

Summary of Draft Amendments to the *Dangerous Waste Regulations* Chapter 173-303 WAC

November 2019

The *Dangerous Waste Regulations* are in the process of being updated. Pre-proposal draft rule language is available for review and comment. Ecology will consider these comments before the amendments are formally proposed. Please see Ecology’s dangerous waste [rulemaking website](#)¹ for the draft rules and how to submit comments.

This document summarizes proposed draft changes to the *Dangerous Waste Regulations*. Amendments based on federal rules are listed in Table 1. The summary paragraph (taken from the Federal Register Notice) is followed by an explanation of how the draft state rule may differ from federal language. State-initiated changes are listed in Table 2.

Table 1. Federal Rule Summaries

Federal Rule Title, Date, Federal Register (FR) Notice page number and EPA Summary	Major Differences between State Rule and EPA Rule	State Citation(s) where federal rule language is
<p>Management Standards for Hazardous Waste Pharmaceutical Rule and Amendment to P075 Nicotine listing. February 22, 2019 – Vol. 84 FR 5816 SUMMARY: Some pharmaceuticals are regulated as hazardous waste under the Resource Conservation and Recovery Act (RCRA) when discarded. This final rule adds regulations for the management of hazardous waste pharmaceuticals by healthcare facilities and reverse distributors. Healthcare facilities (for both humans and animals) and reverse distributors will manage their hazardous waste pharmaceuticals under this new set of sector-specific standards in lieu of the existing hazardous waste generator regulations. Among other things, these new regulations prohibit the disposal of hazardous waste pharmaceuticals down the drain and eliminates the dual regulation of RCRA hazardous waste</p>	<ul style="list-style-type: none"> • In WAC 173-303-555(10) the state has added an option for disposal of state-only non-creditable dangerous waste pharmaceuticals at a non-RCRA permitted combustor or incinerator. • Provide a definition for state-only dangerous waste pharmaceuticals. Pharmaceuticals that designate for state criteria will also be managed under the pharmaceutical rules. • The state is not adopting the presumption that a long-term care facility with 20 beds or fewer is presumed to be a small quantity generator (see 40 CFR 266.5045(d)). 	<ul style="list-style-type: none"> • 040 “Control” • 071(3)(a)(ii) • 081(1)(c) • 160(5) • 169(4)(j) • 170(9)-(11) • 171(e)(x)-(xi) • 555 • 573(39) • 600(3)(r)

¹ <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-303>

Federal Rule Title, Date, Federal Register (FR) Notice page number and EPA Summary	Major Differences between State Rule and EPA Rule	State Citation(s) where federal rule language is
<p>pharmaceuticals that are also Drug Enforcement Administration (DEA) controlled substances. The new rules also maintain the household hazardous waste exemption for pharmaceuticals collected during pharmaceutical takeback programs and events, while ensuring their proper disposal. The new rules codify Environmental Protection Agency (EPA)’s prior policy on the regulatory status of nonprescription pharmaceuticals going through reverse logistics. Additionally, EPA is excluding certain U.S. Food and Drug Administration (FDA) approved over-the-counter (OTC) nicotine replacement therapies (NRTs) from regulation as hazardous waste and is establishing a policy on the regulatory status of unsold retail items that are not pharmaceuticals and are managed via reverse logistics, fulfilling the commitment we made in the Retail Strategy of September 2016.</p>	<ul style="list-style-type: none"> • The state has divided 40 CFR 266.510 “Standards for the management of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals at reverse distributors” into four subsections 555(12) through (15). This was done for ease of reading and citation formatting. No new requirements were added as a result of this state difference. 	
<p>Amendment to P075 Nicotine listing</p>		<ul style="list-style-type: none"> • 9903
<p>Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest system and amendments to Manifest Regulations. January 3, 2018 – Vol. 83 FR 420 SUMMARY: The Environmental Protection Agency (EPA or the Agency) is establishing by this regulation the methodology the Agency will use to determine and revise the user fees applicable to the electronic and paper manifests to be submitted to the national electronic manifest system (eManifest system) that EPA is developing under the Hazardous Waste Electronic Manifest Establishment Act. After the eManifest system’s implementation date, certain users of the hazardous waste manifest will be required to pay a prescribed fee for each electronic and paper manifest</p>	<p>None</p>	<ul style="list-style-type: none"> • 180 • 250(5)-(6), (10)(f) • 370(2)(e), (10)-(11)

