



DEPARTMENT OF
ECOLOGY
State of Washington

Final Regulatory Analyses

Including the:

Cost-Benefit Analysis

Least-Burdensome Alternative Analysis

Administrative Procedure Act Determinations

Regulatory Fairness Act Compliance

Chapter 173-312 WAC

Local Solid Waste Financial Assistance

and

Chapter 173-313 WAC

Local Solid Waste Enforcement Grant

Regulation

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-

Chapter 173-312 WAC Local Solid Waste Financial Assistance

and

Chapter 173-313 WAC Local Solid Waste Enforcement Grant Regulation

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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 adopted amendments to the Local Solid Waste Financial Assistance (formerly Coordinated Prevention Grants) rule (chapter 173-312 WAC) and repeal of the Local Solid Waste Enforcement Grant Regulation (chapter 173-313 WAC) (the “rules”). This includes the:

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

The Department of Ecology issued a preliminary CBA (included in the Preliminary Regulatory Analyses) at the time we proposed these rule amendments. We have since determined that under RCW 34.05.328(5)(b)((ii) this rulemaking does not require this analysis because it is a rule that relates “only to internal governmental operations that are not subject to violation by a nongovernment party”. However, we decided to update the Regulatory Analyses in response to comments received during the public comment period.

All determinations are based on the best available information at the time of publication.

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 rule amendments.

While the adopted rule potentially reallocates grant funds across local jurisdictions, it does not change the total amount of funding available. The total funding available is determined by the state Legislature, through the budget process. Therefore, while potential funding for individual grant recipients may increase or decrease as a result of the adopted rule amendments, there is no resulting net financial cost.

However, if the total allocation available in a biennium drops below \$14.625 million, the reallocation of a larger percentage of funds to local solid waste enforcement could result in reduced planning and implementation, as a tradeoff for the reduced risk of insufficient or lacking solid waste enforcement programs.

The adopted rule provides the following likely benefits, as compared to the baseline.

- Clear rule language and streamlined program requirements will reduce administrative burden for funding recipients and Ecology.
- Ecology will have greater clarity and flexibility in funding projects that address the most important environmental issues and offer the most overall benefit as priorities evolve over time.

- Local solid waste enforcement programs will be able to maintain lean programs even if funding drops to historically low levels.
- Jurisdictional health departments will receive fixed base funding and a population-based additional allocation, resulting in more up-front funding, and reducing effort required for reallocation of unused or unwanted funds.
- Recipients will be able to use funds immediately and will not have to wait for incentives.
- Ecology will be able to manage agreements more effectively and efficiently, helping to ensure better project outcomes.

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

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.

Chapter 1: Introduction and Background

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 adopted amendments to the Local Solid Waste Financial Assistance (formerly Coordinated Prevention Grants) rule (chapter 173-312 WAC) and repeal of the Local Solid Waste Enforcement Grant Regulation (chapter 173-313 WAC) (the “rules”). 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.

The Department of Ecology issued a preliminary CBA (included in the Preliminary Regulatory Analyses) at the time we proposed these rule amendments. We have since determined that under RCW 34.05.328(5)(b)((ii) this rulemaking does not require this analysis because it is a rule that relates “only to internal governmental operations that are not subject to violation by a nongovernment party”. However, we decided to update the Regulatory Analyses in response to comments received during the public comment period.

All determinations are based on the best available information at the time of publication.

The Washington Regulatory Fairness Act (RFA; Chapter 19.85 RCW) requires Ecology to evaluate the relative impact of 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 Background

Chapter 173-312 WAC, *Local Solid Waste Financial Assistance*, sets requirements for the conduct of a financial assistance program providing grants to local governments for local solid and hazardous waste plans and programs, under the Model Toxics Control Act, RCW 70.105D.070(3). Under the provisions of this chapter, “coordinated prevention grants” assist plans and programs designed to prevent or minimize environmental contamination. Additionally, this rule establishes a structure for the administration of local solid waste financial assistance grants funded from the local toxics control accounts authorized by RCW 82.21.030, and allows this administrative structure to be extended to other waste management grant programs using certain other funding sources. The Local Solid Waste Financial Assistance program ultimately serves to:

- Consolidate all grant programs funded from the local toxics control accounts, and other programs in subsection (2) of this section that may be selected, into a single program, except for remedial action, public participation, and citizen proponent negotiations grants.
- Promote regional solutions and intergovernmental cooperation.
- Prevent or minimize environmental contamination by providing financial assistance to local governments to help them comply with state solid and hazardous waste laws and rules.
- Provide funding assistance for local solid and hazardous waste planning and for implementation of some programs and projects in those plans.
- Encourage local responsibility for solid and hazardous waste management.
- Improve efficiency, consistency, reliability, and accountability of grant administration.

