

**WSR 12-08-002**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed March 21, 2012, 1:27 p.m., effective April 21, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-450-0015 and 388-470-0055 to eliminate reference to general assistance or the disability lifeline and include reference to aged, blind, or disabled assistance program and pregnant women program established November 1, 2011, through an emergency rule filed February 9, 2012 (WSR 12-05-033) extending emergency rule filed October 12, 2011, under WSR 11-21-049.

These amendments are necessary to comply with the changes outlined in ESHB 2082, Laws of 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0015 and 388-470-0055.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.04.770, 74.08.043, 74.08.335.

Other Authority: ESHB 2082, chapter 36, Laws of 2011 1st sp. sess.

Adopted under notice filed as WSR 12-02-083 on January 4, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: March 16, 2012.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-21-025, filed 10/11/11, effective 10/29/11)

**WAC 388-450-0015 What types of income are not used by the department to figure out my benefits?** This section applies to cash assistance, children's, family, or pregnancy medical, and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal income tax refunds and earned income tax credit (EITC) payments in the month received;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

(f) Energy assistance payments;

(g) Educational assistance we do not count under WAC 388-450-0035;

(h) Native American benefits and payments we do not count under WAC 388-450-0040;

(i) Income from employment and training programs we do not count under WAC 388-450-0045;

(j) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, ((GA)) aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and SSI;

(k) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

(l) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

(m) Payments we are directly told to exclude as income under state or federal law.

(n) **For cash and Basic Food:** Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household;

(o) **For Basic Food only:** The total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf.

(p) **For medical assistance:** Only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

AMENDATORY SECTION (Amending WSR 11-21-025, filed 10/11/11, effective 10/29/11)

**WAC 388-470-0055 How do my resources count toward the resource limit for Basic Food?** (1) For Basic Food, if your assistance unit (AU) is not categorically eligible (CE) under WAC 388-414-0001, we count the following resources toward your AU's resource limit to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources. These are resources that are easily changed into cash. Some examples of liquid resources are:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;
- (iv) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
- (v) Available trusts or trust accounts; or
- (vi) Lump sum payments. A lump sum payment is money owed to you from a past period of time that you get but do not expect to get on a continuing basis.

(b) Nonliquid resources, personal property, and real property not specifically excluded in subsection (2) below.

(c) Vehicles as described in WAC 388-470-0075.

(d) The resources of a sponsor as described in WAC 388-470-0060.

(2) The following resources do not count toward your resource limit:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

- (i) Employment;
- (ii) Training for future employment;
- (iii) Illness; or
- (iv) Natural disaster or casualty.

(c) Property that:

- (i) You are making a good faith effort to sell;
- (ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis;

(iv) Is essential to the employment or self-employment of a household member. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing; or

(v) Is essential for the maintenance or use of an income-producing vehicle; or

(vi) Has an equity value equal to or less than half of the resource limit as described in WAC 388-470-0005.

(d) Household goods

(e) Personal effects;

(f) Life insurance policies, including policies with cash surrender value (CSV);

(g) One burial plot per household member;

(h) One funeral agreement per household member, up to fifteen hundred dollars;

(i) Pension plans or retirement funds not specifically counted in subsection (1) above;

(j) Sales contracts, if the contract is producing income consistent with its fair market value;

(k) Government payments issued for the restoration of a home damaged in a disaster;

(l) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs;

(m) Nonliquid resources that have a lien placed against them;

(n) Earned Income Tax Credits (EITC):

(i) For twelve months, if you were a Basic Food recipient when you got the EITC and you remain on Basic Food for all twelve months; or

(ii) The month you get it and the month after, if you were not getting Basic Food when you got the EITC.

(o) Energy assistance payments or allowances;

(p) The resources of a household member who gets SSI, TANF/SFA, ABD assistance, or ((GA)) PWA benefits;

(q) Retirement funds or accounts that are tax exempt under the Internal Revenue Code;

(r) Education funds or accounts in a tuition program under section 529 or 530 of the Internal Revenue Code;

(s) Resources specifically excluded by federal law; and

(t) Federal income tax refunds for twelve months whether or not you were receiving Basic Food assistance at the time you got the refund.

