



# PROPOSED RULE MAKING

**CR-102 (June 2024)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: September 17, 2024

TIME: 8:32 AM

WSR 24-19-075

**Agency:** Department of Ecology AO #24-11

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR** \_\_\_\_\_ ; 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 proposes updates to the human health criteria and associated footnotes in Table 240 of WAC 173-201A-240, Toxic substances, to remove state-adopted human health criteria that the Environmental Protection Agency (EPA) disapproved and adopt as state law federal human health criteria that EPA promulgated for Washington. Human health criteria are pollution limits on toxic substances that are set to protect people who consume fish and shellfish and drink untreated water from Washington's surface waters.

The state's water quality standards, Chapter 173-201A WAC, set limits on pollution in our lakes, rivers, and marine water in order to protect beneficial uses, such as swimming and fishing. The water quality standards are implemented through discharge permits and other regulatory mechanisms under the federal Clean Water Act. They are also used to identify polluted waters and set levels for water cleanup.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
Oct. 22, 2024	5:30 p.m.	Webinar	<p>Presentation, question and answer session followed by the hearing.</p> <p>We are also 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: <a href="https://waecy-wa.gov.zoom.us/meeting/register/tZUqcOygpjgrE9YnQmdRMIg3gMthCX8BZk-Z">https://waecy-wa.gov.zoom.us/meeting/register/tZUqcOygpjgrE9YnQmdRMIg3gMthCX8BZk-Z</a></p> <p>For audio call US Toll number 1 253 205 0468 and enter access code 817 7588 3192. Or to receive a free call back, provide your phone number when you join the event</p>

**Date of intended adoption:** Nov. 27, 2024 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name Marla Koberstein  
Address Send US mail to:  
Department of Ecology  
Water Quality Program  
PO Box 47696, Olympia, WA 98504-7696

**Assistance for persons with disabilities:**

Contact Ecology ADA Coordinator  
Phone 360-407-6831

Or  
Send parcel delivery services to:  
Department of Ecology  
Water Quality Program  
PO Box 47696, Olympia, WA 98504-7696

Email Submit comments by mail, online, or at the hearing  
Fax N/A

Other Online  
<https://wq.ecology.commentinput.com?id=PYcJ7i5sk>  
Beginning (date and time) Sept 17, 2024 at 12 a.m.  
By (date and time) Oct. 25, 2024 at 11:59 p.m.

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](mailto:ecyADAcordinator@ecy.wa.gov)

Other N/A  
By (date) Oct. 15, 2024

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** Ecology proposes to remove from the Washington Administrative Code certain state-adopted human health criteria that EPA previously disapproved and replace those disapproved criteria with the limits that EPA put in place for Washington’s waters under 40 Code of Federal Regulations (CFR) § 131.45.

This proposed rule would replace 143 human health criteria for 73 pollutants that were disapproved by EPA. In addition, Ecology proposes to adopt three criteria for two pollutants that EPA put into effect for Washington in 2016 that Ecology did not adopt state criteria for. We also updated the footnotes in Table 240 associated with the replaced criteria.

By adopting the current federal human health criteria as state law, Ecology aims to provide durability and regulatory certainty for pollution limits that were set to protect human health, including vulnerable populations, from the harmful effects of toxic substances. **The proposed rule will not result in any change to water quality criteria that Ecology is already implementing.**

Ecology is also correcting typographical errors in Table 240.

Ecology is starting this rulemaking at the rule proposal (CR-102) filing phase. This rulemaking is exempt from the requirement to file a Pre-Proposal Statement of Inquiry (CR-101) under the Administrative Procedure Act (RCW 34.05) because this rulemaking intends to adopt without material change federal regulations. Additionally, this rulemaking is exempt from completing analyses required under the Regulatory Fairness Act (RCW 19.85).

**Reasons supporting proposal:** In 2016, Ecology adopted human health criteria for Washington’s waters through an extensive public rulemaking process and following Tribal consultation. We submitted the adopted rule to EPA for review and approval. EPA approved 45 of Washington’s criteria and disapproved 143 criteria on the basis that those criteria were not protective of designated uses (such as fishing). EPA promulgated criteria for Washington for 141 of the values that were disapproved, and promulgated criteria for two substances (methylmercury and bis(2-Chloro-1-Methylethyl)Ether) that Washington did not include in their state rule adoption.

In 2017, a group of Washington businesses petitioned EPA to reconsider the 2016 partial disapproval and repeal the federally promulgated human health criteria. Washington and several Tribes urged EPA to deny the petition.

In 2019, EPA granted the petition to reconsider their 2016 disapproval of Washington’s adopted human health criteria. In 2020, EPA formally reversed their decision and approved the previously disapproved criteria, which resulted in the 2016 state adopted criteria to go into effect for permits and other Clean Water Act programs. EPA also approved HHC for two substances (Dioxin and Thallium) that they deferred action on in 2016.

However, in 2022, EPA reversed that decision following legal challenges by Washington and several Tribes. As a result, EPA once again formally promulgated those criteria that they originally promulgated in 2016. Washington's promulgated human health criteria went back into effect on Dec. 19, 2022.

Ecology's proposal provides durability and regulatory certainty for the human health criteria already in place for Clean Water Act regulatory programs in Washington. The state-adopted human health criteria that were disapproved by EPA are not being implemented in state regulatory programs.

**Statutory authority for adoption:** RCW 90.48.035 provides clear and direct authority to Ecology to revise the Surface Water Quality Standards (SWQS). Additionally, 40 CFR 131.20 requires states and tribes with Federal Clean Water Act authority to periodically review and update the SWQS

**Statute being implemented:** Chapter 90.48 RCW - Water Pollution Control

**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 131.45

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) Department of Ecology

**Type of proponent:**  Private.  Public.  Governmental.

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting	Marla Koberstein	HQ - Lacey	360-628-6376
Implementation	Melissa Gildersleeve	HQ - Lacey	360-522-6441
Enforcement	Vincent McGowan	HQ - Lacey	360-407-6405

**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  
Address  
Phone  
Fax  
TTY  
Email  
Other

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name  
Address  
Phone  
Fax  
TTY  
Email  
Other

No: Please explain: RCW 34.05.328 (5)(b)(iii) exempts rules from a cost-benefit analysis when they adopt by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

We propose to remove human health criteria disapproved by EPA and adopt without change human health criteria that EPA put into effect for Washington under 40 CFR 131.45. These criteria went into effect for Washington's waters on Dec. 19, 2022. Ecology is already implementing the EPA promulgated human health criteria into Clean Water Act regulatory programs across the state. The state-adopted human health criteria that were disapproved by EPA are not being implemented in state regulatory programs.

RCW 34.05.328(5)(b)(iv) likewise exempts rules from a cost-benefit analysis when they only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

We propose to correct typographical errors in Table 240 of WAC 173-201A-240, such as correcting the number of significant figures for a criterion.

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations)         | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)  | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(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\(4\)](#). (Does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule: This rulemaking proposes to adopt without material change federal regulations that specify human health criteria currently in place for Washington. This proposal also includes corrections to typographical errors.

**(2) Scope of exemptions:** *Check one.*

The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.

The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_\_\_\_\_
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact 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  
TTY  
Email  
Other

**Date:** 9/17/24

**Name:** Heather Bartlett

**Title:** Deputy Director

**Signature:**

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