



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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FILED

DATE: March 25, 2020

TIME: 11:33 AM

WSR 20-08-048

Agency: Department of Ecology AO # 19-07

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-16-099 ; 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) Chapter 173-303 Washington Administrative Code (WAC), Dangerous Waste Regulations. These regulations set standards for the safe management of dangerous wastes.

For more information on this rulemaking visit: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-303>

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 5, 2020	1:00PM	Webinar hearing: https://watech.webex.com/watech/onstage/g.php?MTID=e80b9b72c04132f0d53a284641f137ead .	At this time Ecology is not holding an in-person public hearing, due to the current public health concerns. This webinar meets legal requirements for a rulemaking public hearing. Presentation, question and answer session followed by the hearing. We are 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://watech.webex.com/watech/onstage/g.php?MTID=e80b9b72c04132f0d53a284641f137ead For audio, call US Toll number 1-415-655-0001 and enter access code 800 035 845. To receive a free call back, provide your phone number when you join the event.

Date of intended adoption: September 30, 2020 (Note: This is NOT the effective date)

Submit written comments to:

Name: Robert Rieck

Address: **US mail:**

Department of Ecology
Hazardous Waste and Toxics Reduction Program
PO Box 47600, Olympia, WA 98504-7600

Parcel delivery services:

Department of Ecology
Hazardous Waste and Toxics Reduction 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://hwtr.ecology.commentinput.com/?id=Ccx25>

By (date) May 26, 2020

Assistance for persons with disabilities:

Contact Ecology's ADA Coordinator

Phone: 360-407-6831

Fax: N/A

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

Email: ecyADACoordinator@ecy.wa.gov

Other: Visit <https://ecology.wa.gov/accessibility> for more information

By (date) April 30, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Chapter 173-303 WAC implements Chapter 70.105 RCW and Subtitle C of the federal Resource Conservation and Recovery Act (RCRA). Chapter 70.105 RCW provides authority to adopt regulations for dangerous waste management. The term dangerous waste includes more wastes than are in the federal hazardous waste definition because Washington's rules are more protective. The Department of Ecology (Ecology) proposes to amend specific sections of the dangerous waste regulations to incorporate new federal hazardous waste rules, including but not limited to:

- 1) Management Standards for Hazardous Waste Pharmaceuticals and Amendments to the P075 Listing for Nicotine. 84 FR 5816; February 22, 2019.
- 2) Safe Management of Recalled Airbags. 83 FR 61552; November 30, 2018.
- 3) User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations. 83 FR 420; January 3, 2018.

Proposed state-initiated amendments will also include:

- 1) Corrections and clarifications to the Generator Improvements Rule and other dangerous waste rules adopted January 28, 2019.
- 2) Updating Biological Testing Methods for the Designation of Dangerous Waste publication 80-12.
- 3) Other clarifications and corrections as necessary.

The purpose of this proposal is to clarify requirements, streamline compliance, and ensure that state dangerous wastes are properly and safely managed, which is a critical priority. Adoption of these federal regulations in Washington state will help promote compliance and safe management practices.

Reasons supporting proposal: Under federal law, Ecology is required to adopt certain federal hazardous waste rules to maintain its authorization by the U.S. Environmental Protection Agency (EPA) and remain consistent with EPA regulations. Other new federal hazardous waste rules are optional for the state to adopt (for example, the recalled airbag rule and portions of the pharmaceutical rule). We are proposing some of the federal optional rules as part of this rulemaking. Adopting the required as well as the optional federal rules will promote better waste management, environmental protection, and consistency with the federal rules.

Washington state's healthcare stakeholders requested that we adopt the new federal pharmaceutical waste rules as soon as possible in order to help them better manage their waste streams, reduce confusion, and simplify compliance with the dangerous waste regulations.

These changes are:

- 1) Hazardous Waste Pharmaceutical rule and amendments to the P075 Listing for Nicotine:
 - a. Sets consistent, mandatory standards for healthcare facilities and reverse distributors across the nation.
 - b. Prohibits disposal of pharmaceuticals down the drain, resulting in fewer toxic chemicals in our waterways.
 - c. Removes over-the-counter nicotine replacement therapies, including nicotine-containing patches, gums, and lozenges, from being listed as P075 acutely hazardous waste when discarded. Because only a small amount of P-listed waste causes a generator to be regulated as a large quantity generator, the effect of delisting these discarded products may mean that some retail stores and pharmacies would be at a lower generator status.
- 2) Safe Management of Recalled Airbags:
 - a. Provides regulatory relief to generators and transporters of airbag modules and inflators.
 - b. Facilitates a more expedited removal of defective Takata airbag inflators from vehicles by Washington state dealerships, salvage yards, and other locations for safe and environmentally sound disposal.
- 3) User Fees and amendments for the Electronic Hazardous Waste Manifest System:
 - a. Sets standards for determining electronic manifest user fees.
 - b. Modifies some existing manifest regulations.
 - c. Improves generator and state regulator access to the hazardous waste manifest system for tracking dangerous waste shipments.
 - d. Is a required rule Ecology must adopt to remain equivalent with federal regulations.