(3) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit. **Exception:** Federal tax refunds are not counted for twelve months even when mixed with countable resources.

(4) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

#### WSR 12-08-004

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Adult Services Administration)

[Filed March 22, 2012, 8:32 a.m., effective April 22, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending and adding sections to these rules as a result of legislative activity during session and to be consistent with newly passed state law, ESSB 5708 Long-term care services.

The department added new WAC 388-78A-2032 and 388-78A-2035.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2020 and 388-78A-2030.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Adopted under notice filed as WSR 12-01-113 on December 21, 2011.

Changes Other than Editing from Proposed to Adopted Version: Changes are shown with the new language underlined and deleted text lined through.

**WAC 388-78A-2020 Definitions.**

"Wellness program" means an educational program provided by the boarding home. It is a proactive and preventative approach to assist residents and nonresident individuals in achieving optimal levels of health, social, and emotional functioning. A wellness program does not include medical care or interventions.

**WAC 388-78A-2030 Boarding home license required.**

(1) A boarding home license is required to operate or maintain a boarding home as defined in chapter 18.20 RCW and this chapter.

(2) A boarding home license is required when any person other than a family member provides housing, one or more basic services, and one or more of the following:

(a) Assumes general responsibility for the safety and well-being of the residents except as provided in WAC 388-78A-2032;

(b) Provides domiciliary care which includes:

(i) Providing assistance with activities of daily living, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2190;

(ii) Providing health support services, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2200; or

(iii) Providing intermittent nursing services, either directly or indirectly as described in WAC 388-78A-2310.

(3) A boarding home license is required if the provision of items and services to a nonresident individual requires ongoing evaluation or assessment, ongoing care and service planning, ongoing intervention or ongoing monitoring of a nonresident individual's well-being as specified in this chapter.

(4) A boarding home may provide adult day services as defined in WAC 388-78A-2020 and as specified in WAC 388-78A-2360 to nonresident individuals, including independent living residents, on the boarding home premises.

**NEW SECTION**

**WAC 388-78A-2032 Boarding home license not required.**

(2) A boarding home license is not required for one or more of the following items and services that may, upon request of the nonresident individual, be provided to a nonresident individual:

(a) Emergency assistance provided on an intermittent or nonroutine basis;

(b) Systems including technology-based monitoring devices employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services;

(c) Scheduled and nonscheduled blood pressure checks;

(d) Nursing assessment services to determine whether referral to an outside health care provider is recommended;

(e) Making and reminding of health care appointments;

(f) Preadmission assessment, for the purposes of transitioning to a licensed care setting;

(g) Medication assistance which may include reminding or coaching the nonresident individual, opening the nonresident individual's [individual's] medication container, using an enabler, and handing prefilled insulin syringes to the nonresident individual;

(h) Prefilling insulin syringes which must be performed by a nurse licensed under chapter 18.79 RCW;

(i) Assessment to determine cause of a fall;

(j) Nutrition management and education services;

(k) Dental services;

(l) Wellness programs as defined in WAC 388-78A-2020; or

(m) Services customarily provided under the landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
WAC 388-78A-2032 Requested the term "wellness program" be defined.	"Wellness program" definition is added to WAC 388-78A-2020, and referred to under WAC 388-78A-2032.
Requested clarification regarding the boarding home's ability to provide adult day services to nonresident individuals, including independent living residents, on the boarding home premises.	The department added language to clarify that, for the purposes of adult day services, nonresident individuals includes independent living residents in WAC 388-78A-2030.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 2, Repealed 0.

Date Adopted: March 20, 2012.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-09 issue of the Register.

**WSR 12-08-009**  
**PERMANENT RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed March 23, 2012, 8:22 a.m., effective April 23, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-326 WAC by prohibiting the production of Brassica napus var. biennis - winter type canola or rapeseed, in Brassica production district 2. In addition it also modifies the question format of some section headings.

