

**Provide feedback on this preliminary draft rule language by Monday August 14, 2017 (11:59 PM)**

Online:

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Webinar: August 7, 2017 1:30 PM  
Join the webinar: [LINK](#)

**Chapter 173-323 WAC – Grants and Loans** will apply to the following grant and loan programs:

1. Air Quality Clean Diesel Grant Program (Competitive)
2. Air Quality Local Partner Wood Smoke Reduction (Competitive)
3. Shoreline Master Program Grants (Formula)
4. Spill Prevention, Preparedness, and Response Equipment Grants (Competitive)
5. Water Quality Stormwater Capacity (Formula)
6. Water Quality Stormwater Grants of Regional or Statewide Significance (Competitive)
7. Water Quality Stormwater Financial Assistance Grant Program (Competitive)
8. Programmatic grants or loans

## Chapter 173-323 Grants and Loans

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**WAC 173-323-010 Applicability.**

- 1) This chapter only applies to grants and loans issued by ecology that are funded under Chapter 70.105D RCW Hazardous Waste Cleanup – Model Toxics Control Act (MTCA), and that are not regulated by another chapter of the WAC that provides requirements for a specific grant or loan program. Ecology will maintain a list of these other chapters on the agency website.
- 2) This chapter contains general rules for grant and loan issuance and performance, and applies to the following types of grants and loans issued by the department of ecology:
  - a) Competitive
  - b) Formula
  - c) Programmatic

**WAC 173-323-020 Definitions.**

**Grant or Loan Agreement or “Agreement”** means the formal, written, contractual document that details the terms and conditions, scope of work, budget, and schedule of the grant or loan, and that is signed by the authorized signatories of the recipient and Ecology.

**Agreement Effective date** means the date on which the grant or loan agreement becomes effective, as specified in the the grant or loan agreement. This is the earliest date eligible costs can be incurred.

**Agreement Expiration date** means the latest date eligible costs can be incurred, as specified in the grant or loan agreement.

**Competitive grants and loans** means grants or loans that are evaluated and awarded based on prioritization, scoring, or ranking.

**Ecology** means the Washington State department of ecology.

**Eligible costs** means costs that meet all criteria established in the agreement and grant or loan program funding guidelines.

**Formula grants and loans** means grants or loans awarded based on distribution factors, such as population.

**Grant** means an award of financial assistance given to a recipient to carry out work for a public purpose or public good authorized by law.

**Loan** means an agreement involving lending money to a recipient.

**Programmatic grants and loans** means grants or loans that do not meet the definition of a formula or a competitive grant or loan.

**Signature date** means the date the ecology authorized signatory signs the agreement.

## **WAC 173-323-030 Grant and Loan Announcements.**

### **Competitive and formula grants and loans.**

- 1) Ecology will announce the availability of funding opportunities for competitive and formula grants and loans. The announcement must include, at a minimum, a description of:
  - a) Purpose of the grant or loan.
  - b) Funding cycle for the grant or loan.
  - c) Amount of funding available, if known.
  - d) Eligibility criteria for the grant or loan.
  - e) Information about how to apply.
  - f) Application deadlines.
  - g) Ecology contact information.

**Programmatic grants and loans**

- 2) Ecology is not required to announce the availability of funding opportunities for programmatic grants or loans.

**Unused funds**

- 3) Ecology is not required to announce the availability of unused funds. Ecology awards unused funds based on the requirements in WAC 173-323-060. Unused funds are one or all of the following:
  - a) Funds awarded by ecology, but not used by the recipient.
  - b) Funds offered by ecology but not accepted by the recipient.
  - c) Funds not awarded by ecology in the initial distribution cycle.

**WAC 173-323-040 Application.**

- 1) All applicants must use the electronic system identified by ecology to apply for grants and loans. Applicants without access to the electronic system must use a process approved by ecology.
- 2) The applicant must complete the application process and provide all required information, including:

- a) Applicant information.
  - b) Project location and description.
  - c) Scope of work and tasks for the project.
  - d) Requested funding amount for the project.
  - e) Timeline for scope of work.
  - f) Any other information required by ecology for the specific type of grant or loan.
- 3) For formula or competitive grants and loans, the applicant must submit the application by the due date, if a due date is included in the announcement. Ecology may approve a later due date.
  - 4) Ecology may request additional information to assist in the application evaluation process.