Chapter 173-313 WAC, *Local Solid Waste Enforcement Grant Regulation*, establishes criteria by which the Department of Ecology allocates financial aid, pursuant to the Model Toxics Control Act, to jurisdictional health departments to enforce rules promulgated under chapter 70.95 RCW.

1.1.2 Current rulemaking

The Local Solid Waste Financial Assistance and Local Solid Waste Enforcement Grant Regulation rules are important tools to help local governments develop and implement local solid waste management programs. All rules require periodic updating to keep pace with changes in related laws and rules, and to accommodate shifts in the way business is accomplished. The Coordinated Prevention Grants (now Local Solid Waste Financial Assistance) rule was last updated in 2002, and the Local Solid Waste Enforcement Grant Regulation has not been updated since 1989.

With this rulemaking, Ecology is repealing the Local Solid Waste Enforcement Grant Regulation rule, but retain the related grant program. This eliminates redundant information and folds the

essential elements of solid waste enforcement grants into the Local Solid Waste Financial Assistance rule. By itself, that action could have been accomplished administratively, but a rulemaking allows Ecology to improve the value of its grant programs by making multiple updates and clarifications. In some cases, stakeholder input was necessary to decide how to make these updates.

Ecology worked with an advisory committee of local stakeholders to develop changes that will likely benefit program participants and the objectives of grant-funded projects, and Ecology. Ultimately, the adopted changes will clarify eligibility and program requirements for recipients. They will benefit the state by ensuring that Ecology can select projects that provide the greatest return on investment, and manage these projects more efficiently. This will result in the most effective allocation of funds.

1.2 Summary of the adopted rule amendments and repeal

The adopted rule amendments to Chapter 173-312 WAC, *Local Solid Waste Financial Assistance*, make the following changes not required by other laws or rules:

- Generalizing the prioritization of certain grant eligible activities, and adding language to clarify that Ecology will describe priorities in its guidelines.
- Establishing a minimum allocation and additional population-based additional allocation for funding solid waste enforcement grants.
- Eliminating separate incentives.
- Reducing the likelihood of a separate offset grant cycle.
- Eliminating the obligation to set aside future funding.
- Setting time limits.
- Housekeeping:
 - Changing the name of the program.
 - Revising, clarifying, removing, and adding definitions to support the revised rule.
 - Removing obsolete definitions.
 - Applying “Plain Talk” principles where applicable and feasible throughout.
 - Move relevant language out of Chapter 173-313 WAC into Chapter 173-312 WAC and repeal Chapter 173-313 WAC.
- Clarification:
 - Clarifying the scope and purpose of the program.
 - Clarifying eligible activities and identifying criteria that may be used to authorize funding.
 - Clarifying the obligation of counties to notify cities and lead implementation agencies in their jurisdiction of funding opportunities.

1.3 Reasons for the adopted rule amendments

1.3.1 Generalizing the prioritization of certain grant eligible activities, and adding language to clarify that Ecology will describe details in its guidelines

Statutes pertaining to solid waste management and hazardous waste cleanup (RCW 70.95 and RCW 70.105) were created with the acknowledgement that local jurisdictions play a key role in waste management, and that coordination with regional and state partners is crucial in preventing land, air, and water pollution, as well as conserving natural, economic, and energy resources of the state. In keeping with this sentiment, these statutes authorize Ecology to administer a financial assistance program to allocate state funds to local jurisdictions to aid in carrying out the specific objectives of the statutes. The authorization to create a financial assistance program further requires Ecology to establish rules that consider population, urban development, the number of disposal sites, and geographical area, but otherwise allows Ecology broad flexibility.

In relation to both the intent and word of the authorizing statutes, the previous rule was prescriptive in certain sections regarding eligibility requirements for local jurisdictions. Accordingly, these adopted amendments will allow Ecology greater flexibility to administer the program in a manner consistent with evolving environmental priorities, creating the greatest return on investment.

1.3.2 Establishing a minimum allocation and additional population-based allocation for funding solid waste enforcement grants

The adopted rule changes the current 20 percent set aside for solid waste enforcement, to a minimum of 20 percent. The allocated percentage will increase from 20 percent based on the total allocation available in a biennium, when it is less than \$14.625 million. When the total allocation is below \$14.625 million, allocations of 20 percent are not necessarily sufficient to maintain minimal solid waste enforcement. Local jurisdictions indicated that very low amounts of available funding make it impossible to continue a viable enforcement program and therefore make the effort of administering a solid waste enforcement agreement less worthwhile.