Federal Rule Title, Date, Federal Register (FR) Notice page number and EPA Summary	Major Differences between State Rule and EPA Rule	State Citation(s) where federal rule language is
<p>they use and submit to the national system so that EPA can recover the costs of developing and operating the national e-Manifest system. This final rule also announces the date when EPA expects the system to be operational and available to users. EPA will begin accepting manifest submissions and collecting the corresponding manifest submission fees on this date. In addition, this action announces final decisions and regulations relating to several non-fee related matters that were included in the proposed rule. This includes modifying the existing regulations to: allow changes to the transporters designated on a manifest while the shipment is en route; describe how data corrections may be made to existing manifest records in the system; and amend the previous e-Manifest regulation (the One Year Rule) to allow the use, in certain instances, of a mixed paper and electronic manifest to track a hazardous waste shipment.</p>		
<p>Safe Management of Recalled Airbags. November 30, 2018 – Vol. 83 FR 61552 SUMMARY: The Environmental Protection Agency (EPA) is issuing this interim final rule in response to the urgent public health issue posed by recalled Takata airbag inflators still installed in vehicles. With this rule, EPA is facilitating a more expedited removal of defective Takata airbag inflators from vehicles by dealerships, salvage yards and other locations for safe and environmentally sound disposal by exempting the collection of airbag waste from hazardous waste requirements so long as certain conditions are met. The Agency is also seeking comment on this interim final rule.</p>	<ul style="list-style-type: none"> • Clarified accumulation is not to exceed 250 airbag modules or airbag inflators and for no longer than 180 days, whichever comes first. • Changed recordkeeping requirement from 3 years to 5. • Any airbags that are managed under the exclusion are not allowed to be reused in vehicles. 	<p>071(3)(tt)</p>

Table 2. State-initiated Rule Amendments

Citation WAC 173-303	Suggested change	Why needed
010	Update references.	Correction. RCW 70.105 has been repealed and replaced with RCW 70.95E.
017(5)(a)(iv-v)	Delete citations.	Correction. We adopted these citations by mistake in 2019. These are not variance options, but are part of RCRA non-waste determination rules, which we have not adopted.
040 Electronic signature”	Update RCW reference.	The previous reference to RCW 19.34.020 was repealed.
045	Revise 40 CFR incorporation date.	This date is updated each time the dangerous waste rules are amended.
070(4)	Add <u>“The department may require persons to submit a waste analysis plan to, and receive written approval from, the department prior to testing a waste.”</u>	Existing regulations don’t require generators to submit waste designation sampling plans to Ecology. This change gives Ecology discretionary authority to obtain and approve of sampling plans prior to testing of the waste.
071(3)(nn)	Update exclusion for state-only drugs to only apply to Washington state law enforcement agencies.	New requirement. The exclusion is restricted to state-only drugs in the custody of law enforcement. This rule is being updated to better integrate with the pharmaceutical rules for health care facilities. These rules give a limited exemption for state-only drug disposal to a non-RCRA permitted combustor or incinerator.
071(3)(r)(i)	Correct internal references.	Correction. Update references that changed due to the 2019 generator improvements rule (GIR) amendments.
071(3)(rr)(v), 071(3)(ss)(v)	Add five year documentation retention period.	New rule. Require documentation to be retained on site consistent with WAC 173-303-210 recordkeeping requirements.
073(2)	Correct internal reference.	Correction. Update reference that changed due to the 2019 GIR amendments.
081(2)(a)	Correct internal reference.	Correction. Update reference that changed due to the 2019 GIR amendments.
081(2)(a)(iv)	Clarify that the 220 lb quantity exclusion limit for P listed cleanup wastes applies when those P listed chemicals are spilled into or on any land or water.	Clarification. The rule is unclear about the kind of P listed chemical spills, and is being updated to align with definitions for SQGs, MQGs and LQGs.

