

Notice to Interested Parties

Adopting Revisions to Chapter 173-312 WAC – Local Solid Waste Financial Assistance and repealing Chapter 173-313 WAC – Local Solid Waste Financial Assistance Regulation

Dear LSWFA interested parties-

This message provides up-to-date information related to the adoption of chapter 173-312 WAC – *Local Solid Waste Financial Assistance*. You can find answers to **frequently asked questions** at the end of this message.

Director Maia Bellon adopted the revised rule on September 8, 2017. It will be effective on October 9, 2017, at which time chapter 173-313 WAC – Local Solid Waste Enforcement Grant Regulation will be repealed.

Whom does this rule affect?

- Local governments that have the primary responsibility for maintaining their Ecology-approved solid waste management plan;
- Partnering local governments that comply with coordination requirements for planning and implementation;
- Jurisdictional health authorities that are responsible for the enforcement of state and local solid waste rules and regulations.

What is the purpose of the rule?

Chapter 173-312 WAC establishes requirements for financial assistance under the Model Toxics Control Act, RCW 70.105D.070(3), to provide financial assistance for “local hazardous waste planning and implementation, local solid waste planning and implementation, and enforcement of rules and regulations governing solid waste handling. Planning, implementation, and enforcement are designed to prevent or minimize environmental contamination resulting from improper management or disposal of waste.”

The rule also establishes a structure for the administration of local solid waste financial assistance funded from the local toxics control accounts authorized by RCW 82.21.030. The purposes of local solid waste financial assistance are to:

- Promote regional solutions and intergovernmental cooperation for efficient implementation of programs and eligible-projects ...;
- Prevent or minimize environmental contamination by providing financial assistance to local governments to help them comply with state and local solid and hazardous waste laws and rules;
- Provide financial assistance for local solid and hazardous waste planning, and for implementation of eligible programs and projects in those plans;
- Provide for the enforcement of rules and regulations promulgated under chapter 70.95 RCW;
- Encourage local responsibility for solid and hazardous waste management;

- Improve efficiency, consistency, reliability, and accountability for administration of local solid waste financial assistance.

What changed after the rule proposal?

We changed some definitions in WAC 173-312-020 for clarification:

- Deleted “Contributed services”
- Under “In-kind interlocal”, deleted the word “local” in the first sentence
- Under “Local contribution”, replaced “contributed services” with “in-kind interlocal”

We clarified language in WAC 173-312-060 regarding local contribution:

- Under subsection (3), replaced “contributed services” with “in-kind interlocal”

We tied project funding to statutory requirements and approved local plans in WAC 173-312-070 in response to stakeholder concerns about establishing criteria in guidelines:

- (2)(b) was revised to read, “The extent to which projects proposed in the application serve statutory priorities or priorities identified in the local solid and/or hazardous waste plans;”
- Deleted subsection (e) referring to other criteria in guidelines.

In response to stakeholder comments, we revised WAC 173-312-080 regarding reductions in allocation of state financial assistance and performance evaluation.

- We added flexibility in the amount of reduction to be “up to ten percent”, instead of a flat ten percent.
- We revised the reference to performance evaluation in (3) to read, “If a recipient fails to comply with the terms of its award or administrative requirements, the department may reduce their award in the next biennium by up to ten percent for failure to meet performance expectations. The department will make this determination after receiving applications in the next biennium.”
- We added language to provide a stakeholder opportunity to ask for reconsideration of an award reduction in (3) to read, “A recipient may request the department’s reconsideration within seven calendar days of the award reduction notification and must submit the request in writing detailing the reasons for the request.”

We clarified language in WAC 173-312-090 regarding local contribution:

- (2) The local contribution may be met by cash expenditures and in-kind interlocal. The applicant's intent to use in-kind interlocal must be stated in the application. The department will confirm the costs meet department requirements, and prepare the agreement to reflect the local contribution prior to offering the agreement.

What changes to the original rule were proposed and adopted?

We changed the name of the program and repealed Chapter 173-313 WAC after consolidating it with Chapter 173-312 WAC. Other changes included clarifying and simplifying language, adding language, and deleting or replacing obsolete language. Significant amendments were made in sections 060, 080, and 100.

