



DEPARTMENT OF
ECOLOGY
State of Washington

Final Regulatory Analyses

Including the:

Final Cost-Benefit Analysis

Least-Burdensome Alternative Analysis

Administrative Procedure Act Determinations

Regulatory Fairness Act Compliance

Chapter 173-323 WAC
Grants and Loans

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Final Regulatory Analyses

Including:

- **Final Cost-Benefit Analysis**
 - **Least-Burdensome Alternative Analysis**
 - **Administrative Procedure Act Determinations**
 - **Regulatory Fairness Act Compliance**
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Chapter 173-323 WAC

Grants and Loans

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Executive Summary

This report presents the determinations made by the Washington State Department of Ecology (Ecology) as required under Chapters 34.05 and 19.85 Revised Code of Washington (RCW), for the adopted Grants and Loans rule Chapter 173-323 Washington Administrative Code (WAC); the “rule”). This includes the:

- Final Cost-Benefit Analysis (CBA)
- Least-Burdensome Alternative Analysis (LBA)
- Administrative Procedure Act Determinations
- Regulatory Fairness Act Compliance

The adopted rule codifies current practices for managing MTCA funded grants and loans that are not regulated by another chapter of the Washington Administrative Code (WAC) that provides requirements for a specific grant or loan program. The adopted rule applies to the following grant and loan programs:

- Air Quality Clean Diesel Grant Program.
- Air Quality Local Partner Wood Smoke Reduction.
- Shoreline Master Program Grants.
- Spill Prevention, Preparedness, and Response Equipment Grants.
- Water Quality Stormwater Capacity.
- Water Quality Stormwater Grants of Regional or Statewide Significance.
- Water Quality Stormwater Financial Assistance Grant Program.
- One-time grants or loans.

The Toxics Control Accounts state law (RCW 70.105D.070(8)) directs Ecology to adopt rules on issuance and performance of MTCA funded grants and loans. We are therefore adopting this chapter to establish in rule Ecology’s guiding standards and expectations for grant and loan issuance and performance where public MTCA funds are involved, as required by RCW 70.105D.070 (8). We are also adopting this rule to be more clear and consistent in how we manage public funds. The adopted rule is intended to reflect current Ecology practice, and is not intended to add any new requirements beyond those currently in practice in the affected grants and loans programs.

The costs associated with the adopted rule result from the application process. It is impossible to quantify these costs, as they could vary considerably from application to application depending on the complexity of the grant or loan application, the projects for which funding is being requested, the amount of time it takes to prepare the application, and the salary level(s) of the people involved in preparing the application.

The adopted rule will create benefits by increasing clarity, creating certainty, and ensuring consistency in the process Ecology uses with applicants for MTCA funding.

Benefits specifically attributable to the application process include ensuring that potential grant/loan applicants know the information they must provide in order to be eligible to receive grant or loan funding. Without that knowledge applicants would be unlikely to receive funding.

Ecology concludes, based on reasonable understanding of the qualitative costs and benefits likely to arise from the adopted rule, that the benefits of the adopted rule (increasing the ability of applicants to have access to grant and loan funding) are greater than the costs associated with providing the information required in the grant/loan application.

After considering alternatives to the adopted rule's contents, as well as the goals and objectives of the authorizing statute, Ecology determined that the adopted rule represents the least-burdensome alternative of possible rule contents meeting these goals and objectives.

In addition, the information and processes required by the rule are the minimum required by state law to ensure Ecology is meeting generally accepted government auditing standards, as well as the minimum necessary to ensure responsible use of public funds in awarding grants and loans.

Chapter 1: Background and Introduction

1.1 Introduction

This report presents the determinations made by the Washington State Department of Ecology (Ecology) as required under Chapters 34.05 and 19.85 Revised Code of Washington (RCW), for the adopted Grants and Loans rule (Chapter 173-323 Washington Administrative Code (WAC); the “rule”). This includes the:

- Final Cost-Benefit Analysis (CBA)
- Least-Burdensome Alternative Analysis (LBA)
- Administrative Procedure Act Determinations
- Regulatory Fairness Act Compliance

The Washington Administrative Procedure Act (APA; RCW 34.05.328(1)(d)) requires Ecology to evaluate significant legislative rules to “determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the law being implemented.” Chapters 1 – 5 of this document describe that determination.