Citation WAC 173-303	Suggested change	Why needed
082(2)	Correct internal reference.	Correction. Update reference that changed due to the 2019 GIR amendments.
090(4)	Correct internal reference.	Correction. Update reference that changed due to the 2019 GIR amendments.
100(4)	Correct internal reference.	Correction. Update reference that changed due to the 2019 GIR amendments.
100(4)(b)	Add the quantity exclusion limit (QEL) for WT01 clean up wastes.	Clarification needed in the state criteria regulations that the quantity exclusion limit for WT01 clean up wastes is 220 lbs per month.
100(5)(c)((i)-(ii), 110(3)(b)	Remove references to the oral rat bioassay test.	Ecology is removing the oral rat bioassay test from the Biological Test Methods publication # 80-12, and removing related citations in the dangerous waste regulations. This test is no longer being used due to lack of testing labs, expense and a move away from using animal species for chemical testing.
110(3)(a)	Include latest Final Update VI to EPA SW-846 Test Methods.	Update to latest EPA SW-846 Final Update version.
140(2)(a)	Correct internal reference	Correction. Update reference that changed due to the 2019 GIR amendments.
140(2)(c)	Correct reference	Correction. The wording must match federal language in 40 CFR 268.7(a)(1).
141(1)	In the first sentence, after the word “offer” add the words “... <u>transport, transfer, or deliver...</u> ”.	Existing rule wording (offer) doesn’t adequately describe ways that dangerous waste is shipped to a TSD. This has created problems enforcing this regulation.
141(2)(d)	Delete allowance for generators to not put the EPA identification number for out-of-state receiving facilities on the manifest and annual report.	E-manifest rules require receiving facilities to have an EPA ID number, which the sending generator will indicate on the manifest and on annual reports.
169(3)(b) Table 1	Expand description in the table heading column three for dangerous wastes with a 2.2 lb QEL	Clarifying language needed to better describe types of dangerous waste subject to the 2.2 lb QEL.
169(4)(b)	Delete incorrect internal reference	Correction. Update reference that changed due to the 2019 GIR amendments.
170(5)(a) and (b)	Delete injunctive relief.	Ecology’s penalties are only appealable to the PCHB, not to injunctive relief.

Citation WAC 173-303	Suggested change	Why needed
170(12)	Add new subsection for law enforcement allowing them to comply with 555(7) and (9).	State only rule to provide some relief to law enforcement and the drugs in their possession. Law enforcement is not a healthcare facility.
171(1)(c)	Clarify that WT01 cleanup debris, as defined in the definition of a small quantity generator, is 220 lbs.	Clarification. Existing language is unclear.
172(4)(b)	Change the word “and” to “or”.	Correction. Accumulation limits apply to any one of the limits, not a combination of them.
172(5)(a)	Internal reference updated.	Correction of internal reference.
200(3)(d)	Internal reference updated.	Correction of internal reference.
172(4)(a)	Increase the MQG pounds of dangerous waste allowed to be accumulated on-site from 2,200 lbs to 6,600 lbs.	Less stringent state-only rule. Existing rule requires an MQG that accumulates greater than 2,200 lbs to obtain a RCRA storage permit. Increasing the threshold amount of MQG dangerous waste accumulated on-site to 6,600 lbs means that an MQG who regularly generates and stores close to 2,200 lbs every month will have a longer time frame before they must ship their dangerous waste off-site. This gives MQGs the benefit of avoiding costs of frequent dangerous waste shipments, and reduction in amount of waste shipments over the roadways.
172(5)(f)(i) and (ii)	Grammatical corrections.	Correct grammar to match comparable 200(3)(f).
172(6)(b)(vi)	Add RCRA recordkeeping requirements for use of the alternate tank inspection schedule.	By oversight, RCRA recordkeeping requirements were not included in this citation.
172(7) and (8), 200(5) and (6)	Replace “dangerous” with “hazardous”.	Correction to maintain consistency with section 040 definitions and RCRA wording for drip pads and containment buildings.
172(9)(a), 200(7)(a)	Correct grammatical errors	Correct grammar and inconsistent wording between these two cites.
172(9)(a)(iv) and (v), 200(7)(a)(iv) and (v)	Add container labeling instructions for affixing, destroying and ensuring readability of the label.	By oversight, container label instructions from pre-2019 dangerous waste regulations were not included in the 2019 amendments. These instructions are from existing WAC 173-303-630(3).