Citation of Existing Rules Affected by this Order: Amending WAC 16-326-010, 16-326-020, 16-326-030, 16-326-040, and 16-326-050.

Statutory Authority for Adoption: RCW 15.51.050.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-04-094 on February 1, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 23, 2012.

Dan Newhouse  
 Director

AMENDATORY SECTION (Amending WSR 08-04-005, filed 1/24/08, effective 2/24/08)

**WAC 16-326-010 (~~What are the~~) Boundaries of the (~~regulated areas, also called the~~) Brassica seed production districts(?)**, (1) For purposes of descriptions of boundaries, any highway designation is measured from the center line of the highway, as determined by Washington department of transportation maps.

(2) *Brassica* seed production district 1 includes areas of five counties as follows:

(a) In Whatcom County, the area is bounded as follows: From two miles west of the Interstate 5 intersection with the Canadian border, a southward line extends parallel to, and two miles west of, Interstate 5 to its intersection with State Highway 542. The line then extends generally northeastward along State Highway 542 to the city limits of Kendall. At Kendall, the line continues due north to the Canadian border. The line then extends westward along the Canadian border to its point of origin.

(b) All of mainland Skagit County is included. On Fidalgo Island, the area on its eastern side bounded by a line three miles west of and parallel to the Swinomish Channel,

extending from Padilla Bay to (~~Smilk~~) Similk Bay, is included. All of Samish Island is included. The remaining portion of Fidalgo Island and all other islands in Skagit County are excluded from *Brassica* seed production district 1.

(c) In Snohomish County, the area is bounded as follows: From Puget Sound east along State Highway 531 (also known as Lakewood Rd.), the line extends through Interstate 5 Exit #206 (the Smokey Point exit) to the intersection of State Highway 531 and State Highway 9 in Arlington. From there the line extends generally northward along State Highway 9 to the county line, and then west along the county line to Puget Sound.

(d) In Island County, all of Camano Island and the portion of Whidbey Island north of an east-west line extending through Greenbank.

(e) In Clallam County, the area is bounded as follows: From the westernmost city limit of Port Angeles, a line extends due south to a location five miles south of State Highway 101. From there, the boundary continues east along a line parallel to, and five miles south of, State Highway 101 to the Clallam/Jefferson County line. The boundary turns north along the Clallam/Jefferson County line until it reaches the Straits of Juan de Fuca and then continues along the Straits to its point of origin.

(3) *Brassica* seed production district 2 is divided into two subdistricts, designated district 2A and district 2B. For purposes of descriptions of boundaries relating to *Brassica* seed production district 2, all references to canals pertain to Columbia Basin Irrigation Project structures. *Brassica* seed production district 2 includes portions of Grant and Adams counties and is bounded as follows:

(a) Beginning at the Grant/Douglas County boundary, the line proceeds continuously due east along existing portions of Road 13NW to its intersection with the West Canal. The line follows the West Canal in a northeasterly direction through portions of the city of Ephrata, then around the northern end of Soap Lake and easterly to the intersection of the West Canal and the East Low Canal. The line follows the East Low Canal in a southerly, then easterly direction to its intersection with State Highway 26. Then it turns west and follows State Highway 26 to the Columbia River. The line continues due west until it intersects the county boundary in the Columbia River. The line then turns north and follows the county boundary to the point of origin.

(b) *Brassica* seed production district 2A is the northwestern portion of *Brassica* seed production district 2. It is bounded on the north and west by the boundaries of *Brassica* seed production district 2. Its eastern boundary line commences at the intersection of Rd. 13 NW and K NW. The line extends south along K NW to its intersection with the I-90 North Frontage Rd. The line extends west along North Frontage Rd. to State Highway 281N, and along State Highway 281N to Q SW. It extends north along Q SW to 5 NW and west along 5 NW to the western boundary of *Brassica* seed production district 2.

(c) *Brassica* seed production district 2B consists of the portion of *Brassica* seed production district 2 that is not encompassed in *Brassica* seed production district 2A.