- **WAC 173-312-010 Purpose and authority:**

We clarified and deleted or replaced obsolete language. We changed the grant program name to Local Solid Waste Financial Assistance. The new name makes it clear that the program supports local government solid waste management.

- **WAC 173-312-020 Definitions:**

We deleted obsolete definitions, clarified existing definitions, and added definitions.

- **WAC 173-312-030 Relation to other legislation and administrative rules:**

We clarified and deleted or replaced obsolete language.

- **WAC 173-312-040 Applicant eligibility for financial assistance:**

Changes were for clarification and to simplify who is an eligible applicant. We made no changes to the program's eligibility requirements. There are three easy tests to determine an applicant is eligible for financial assistance through this program.

- **WAC 173-312-050 Project and cost eligibility:**

We clarified language, aligned the rule with statutory priorities, and added statutorily ineligible costs to the existing list.

- **WAC 173-312-060 Application process:**

We clarified and simplified coordination requirements. We deleted an unused provision to set aside an incentive for coordination, in favor of disbursing all money as soon as possible at the onset of the biennium. We added language authorizing Ecology to redirect funds if a recipient does not return a signed offer within the specified time.

- **WAC 173-312-070 Application evaluation:**

We clarified and updated criteria for evaluation.

- **WAC 173-312-080 Allocation of state financial assistance:**

We clarified, deleted or replaced obsolete language, and moved some language to other sections. We revised the funding formula to provide a minimum funding level for enforcement work when program funding is below \$14.625M. We added language for a fixed and per capita amount when calculating disbursement of the solid waste enforcement portion of funding. We added language to disburse all funds as soon as possible at the onset of the biennium, reducing the potential need for a supplemental (or secondary) funding cycle. We added language allowing the agency to reduce future awards if a recipient fails to meet agreed-upon performance measures. The new language also allows a recipient to request reconsideration of a reduced award.

- **WAC 173-312-090 Local contribution:**

We clarified language and moved some content to other sections.

- **WAC 173-312-100 Program administration:**

We clarified language and moved some content to other sections. We deleted language that referenced supplemental funds, and the requirement for a recipient to use a portion of its next award to complete projects not finished in the previous biennium. We added language to support reimbursement of costs retroactively.

How to become a successful applicant and recipient of grant funds

Ecology wants applicants to understand the new requirements and for recipients to be successful. We are developing guidelines and training to help local governments understand the rule changes and processes. Ecology's LSWFA team can answer questions and provide technical assistance.

Ecology LSWFA Team

If you need help, please contact us:

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Important Links

- Rulemaking Website – <http://www.ecy.wa.gov/programs/swfa/rules/wac173312/1515ov.html>
- Rule-Making Order (CR-103 Form) – http://laws-rules/wac173312_313/x1515.pdf
- Rule Language – http://www.ecy.wa.gov/laws-rules/wac173312_313/x1515a.pdf

- Local Solid Waste Financial Assistance Webpage – <http://www.ecy.wa.gov/programs/swfa/grants/cpg.html>

Response to Comments

Ecology's response to comments received during the public comment period is now available. Download a copy at <https://fortress.wa.gov/ecy/publications/SummaryPages/1707023.html>.

To see the comments Ecology received visit:
<http://wt.ecology.commentinput.com/comment/extra?id=EKhRf>

Appeal Procedures

This adoption can be appealed under procedures described in the Administrative Procedure Act (RCW 34.05), including those found in RCW 34.05.330.

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Frequently Asked Questions

Q: What is the status of funding for the 17-19 biennium?

The Washington Legislature has yet to pass a capital budget for the 2017-19 biennium. Funding for the Local Solid Waste Financial Assistance program is part of the capital budget. No funding will be available until a capital budget is approved.

Q: Will my funding be reduced in the 17-19 biennium based on rule amendments?

The rule amendments that impact overall disbursement of LSWFA preserve the traditional eighty-twenty split between *planning & implementation* and *solid waste enforcement* projects until the overall allocation from the legislature for LSWFA falls below \$14.625 million. In the 17-19 biennium, we anticipate an overall budget of \$10 million. This amount would trigger a shift in the allocation, allocating seventy one percent of available funding to *planning & implementation* and twenty nine percent to *solid waste enforcement*.