1.3.3 Eliminating separate incentives

Projects will benefit from clear, streamlined grant funding allocation and distribution. The adopted rule does not separate incentives, and instead determines awarded amounts up front. This means the coordination-based incentive will be distributed, where applicable, along with initial funds. Recipients will no longer need to wait for the incentive, and could use funds immediately.

1.3.4 Reducing the likelihood of a separate offset grant cycle

Projects will benefit from earlier and more predictable funding distribution. The adopted rule allocates grant funds immediately or as soon as possible, reducing the need for recipients to wait for available funding. It replaces this language with a description of how newly available funds will be distributed, based on need and criteria.

The adopted rule also specifies that Ecology will work with grant recipients to adjust budgets as necessary, resulting in better ability to identify need and good performance that could contribute to increased funds if they become available.

1.3.5 Eliminating the obligation to set aside future funding

Under the previous rule, grant recipients that did not finish their projects were obligated to set aside funding from the next grant cycle to complete projects. This potentially resulted in grantees performing work and making expenditures for which funding had not been applied or approved, and may not have been received. The adopted rule eliminates this language, to align two-year grant cycles with the state fiscal biennium. This change, combined with changes to ensure funding as early as possible, and to base funding on past performance, streamlines the grant process to improve funded project success while reducing the amount of work done prior to guarantee of funding.

1.3.6 Setting time limits

To promote efficient and effective distribution of funds and program administration, the adopted rule sets time limits on when signed agreements and requests for reimbursement of retroactive costs must be received to avoid risk of losing funds. This promotes faster distribution of funds to grant project proponents, encourages good performance by recipients, and improves overall program efficiency.

1.3.7 Housekeeping

Stakeholders asked Ecology to change the title of the rule to more accurately reflect the purpose of the program and its essential functions. Updates to the definitions section include the removal of obsolete terminology, revision of existing definitions, and the addition of new words necessary to support other changes being made as a part of this rulemaking. Additionally, minor “Plain Talk” revisions have been made throughout the chapter so that program participants and others can more easily understand what they are reading.

1.3.8 Clarification

Stakeholders asked Ecology to make certain elements of this rule clearer. Accordingly, we have updated the sections pertaining to performance requirements for participants in the program, and the obligations of counties to notify cities and lead implementation agencies in their local jurisdictions so that they can be more easily read and understood. These changes will help reduce the administrative burden associated with erroneous or ineligible applications for both Ecology and program participants, ensure that all eligible parties are aware of the program, and encourage coordinated planning across local jurisdictions.

1.4 Document organization

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

- Baseline and the adopted rule amendments (Chapter 2): Description and comparison of the baseline (what would occur in the absence of the rule amendments) and the adopted changes to rule requirements.

- Likely costs of the adopted rule amendments (Chapter 3): Analysis of the types and sizes of costs we expect impacted entities to incur as a result of the adopted rule amendments.
- Likely benefits of the adopted rule amendments (Chapter 4): Analysis of the types and size of benefits we expect to result from the adopted 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 adopted rule amendments.
- Small Business Economic Impact Statement (Chapter 7, when applicable): 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 Adopted Rule Amendments

2.1 Introduction

We analyzed the impacts of the adopted rule amendments relative to the baseline of the existing rules, 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 in the absence of the adopted changes. 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 adopted rule amendments.

For this rulemaking, the baseline includes:

- The existing rules:
 - Coordinated Prevention Grants (chapter 173-312 WAC)
 - Local Solid Waste Enforcement Grant Regulation (chapter 173-313 WAC)
- Authorizing statutes:
 - Solid Waste Management – Reduction and Recycling (chapter 70.95 RCW)
 - Waste Reduction (chapter 70.95C RCW)
 - Used Oil Recycling (chapter 70.95I RCW)
 - Hazardous Waste Management (chapter 70.105 RCW)
 - Model Toxics Control Act (RCW 70.105D.070(3))

2.3 Adopted rule amendments

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

- Generalizing the prioritization of certain grant eligible activities, and adding language to clarify that Ecology will describe priorities in its guidelines.
- Establishing a minimum allocation and additional population-based additional allocation for funding solid waste enforcement grants.
- Eliminating separate incentives.
- Reducing the likelihood of a separate offset grant cycle.
- Eliminating the obligation to set aside future funding.
- Setting time limits.

- Housekeeping:
 - Changing the name of the program.
 - Revising, clarifying, removing, and adding definitions to support the revised rule.
 - Removing obsolete definitions.
 - Applying “Plain Talk” principles where applicable and feasible throughout.
 - Move relevant language out of Chapter 173-313 WAC into Chapter 173-312 WAC and repeal Chapter 173-313 WAC.
- Clarification:
 - Clarifying the scope and purpose of the program.
 - Clarifying eligible activities and identifying criteria that may be used to authorize funding.
 - Clarifying the obligation of counties to notify cities and lead implementation agencies in their jurisdiction of funding opportunities.