AMENDATORY SECTION (Amending WSR 08-04-005, filed 1/24/08, effective 2/24/08)

**WAC 16-326-020 ((What are the)) General requirements for growing, transporting or processing *Brassica* seed within any *Brassica* seed production district((?)).** (1) Growing, transportation or processing of *Brassica* seed is regulated under provisions of this section only within the borders of a *Brassica* seed production district, as described in WAC 16-326-010.

(2) No *Brassica* seed crop grown for any purpose is regulated as part of a *Brassica* seed production district, if it is harvested or mowed before flowering or otherwise handled so that pollen production is prevented. Note that other regulatory requirements, such as the provisions of the crucifer seed quarantine rule found in WAC 16-301-490 through 16-301-580, are applicable.

(3) *Brassica* seed crops, including seed grown for planting and seed grown for crushing or extraction for fuel or oil, may only be grown in locations that have been identified in a timely manner through the pinning process.

(a) Pinning for *Brassica* seed production in *Brassica* seed production district 1 will be held at least once a year at the WSU Northwestern Washington Research and Extension Center, 16650 State Route 536, Mt. Vernon, Washington 98237. Contact the WSU Mount Vernon Skagit County Extension office at 360-428-4270 for information about pinning events for district 1.

(b) Pinning for *Brassica* seed production district 2 will be held at least once a year at the WSU Grant/Adams County Extension office, 35 C St. N.W., Ephrata, Washington 98823. Contact the WSU Grant County Extension office at 509-754-2011, ext. 413 for information about pinning events for district 2.

(c) Dates, times, locations and other information about pinning events will vary.

(d) Pinning for *Brassica* seed crops produced for planting must be performed by an authorized representative of the contractor for the crop. If the seed produced for planting is not being produced for a contractor, or if the contractor waives the pinning privilege, then the grower is responsible for pinning the location of the crop.

(e) Pinning for *Brassica* seed crops produced for fuel or oil must be performed by an authorized representative of the grower.

(4) Transportation and handling of *Brassica* seed within any *Brassica* seed production district must be performed in a way to prevent inadvertent spread of seed or production of volunteer plants. All shipments of viable seed must be in covered containers from which the seed cannot leak.

(5) Volunteer *Brassica* plants must be controlled as soon as feasible, but always prior to pollen production or blossoming.

AMENDATORY SECTION (Amending WSR 08-04-005, filed 1/24/08, effective 2/24/08)

**WAC 16-326-030 ((What are the)) Requirements to grow *Brassica* seed in *Brassica* seed production district 1((?)).** (1) *Brassica* seed crops intended for oil or fuel production and/or associated by-products, forage, or cover crops

may only be planted or grown in compliance with a *Brassica* production agreement, as described in RCW 15.51.040.

(2) *Brassica* seed crops of species generally known as rapeseed or canola((;)) that are intended for producing seed for planting, may only be planted or grown under conditions of a *Brassica* production agreement, as described in RCW 15.51.040.

AMENDATORY SECTION (Amending WSR 08-04-005, filed 1/24/08, effective 2/24/08)

**WAC 16-326-040 ((What are the)) Requirements for growing *Brassica* seed in all of *Brassica* seed production district 2((, which is composed of two subdistricts designated districts 2A and 2B?)).** (1) *Brassica napus* var. *bien-nis*, winter type canola or rapeseed, may not be planted in *Brassica* seed production district 2.

(2) A minimum isolation distance of two miles must be preserved from the nearest edge of any *Brassica* seed crop to any other *Brassica* seed crop. The location pinned first has priority and establishes a basis for the isolation distance for other *Brassica* seed crops. Any person subsequently pinning any other location for a *Brassica* seed crop is responsible for maintaining the two-mile minimum isolation distance. Exceptions to this two-mile minimum distance can occur only in the following three situations:

(a) An exception that allows an isolation distance of less than two miles will occur when a written agreement between two or more contractors and/or growers complies with the conditions specified in subsection ((2)) (3) of this section. All locations to be planted under such a written agreement between the parties must be pinned.