### **WAC 173-323-050 Evaluation process.**

- 1) Ecology's evaluation process for each of ecology's grant or loan programs guides funding allocations.
- 2) Ecology will evaluate all applications submitted within all required deadlines.
- 3) Ecology will review and evaluate applications to determine eligibility and funding.

#### **Competitive and formula grants and loans:**

- 4) When evaluating competitive and formula grant and loan applications, ecology will consider:
  - a) Eligibility of the application and whether the project meets the eligibility criteria.
  - b) Whether the application demonstrates all of the following:
    - i.) Readiness to proceed.
    - ii.) Feasibility of the project.
    - iii.) Availability of matching funds, if applicable.
  - c) The applicant's past grant or loan performance.

**Programmatic grants and loans**

- 5) When evaluating a programmatic grant or loan application, ecology will consider:
  - a) Whether the project is eligible for the funding based on the authority for the funding or, when appropriate, the specific direction of the legislature.
  - b) Whether the project is an effective use of available funds.
  - c) Whether the project involves one or more of the following:
    - (i) Designation by the legislature or Governor; such as a recipient, project, or type of work.
    - (ii) Identification of recipient(s) based on input from advisory or stakeholder groups.
    - (iii) An environmental or human health emergency, priority, or concern.
  - d) The applicant's past grant or loan performance.

**WAC 173-323-060 Awarding funds.**

- 1) Ecology will award grants and loans:
  - a) Consistent with all federal and state laws and rules authorizing the funding and any specific direction by the legislature.
  - b) Subject to available funds.
  - c) Based on evaluations of grant or loan applications submitted.
- 2) Ecology has discretion to determine what the final award amount will be.

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

- 1) Ecology will work with the recipient to prepare the grant or loan agreement.
- 2) The grant or loan agreement must be signed by the recipient and ecology.
- 3) The grant or loan agreement must describe the project, the environmental outcomes, and other desired outcomes. The agreement may include other items necessary to meet the goals of the grant or loan program.
- 4) A grant or loan agreement issued and managed in Ecology's electronic system must include, at a minimum:
  - a) Project description.
  - b) Project budget and funding distribution.
  - c) Agreement effective date and expiration date.
  - d) Description of tasks and deliverables.
  - e) Contact information for ecology and the recipient.
  - f) Signatures of authorized signatories.
  - g) General terms and conditions that specify requirements related, but not limited, to:
    - i.) Amendments and modifications.
    - ii.) Assignment limits on transfer of rights or claims.
    - iii.) Inadvertent discovery of human remains and/or cultural resources.
    - iv.) Compliance with all laws.
    - v.) Conflict of interest.
    - vi.) Disputes.
    - vii.) Environmental data standards.
    - viii.) Governing law.
    - ix.) Indemnification.
    - x.) Independent status of the parties to the agreement.



- xi.) Order of precedence for laws, rules, and the agreement.
  - xii.) Property rights, copyrights, and patents.
  - xiii.) Records, audits, and inspections.
  - xiv.) Recovery of funds.
  - xv.) Severability.
  - xvi.) Suspension.
  - xvii.) Sustainable practices.
  - xviii.) Termination.
  - xix.) Third-party beneficiary.
  - xx.) Waiver of agreement provisions.
- h) Special terms and conditions, if any.
  - i) Agreement-specific terms and conditions, if any.
  - j) General federal conditions, if any.

### **WAC 173-323-080 Amendments to the grant or loan agreement.**

- 1) A change to any of the following items requires an amendment to the agreement:
  - a. Scope of work or the objectives of the project.
  - b. Budget, whether for an increase or decrease.
  - c. Funding, whether for an increase or decrease.
  - d. Redistributing costs among budget tasks that exceed ten percent deviation of the total eligible costs of the funding distribution.
  - e. Funding distributions, including share percentages.
  - f. Agreement effective or expiration date, whether to shorten or extend.

