorporate statutory changes made in the 2019 legislative session. Through ESHB 1578 and ESSB 5579, the Legislature expanded reporting requirements for regulated facilities, pipelines, and Ecology, and placed statutory limits on the vapor pressure of crude oil that can be loaded or unloaded into or from a rail tank car by facilities.

Initially our rulemaking was scoped to address these updates in alignment with legislative direction. However, the Pipeline and Hazardous Materials Safety Administration (PHMSA) determined that the crude oil vapor pressure limit is preempted by the Hazardous Materials Transportation Act. Ecology is continuing rulemaking but is no longer pursuing updates to incorporate statutory limits on the vapor pressure of crude oil that can be loaded or unloaded into or from a rail tank car by facilities.

Expanded reporting requirements will help Ecology and other emergency responders understand the crude oil movement picture statewide, and to better assess potential impacts of crude oil movement by rail and pipeline. The additional data can help Ecology and emergency response agencies determine the need for additional prevention and preparedness measures.

Statutory authority for adoption: Chapter 90.56 RCW; RCW 90.56.005; RCW 90.56.050; RCW 90.56.565

Statute being implemented: RCW 90.56.565

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:	Kim Morley	Lacey, WA	360-701-2398
Implementation:	Nhi Irwin	Lacey, WA	360-791-5514
Enforcement:	Nhi Irwin	Lacey, WA	360-791-5514

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: Kim Morley
Address: Department of Ecology
Spill Prevention, Preparedness, and Response Program
PO Box 47600, Olympia, WA 98504-7600
Phone: 360-701-2398
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: kim.morley@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:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

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 19.85.025(4).

Explanation of exemptions, if necessary: We analyzed the compliance costs of the proposed rule amendments in the Preliminary Regulatory Analyses for this rulemaking (Ecology publication no. 20-08-007). All but one of the parties covered by this rule are businesses with more than 50 employees, and the remaining party is government-owned:

- BP Cherry Point Refinery: BP has over 10,000 employees.
- Andeavor Anacortes Refinery: Andeavor has over 10,000 employees.
- Shell Puget Sound Refinery: Shell has over 10,000 employees.
- Phillips 66 Refinery: Phillips 66 has over 10,000 employees.
- U.S. Oil and Refining: U.S. Oil and Refining has between one hundred and 249 employees.
- TransMountain Pipeline (Puget Sound): Trans Mountain Pipeline is a wholly owned subsidiary of Canada Development Investment Corporation, which is owned by the Canadian government. As a public entity, it is not a business.
- BP Olympic Pipeline: BP has over 10,000 employees.
- SeaPort Sound Terminal: This terminal is owned by Targa Resources, which has 1,000 – 4,999 employees.

Therefore, this rulemaking is exempt from the requirements of the Regulatory Fairness Act (chapter 19.85 RCW) according to RCW 19.85.025(4), which states, "This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses."

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:

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

Name:

Address:

Phone:
Fax: N/A
TTY:
Email:
Other:

Date: September 2, 2020

Name: Heather Bartlett

Title: Deputy Director

Signature:

A handwritten signature in black ink that reads "Heather R. Bartlett". The signature is written in a cursive style with a large, looped initial 'H' and 'B'.