(b) An exception to the minimum isolation distance may be allowed under conditions of a *Brassica* production agreement, as described in RCW 15.51.040. All locations to be planted under such a *Brassica* production agreement must be pinned.

(c) *Brassica* seed crops grown for forage or cover crops may be planted or grown within the two-mile minimum isolation distance, if the forage or cover crop is not allowed to bloom or to produce pollen from April 1 through August 15 of any year. Forage or cover crops that comply with requirements of this subsection are not required to be pinned.

((2)) (3) Written agreements between parties to voluntarily allow planting of locations, any portion of which are within the minimum isolation distance of two miles (as referenced in subsection ((4)) (2)(a) of this section), must comply with all of the following conditions:

(a) The agreement must be signed by authorized representatives of the contractors for the *Brassica* seed crops grown for planting, and by the growers of *Brassica* seed crops grown for fuel or oil. If one or more of the affected *Brassica* seed crops for planting is not being produced under contract, or if the contractor waives signature authority for this agreement, the grower of the crop must enter into the agreement instead.

(b) The agreement must, at a minimum, specify:

- The date of the agreement;
- The approximate dates during which the affected crops will be in the field;

- The name, business name (if applicable), telephone number and address of each affected grower;
- The location and acreage of each planting affected by the agreement;
- The contractor (if applicable) for each location; and
- *Brassica* seed crop species and variety for each location.

(c) These written agreements cannot extend beyond one harvest per agreement.

(d) Copies of the written agreement must be retained by each person who signs it for a minimum of three years.

((3)) (4) Pinning for *Brassica* seed crops intended to produce seed for planting starts each year on the first business day **after** January 31 for summer annual species or varieties (such as mizuna and Chinese cabbage) and on the first business day **after** May 31 for overwintered species or varieties (such as cabbage, broccoli, and turnip). Pinning for *Brassica* seed crops to produce seed intended for oil or fuel starts the first business day **after** June 30.

AMENDATORY SECTION (Amending WSR 08-04-005, filed 1/24/08, effective 2/24/08)

**WAC 16-326-050** (~~What are the~~) **Differences between restrictions on *Brassica* seed production in *Brassica* seed production districts 2A and 2B**(?), WAC 16-326-040 establishes restrictions that apply throughout all of *Brassica* seed production district 2 (including the two subdistricts designated districts 2A and 2B in WAC 16-326-010(3)), regarding the production of *Brassica* seed crops. Additional specific restrictions apply to district 2A. The differences between the subdistricts are:

(1) *Brassica* seed production in *Brassica* seed production district 2A is limited primarily to production of any species of *Brassica* seed for planting, except for *Brassica napus* var. *biennis*, winter type canola or rapeseed, as disallowed in WAC 16-326-040(1). Within *Brassica* seed production district 2A, *Brassica* seed crops intended for oil or fuel production may only be planted or grown under conditions of a *Brassica* production agreement, as described in RCW 15.51.040.

(2) *Brassica* seed production in *Brassica* seed production district 2B includes production of any species of *Brassica* seed for planting, oil or fuel production, except for *Brassica napus* var. *biennis*, winter type canola or rapeseed, as disallowed in WAC 16-326-040(1).

### WSR 12-08-018

#### PERMANENT RULES

#### EASTERN WASHINGTON UNIVERSITY

[Filed March 26, 2012, 10:53 a.m., effective April 26, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Repealing chapter 172-136 WAC, University facilities. These rules are obsolete. The provisions of these rules have been or are being superseded by other university rules and policies.

Citation of Existing Rules Affected by this Order: Repealing chapter 172-136 WAC.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 12-04-086 on January 31, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 13; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 23, 2012.

