



DEPARTMENT OF
ECOLOGY
State of Washington

Preliminary Regulatory Analyses

Including the:

- Preliminary Cost-Benefit Analysis
- Least-Burdensome Alternative Analysis
- Administrative Procedure Act Determinations
- Regulatory Fairness Act Compliance

Chapter 173-321 WAC
Public Participation Grants

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Chapter 173-321 WAC Public Participation Grants

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for the

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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 RCW and 19.85 RCW, for the proposed amendments to the Public Participation Grant rule (chapter 173-321 WAC; the “rule”). This includes the:

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

All determinations are based 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 Public Participation Grants (PPG) Program is a competitive grant program. The grants support projects that encourage Washington citizens to work together to solve solid waste and hazardous waste problems. The PPG Program provides funding to qualified not-for-profit organizations and citizens groups to:

- Facilitate public participation in the investigation and remediation of contaminated sites.
- Implement waste reduction education and prevention projects.
- Promote, carry out, or improve state or local solid waste or hazardous waste management plans.

The PPG rule establishes eligibility requirements and funding criteria for grants authorized by Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

In 2016, we obtained an independent audit of our Public Participation Grants program. The changes we are proposing are either specific audit recommendations or based on the agency’s experiences implementing the program.

The rule amendments we are proposing below are not *specifically* required by other laws or rules:

- Revising grant eligibility requirements
- Modifying the grant application evaluation criteria
- Evaluates eligible costs
- Creating an annual renewal process per Chapter 70.105D RCW.

The proposed rule amendments do not impose additional, discretionary costs on applicants or recipients.

The potential benefits of the proposed rule amendments include:

- Decreased costs for applicants, both initially and if renewing previously awarded grant.
- Increasing the pool of potential applicants.

- Increased ability to improve evaluation criteria as needed.
- Increasing the number and limit on costs eligible to be covered by grant funds.

Ecology concludes, based on reasonable understanding of the quantified and qualitative costs and benefits likely to arise from the proposed rule amendments, that the benefits of the proposed rule amendments are greater than the costs.

After considering alternatives to the proposed rule amendments, as well as the goals and objectives of the authorizing statute, Ecology determines the proposed rule represents the least-burdensome alternative for meeting these goals and objectives of rule.

Ecology has analyzed the compliance costs of this rulemaking in previous chapters of this document. Based on this analysis we determine the proposed rule does not impose more than minor costs on businesses in an industry, as the proposed rule amendments are not likely to impose any additional costs on businesses. Therefore, we are not required to prepare a small business economic impact statement (RCW 19.85.030(1)(a)).

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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 RCW and 19.85 RCW, for the proposed amendments to the Public Participation Grant rule (chapter 173-321 WAC; the “rule”). This includes the:

- Preliminary 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.

All determinations are based 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 proposed 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 Public Participation Grants

The Public Participation Grants (PPG) Program is a competitive grant program. The grants support projects that encourage Washington citizens to work together to solve solid waste and hazardous waste problems. The PPG Program provides funding to qualified not-for-profit organizations and citizens groups to:

- Facilitate public participation in the investigation and remediation of contaminated sites.
- Implement waste reduction education and prevention projects.
- Promote, carry out, or improve state or local solid waste or hazardous waste management plans.

PPG funding comes from a tax on commonly used hazardous substances such as motor oil, pesticides, and solvents. In 1988, Washington voters passed Initiative 97. This created a program to clean up all sites contaminated by hazardous substances and prevent future contaminated sites in Washington State. MTCA requires Ecology to set aside at least one percent of the revenues collected from the tax collected on hazardous substances for the PPG Program.

The PPG rule establishes eligibility requirements and funding criteria for grants authorized by Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

In 2016, we obtained an independent audit of our Public Participation Grants program. The changes we are proposing are either specific audit recommendations or based on the agency's experiences implementing the program.

1.2 Summary of the proposed rule amendments

The rule amendments we are proposing below are not *specifically* required by other laws or rules:

- Revising grant eligibility requirements
- Modifying the grant application evaluation criteria
- Evaluates eligible costs
- Creating an annual renewal process per Chapter 70.105D RCW.

1.3 Reasons for the proposed rule amendments

1.3.1 Revising grant eligibility requirements

The proposed amendments:

- Revises the wording in Chapter 173-321-010 from: "These grants shall be used to facilitate public participation in . . ." to "The purpose of these grants is to facilitate public participation in . . ." aligns the rule with its authorizing statute (Chapter 70.105D RCW).
- Change the previous requirement of "three or more unrelated persons" to "individuals" aligns the proposed rule with its authorizing statute (Chapter 70.105D.070 (7) RCW).

- Include tribal not-for-profit organizations as eligible for grants to incorporate the current practice of treating them as eligible into rule.

1.3.2 Modifying the grant application evaluation criteria

The proposed amendments remove several proscriptive elements of the criteria and combines others. This is done to give more freedom to grant recipients to decide or alter specific criteria. We provide guidelines to applicants which may contain more specific elements of the criteria we use to evaluate applications.