The APA also requires Ecology to “determine, after considering alternative versions of the rule...that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives” of the governing and authorizing statutes (RCW 34.05.328(1)(d)). Chapter 6 of this document describes that determination.

The APA also requires Ecology to make several other determinations (RCW 34.05.328(1)(a) – (c) and (f) – (h)) about the rule, including authorization, need, context, and coordination. Appendix A provides the documentation for these determinations.

Ecology bases all determinations on the best available information at the time of publication. Ecology encourages feedback (including specific data) that may improve the accuracy of this analysis.

The Washington Regulatory Fairness Act (RFA; Chapter 19.85 RCW) requires Ecology to evaluate the relative impact of adopted rules that impose costs on businesses in an industry. It compares the relative compliance costs to small businesses to the largest businesses affected. Chapter 7 documents that analysis, when applicable.

1.1.1 Chapter 173-323 WAC – Grants and Loans

We are adopting this chapter to establish Ecology’s guiding standards and expectations for grant and loan issuance and performance when public MTCA funds are involved, as required by RCW

70.105D.070(8). We are also adopting this rule to be more clear and consistent in how we manage public funds. Ecology intends this rule to reflect current grant and loan practices.

1.2 Summary of the adopted rule

The adopted rule codifies current practices for managing MTCA funded grants and loans that are not regulated by another chapter of the Washington Administrative Code (WAC) that provides requirements for a specific grant or loan program. The adopted rule applies to the following grant and loan programs:

- Air Quality Clean Diesel Grant Program.
- Air Quality Local Partner Wood Smoke Reduction.
- Shoreline Master Program Grants.
- Spill Prevention, Preparedness, and Response Equipment Grants.
- Water Quality Stormwater Capacity.
- Water Quality Stormwater Grants of Regional or Statewide Significance.
- Water Quality Stormwater Financial Assistance Grant Program.
- One-time grants or loans.

The adopted rule covers the following aspects of managing a grant or loan program:

- The application process.
- Evaluating applications.
- The grant or loan agreement.
- Amendments to the agreement.
- Performance standards for Ecology and recipients.
- Reimbursing eligible costs.
- Closing out the agreement.

1.3 Reasons for the adopted rule

The Toxics Control Accounts state law (RCW 70.105D.070(8)) directs Ecology to adopt rules on issuance and performance of MTCA funded grants and loans. We are therefore adopting this chapter to establish in rule Ecology's guiding standards and expectations for grant and loan issuance and performance where public MTCA funds are involved, as required by RCW 70.105D.070(8). We are also adopting this rule to be more clear and consistent in how we manage public funds. The adopted rule is intended to reflect current Ecology practice, and is not intended to add any new requirements beyond those currently in practice in the affected grants and loans programs.

1.4 Document organization

The remainder of this document is organized in the following chapters:

- Baseline and the adopted rule (Chapter 2): Description and comparison of the baseline (what would occur in the absence of the adopted rule) and the adopted rule requirements.
- Likely costs of the adopted rule (Chapter 3): Analysis of the types and sizes of costs we expect impacted entities to incur as a result of the adopted rule.
- Likely benefits of the adopted rule (Chapter 4): Analysis of the types and size of benefits we expect to result from the adopted rule.
- Cost-benefit (CBA) comparison and conclusions (Chapter 5): Discussion of the complete implications of the CBA.
- Least-Burdensome Alternative (LBA) Analysis (Chapter 6): Analysis of considered alternatives to the contents of the adopted rule.
- Regulatory Fairness Act Compliance (Chapter 7).
- RCW 34.05.328 determinations not discussed in Chapter 5 or 6 (Appendix A)

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Chapter 2: Baseline and the Adopted Rule

2.1 Introduction

We analyzed the impacts of the adopted rule relative to the baseline, within the context of all existing requirements (federal and state laws and rules). We call this context for comparison “the baseline.” The baseline reflects the most likely regulatory circumstances that entities would face if Ecology did not adopt the rule, we explore this in Section 2.2 below.

2.2 Baseline

The baseline for our regulatory analyses generally consists of existing rules and laws, and their requirements. This analytical approach allows us to make a consistent comparisons between the state of the world with and without the adopted rule.

State law, Fiscal Management—Powers and Duties of Officers and Agencies, RCW 43.88.160(4)(a) requires The Office of Financial Management (OFM) to establish a Generally Accepted Accounting Principles (GAAP)-based accounting system and procedures, as necessary, to provide for accountability of the state’s assets and compliance to its laws and regulations. The manual established by OFM is called the State Administrative and Accounting Manual (SAAM). All agencies, including Ecology, must comply with the SAAM, unless exempted under RCW 43.88.020. To assure we are in compliance with the SAAM, we have established the Administrative Requirements for the Recipients of Ecology Grants and Loans (Yellow Book). The Yellow Book provides instructions, explanations, requirements, and definitions. It includes details on agreement language, costs, budgets, financial management, procurement, contracting, property management, closeout, and record keeping.

For this rulemaking, the baseline includes requirements found in:

- RCW 43.88.160.
- RCW 70.105D.070.
- Washington State Department of Ecology Administrative Requirements for Recipients of Ecology grants and Loans (Yellow Book).

2.3 Adopted rule

Sections of the adopted rule that impact applicants/recipients include:

- WAC 173-323-040 Application.
- WAC 173-323-070 Grant and Loan Agreement.
- WAC 173-323-080 Amendments to the Grant or Loan Agreement.
- WAC 173-323-090 Performance Standards.

- WAC 173-323-100 Reimbursement.
- WAC 173-323-110 Closing Out the Agreement.

2.3.1 WAC 173-323-040 Application

Baseline

The baseline does not include any specifications concerning the application process.

Adopted changes from the baseline

- 1) All applicants must use the electronic system identified by Ecology to apply for grants and loans. Applicants without access to the electronic system must use a process approved by Ecology.
- 2) The applicant must complete the application process and provide all required information, including:
 - a) Applicant information.
 - b) Project location and description.
 - c) Scope of work and tasks for the project.
 - d) Requested funding amount for the project.
 - e) Any other information required by Ecology for the specific type of grant or loan.
- 3) For formula or competitive grants and loans, the applicant must submit the application by the due date, if a due date is included in the announcement. Ecology may approve a later due date.
- 4) Ecology may request additional information to assist in the application evaluation process.

Expected impact

While the information the rule requires the applicant to include in an application is basic information that may reasonably be required by any grant or loan program anywhere, putting it together may be time consuming. Therefore, we expect this requirement will have a cost impact when compared with the baseline. It is impossible to quantify this cost impact, because it will vary case by case depending on how complex the grant/loan application is, the amount of time it takes to prepare the application, and the salary level(s) of the people involved in preparing the application. It should be noted, however, that applicants for grants or loans currently provide this information to Ecology, so putting the requirements in rule will not impose any costs on them beyond what they would accrue without the rule.

2.3.2 WAC 173-323-070 Grant or Loan Agreement.

Baseline

- 1) Ecology works with the recipient to prepare the grant or loan agreement.
- 2) A grant or loan agreement issued and managed in Ecology's electronic system must include, at a minimum:

- a) Project description.
- b) Expected outcomes.
- c) Project budget and funding distribution.
- d) Agreement effective date and expiration date.
- e) Description of tasks and deliverables.
- f) Contact information for Ecology and the recipient.
- g) Signatures of authorized signatories.
- h) General terms and conditions that specify requirements related, but not limited, to:
 - i.) Amendments and modifications.
 - ii.) Assignment limits on transfer of rights or claims.
 - iii.) Inadvertent discovery of human remains and/or cultural resources.
 - iv.) Compliance with all laws.
 - v.) Conflict of interest.
 - vi.) Disputes.
 - vii.) Environmental data standards.
 - viii.) Governing law.
 - ix.) Indemnification.
 - x.) Independent status of the parties to the agreement.
 - xi.) Order of precedence for laws, rules, and the agreement.
 - xii.) Property rights, copyrights, and patents.
 - xiii.) Records, audits, and inspections.
 - xiv.) Recovery of funds.
 - xv.) Severability.
 - xvi.) Suspension.
 - xvii.) Sustainable practices.
 - xviii.) Termination.
 - xix.) Third-party beneficiary.
 - xx.) Waiver of agreement provisions.
- i) Special terms and conditions, if any.
- j) Agreement-specific terms and conditions, if any.
- k) General federal conditions, if any.
- l) Other items, if any, necessary to meet the goals of the grant or loan program.

Adopted changes from the baseline

No change.

Expected impact

None.

2.3.3 WAC 173-323-080 Amendments to the grant or loan agreement

Baseline

- 1) A change to any of the following items requires an amendment to the agreement:
 - a. Scope of work or the objectives of the project.
 - b. Budget, whether for an increase or decrease.
 - c. Funding, whether for an increase or decrease.
 - d. Redistributing costs among budget tasks that exceed ten percent deviation of the total eligible costs of the funding distribution.
 - e. Funding distributions, including share percentages.
 - f. Agreement effective or expiration date, whether to shorten or extend.
 - g. Special terms and conditions or agreement-specific terms and conditions.
- 2) Administrative changes do not require an amendment. Examples of administrative changes include updates to contact names, addresses, and phone numbers.
- 3) An amendment must be signed by all parties before it is effective.

Adopted changes from the baseline

No change.

Expected impact

None.

2.3.4 WAC 173-323-090 Performance standards

Baseline

General provisions

- 1) Nothing in this chapter influences, affects, or modifies existing Ecology programs, rules, or enforcement of applicable laws and rules relating to activities funded by a grant or loan.
- 2) Ecology and the recipient must fulfill their obligations under the terms of a grant or loan agreement.
- 3) Ecology, or an auditor authorized by the state of Washington, may audit or inspect a recipient's grant or loan agreements and records.
- 4) New Ecology grant and loan agreements signed after the effective date of this chapter must be managed using Ecology's designated electronic system. A recipient who cannot access the electronic system to meet a deadline or agreement requirements must use a process approved by Ecology.
- 5) Ecology may perform site visits to monitor the project, evaluate performance, and document compliance or any other conditions of the agreement.

Recipient standards

- 6) Recipients must:

- a) Follow all applicable accounting and auditing laws and rules related to grants and loans.
 - b) Use funds according to the agreement.
 - c) Use funds according to the recipient's own policies and procedures, and according to all applicable laws and rules.
 - d) Comply with all applicable laws, rules, orders, and permits when carrying out activities authorized by the agreement.
 - e) Obtain pre-approval for equipment purchases over the amount specified in the agreement.
- 7) As specified in the grant or loan agreement, the recipient must submit the following to Ecology:
- a) Progress reports.
 - b) Payment requests.
 - c) Equipment purchase reports.
 - d) Documentation.
 - e) A final closeout report.
 - f) Any other required information.

Adopted changes from the baseline

No change.

Expected impact

None.

2.3.5 WAC 173-323-100 Reimbursement

Baseline

- 1) Ecology will only reimburse eligible costs incurred between the effective date and the expiration date of an agreement.
 - a. Ecology will not reimburse costs until on or after the signature date of an agreement.
 - b. Any cost incurred before the signature date are at the recipient's risk.
- 2) The recipient must submit a progress report with a payment request and other documentation as required in the grant or loan agreement to be reimbursed.
- 3) Ecology will not issue final payment until the closeout requirements in WAC 173-323-110 have been met.

Adopted changes from the baseline.

No change.

Expected impact

None.

2.3.6 WAC 173-323-110 Closing out the agreement

Baseline

- 1) The recipient must follow the closeout requirements in the agreement.
- 2) Ecology is not obligated to reimburse the recipient the final payment if the recipient does not meet all closeout requirements within the timeframes in the agreement.
- 3) Ecology will close out the grant or loan agreement when it determines the recipient has met the closeout requirements or when the agreement has been terminated.

Adopted changes from the baseline.

No change.

Expected impact

None.

Chapter 3: Likely Costs of the Adopted Rule

3.1 Introduction

We estimated the likely costs associated with the adopted rule, as compared to the baseline. The adopted rule and the baseline are discussed in detail in Chapter 2 of this document.

3.2 Cost analysis

The costs associated with the adopted rule result from the application process. It is impossible to quantify these costs, as they could vary considerably from application to application depending on the complexity of the grant or loan application, the projects for which funding is being requested, the amount of time it takes to prepare the application, and the salary level(s) of the people involved in preparing the application.

3.3 Cost summary

The adopted rule creates costs through the application process. It is impossible to quantify these costs, as they could vary considerably from one application to the next.

However, the application requirements in the rule are consistent with Ecology's current practice. Therefore, they will impose no new costs on the applicants over and above the costs that are currently imposed.

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Chapter 4: Likely Benefits of the Adopted Rule

4.1 Introduction

We estimated the likely benefits associated with the adopted rule, as compared to the baseline (both described in Chapter 2 of this document).

4.2 Benefit analysis

The adopted rule will create benefits by increasing clarity, creating certainty, and ensuring consistency in the process Ecology uses with applicants for MTCA funding.

Benefits specifically attributable to the application process include ensuring that potential grant/loan applicants know the information they must provide in order to be eligible to receive grant or loan funding. Without that knowledge applicants would be unlikely to receive funding.

The APA requires that Ecology include quantifiable and qualitative costs and benefits in this analysis, and the qualitative discussion above describes the types of benefits that are likely to arise.

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Chapter 5: Cost-Benefit Comparison and Conclusions

5.1 Summary of the costs and benefits of the adopted rule

The adopted rule creates costs through the application process. These costs are impossible to quantify because of the variability among grant and loan applications. However, the costs imposed by the rule are consistent with current practice.

The adopted rule will create benefits by increasing clarity, creating certainty, and ensuring consistency in the process Ecology uses with applicants for MTCA funding.

Benefits specifically attributable to the application process include ensuring that potential grant/loan applicants are aware of the information they must provide in order to be eligible to receive grant or loan funding. Without that knowledge, applicants would be unlikely to receive funding.

5.2 Conclusion

Ecology concludes, based on reasonable understanding of the qualitative costs and benefits likely to arise from the adopted rule, that the benefits of the adopted rule (increasing the ability of applicants to have access to grant and loan funding) are greater than the costs associated with providing the information required in the grant/loan application.

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Chapter 6: Least-Burdensome Alternative Analysis

6.1 Introduction

RCW 34.05.328(1)(e) requires Ecology to “[d]etermine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection.” The referenced subsections are:

- (a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;
- (b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;
- (c) Provide notification in the notice of proposed rulemaking under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice must include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis must be available when the rule is adopted under RCW 34.05.360;
- (d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

In other words, to be able to adopt the rule, Ecology is required to determine that the contents of the rule are the least burdensome set of requirements that achieve the goals and objectives of the authorizing statute(s).

Ecology assessed alternatives to the adopted rule content, and determined whether the alternatives met the goals and objectives of the authorizing statutes. Of those that would meet these goals and objectives, Ecology determined whether the alternatives chosen for the adopted rule were the least burdensome to those required to comply with them.

6.2 Goals and objectives of the authorizing statutes: Chapter 70.105D RCW

RCW 70.105D.010 Declaration of Policy states:

Declaration of policy.

1. *Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to preserve and enhance that right. The beneficial stewardship of the land, air, and waters of the state is a solemn obligation of the present generation for the benefit of future generations.*
2. *A healthful environment is now threatened by the irresponsible use and disposal of hazardous substances. There are hundreds of hazardous waste sites in this state, and more will be created if current waste practices continue. Hazardous waste sites threaten the state's water resources, including those used for public drinking water. Many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and environment. The costs of eliminating these threats in many cases are beyond the financial means of our local governments and ratepayers. The main purpose of chapter 2, Laws of 1989 is to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's land and waters.*
3. *Many farmers and small business owners who have followed the law with respect to their uses of pesticides and other chemicals nonetheless may face devastating economic consequences because their uses have contaminated the environment or the water supplies of their neighbors. With a source of funds, the state may assist these farmers and business owners, as well as those persons who sustain damages, such as the loss of their drinking water supplies, as a result of the contamination.*
4. *It is in the public's interest to efficiently use our finite land base, to integrate our land use planning policies with our clean-up policies, and to clean up and reuse contaminated industrial properties in order to minimize industrial development pressures on undeveloped land and to make clean land available for future social use.*
5. *Because it is often difficult or impossible to allocate responsibility among persons liable for hazardous waste sites and because it is essential that sites be cleaned up well and expeditiously, each responsible person should be liable jointly and severally.*
6. *Because releases of hazardous substances can adversely affect the health and welfare of the public, the environment, and property values, it is in the public interest that affected communities be notified of where releases of hazardous substances have occurred and what is being done to clean them up.*

RCW 70.105D.070 – Toxics control accounts states

8. *The department shall adopt rules for grant or loan issuance and performance.*

6.3 Alternatives considered and why they were not included

6.3.1 Calling one-time grants and loans programmatic

Ecology considered calling one-time grants and loans programmatic. Using the term programmatic to refer to these types of grants and loans was confusing. Our Ecology Administration of Grants and Loans (EAGL) system and staff currently refer to them as "one-time." We also believe this is a term that stakeholders are familiar with. For these reasons we decided not to call them "programmatic."

Adopting this alternative would be more burdensome to stakeholders.

6.3.2 Expand the focus of the rule to more than just MTCA funded grant and loan programs

Ecology considered expanding the focus of the rule to more than just MTCA funded grant and loan programs. The authorizing law for this rulemaking directed Ecology to adopt rules for the issuance and performance of MTCA funded grants or loans. Therefore we did not expand the focus.

Adopting this alternative would unnecessarily complicate meeting the goals and objectives of the authorizing statute.

6.3.3 Include a more extensive list of what must be included in the grant or loan agreement

Ecology considered including a more extensive list of what must be included in the grant or loan agreement. To identify the items the rule would require to be in a grant or loan agreement, we examined existing agreements. We identified a list of things that must be included based on accounting principles, best practices for contract management, and information needed to meet Ecology's requirements. We limited the rule to these minimum requirements because other items in existing agreements can vary depending on the needs of the situation. Including only the minimum requirements allows for flexibility in writing the grant or loan agreement to accommodate the changes and variation in individual needs. Examples of the items in a grant or loan agreement that are not in the rule are: communications (how the parties communicate), compensation, and contracting.

Adopting this alternative would be more burdensome to stakeholders.

6.3.4 Go beyond current practice

Ecology considered going beyond current practice. Items included in the rule were assessed to ensure they were consistent with current business practice. If they were not consistent with current practices we then evaluated them to determine if they were necessary to meet the goals and objectives of the statute. If they were not necessary we remained with current practice. We

determined this would be the least burdensome because there would be no change in behavior required.

Adopting this alternative would be more burdensome to stakeholders and would unnecessarily complicate meeting the goals and objectives of the authorizing statute.

6.3.5 Changing current practice

Ecology considered changing current practice. Items included in the rule were assessed to ensure that they were consistent with current business practice. If they did not match current practices, we then evaluated them to determine if they were necessary to meet the goals and objectives of the statute. If they were not necessary we remained with current practice. We determined this approach would be the least burdensome because there would be no change in behavior.

Adopting the alternative of changing current practice would be more burdensome to stakeholders and would unnecessarily complicate meeting the goals and objectives of the authorizing statute.

6.3.6 Making the adopted rule more specific

Ecology considered making the rule more specific. This rule covers any grant or loan program funded by MTCA that is not currently covered by an existing rule. We identified a standard set of best practices and requirements that would apply to all of the programs covered by the rule. More specificity could have the unintended consequences of hampering the flexibility needed to meet the goals and objectives of the specific funding programs. Another unintended consequence could be that a more specific rule may place a greater administrative burden on applicants and recipients than is necessary to meet the goals and objectives of the funding programs.

Adopting this alternative would be more burdensome to stakeholders.

6.4 Conclusion

After considering alternatives to the adopted rule's contents, as well as the goals and objectives of the authorizing statute, Ecology determined that the adopted rule represents the least-burdensome alternative of possible rule contents meeting these goals and objectives.

In addition, the information and processes required by the rule are the minimum required by state law to ensure Ecology is meeting generally accepted government auditing standards, as well as the minimum necessary to ensure responsible use of public funds in awarding grants and loans.