Trent Lutey

University Policy Administrator

### WSR 12-08-019

#### PERMANENT RULES

#### EASTERN WASHINGTON UNIVERSITY

[Filed March 26, 2012, 10:54 a.m., effective April 26, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These rules revise regulations related to the use of tobacco and related products in or on property that is owned or leased by Eastern Washington University. These rules constitute a significant revision that is more easily implemented by repealing the existing section and adopting a new section. These rule changes are needed to better support and comply with the requirements of chapter 70.160 RCW, Smoking in public places.

Citation of Existing Rules Affected by this Order: Repealing WAC 172-122-300.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 12-04-085 on January 31, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 0, Repealed 1; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 23, 2012.

Trent Lutey  
University Policy Administrator

## Chapter 172-122 WAC

### GENERAL CONDUCT CODE

#### NEW SECTION

**WAC 172-122-310 Use of tobacco, electronic cigarettes, and related products.** Eastern Washington University is committed to providing a safe and healthy environment for its employees, students and visitors. In light of the associated health risks, the use of tobacco, electronic cigarettes, and related products in or on university owned or leased property is restricted as described herein.

(1) The use of tobacco, electronic cigarettes, and related products is prohibited:

(a) within any building or vehicle owned or leased by EWU, to include residence halls and university apartments; and

(b) within twenty-five feet of entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by EWU.

(2) For the purposes of this section, "tobacco, electronic cigarettes, and related products" includes any cigarette, cigar, pipe, bidi, clove cigarette, e-cigarette/cigar/pipe, waterpipe (hookah) and smokeless or spit tobacco, dissolvable tobacco, snuff or snoose.

(3) Distribution or sale of tobacco, electronic cigarettes, or related products in or on EWU owned or leased property is prohibited. Advertising or sponsorship of tobacco, electronic cigarettes or related products is prohibited on EWU property or at University-affiliated events, including the use of brand or corporate names, trademarks, logos, symbols or mottos. EWU will neither solicit nor accept any grant or gift from a manufacturer, distributor or retailer whose principal business is tobacco, electronic cigarettes, or related products.

(4) Any person intentionally violating this section may be subject to a civil fine of up to one hundred dollars. Local law enforcement agencies may enforce this section by issuing a notice of infraction, assessed in the same manner as traffic infractions, as described under chapter 70.160 RCW. Any student, staff or faculty member who violates this section may also be subject to disciplinary action by the university.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 172-122-300 Smoking regulations.

## WSR 12-08-033

### PERMANENT RULES

### DEPARTMENT OF FISH AND WILDLIFE

[Order 12-28—Filed March 29, 2012, 11:17 a.m., effective April 29, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this proposal is to revise the date that fishing for bottomfish is restricted seaward of twenty fathoms in Catch Record Card Areas 3 (La Push) and 4 (Neah Bay); allow rockfish retention seaward of thirty fathoms from March 15 through June 15 in Catch Record Card Area 2 (Westport); and restrict lingcod fishing in deep water portions of Catch Record Card Areas 1 (Ilwaco/Chinook) and 2 (Westport).

Depth restrictions and area closures are needed to ensure that numbers of yelloweye and canary rockfish taken incidentally during recreational halibut and bottomfish fisheries do not exceed federal harvest guidelines. Yelloweye and canary rockfish are considered overfished species and are managed under rebuilding plans by the Pacific Fishery Management Council (PFMC). These changes are necessary to conform state regulations to federal regulations. The federal regulations are listed in Code of Federal Regulations (C.F.R.) Title 50, Part 660.

Reasons Supporting Proposal: This rule change conforms state regulations to regulations adopted by PFMC and implemented by the National Marine Fisheries Service. Input from Washington recreational fishermen was gathered during the PFMC public process and during public meetings sponsored by the Washington department of fish and wildlife.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-250 and 220-56-255.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Other Authority: C.F.R. Title 50, Part 660.

Adopted under notice filed as WSR 12-03-053 on January 11, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 29, 2012.

