



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 173-95A WAC
Uses and Limitations of the Centennial
Clean Water Program*

and

*Chapter 173-98 WAC
Uses and Limitations of the Pollution
Control Revolving Fund*

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-

Chapter 173-95A WAC Uses and Limitations of the Centennial Clean Water Program

And

Chapter 173-98 WAC Uses and Limitations of the Water Pollution Control Revolving Fund

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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 Uses and Limitations of the Centennial Clean Water Program rule (chapter 173-95A WAC) and the Uses and Limitations of the Water Pollution Control Revolving Fund rule (chapter 173-98 WAC) (the “rules”). 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.

Chapter 173-98 WAC, *Uses and Limitations of the Water Pollution Control Revolving Fund*, sets forth requirements for Ecology’s administration of Washington State’s Water Pollution Control Revolving Fund (CWSRF), and the Water Pollution Control Revolving Administration Account. CWSRF provides financial assistance to public bodies for high-priority water quality projects in the form of low interest rate loans.

Chapter 173-95A WAC, *Uses and Limitations of the Centennial Clean Water Program*, sets forth requirements for Ecology’s administration of the Centennial Clean Water Program (Centennial). Centennial provides financial assistance to public bodies for high-priority water quality projects in the form of grants and, rarely, low interest rate loans.

Since the last significant rulemaking in 2011, external stakeholders and Ecology have identified several issues related to the lack of clarity and flexibility in the rules. In 2014 the federal Clean Water Act (CWA) was amended to allow states to offer loan terms of up to 30 years and to provide loans to acquire land for constructing treatment facilities. In 2016 Chapter 90.50A RCW was amended to allow Ecology to offer loan terms of up to 30 years.

The proposed rule amendments make the following changes not required by other laws or rules:

- Increase loan terms to 30 years.
- Offering CWSRF or Centennial loans for environmental emergencies.
- Offering Centennial grants for land acquisition to protect water quality
- Address “housekeeping” issues.

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

The potential benefits of the proposed rule amendments include:

- Smaller monthly costs to the applicants'/recipients' citizens/customers.
- Greater availability of funding to projects.
- Additional projects being viable.

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 rules' contents, as well as the goals and objectives of the authorizing statutes, Ecology determined that the proposed rules represent the least-burdensome alternative of possible rule contents meeting these goals and objectives.

Ecology analyzed the compliance costs of this rulemaking. Based on this analysis we determine the proposed rules do 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. Moreover, the rule only applies to public entities, and inherently does not impose any compliance costs on businesses. Therefore, we are not required to prepare a small business economic impact statement (RCW 19.85.030(1)(a)).

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 Uses and Limitations of the Centennial Clean Water Program rule (chapter 173-95A WAC) and the Uses and Limitations of the Water Pollution Control Revolving Fund rule (chapter 173-98 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.

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 Background

Chapter 173-98 WAC, *Uses and Limitations of the Water Pollution Control Revolving Fund*, sets forth requirements for Ecology’s administration of Washington State’s Water Pollution Control

Revolving Fund (CWSRF), and the Water Pollution Control Revolving Administration Account. CWSRF provides financial assistance to public bodies for high-priority water quality projects in the form of low interest rate loans.

Chapter 173-95A WAC, *Uses and Limitations of the Centennial Clean Water Program*, sets forth requirements for Ecology’s administration of the Centennial Clean Water Program (Centennial). Centennial provides financial assistance to public bodies for high-priority water quality projects in the form of grants and, rarely, low interest rate loans.

Since the last significant rulemaking in 2011, external stakeholders and Ecology have identified several issues related to the lack of clarity and flexibility in the rules. In 2014 the federal Clean Water Act (CWA) was amended to allow states to offer loan terms of up to 30 years and to provide loans to acquire land for constructing treatment facilities. In 2016 Chapter 90.50A RCW was amended to allow Ecology to offer loan terms of up to 30 years. The proposed extended loan terms and land acquisition amendments would provide new funding opportunities if the rules are revised.