1.3.3 Evaluating eligible costs

The proposed amendments:

- Add a definition of “lobbying”. Previously, this term was only defined in guidance documents and was more broadly defined. Revising this definition, allows applicants to use grant funds to recover the costs of meeting with agency staff to discuss agency decisions using grant funds.
- Increase the limit on purchase costs of equipment from \$300 to \$5,000 to reflect inflation since 1991 (when the \$300 limit was implemented).

1.3.4 Creating an annual renewal process

Ecology has been awarding two-year grants for up to \$120,000. The 2016 audit determined that we did not have the statutory authority to do so for more than one year at a time. Chapter 70.105D.070 (7) RCW states no “grant may exceed sixty thousand dollars. Grants may be renewed annually”. This proposed change would allow Ecology to renew the grants annually for a maximum of \$120,000 for two years without requiring grant recipients to submit a new application. This meets the requirement of the statute and continues the current practice of approving two year projects. The renewal will be based on the grantees performance during the first year.

1.4 Document organization

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

- Baseline and the proposed rule amendments (Chapter 2): Description and comparison of the baseline (what would occur in the absence of the proposed rule amendments) and the proposed changes to rule requirements.
- Likely costs of the proposed rule amendments (Chapter 3): Analysis of the types and sizes of costs we expect impacted entities to incur as a result of the proposed rule amendments.
- Likely benefits of the proposed rule amendments (Chapter 4): Analysis of the types and size of benefits we expect to result from the proposed rule amendments.
- Cost-benefit comparison and conclusions (Chapter 5): Discussion of the complete implications of the CBA.

- Least-Burdensome Alternative Analysis (Chapter 6): Analysis of considered alternatives to the contents of the proposed rule amendments.
- Small Business Economic Impact Statement (Chapter 7): Comparison of compliance costs to small and large businesses; mitigation; impact on jobs.
- RCW 34.05.328 determinations not discussed in Chapter 5 or 6 (Appendix A)

Chapter 2: Baseline and the Proposed Rule Amendments

2.1 Introduction

We analyzed the impacts of the proposed rule amendments relative to the baseline of the existing rule, within the context of all existing requirements (federal and state laws and rules). This context for comparison is called the baseline, and reflects the most likely regulatory circumstances that entities would face if the proposed rule amendments were not adopted. It is discussed in Section 2.2, below.

2.2 Baseline

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this proposed rulemaking, the baseline includes:

- Chapter 173-321 WAC
- Chapter 70.105D RCW
- Chapter 43.17.095 RCW

2.3 Proposed rule amendments

The proposed rule amendments that differ from the baseline and are not *specifically* dictated in the authorizing statute or elsewhere in law or rule include:

- Revising grant eligibility requirements
- Modifying the grant application evaluation criteria
- Evaluates eligible costs
- Creating an annual renewal process per Chapter 70.105D RCW.

2.3.1 Revising grant eligibility requirements

Baseline

The current rule requires recipients of grant awards to use the funds to facilitate public participation in waste management projects. It also indicated that awards would only be given to groups of three or more unrelated persons or to not-for-profit public interest organizations.

The current rule indicates that a Federally recognized Indian tribe as a governing body is ineligible for grant funding, while individual tribe members of three or more individuals

are eligible. It does not specify tribal not-for-profit organizations as either eligible or ineligible.

Proposed

The proposed amendments do not specifically require a public participation component for proposed waste management projects, only for hazardous substance release projects. This allows applicants that may want to do research in waste management priorities without a public participation component.

It also allows individuals and tribal not-for-profit organizations to apply.

Expected impact

A potential increase in eligible applicants.

2.3.2 Modifying the grant application evaluation criteria

Baseline

The current rule is very proscriptive in its evaluation criteria.

Proposed

The proposed amendments remove many of the proscriptive elements of the evaluation criteria, allowing more freedom in determining specific evaluation criteria over time.

Expected impact

Criteria may change from grant cycle to grant cycle.

2.3.3 Evaluating eligible costs

Baseline

The current rule limits the purchase cost of equipment to \$300.

It does not explicitly define “lobbying” though “Lobbying any governmental official or agency” is an ineligible cost. This would include any discussions with agency staff regarding the use of grant funds.

Proposed

The proposed amendments raise the limit on equipment to \$5,000.

It also explicitly defines lobbying as attempting to influence the passage or defeat of legislation or adoption or rejection of any rule.

Expected impact

Increases purchasing limits using grant funds.

Also allows recipients to recover the costs of meeting with agency staff to discuss agency decisions regarding the use of grant funds.

2.3.4 Creating an annual renewal process

Baseline

Under the current rule, Ecology has been issuing two-year grants for up to \$120,000.

Proposed

The proposed amendments limit awards to one-year grants worth up to \$60,000. Grants may be renewed annually. Specifics for renewal will be outlined in program guidelines.