Philip Anderson  
Director

Permanent

AMENDATORY SECTION (Amending Order 11-141, filed 7/6/11, effective 8/6/11)

**WAC 220-56-250 Lingcod—Areas and seasons.** It is unlawful to take, fish for, or possess lingcod for personal use except during the following seasons and areas:

(1) Coastal area:

(a) Catch Record Card Areas 1 through 3: The Saturday closest to March 15, through the Saturday closest to October 15;

(b) Catch Record Card Area 4 west of the Bonilla-Tatoosh line: April 16 through October 15, or the Saturday closest to October 15 if that Saturday comes before October 15, whichever is earlier; and

(c) Catch Record Card Area 4 east of the Bonilla-Tatoosh line: April 16 through October 15.

(d) It is unlawful to fish for, retain, or possess lingcod in Catch Record Card Area 1 seaward of a line extending from 46°38.17'N. lat., 124°21.00'W. long. to 46°25.00'N. lat., 124°21.00'W. long. year-round.

(e) It is unlawful to fish for, retain, or possess lingcod in Catch Record Card Area 2 seaward of a line extending from 47°31.70'N. lat., 124°45.00'W. long. south to 46°38.17'N. lat., 124°30.00'W. long. year-round, except that lingcod may be taken, retained and possessed seaward of the line on days open during the primary halibut season.

(2) Catch Record Card Areas 5 through 13: May 1 through June 15 by angling, and May 21 through June 15 by spear fishing.

AMENDATORY SECTION (Amending Order 10-199, filed 8/4/10, effective 9/4/10)

**WAC 220-56-255 Halibut—Seasons—Daily and possession limits.** (1) It is unlawful to fish for or possess halibut taken for personal use except from the areas or in excess of the amounts provided for in this section:

(a) Catch Record Card Area 1: Open on the first Thursday in May or May 1, if May 1 is a Friday or Saturday, through the third Saturday in July, from 12:01 a.m. each Thursday through 11:59 p.m. each Saturday. The fishery will reopen on the first Friday in August through September 30, from 12:01 a.m. each Friday through 11:59 p.m. each Sunday. By-catch restriction: It is unlawful during any vessel trip to bring into port or land bottomfish, except sablefish or Pacific cod, if the vessel has brought halibut into port or landed halibut.

(b) Catch Record Card Area 2:

(i) The northern near shore fishery takes place in those waters from 47°31.70'N. lat. south to 46°58.00'N. lat. and east of a boundary line approximating the 30 fathom depth contour as defined by the following coordinates:

47°31.70'N. lat., 124°37.03'W. long.

47°25.67'N. lat., 124°34.79'W. long.

47°12.82'N. lat., 124°29.12'W. long.

46°58.00'N. lat., 124°24.24'W. long.

Open on the first Sunday in May through September 30 on days that all other waters in Area 2 are open, as specified in (b)(ii) of this subsection, and from 12:01 a.m. each Thursday through 11:59 p.m. each Sunday.

(ii) All other waters in Area 2 - Open on the first Sunday in May through the third Sunday in May from 12:01 a.m. through 11:59 p.m. each Sunday, and from 12:01 a.m. through 11:59 p.m. each Tuesday. Beginning on the third Sunday in May through September 30, the halibut fishery will be open from 12:01 a.m. through 11:59 p.m. each Sunday.

(iii) From March 15 through June 15, it is unlawful to fish for or possess bottomfish, except rockfish, seaward of a line approximating the 30-fathom depth contour as defined by the coordinates below. However, a person may fish for and retain sablefish and Pacific cod from May 1 through June 15 and retain lingcod on days open during the primary halibut season as described in (b)(ii) of this subsection, seaward of a line approximating the 30-fathom depth contour as defined by the coordinates below:

47°31.70'N. lat., 124°37.03'W. long.

47°25.67'N. lat., 124°34.79'W. long.

47°12.82'N. lat., 124°29.12'W. long.

46°52.94'N. lat., 124°22.58'W. long.

46°44.18'N. lat., 124°18.00'W. long.

46°38.17'N. lat., 124°15.88'W. long.