1.2 Summary of the proposed rule amendments

The proposed rule amendments make the following changes not required by other laws or rules:

- Increase loan terms to 30 years.
- Offering CWSRF or Centennial loans for environmental emergencies.
- Offering Centennial grants for land acquisition to protect water quality
- Address “housekeeping” issues.

1.3 Reasons for the proposed rule amendments

1.3.1 Increase loan terms to 30 years

Under the current rules, loan terms cannot exceed 20 years.

During meetings with Ecology’s advisory group, the Financial Assistance Council (FAC) discussed multiple options for awarding loan terms of up to 30 years currently allowed by state and federal law. The proposed amendments would benefit all applicants/recipients by allowing them to take advantage of the longer term, lower annual costs 30-year loan term option; this would result in smaller monthly costs to the applicants’/recipients’ citizens/customers.

1.3.2 Offering CWSRF or Centennial loans for environmental emergencies

Under the current rules, neither CWSRF nor Centennial funding can be provided for “environmental emergencies” without following the standard application process. The standard application process can take as long as 20 months between the time of application and the

signing of a funding contract that will allow Ecology to reimburse for eligible costs. In addition, both rules currently prohibit funding for “acts of nature”.

The proposed rule amendments would allow either CWSRF or Centennial loans to fund environmental emergencies, including acts of nature, through a process to be defined in the Funding Guidelines. These proposed amendments would benefit applicants/recipients by making loans available that under the current rules is either prohibited or only available through the standard application process.

1.3.3 Offering Centennial grants for land acquisition to protect water quality

Under the current rules, only CWSRF or Centennial loans can be used to fund land acquisition to protect water quality. For example:

- Wetland habitat preservation
- Riparian area preservation
- Drinking water source protection

Ecology is proposing amendments to the Centennial rule to allow grants to fund such land acquisition. The proposed amendments would benefit applicants/recipients by making grants available to fund projects that are currently only eligible for loans.

1.3.4 Address “housekeeping” issues

Housekeeping issues addressed in the proposed rule amendments include:

- Correcting spelling and grammar errors.
- Clarifying rule language to make it easier to understand.

These proposed amendments are exempt from the current analysis under RCW 34.05.328(5)(b)(iv).

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 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 if the proposed rules 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 173-95A WAC
- Chapter 173-98 WAC
- Chapter 70.146 RCW
- Chapter 90.50A 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:

- Increase loan terms to 30 years
- Offering CWSRF or Centennial loans for environmental emergencies
- Offering Centennial grants for land acquisition to protect water quality

2.3.1 Increase loan terms to 30 years

Baseline

Under the current rules, loan terms cannot exceed 20 years.

Proposed

Allowing loan terms of up to 30 years.

Expected impact

Loan terms potentially increasing.

2.3.2 Offering CWSRF or Centennial loans for environmental emergencies

Baseline

Under the current rules, neither CWSRF nor Centennial funding can be provided for environmental emergencies without following the standard application process.

Proposed

Allow either CWSRF or Centennial loans to fund environmental emergencies, including acts of nature, through a process to be defined in the Funding Guidelines.

Expected impact

These proposed amendments would make loans available, which under the current rules are prohibited or only available through the standard application process.

2.3.3 Offering Centennial grants for land acquisition to protect water quality

Baseline

Under the current rules, only CWSRF or Centennial loans can be used to fund land acquisition to protect water quality. For example:

- Wetland habitat preservation
- Riparian area preservation
- Drinking water source protection

Proposed

Allow grants to fund such land acquisition.

Expected impact

These proposed amendments would make grants available to fund projects that are currently only eligible for loans.

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 made with Ecology's discretion do not impose new or additional restrictions or expenditures of time or effort 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 Increase loan terms to 30 years

Increasing the loan terms allows all applicants/recipients to benefit by allowing them to take advantage of the longer term, lower annual costs 30-year loan term option; this would result in smaller monthly costs to the applicants'/recipients' citizens/customers. Though, the monthly payments would be smaller, the total amount repaid would likely be larger under 30-year terms, depending on the interest rates charged. Applicants/recipients would choose the repayment option that works best with their repayment funding sources.