- g. Special terms and conditions or agreement-specific terms and conditions.
- 2) Administrative changes do not require an amendment. Examples of administrative changes include updates to contact names, addresses, and phone numbers.
- 3) An amendment must be signed by all parties before it is effective.

### **WAC 173-323-090 Performance standards.**

#### **General provisions**

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

#### **Recipient standards**

- 5) Recipients must:
  - a) Follow all applicable accounting and auditing laws and rules related to grants and loans.
  - b) Use funds according to the agreement.
  - c) Use funds according to the recipient's own policies and procedures, and according to all applicable laws and rules.
  - d) Comply with all applicable laws, rules, orders, and permits when carrying out activities authorized by the agreement.
  - e) Seek pre-approval for equipment purchases over the amount specified in the agreement.

- 6) As specified in the grant or loan agreement the recipient must submit the following to ecology:
  - a) Progress reports.
  - b) Payment requests.
  - c) Equipment purchase reports.
  - d) Supporting documentation and other deliverables.
  - e) A final closeout report.
  - f) Any other information or documentation required by ecology for the specific type of grant or loan.

**Ecology standards**

- 7) Ecology must:
  - a) Follow all applicable accounting and auditing laws and rules related to grants and loans.
  - b) Monitor projects and review progress reports to assure compliance with applicable laws, rules, orders, permits, and terms and conditions of the agreement.
  - c) Confirm that ecology has received all documentation and the project is satisfactorily completed before approving final payment.
- 8) Ecology may perform site visits to monitor the project, evaluate performance, and document compliance or any other conditions of the agreement.

**WAC 173-323-100 Reimbursement.**

- 1) Ecology will not reimburse costs until on or after the signature date of an agreement.
- 2) Any cost incurred before the signature date are at the recipient's risk.
- 3) Ecology will only reimburse eligible costs incurred between the effective date and the expiration date of an agreement.

- 4) To be reimbursed, each recipient must submit a progress report with a payment request and other documentation as required in the grant or loan agreement.
- 5) Ecology will not issue final payment until the closeout requirements in WAC 173-323-110 have been met.

#### **WAC 173-323-110 Closing out the agreement.**

- 1) Ecology is not obligated to reimburse the recipient the final payment if the recipient does not meet all closeout requirements within the timeframe specified in the agreement.
- 2) Ecology will close out the grant or loan agreement when it determines the recipient has met all closeout requirements or when the agreement has been terminated (see WAC 173-323-120).

#### **WAC 173-323-120 Termination of agreement.**

- 1) Failure by the recipient to comply with a grant or loan agreement may result in termination of the agreement.
- 2) Ecology will attempt to contact the recipient regarding any issues with agreement compliance prior to terminating an agreement.
- 3) In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the agreement effective date and prior to agreement expiration date, ecology, at its sole discretion, may elect to suspend or terminate the agreement, in whole or part, or renegotiate the agreement, subject to new funding limitations or conditions.
- 4) Ecology will document, in writing, the termination of an agreement.

[Existing Agency Grants and Loans Rules](#) (not part of rule, just provided as reference)▲

**Waste 2 Resources**

- [Chapter 173-312 WAC](#) - Coordinated prevention grants (open rulemaking)
- [Chapter 173-313 WAC](#) - Local solid waste enforcement grant regulation (open rulemaking, it is being combined into WAC 173-312)
- [Chapter 173-321 WAC](#) - Public participation grants

**TCP**

- [Chapter 173-322A WAC](#) - Remedial action grants and loans

**Water Quality**

- [Chapter 173-80 WAC](#) - Limitations on use of Referendum 39 grant funds for water pollution abatement
- [Chapter 173-95A WAC](#) - Uses and limitations of the centennial clean water program (open rulemaking)
- [Chapter 173-98 WAC](#) - Uses and limitations of the water pollution control revolving fund(open rulemaking)
- [Chapter 173-255 WAC](#) - Limitations on use of Referendum 26 grant funds for water pollution abatement

**Air Quality**

- [Chapter 173-450 WAC](#) - Establishing Requirements for the Receipt of Financial Aid (For the CORE Grants (State Match) program)