2.3.1 Generalizing the prioritization of certain grant eligible activities, and adding language to clarify that Ecology will describe priorities in its guidelines

Baseline

When evaluating applications for local solid waste financial assistance, the authorizing statute requires that funding of some projects takes precedence over others. The rule outlines specific types of projects and the particular details regarding each specific type that are prioritized in descending order according to the statute.

Adopted

While funding of some projects will still take precedence over others, prioritization based on specific type of project is replaced with general requirements that ensure complete applications from eligible applicants in a timely and efficient manner, and the rule now will refer applicants to the program guidelines for detailed information regarding the types of projects that are eligible.

Expected impact

The administrative burden associated with processing erroneous applications will be reduced, and Ecology will have greater clarity and flexibility to fund projects that address the most important environmental issues and offer the most overall benefit as priorities evolve over time.

2.3.2 Establishing a minimum allocation and population-based additional allocation for funding solid waste enforcement grants

Baseline

Financial assistance set aside for solid waste enforcement within each local jurisdiction is 20 percent of the total allocation available each biennium.

Solid waste enforcement grant allocation is based on even distribution across local jurisdictional health departments, with 50 percent higher allocations to those with multiple jurisdictional health departments.

Adopted

Financial assistance set aside for solid waste enforcement within each local jurisdiction is *not less than 20 percent* of total allocation available each biennium, or \$75 thousand per county, whichever is greater.

Solid waste enforcement grant allocation is based on:

- Regardless of size: A fixed base allocated to single or multi-county jurisdictional health departments.
- An additional allocation based on population.

Expected impact

When the total allocation available in a biennium drops below \$14.625 million, solid waste enforcement recipients will receive more than 20 percent of the total funds available to ensure that funding levels at least allow for a lean enforcement program. As the percentage of funds being set aside for solid waste enforcement increases, the percentage of funds set aside for planning and implementation will decrease proportionally.

When available funding exceeds \$14.625 million, funding for solid waste enforcement is capped at 20 percent as it currently is and planning and implementation funds are not impacted.

The change to allocations to individual jurisdictional health departments could result in larger or smaller funds going to recipients of grant funds for planning and implementation projects, compared to the baseline. Under the APA, this is a reallocation and results in no net cost. The total allocation remains determined by the Legislature during the budgeting process.

When the total allocation available in a biennium drops below \$14.625 million, the reallocation of a larger percentage of funds to local solid waste enforcement could result in reduced planning and implementation, as a tradeoff for the reduced risk of insufficient or lacking solid waste enforcement programs.

2.3.3 Eliminating separate incentives

Baseline

A ten percent incentive can be given to counties that submit coordinated applications. The incentive is lost when applicants do not coordinate.

Adopted

The separate incentive is eliminated.

Expected impact

Funds previously reserved under the rule for coordinating jurisdictions are included in the initial total allocation for all counties. Recipients will no longer need to wait for the incentive, and could use funds immediately. This change could result in funds going to other grant recipients than they would under the baseline. Under the APA, this is a reallocation and results in no net cost.

2.3.4 Reducing the likelihood of a separate offset grant cycle

Baseline

After initial grant amounts are distributed based on applications, unallocated funds become part of supplemental funds used to promote strategic initiatives to meet state solid waste needs.

Adopted

Grant funds are allocated and distributed as soon as possible, without establishing a supplemental fund. New language describes Ecology working with grant recipients to adjust budgets as necessary. If there are more funds than needed at the onset of a biennium, the available funds could be used for a secondary or subsequent funding opportunity.

Expected impact

All grant funds will be distributed as soon as possible, reducing the need for recipients to wait for available funding. Any new funding or excess funds at the onset of a biennium will be allocated based on need and other criteria that will be determined in financial assistance guidelines.

This change could result in funds going to other grant recipients than they would under the baseline. Under the APA, this is a reallocation and results in no net cost.

2.3.5 Eliminating the obligation to set aside future funding

Baseline

Grant recipients that do not finish their projects are obligated to set aside funding from the next grant cycle to complete projects.

Adopted

The requirement to set aside funds from the next grant cycle is eliminated.

Expected impact

This change will allow for the use of local funds to complete a project, or potentially leaving a failing project. This change is part of streamlining the grant process to improve funded project success while reducing the amount of work done prior to guarantee of funding. In practice, a correctly developed scope of work should reflect a reasonable project to finish in the time allotted. Ecology's flexibility in funding and ongoing budget management will also facilitate project and scoping improvement.