Expected impact

Because Ecology is not statutorily authorized to award two-year grants, without the amendments, renewals would require a full, new application process. With the proposed amendments, renewal will include less than a full application process.

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Chapter 3: Likely Costs of the Proposed Rule Amendments

3.1 Introduction

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

3.2 Cost analysis

The proposed rule amendments do not impose additional, discretionary costs on applicants or recipients.

3.3 Cost summary

The proposed rule amendments do not impose additional, discretionary costs on applicants or recipients.

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Chapter 4: Likely Benefits of the Proposed Rule Amendments

4.1 Introduction

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

4.2 Benefit analysis

4.2.1 Eligibility Requirements

Clarifying the eligibility requirements may increase the pool of applicants.

4.2.2 Evaluation Criteria

Removing many of the more proscriptive elements of the evaluation criteria allows better ability to revise evaluation criteria as needed. This represents a potential benefit in the form of environmental protection.

4.2.3 Evaluating Eligible Costs

Increasing purchasing limits using grant funds and removing meetings with Ecology staff from the list of ineligible costs, potentially increases the amount of recoverable costs for grantees. It could also increase the amounts they are able to apply for.

4.2.4 Annual Renewal

Switching from a two-year grant cycle to an annual renewal process would decrease the costs on applicants seeking renewal.

4.3 Benefit summary

The potential benefits of the proposed rule amendments include:

- Decreased costs for applicants, both initially and if renewing previously awarded grant.
- Increasing the pool of potential applicants.
- Increased ability to improve evaluation criteria as needed.
- Increasing the number and limit on costs eligible to be covered by grant funds.

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Chapter 5: Cost-Benefit Comparison and Conclusions

5.1 Summary of the costs and benefits of the proposed rule amendments

The proposed rule amendments do not impose additional, discretionary costs on applicants or recipients.

The potential benefits of the proposed rule amendments include:

- Decreased costs for applicants, both initially and if renewing previously awarded grant.
- Increasing the pool of potential applicants.
- Increased ability to improve evaluation criteria as needed.
- Increasing the number and limit on costs eligible to be covered by grant funds.

5.2 Conclusion

Ecology concludes, based on reasonable understanding of the quantified and qualitative costs and benefits likely to arise from the proposed rule amendments, that the benefits of the proposed rule amendments are greater than the costs.

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

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

The goals and objectives of the authorizing statute are:

- Identify where releases of hazardous substances have occurred and what is being done to clean them up.
- Fund public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance, and for not-for-profit public interest organizations.
- Facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities.

6.3 Alternatives considered and why they were not included

6.3.1 Incorporate audit recommendations into guidance documents

The alternative considered was to incorporate audit recommendations in the guidance we develop for each grant cycle. The guidance includes:

- Eligibility requirements
- Application instructions
- Grant management instructions

However, for us to be able to enforce the new requirements we need to incorporate them into the rule.

6.4 Conclusion

After considering alternatives to the proposed rule amendments, as well as the goals and objectives of the authorizing statute, Ecology determines the proposed rule represents the least-burdensome alternative for meeting these goals and objectives of rule.

Chapter 7: Regulatory Fairness Act Compliance

7.1 Introduction

Ecology has analyzed the compliance costs of this rulemaking in previous chapters of this document. Based on this analysis we determine the proposed rule does not impose more than minor costs on businesses in an industry, as the proposed rule amendments are not likely to impose any additional costs on businesses. Therefore, we are not required to prepare a small business economic impact statement (RCW 19.85.030(1)(a)).

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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>One alternative considered was not amending the rule.</p> <p>Not amending the rule would ignore the recommendations of the 2016 audit and fail to take advantage of opportunities to provide benefits to applicants in the form of:</p> <ul style="list-style-type: none"> • Decreased costs for applicants, both initially and if renewing previously awarded grant. • Increasing the pool of potential applicants. • Increased ability to improve evaluation criteria as needed. • Increasing the number and limit on costs eligible to be covered by grant funds. <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)
See Chapters 1 – 5.
Is this rule the least burdensome alternative for those required to comply? RCW 34.05.328 (1)(e)
Please see Chapter 6.
Does this rule require those to whom it applies to take an action that violates requirements of another federal or state law?
<div style="display: flex; align-items: center;"> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div>

Explain how that determination was made. RCW 34.05.328(1)(f)

This rule implements a state-only-funded grant program. Grant applications are reviewed before being awarded in a competitive process. Recipients are required to comply with applicable federal, state, and local rules when implementing approved grant activities.

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

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

☐ Yes. List below. ☒ No

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)

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)

No other agencies implement this grant program. WAC 173-321-030 addresses the relationship to other legislation and administrative rules. “(1) The organization receiving a grant shall comply fully with all applicable federal, state, and local laws, orders, regulations, and permits. (2) Nothing in this chapter shall influence, affect or modify existing department programs, regulations, or enforcement of applicable laws relating to solid and hazardous waste management and cleanup. (3) All grants shall be subject to the existing, applicable accounting and auditing requirements of state laws and regulations...”