The disbursement formula for each portion of funding determines the amount available for each jurisdiction. Rule amendments added formula expectations for disbursing *solid waste enforcement*, but did not change the formula expectations for *planning & implementation*.

Q: Why is Ecology mandating minimum funding levels for solid waste enforcement?

Funding for the Coordinated Prevention Grants/Local Solid Waste Financial Assistance program has been reduced significantly in recent budgets, falling from \$28.2 million in 2013-15 to \$15 million in 2015-17 to a proposed \$10 million in 2017-19.

Historically, CPG funding was split 80-20 between solid waste programs typically conducted by counties and solid waste enforcement programs typically conducted by jurisdictional health

departments. With the decline in funding, however, it was clear that many local health departments would not be able to meet the solid waste enforcement duties delegated to them.

Ecology believes Local Solid Waste Financial Assistance needs to be a balanced program and that it is unacceptable for significant portions of our state to go without solid waste enforcement oversight. The minimum funding levels added in the new regulation would only come into play when overall program funding falls below \$14.625 million.

Q: Does Ecology have a draft allocation table prepared based on the anticipated \$10M for the 17-19 cycle?

Now that the rule is adopted, Ecology can provide a draft allocation table. Ecology based the table on the Governor's proposed \$10 million funding level. We intend to make these funding levels available if a budget is passed.

Q: Why did Ecology change the name of the Coordinated Prevention Grants program, and who chose the new name?

In speaking to stakeholders both before and during the rulemaking process on chapters 173-312 and 173-313 WAC, Ecology heard a clear preference for a program name that more accurately described the program's purpose. Stakeholders felt that "Coordinated Prevention Grants" was confusing and did not reflect the purpose of the program. Local Solid Waste Financial Assistance makes it clear that the program is intended to support local government solid waste management.

Q: Why is Ecology adding performance measures?

The Local Solid Waste Financial Assistance program is funded by Washington taxpayers. They have the right to expect these funds to be spent on approved activities and that Ecology exercise rigorous oversight of this spending. In the past, some local governments have been negligent in filing timely reports and delivering fiscal transparency. Adding performance measures to the program regulations allows Ecology to fulfill its oversight role and ensure that funding is used as intended.

Ecology will work with recipients during the 17-19 biennium to understand the performance expectations and how to avoid a reduced award in the 21-23 biennium for poor performance.

Q: Why reduce awards at all when local governments already don't have enough money to fund mandates?

One of Ecology's goals is to ensure the overall allocation provided by the legislature each biennium is spent. This helps justify Ecology's legislative request for full funding each biennium for LSWFA. The 15-17 biennium started with a forty-nine percent overall reduction in funding for the program, but many recipients still closed the biennium with a significant budget balance remaining. This is inefficient, and results in other local governments forgoing funding for activities that could have been paid for by the program.

Ecology will be evaluating these performance measures during the 2017-19 biennium and will not apply reductions based on performance in this biennium. Ecology plans to review these performance measures and work with stakeholders to refine them, meaning that no reductions would be imposed prior to the 2021-23 biennium.

Q: Will there be opportunity for local governments to provide Ecology input on implementing this rule?

The statewide LSWFA coordinator, Tami Ramsey, will work with the LSWFA Work Group for their input on guidance that will help explain the rule and implement the program. The work group will also help Ecology staff evaluate how the new rule is working.

Q: Will there be an opportunity for applicants to receive additional funding outside the regular cycle now that an offset cycle has been eliminated?

Rule amendments added a provision to disburse the entire overall allocation at the onset of each biennium rather than setting aside money for a competitive offset or secondary cycle. It is possible, however, that additional funding could become available. There are several scenarios in which this could happen, such as a legislative proviso or a biennium where money remains after attempts to disburse the entire overall allocation. If additional funding becomes available (other than money that qualifies as “unspent”), Ecology expects to treat it as a subsequent funding opportunity and will announce it accordingly.