This change could result in funds going to other grant recipients than they would under the baseline. Under the APA, this is a reallocation and results in no net cost.

2.3.6 Setting time limits

Baseline

There are no time limits on when signed agreements must be returned, or requests for retroactive reimbursement to be received, to guarantee funding.

Adopted

Funds may be redirected to another applicant if the initial applicant does not return a signed agreement within four months of Ecology's official offer.

Requests for reimbursement of retroactive costs must be submitted to Ecology within 90 days of Ecology's signature date on the grant agreement, and may otherwise be denied.

Expected impact

This change could result in funds going to other grant recipients than they would under the baseline. Under the APA, this is a reallocation and results in no net cost. This change will likely result in earlier, more efficient distribution of funds overall.

2.3.7 Housekeeping

Baseline

The program and the WAC chapter describing it are titled "Coordinated Prevention Grants."

The definitions pertain only to the rule in its current state and do not take adopted changes into account.

The chapter is written in a manner that does not implement elements of "Plain Talk."

Adopted

The program and the WAC chapter describing it are titled "Local Solid Waste Financial Assistance."

Obsolete terminology is omitted, some existing definitions are revised, and new words are added.

Elements of “Plain Talk,” such as using more active phrasing and replacing antiquated or obscure words, are implemented throughout the chapter where feasible.

Expected impact

The name will more accurately describe the program and its essential functions, allowing funding recipients and potential applicants to more easily identify the program and locate related information.

The changes made to the definitions will support the concepts and other changes being made as a part of this rulemaking, improving clarity and general cohesion of concepts to make the chapter easier for readers to understand.

“Plain Talk” revisions will make it easier for readers, including program participants and potential applicants, to understand the program and its requirements.

2.3.8 Clarification

Baseline

References to authorizing statutes are used throughout the Purpose and Authority section and remainder of the rule to describe the types of solid waste programs that the financial assistance program is designed to cover.

WAC 173-312-050 Project Eligibility describes project eligibility requirements in general, brief terms using references to authorizing statutes.

Coordination between counties, local health departments, and other local entities within a jurisdiction is required for eligible applicants to receive a financial incentive after initial allocation of funds.

Adopted

References to authorizing statutes have been moved to the beginning of the Purpose and Authority section, and replaced throughout the remainder of the chapter where feasible with accurate descriptions of the types of solid waste programs that this financial assistance program is designed to cover.

WAC 173-312-050 Project Eligibility has been retitled “Project and cost eligibility,” describes eligibility requirements in specific detail, and lists solid waste programs in priority order.

Coordination between counties, local health departments, and other local entities within a jurisdiction is clarified and continues to be required. The rule clarifies the different local governments required to coordinate and how to accomplish coordination.

The term “lead implementation agency” is replaced with the term “partnering local government.”

Expected impact

Funding applicants and recipients will be able to understand the rule content easier without needing to refer to other sections, reducing reader confusion.

Applicants and recipients will be able to more clearly understand project eligibility.

The clarification of coordination requirements and replacing “lead implementation agency” with “partnering local government”, will make it easier for partnering local governments to apply for and receive financial assistance, while collaborative solid waste solutions will still be encouraged through the coordination obligation. The addition of related terminology will make the roles and responsibilities of each party easier to understand.

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Chapter 3: Likely Costs of the Adopted Rule Amendments

3.1 Introduction

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

3.2 Cost analysis

While the adopted rule potentially reallocates grant funds across local jurisdictions, it does not change the total amount of funding available. The total funding available is determined by the state Legislature, through the budget process. Therefore, while potential funding for individual grant recipients may increase or decrease as a result of the rule amendments, there is no resulting net cost.

When the total allocation available in a biennium drops below \$14.625 million, however, the reallocation of a larger percentage of funds to local solid waste enforcement could result in reduced planning and implementation, as a tradeoff for the reduced risk of insufficient or lacking solid waste enforcement programs.

In addition, the adopted rule and baseline rules are not regulatory in the sense that they impose regulatory requirements and penalties for noncompliance. While there are potential reductions in future allocation due to poor past performance, poor performance is not a form of noncompliance, and reductions will occur in separate, subsequent grant cycles.

3.3 Cost Summary

The adopted rule is not likely to result in net financial costs, but if the total allocation available in a biennium drops below \$14.625 million, the reallocation of a larger percentage of funds to local solid waste enforcement could result in reduced planning and implementation, as a tradeoff for the reduced risk of insufficient or lacking solid waste enforcement programs.

