



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017) (Implements RCW 34.05.310)

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WSR 19-16-099

Agency: Department of Ecology AO # 19-07

Subject of possible rule making: Chapter 173-303 Washington Administrative Code (WAC), Dangerous Waste Regulations. These regulations set standards for safely managing state dangerous wastes. Chapter 173-303 WAC implements Chapter 70.105 RCW and Subtitle C of the federal Resource Conservation and Recovery Act (RCRA). Washington uses the term dangerous waste while the federal government uses the term hazardous waste. The term dangerous waste includes more waste than are in the federal hazardous waste definition because Washington's rules are more protective. The Department of Ecology (Ecology) plans to amend specific sections of chapter 173-303 WAC 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) Hazardous Waste Management System: User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations. 83 FR 420; January 3, 2018

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.

Statutes authorizing the agency to adopt rules on this subject: Hazardous Waste Management Chapter 70.105 Revised Code of Washington (RCW)

Reasons why rules on this subject may be needed and what they might accomplish: Updating the state dangerous waste regulations to clarify requirements, streamline compliance, and ensuring that state dangerous wastes are properly and safely managed is a critical priority. Washington State adoption of these federal regulations will help promote compliance and safe management practices.

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 considering adopting some of the federal optional rules into the state rule 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.
- 3) 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.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: EPA has authority to regulate generators of dangerous waste within Washington State. Ecology will keep EPA informed about our rulemaking efforts, and provide drafts and formal rule proposals for their review. We will communicate and coordinate with EPA throughout the process. Ecology will work closely with other interested state and local government agencies and encourage them to provide input throughout the rulemaking process..

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study

Other (describe) Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (Chapter 34.05 RCW).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

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Web site: https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-303	Web site:
Other: Join the rulemaking listserv: http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?SUBED1=DW-RULES&A=1	Other:

Additional comments: Interested parties can stay informed about the rulemaking and public involvement opportunities as described above. For answers to frequently asked questions, visit the rulemaking website. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

Date: 8/2/2019

Name: Darin Rice

Title: Program Manager -
Hazardous Waste and Toxics Reduction Program

Signature:

