



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

Chapter 173-323 WAC

Grants and Loans

Summary of rulemaking and response to comments

December 2017
Publication no. 17-01-013

Publication and Contact Information

This publication is available on the Department of Ecology's website at <https://fortress.wa.gov/ecy/publications/SummaryPages/1701013.html>

For more information contact:

Ecology Financial Services
P.O. Box 47600
Olympia, WA 98504-7600

Phone: 360-407-6985

Washington State Department of Ecology - www.ecology.wa.gov

- Headquarters, Olympia 360-407-6000
- Northwest Regional Office, Bellevue 425-649-7000
- Southwest Regional Office, Olympia 360-407-6300
- Central Regional Office, Union Gap 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

Ecology publishes this document to meet the requirements of the Washington State Administrative Procedure Act (RCW 34.05.325)

To ask about the availability of this document in a version for the visually impaired, call Ecology Financial Services at 360-407-6985.

People with hearing loss, call 711 for Washington Relay Service. People with a speech disability, call 877-833-6341.

Concise Explanatory Statement

Chapter 173-323 WAC Grants and Loans

Financial Services
Washington State Department of Ecology
Olympia, Washington 98504-7600

This page is purposely left blank.

Table of Contents

Introduction	1
Reasons for Adopting the Rule	1
Differences Between the Proposed Rule and Adopted Rule	2
Response to Comments	3
Comments and Responses:	3

This page is purposely left blank.

Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title: Grants and Loans
WAC Chapter(s): 173-323
Adopted date: December 18, 2017
Effective date: January 18, 2018

To see more information related to this rulemaking or other Ecology rulemakings, please visit our web site: <https://ecology.wa.gov/Regulations-Permits/Laws-rules/Rulemaking>

Reasons for Adopting the Rule

The Department of Ecology is adopting a new rule, Chapter 173-323 WAC Grants and Loans. This rule will apply to grants and loans issued by Ecology that are funded under Chapter 70.105D RCW, Hazardous Waste Cleanup—Model Toxics Control Act (MTCA). If an Ecology grant or loan program has a rule specific to that program, this chapter will not apply.

We are proposing this chapter to establish 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 doing this rulemaking to be more clear and consistent in how we manage public funds. Ecology intends to adopt this rule and remain consistent with current grant and loan practices.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

Our intent in this rulemaking was to be consistent with existing practice. As a result, we are revising the language in WAC 173-323-110(3) to match current Ecology policy language. The additions to the language are underlined and the deletions have strikethrough text.

(3) Ecology's ability to make payments is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the ~~agreement~~ effective date and prior to completion or agreement expiration date of the agreement, ecology, at its sole discretion, may elect to ~~suspend-or~~ terminate the agreement, in whole or part, or renegotiate the agreement, subject to new funding limitations or conditions. Ecology may also elect to suspend performance of the agreement until ecology determines the funding insufficiency is resolved.

Response to Comments

Ecology accepted comments between October 03, 2017 and November 14, 2017.

Affiliation	Commenter Name	Topics where comments were assigned	Associated Comment numbers
Individual			
	Neely, James	Application Costs	I-1-1
	Roberts, Kirk	Stormwater regulations	I-2-1
Agency			
City of Kirkland Solid Waste Division	MacGillivray, John	Date for incurring costs	A-1-1
City of Spokane, Brownfields Program	Stripes, Teri	No concerns	A-3-1
Olympic Region Clean Air Agency	McNair, Francea	Date for incurring costs	A-2-2
		Termination	A-2-3
		Funding source	A-2-1
Organization			
City of Redmond	Auer, Stacey	Date for incurring costs	O-1-1

Comments and Responses:

Comments and Responses are grouped together and organized by topic. Under each topic heading, you can see all the comments Ecology received for that topic, followed by Ecology's single response to all the comments on that topic.

Ecology used the following topics to group comments together:

- Date for incurring costs
- Termination
- Funding source
- Application costs
- No concerns
- Stormwater regulations

Comments on: Date for incurring costs

Commenter: John MacGillivray - Comment A-1-1

New section WAC 173-323-100 Reimbursement only allows reimbursement for eligible costs incurred on or after the signature date of the agreement (effective date). Given that the State Legislature has not passed its capital budget for the 2017-19 biennium and cities are incurring eligible, reimbursable costs in the interim, particularly those associated with staffing, Ecology

should consider changing this section to allow costs to be retroactively reimbursed back to the start of the State's fiscal year (July 1) instead of the effective date of the agreement or, alternatively, give authority to the Director to consider making the costs fully or partially retroactive based upon the circumstances at the time.

Commenter: Stacey Auer - Comment O-1-1

New section WAC 173-323-100 Reimbursement only allows reimbursement for eligible costs incurred on or after the signature date of the agreement (effective date). Ecology should consider changing this section to allow costs to be retroactively reimbursed back to the start of the State's fiscal year (July 1) instead of the effective date of the agreement. This will allow cities to be reimbursed for eligible costs they have incurred during the period in which the budget had not been passed.

Commenter: Francea McNair - Comment A-2-2

Reimbursement 2.3.5 WAC 173-323-100- In prior grant cycles we have been told by Ecology that once the budget is passed by the Legislature, and we knew our allocation amount, we could start to expend funds, even if the agreement hasn't been signed by both Ecology and ORCAA. This was very helpful for the woodstove grant when it was funded under MTCA, because the paperwork from Ecology could take months. This is an unwelcome change.

Response to: Date for incurring costs

The rule states that reimbursement will only be for eligible costs incurred between the effective date and expiration date of the agreement. The effective date may be prior to the signature date.

For example:

- Effective date is 7/1/17
- Signature date is 9/30/17
- Expiration date is 6/30/18

In the above example, eligible costs incurred between 7/1/17 and 6/30/18 would be reimbursed, even though the signature date is later than the effective date. The effective date in an agreement cannot be any earlier than the effective date of the budget that authorizes funding. Ecology will also consider program specific requirements related to each grant or loan, and each particular agreement's requirements, when reimbursing eligible costs.

Comments on: Termination

Commenter: Francea McNair - Comment A-2-3

WAC 173-323-110 and 120 both show a lack of commitment to working with the grant recipient. Ecology can terminate the grantor or close out the grant when it wants to, based on the statements made in the proposed rule change. Section 3 in 120 states, that "Ecology at it's sole discretion may elect to suspend or terminate the agreement". This is not the way an agency should be working with a grant recipient.

Feel free to contact me for further information.

Response to: Termination

Our intent in this rulemaking is to be consistent with existing practice. As a result, we are revising the language in WAC 173-323-110(3) to match current Ecology policy language.

Ecology is committed to working with recipients to help them meet grant or loan requirements, to complete the closeout process, and to manage funding cuts. But, when funding circumstances require it, Ecology may in some situations terminate agreements.

The language in WAC 173-323-110 reflects Ecology's current closeout process when the agreement purpose has been met. Ecology works with recipients to help them complete the final documentation and deliverables as required in the agreement for the closeout process.

The language in WAC 173-323-120(3) is addressing situations where Ecology's ability to make payments is contingent on availability of funding. If funding from state, federal, or other sources has been reduced or limited in any way after an agreement is signed, Ecology reexamines our ability to fully fund the agreement. In these situations, Ecology works with the recipient to renegotiate or, if necessary, suspend or terminate parts or all of the agreement.

Comments on: Funding source

Commenter: Francea McNair - Comment A-2-1

My first comment deals with which grants are covered by this rule change. It lists the Air Quality Local Partner Wood Smoke Reduction Grant. This grant is no longer funded through MTCA. It has been funded, when there are capital funds, through the State Building and Construction Grant. Those funds would therefore not be part of this Rule.

Response to: Funding source

The Air Quality Local Partner Wood Smoke Reduction Grant program has received a single appropriation from the State Building and Construction Account. This appropriation was granted in the 2016 Supplemental Budget and was limited to work in Pierce County only. Which account(s) will be used for future appropriations to this grant program is a decision to be made by the Legislature.

If the Air Quality Local Partner Wood Smoke Reduction Grant is funded through MTCA in the future, it would be subject to this rule.

Comments on: Application Costs

Commenter: James Neely - Comment I-1-1

The assumption that labor costs are under \$100 per hour to complete an application does not include overhead and benefits. Overhead and benefits range from 200 to 300 percent of base salary (or more). Also the assumption that an application takes one hour is also doubtful. There are other tasks the applicant needs to perform besides filling out the form-research the program, calculate costs, review time, etc.

Response to: Application Costs

We are updating Chapter 7 of the Regulatory Analysis document.

Based on review of information of past recipients, we determined that no small businesses have been, or are likely to be, recipients of the grants or loans covered by this rule.

Our original assumption in Chapter 7 of the Regulatory Analysis, where we assumed that the cost for a small business to prepare an application would be under \$100, was an error. We discovered an internal miscommunication, where the time to prepare an application was confused with the time to simply key the application information into the computer system. We began to reconsider how much time it would take for a typical small business to complete an application. That effort became unnecessary when our economist reviewed the list of past recipients in the grant and loan management system, and determined that none had been small businesses.

Comments on: No concerns

Commenter: Teri Stripes - Comment A-3-1

As a grantee I do not have any concerns regarding the proposed rule language.

Response to: No concerns

Thank you for your comment.

Comments on Stormwater regulations

Commenter: Kirk Roberts - Comment I-2-1

i have found no help from the department regarding the storm water regulations as i submit a building permit. im not a developer im just building on my own land if there was more resources or help with complying with the regulations and codes that the department of ecology has created. it may possibly help with the cost of living in the long run here in the state. the more codes and regulations that are created the more unattainable housing gets for people.

Response to Stormwater regulations

Thank you for your comment. This rulemaking focuses on grants and loans, and not the stormwater regulations.