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Chapter 4: Likely Benefits of the Adopted Rule Amendments

4.1 Introduction

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

4.2 Benefit analysis

4.2.1 Generalizing the prioritization of certain grant eligible activities, and adding language to clarify that Ecology will describe priorities in its guidelines

The administrative burden associated with processing erroneous applications will be reduced, and Ecology will have greater clarity and flexibility in funding projects that address the most important environmental issues and offer the most benefit as priorities evolve over time.

4.2.2 Establishing a minimum allocation and population-based additional allocation for funding solid waste enforcement grants

When the total allocation available in a biennium drops below \$14.625 million, solid waste enforcement recipients will receive more than 20 percent of the total funds available to ensure that funding levels at least allow for a lean program.

Setting a fixed base allocation for jurisdictional health departments, with additional allocation based on population (a per-capita amount) is likely to more-closely align with local program funding needs, reducing the incidence of initial over-allocation or under-allocation relative to need. This means reduced funding delays resulting from a need to reallocate funds, reducing project uncertainty or delays in solid waste enforcement.

4.2.3 Eliminating separate incentives

Recipients will no longer need to wait for the incentive, and could use funds immediately.

4.2.4 Reducing the likelihood of a separate offset grant cycle

All grant funds will be distributed as soon as possible, eliminating the need for recipients to wait for available funding.

4.2.5 Eliminating the obligation to set aside future funding

This change will allow for the use of local funds to complete a project, or potentially leaving a failing project. This change is part of streamlining the grant process to improve funded project success while reducing the amount of work done prior to guarantee of funding. In practice, a correctly developed scope of work should reflect a reasonable project to finish in the time

allotted. Ecology's flexibility in funding and ongoing budget management will also facilitate project and scoping improvement.

4.2.6 Setting time limits

This change will likely result in earlier, more efficient distribution of funds overall.

4.2.7 Housekeeping

The name will more accurately describe the program and its essential functions, allowing funding recipients and potential applicants to more easily identify the program and locate related information.

The changes made to the definitions will support the concepts and other changes being made as a part of this rulemaking, improving clarity and general cohesion of concepts to make the chapter easier for readers to understand.

“Plain Talk” revisions will make it easier for readers, including program participants and potential applicants, to understand the program and its requirements.

4.2.8 Clarification

Funding applicants and recipients will be able to understand the rule content easier without needing to refer to other sections, reducing reader confusion.

Applicants and recipients will be able to more clearly understand which projects are eligible.

The clarification of coordination requirements, and replacing “lead implementation agency” with “partnering local government”, will make it easier for partnering local governments to apply for and receive financial assistance, while collaborative solid waste solutions will still be encouraged through the coordination obligation. The addition of related terminology will make the roles and responsibilities of each party easier to understand.

4.3 Benefit Summary

The potential benefits of the adopted rule amendments include:

- Clear rule language and streamlined program requirements will reduce administrative burden for funding recipients and Ecology.
- Ecology will have greater clarity and flexibility in funding projects that address the most important environmental issues and offer the most overall benefit as priorities evolve over time.
- Local solid waste enforcement programs will be able to maintain lean programs even if funding drops to historically low levels.
- Jurisdictional health departments will receive fixed base funding and a population-based additional allocation, resulting in more up-front funding, and reducing effort required for reallocation of unused or unwanted funds.

- Recipients will be able to use funds immediately and will not have to wait for incentives.
- Ecology will be able to manage agreements more effectively and efficiently, helping to ensure better project outcomes.

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Chapter 5: Cost-Benefit Comparison and Conclusions

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

The adopted rule is not likely to result in net financial costs, but if the total allocation available in a biennium drops below \$14.625 million, the reallocation of a larger percentage of funds to local solid waste enforcement could result in reduced planning and implementation, as a tradeoff for the reduced risk of insufficient or lacking solid waste enforcement programs.

The potential benefits of the adopted rule amendments include:

- Clear rule language and streamlined program requirements will reduce administrative burden for funding recipients and Ecology.
- Ecology will have greater clarity and flexibility in funding projects that address the most important environmental issues and offer the most overall benefit as priorities evolve over time.
- Local solid waste enforcement programs will be able to maintain lean programs even if funding drops to historically low levels.
- Jurisdictional health departments will receive fixed base funding and a population-based additional allocation, resulting in more up-front funding, and reducing effort required for reallocation of unused or unwanted funds.
- Recipients will be able to use funds immediately and will not have to wait for incentives.
- Ecology will be able to manage agreements more effectively and efficiently, helping to ensure better project outcomes.

5.2 Conclusion

Ecology concludes, based on reasonable understanding of the quantified and qualitative costs and benefits likely to arise from the adopted rule amendments, that the benefits of the adopted 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 adopted 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 adopted rule were the least burdensome to those required to comply with them.

6.2 Goals and objectives of the authorizing statutes:

6.2.1 Chapter 70.95 RCW: Solid Waste Management – Reduction and Recycling

6.2.1.1 RCW 70.95.010 Legislative finding – Priorities – Goals

(3) Considerations of natural resource limitations, energy shortages, economics and the environment make necessary the development and implementation of solid waste recovery and/or recycling plans and programs.

...

(6)(b) It is the responsibility of state, county, and city governments to provide for a waste management infrastructure to fully implement waste reduction and source separation strategies and to process and dispose of remaining wastes in a manner that is environmentally safe and economically sound. It is further the responsibility of state, county, and city governments to monitor the cost-effectiveness and environmental safety of combusting separated waste, processing mixed municipal solid waste, and recycling programs.

(c) It is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies.

(7) Environmental and economic considerations in solving the state's solid waste management problems requires strong consideration by local governments of regional solutions and intergovernmental cooperation.

...

(11) Steps should be taken to make recycling at least as affordable and convenient to the ratepayer as mixed waste disposal.

(12) It is necessary to compile and maintain adequate data on the types and quantities of solid waste that are being generated and to monitor how the various types of solid waste are being managed.

...

(15) Comprehensive education should be conducted throughout the state so that people are informed of the need to reduce, source separate, and recycle solid waste.

...

(18) It is necessary to provide adequate funding to all levels of government so that successful waste reduction and recycling programs can be implemented.

6.2.1.2 RCW 70.95.020 Purpose

The purpose of this chapter is to establish a comprehensive statewide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

...

(2) To provide for adequate planning for solid waste handling by local government;

...

(4) To encourage the development and operation of waste recycling facilities needed to accomplish the management priority of waste recycling, to promote consistency in the requirements for such facilities throughout the state, and to ensure that recyclable materials diverted from the waste stream for recycling are routed to facilities in which recycling occurs;

(5) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

...

(7) To encourage the development and operation of waste recycling facilities and activities needed to accomplish the management priority of waste recycling and to promote consistency in the permitting requirements for such facilities and activities throughout the state.

6.2.1.3 RCW 70.95.130 Financial aid to counties and cities

Any county may apply to the department on a form prescribed thereby for financial aid for the preparation of the comprehensive county plan for solid waste management required by RCW 70.95.080. Any city electing to prepare an independent city plan, a joint city plan, or a joint county-city plan for solid waste management for inclusion in the county comprehensive plan may apply for financial aid for such purpose through the county. Every city application for financial aid for planning shall be filed with the county auditor and shall be included as a part of the county's application for financial aid. Any city preparing an independent plan shall provide for disposal sites wholly within its jurisdiction.

The department shall allocate to the counties and cities applying for financial aid for planning, such funds as may be available pursuant to legislative appropriations or from any federal grants for such purpose.

The department shall determine priorities and allocate available funds among the counties and cities applying for aid according to criteria established by regulations of the department considering population, urban development, environmental effects of waste disposal, existing waste handling practices, and the local justification of their proposed expenditures.

6.2.1.4 RCW 70.95.220 Financial aid to jurisdictional health departments — Applications — Allocations

Any jurisdictional health department may apply to the department for financial aid for the enforcement of rules and regulations promulgated under this chapter. Such application shall contain such information, including budget and program description, as may be prescribed by regulations of the department.

After receipt of such applications the department may allocate available funds according to criteria established by regulations of the department considering population, urban development, the number of the disposal sites, and geographical area.

The sum allocated to a jurisdictional health department shall be paid to the treasury from which the operating expenses of the health department are paid, and shall be used exclusively for inspections and administrative expenses necessary to enforce applicable regulations.

6.2.2 Chapter 70.105 RCW HAZARDOUS WASTE MANAGEMENT

6.2.2.1 RCW 70.105.007 Purpose

The purpose of this chapter is to establish a comprehensive statewide framework for the planning, regulation, control, and management of hazardous waste which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of the state. To this end it is the purpose of this chapter:

- (1) To promote waste reduction and to encourage other improvements in waste management practices;
- (2) To promote cooperation between state and local governments by assigning responsibilities for planning for hazardous wastes to the state and planning for moderate-risk waste to local government;
- (3) To provide for prevention of problems related to improper management of hazardous substances before such problems occur; and

(4) To assure that needed hazardous waste management facilities may be sited in the state, and to ensure the safe operation of the facilities.

6.2.2.2 RCW 70.105.235 Grants to local governments for plan preparation, implementation, and designation of zones—Matching funds—Qualifications.