Another potential benefit is that the longer loan terms may allow additional projects to be undertaken which were not viable under the shorter term.

4.2.2 Offering CWSRF or Centennial loans for environmental emergencies

Offering loans to fund environmental emergencies would benefit applicants/recipients by making loans available that under the current rules are prohibited or only available through the standard application process.

4.2.3 Offering Centennial grants for land acquisition to protect water quality

Makes grants available to fund projects that are currently only eligible for loans. A potential benefit would be some projects that would be funded through loans would instead be funded through grants, therefore, the funds would not need to be repaid.

4.3 Benefit Summary

The potential benefits of the proposed rule amendments include:

- Smaller monthly costs to the applicants'/recipients' citizens/customers.
- Greater availability of funding to projects.
- Additional projects being viable.

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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:

- Smaller monthly costs to the applicants'/recipients' citizens/customers.
- Greater availability of funding to projects.
- Additional projects being viable.

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 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 statutes: Chapters 70.146 and 90.50A RCW

The goals and objectives of the authorizing statutes are:

- To provide an account to receive federal capitalization grants to provide financial assistance to the state and to local governments for the planning, design, acquisition,

construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state's waters.

- To provide financial assistance to the state and to local governments for the planning, design, acquisition, construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state's waters.

6.3 Alternatives considered and why they were not included

Each alternative considered involved excluding one or more of the proposed amendments. As the proposed amendments provide potential benefits and do not impose costs, excluding one or more of them would impose greater burden on impacted parties.

6.4 Conclusion

After considering alternatives to the proposed rules' contents, as well as the goals and objectives of the authorizing statutes, Ecology determined that the proposed rules represent the least-burdensome alternative of possible rule contents meeting these goals and objectives.

Chapter 7: Regulatory Fairness Act Compliance

Ecology analyzed the compliance costs of this rulemaking in previous chapters of this document. Based on this analysis we determine the proposed rules do 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. Moreover, the rule only applies to public entities, and inherently does not impose any compliance 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)

Before starting the rulemaking we considered the impacts of not adopting this rule. The key consequence of not rulemaking would be a delay in the opportunity to:

- Provide more clarity.
- Provide more flexibility.
- Take advantage of new funding opportunities.

Please see the Least Burdensome Alternative Analysis, Chapter 6 of this document, for discussion of alternative rule content considered.

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?

Yes No

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

The existing rules do not violate either federal or state law.

The proposed amendments are intended to continue to comply with federal and state law while taking advantage of new funding opportunities consistent with federal law update in 2014 and state law update in 2016.

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

The rules only applies to public entities.

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)

Ecology is solely responsible for implementing the Clean Water State Revolving Fund (CWSRF) in Washington State in accordance with Chapter 173-98 WAC. The Environmental Protection Agency (EPA), through the federal Clean Water Act, established baseline rules for the CWSRF. EPA and Ecology have signed an "Operating Agreement" that specifies Ecology's requirements for implementing the CWSRF. However, the CWSRF rule is more restrictive than the federal Clean Water Act because Chapter 90.50A RCW limits funding to "public bodies". The federal Clean Water Act has no such limitations.

Ecology is solely responsible for implementing the Centennial Clean Water Program in Washington State in accordance with Chapter 173-95A WAC.

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)

Ecology coordinates closely with other federal, state, and local agencies during rulemaking. The proposed Rule Advisory Committee is the existing Financial Assistance Council (FAC). The FAC is composed of representatives from:

- Washington Association of Sewer and Water Districts.

- Puget Sound Partnership.
- EPA Region 10 (two representatives).
- Washington State Conservation Commission.
- Washington State Association of Counties.
- Washington Association of Conservation Districts.
- Department of Commerce, Public Works Board.
- U.S. Department of Agriculture-Rural Development.
- Association of Washington Cities.
- Department of Health.
- Coalition for Clean Water.
- Nine local entities that may receive financial assistance.

The FAC met to discuss the rulemaking three times since filing the CR-101. Meeting dates were July 21, 2016, October 6, 2016, and November 10, 2016.