Chapter 7: Regulatory Fairness Act Compliance

7.1 Introduction

Based on research and analysis required by the Regulatory Fairness Act (RFA) – Chapter 19.85 RCW – Ecology has determined the adopted rule does not impact small businesses. There are no small businesses currently receiving funds from any of the programs covered by the adopted rule. All grants and loans covered by the adopted rule have been maintained in the Ecology’s Administration of Grants & Loans (EAGL) system since the system’s implementation in October, 2015¹. Additionally, Ecology looked at historical recipients prior to that time back through the 2009-2011 biennium. In no case has a small business received funds from any of the programs covered by the adopted rule. Prior to that time, the relevant funds were only given to public entities.

Therefore, Ecology is not required to prepare a small business economic impact statement according to RCW 19.85.025(4).

- ¹ Ecology (2017). EAGL, Ecology’s Administration of Grants & Loans database. 2015-2017.

Appendix A

Administrative Procedure Act (RCW 34.05.328)

Determinations

Describe the general goals and specific objectives of the statute that this rule implements. RCW 34.05.328(1)(a)
See Chapter 6.
Explain why this rulemaking is needed to achieve the goals and objectives of the statute. RCW 34.05.328(1)(b)
See Chapters 1 and 2.
Describe alternatives to rulemaking and the consequences of not adopting this rule. RCW 34.05.328(1)(b)
<p>Before starting the rulemaking we considered not issuing the rule.</p> <p>Ecology could require each MTCA-funded grant and loan program to adopt specific program rules, but that would be inefficient and duplicative. The proposed more general rule is a more efficient approach to address the requirement for rulemaking in RCW 70.105D.070 (8) by putting existing agency best practices into rule.</p> <p>Please see the Least Burdensome Alternative Analysis, Chapter 6 of this document, for discussion of alternative rule content considered.</p>
A preliminary cost-benefit analysis was made available. RCW 34.05.328(1)(c)
Notice is provided in the proposed rulemaking notice (CR-102 form) filed under RCW 34.05.320.
Do the probable benefits of this rulemaking outweigh the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented? RCW 34.05.328(1)(d)
Yes. See Chapters 1 – 5.
Is this rule the least burdensome alternative for those required to comply? RCW 34.05.328 (1)(e)
Yes. Please see Chapter 6 and record for rulemaking.
Does this rule require those to whom it applies to take an action that violates requirements of another federal or state law?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Explain how that determination was made. RCW 34.05.328(1)(f)
This rule and the supporting agreement are designed to be consistent with current laws, rules and auditing practice. Ecology did not identify other federal that apply to the issuance or performance of MTCA funded grant or loan programs. The rule is written to allow for flexibility to apply federal laws or rules, for instance where both federal and

state funds are used, and to allow for recipients to comply with local ordinances and laws where they exist.

Does this rule impose more stringent performance requirements on private entities than on public entities? RCW 34.05.328 (1)(g)

- Yes. Provide a citation. Explain.
 No

This rule would apply the same to private and public entities.

Do other federal, state, or local agencies have the authority to regulate this subject?

- Yes. List below. No

OFM requires agencies to meet generally accepted government auditing standards. RCW 43.88.160(4)(a)

Is this rule different from any federal regulation or statute on the same activity or subject?

- Yes No

If yes, check all that apply. The difference is justified because:

- A state statute explicitly allows Ecology to differ from federal standards. (If checked, provide the citation.)
- There is substantial evidence that the difference is necessary to achieve the general goals and objectives of the statute that this rule implements. (If checked, explain.)

RCW 34.05.328 (1)(h)

There are no Federal laws or rules that govern the issuance or performance of state-funded grants or loans issued by Ecology.

Explain how Ecology ensures that the rule is coordinated with other federal, state, and local agencies, laws, and rules. RCW 34.05.328 (1)(i)

Federal laws and rules don't govern the issuance or performance of the state funded portion of grants and loans. The baseline for this rule is requirements in current laws and rules. In addition, this rule reflects Ecology's current practice, which has allowed time for potential issues with other state and local practices to be identified and resolved. This rule is consistent with generally accepted accounting principles, which are also reflected in other federal, state, and local laws, rules, and ordinances. Some of the grants or loans funded by MTCA have specific rules governing how they are administered. This rule clarifies that if a rule specific to a particular grant or loan program exists, this chapter will not apply.