Citation WAC 173-303	Suggested change	Why needed
172(13)	Renumber citation.	Correction. Match how parallel 200(10)(a) is cited.
173(3)(b) and 173(4)(b)	Remove requirement to notify Ecology’s regional Hazardous Waste and Toxics Reduction (HWTR) office of a planned episodic event. An explanatory note recommends sites notify of planned episodic events at least 60 days in advance, and clarifies when notifications may be returned.	Correction. Notification to Ecology’s HWTR regional office is an unnecessary step and creates extra work and confusion. Notification is done by submitting a site identification form to the HWTR annual report team at Ecology headquarters. The note (which is not a regulatory requirement) is intended to help generators submit notifications in time to allow for Ecology review and possible correction by the site.
173(4)(f)(i)(B), 173(4)(f)(i)(C)(II)	For medium quantity generators of episodic waste, add labeling legibility exemption for containers one gallon (or four liters) and under.	Correction. By oversight, the labeling legibility exemption for small containers was not included in the episodic generation rules for MQGs.
174(1)(a) and 200(3)(a)	Delete reference to section 360 in 174(1)(a). In 200(3)(a) replace section 360 reference with 201(13).	Correction. Update references that changed due to the 2019 GIR amendments.
174(1)(d)	Remove “ignitable” from heading.	Correction. Satellite accumulation area rules do not include requirements for managing ignitable wastes, so the word ignitable does not apply.
200 (3)(d)	Correct internal reference.	Correction. Update reference that changed due to the 2019 GIR amendments.
201(9)(b)(i)	Change reference to entire section to just subsections (8) through (14).	Correction. This citation only refers to rules found in WAC 173-303-201(8) through (14), and does not apply to entire section.
220(3)	Modify rule language to expand scope for kinds of reports that Ecology may request from a generator.	Existing rule is limited in kinds of reports that Ecology may request from a generator. This has created problems in obtaining necessary documentation in enforcement cases.
380(2)(c) Table 1	Change Table 1 line entry for Tons (2000 lbs) to Tons (1000 kg).	Correction. This entry code M is for metric tons, which is 1000 kg.
505(1)(b)(iii)(B)	Change internal reference.	Correction.

Citation WAC 173-303	Suggested change	Why needed
600(3)(j), 600(3)(n)	Delete "...or elementary neutralization or wastewater treatment unit..." in 173-303-600(3)(j), and add a reference to WAC 173-303-802(5) in 173-303-600(3)(n).	Clarification. Elementary neutralization or wastewater treatment units described in existing 600(3)(j) are also described in 600(3)(n), which causes duplication and confusion. In 600(3)(n), a reference to 802(5) permit-by-rule requirements was inadvertently left out in past rulemakings.
630, 640, 650, 680 and 810	Update reference.	Correction. Adding "part 264" to references for subparts AA, BB, CC
640(2)(e), 640(3)(b)	Add the word "system" after "tank."	Clarification. Integrity assessments on tanks includes assessing tank ancillary equipment, such as transfer piping.
800(2)	Modify paragraph by clearly stating that facilities that treat, store or dispose of dangerous waste must have a permit. The changes also clarify transfer facilities and recyclers may also need to obtain a permit when required by the chapter.	Clarification. This change clarifies who must have a permit and when the permit is required by the chapter.
806(4)(a)	Delete sentence beginning with "Certain technical data...", and add sentence requiring all documents submitted under this section to be subject to Chapter 196-23 WAC and Chapter 18.43 RCW.	Clarification. Use of the phrase "Certain technical data" has been interpreted to mean certain documents, not otherwise called out in the rule, do not have to be certified by a registered professional engineer (PE). By referencing WA state engineering law and regulations, it is clear what types of documents must be certified by a PE.