This rulemaking will also address state-initiated amendments that we believe will clarify and improve the existing regulations, including:

- 1) Corrections and clarifications to the recent state dangerous waste rule amendments adopted January 28, 2019. As the new rules are being implemented, inspectors and the public have noted mistakes and unclear language needing correction.
- 2) Updating the Biological Test Methods publication will improve the static acute fish toxicity test, making it more usable and cost effective for how dangerous waste is identified. We also plan to remove the obsolete acute oral rat toxicity test method from the publication.

Other clarifications and corrections will improve the usability of the rules. One change Ecology is proposing would modify a final facility permit rule (WAC 173-303-806(4)) to clarify certification requirements for submitted engineering documents.

Statutory authority for adoption: Chapter 70.105 Revised Code of Washington (RCW) Hazardous Waste Management Act

Statute being implemented: Chapter 70.105 RCW

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION: 40 CFR 260-279

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:	Robert Rieck	Lacey	360-407-6751
Implementation:	Darin Rice	Lacey	360-407-6702
Enforcement:	Darin Rice	Lacey	360-407-6702

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: Robert Rieck
Address: PO Box 47600
Olympia, WA. 98504-7600
Phone: 360-407-6751
Fax: N/A
TTY: For Washington Relay Service or TTY call 711 or 877-833-6341

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 19.85.025(4).

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. The Regulatory Fairness Act (RFA; RCW 19.85.070) requires Ecology to perform a set of analyses and make certain determinations regarding the proposed rule amendments, if they impose more than minor compliance costs on businesses. Based on the costs discussed in the Preliminary Regulatory Analyses (PRA) for this rulemaking (Ecology publication no. 20-04-014), we identified the following compliance costs:

- Adding recordkeeping requirements for the use of alternate tank inspection schedules: \$36 to \$39 per facility using an alternate schedule.
- Adding container-labeling instructions for affixing, destroying, and ensuring readability of labels: \$0.08 per label removed, necessitating at least 1,216 labels removed and destroyed (rather than moved or replaced, as implied by baseline labeling requirements) to incur \$100 of compliance cost. High numbers of label removals are unlikely, due to the requirement existing in other sections of the rule, as well as past requirements Ecology recently revised with the accidental omission.
- Increasing records retention for two types of records, by three to five years: Zero or near-zero cost relative to baseline space already retained and minimal management, and consistency with all other records retention requirements in the rule.

We also identified costs in the PRA related to noncompliance, which are excluded from consideration as compliance costs:

- Allowing Ecology discretion to obtain and approve of sampling plans.
- Expanding the scope of kinds of reports that Ecology may request from a generator.

For Ecology, the RFA defines minor costs as "a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll." This means minor costs are less than either:

- The larger of:
 - \$100
 - 0.03 percent of annual revenue or income

- 1 percent of annual payroll

As costs are likely less than \$100, and are not necessarily imposed on the same businesses, they are less than minor costs, because regardless of annual revenue or income of potentially affected businesses:


- If \$100 is larger than 0.03 percent of annual revenue or income, likely costs are less than \$100.
- If \$100 is less than 0.03 percent of annual revenue or income, and likely costs are less than \$100, then likely compliance costs are less than 0.03 percent of annual revenue or income.

Due to the diverse set of industries covered by the rule, and uncertainty as to which businesses are using various existing flexible compliance options, we did not compare estimated compliance costs to payroll or revenue as industry averages would not have reflected facility-specific attributes in the comparisons. Therefore, RFA requirements do not apply to this rulemaking.

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: Robert Rieck
 Address: PO Box 47600
 Olympia, WA 98504-7600
 Phone: 360-407-6751
 Fax: N/A
 TTY: For Washington Relay Service or TTY call 711 or 877-833-6341.
 Email: Robert.rieck@ecy.wa.gov
 Other: N/A

Date: March 25, 2020	Signature: 
Name: Heather Bartlett	
Title: Deputy Director	