(1) Subject to legislative appropriations, the department may make and administer grants to local governments for (a) preparing and updating local hazardous waste plans, (b) implementing approved local hazardous waste plans, and (c) designating eligible zones for designated zone facilities as required under this chapter.

(2) Local governments shall match the funds provided by the department for planning or designating zones with an amount not less than twenty-five percent of the estimated cost of the work to be performed. Local governments may meet their share of costs with cash or contributed services. Local governments, or combination of contiguous local governments, conducting pilot projects pursuant to RCW 70.105.220(4) may subtract the cost of those pilot projects conducted for hazardous household substances from their share of the cost. If a pilot project has been conducted for all moderate-risk wastes, only the portion of the cost that applies to hazardous household substances shall be subtracted. The matching funds requirement under this subsection shall be waived for local governments, or combination of contiguous local governments, that complete and submit their local hazardous waste plans under RCW 70.105.220(6) prior to June 30, 1988.

(3) Recipients of grants shall meet such qualifications and follow such procedures in applying for and using grants as may be established by the department.

6.2.3 RCW 70.105D.100 HAZARDOUS WASTE CLEANUP—MODEL TOXICS CONTROL ACT

In providing grants to local governments, the department shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the department shall utilize the statement of environmental benefit[s] in its prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section.

6.3 Alternatives considered and why they were not included

6.3.1 Revise only chapter 173-312 WAC

Ecology could have chosen to revise only Chapter 173-312 WAC *Coordinated Prevention Grants*, and leave Chapter 173-313 WAC *Solid Waste Enforcement Grants* as a separate chapter.

The consequence of not combining the two rules will be the loss of an opportunity to streamline our grants rules, and reduce the overall number of administrative rules in the process. Another consequence of not moving forward with overall revisions will be a failure to meet identified program rulemaking goals, and a failure to pursue our goal of continuous improvement as well as not meeting the expectations of the State Auditor's Office. In this case, the adopted revisions include stakeholder input to create a less burdensome rule that allows Ecology to better meet the goals and objectives of the financial assistance program's authorizing statutes.

6.3.2 Different threshold for increasing minimum solid waste enforcement grant funding

Ecology could have chosen a lower or higher threshold for determining when to increase local solid waste enforcement funding from 20 percent of the total budget. The \$14.625 million, or specifically \$2.925 million (20 percent of the total), was based on approximate lean program grant need of at least \$75 thousand, multiplied by 39 counties in Washington. A different threshold would not have affected regulatory burden (since the rule allocates grants, rather than acting in a regulatory capacity), but could have reduced effectiveness in immediately and efficiently funding solid waste enforcement programs. Additionally, a lower threshold could have resulted in underfunded local solid waste enforcement programs, resulting in potential harm to human health and the environment from mismanaged solid waste.

6.3.3 Excluding performance measures

Ecology could have excluded performance measures from funding allocation. As this is a statutory requirement, excluding it would not have reduced burden or made a change from the baseline. Including performance measures explicitly in the rule would increase clarity and flexibility in grant fund allocation.

6.3.4 Keeping the offset grant cycle

Ecology could have kept the offset grant cycle, to reallocate unused and unwanted funds from the initial grant cycle. This would have reduced effectiveness in achieving the goals of functional and successful programs, by reducing certainty in funding, and by increasing potential delays in funding. This could have meant local jurisdictions would spend money they were not yet sure they had grant funding to cover.

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.

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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 Ecology has determined the adopted rule only applies to local government agencies and does not impose compliance costs on businesses in an industry. Therefore, Ecology is 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>Before starting the rulemaking we considered the impacts of either not adopting this rule, or revising only <i>Chapter 173-312 WAC Coordinated Prevention Grants</i>, while leaving <i>Chapter 173-313 WAC Solid Waste Enforcement Grants</i> unchanged. The key consequences of either of these alternatives would be a delay in the opportunity to:</p> <ul style="list-style-type: none"> • Reduce the number of administrative rules. • Achieve greater efficiency through streamlining rules. • Ensure that statutory program goals are met. • Provide greater clarity. • Provide greater flexibility. <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?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Explain how that determination was made. RCW 34.05.328(1)(f)

The existing rule and adopted changes do not violate either federal or state law, and are consistent with the word and intent of the authorizing statutes.

The grants implemented by both rules are limited to local governments – private/non-profit organizations are not eligible. The Environment Protection Agency (EPA), and or any other federal and state agencies do not provide funding and have no role in the grants process.

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)

The grants implemented by both rules are limited to local governments – private/non-profit organizations are not eligible. The EPA or any other federal and state agencies do not provide funding and have no role in the grants process. During rule development Ecology has worked with an advisory committee comprised of stakeholders representing the interests of local governments impacted by the rule.