(c) Catch Record Card Areas 3 and 4 - Open the first Thursday between May 9 and May 15 of each year through September 30, from 12:01 a.m. through 11:59 p.m. each Thursday, and from 12:01 a.m. through 11:59 p.m. each Saturday. The following area southwest of Cape Flattery is closed to halibut fishing at all times:

Those waters within an eastward-facing C-shaped closed area defined as: Beginning at 48°18'N. lat., 125°18'W. long.; thence to 48°18'N. lat., 124°59'W. long.; thence to 48°11'N. lat., 124°59'W. long.; thence to 48°11'N. lat., 125°11'W. long.; thence to 48°04'N. lat., 125°11'W. long.; thence to 48°04'N. lat., 124°59'W. long.; thence to 48°00'N. lat., 124°59'W. long.; thence to 48°00'N. lat., 125°18'W. long.; thence to the point of origin.

It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates, from (~~May 21~~) June 1 through September 30, on days and times closed to halibut fishing:

48°23.9'N. lat., 124°44.2'W. long.

48°23.6'N. lat., 124°44.9'W. long.

48°18.6'N. lat., 124°43.6'W. long.

48°18.6'N. lat., 124°48.2'W. long.

48°10.0'N. lat., 124°48.8'W. long.

48°02.4'N. lat., 124°49.3'W. long.

47°37.6'N. lat., 124°34.3'W. long.

47°31.7'N. lat., 124°32.4'W. long.

(d) Catch Record Card Area 5 - Open the Thursday before Memorial Day through September 30, except closed to fishing for halibut beginning at 12:01 a.m. each Tuesday through 11:59 p.m. each Wednesday.

(e) Catch Record Card Areas 6 through 13 - Open May 1 through September 30, except closed to fishing for halibut beginning at 12:01 a.m. each Tuesday through 11:59 p.m. each Wednesday.



(2) Daily limit is one halibut taken from state or offshore waters. This does not include Canadian waters; see WAC 220-56-156 for limits on Canadian-origin halibut.

(3) The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit. See WAC 220-56-156 for rules on Canadian-origin halibut possession.

(4) A violation of this section is punishable under RCW 77.15.370 or 77.15.380, depending on the violation.

**WSR 12-08-034**  
**PERMANENT RULES**  
**OLYMPIC COLLEGE**

[Filed March 29, 2012, 1:00 p.m., effective April 29, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This is an update of the current policy to show adherence to the Genetic Information Nondiscrimination Act of 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 132C-10-160.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 12-05-008 on February 3, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 29, 2012.

Thomas Oliver  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-19-026, filed 9/9/10, effective 10/10/10)

**WAC 132C-10-160 Nondiscrimination policy.** (1) Intent. The Olympic College board of trustees herein affirms its policy of equal opportunity to all individuals and all the communities we serve. Olympic College is committed to the principle of equal opportunity in all matters relating to employment, college-sponsored activities, and education programs and will comply with all applicable laws prohibiting discrimination including Titles VII and IX of the Civil Rights Act of 1964, and amendments; the Age Discrimination in Employment Act of 1967; section 504 of the Rehabilitation Act of 1974; the Americans with Disabilities Act of

1990; the Genetic Information Nondiscrimination Act of 2008; and the Washington state laws against discrimination, chapter 49.60 RCW.

(2) Policy. Olympic College is committed to the principle of equal opportunity in education and employment. Harassment and/or discrimination directed toward any individual or group on the basis of race, creed, color, national origin, sex, genetic information, honorably discharged veteran or military status, age, religious preference, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, status as a disabled or Vietnam-era veteran, or political opinions or affiliations, or any other population designated by statute is a violation of the mission and purpose of Olympic College and will not be tolerated. The college is committed to preventing and stopping discrimination, including harassment, on any of these unlawful bases, and any associated retaliatory behavior. All employees and students shall be allowed to work and learn in an environment free from discrimination.

(a) This policy is based on the principle that all forms of harassment and/or discrimination are unacceptable and will be dealt with promptly and effectively. Students, faculty or staff who are determined to have violated this policy (following investigatory proceedings) are subject to disciplinary action up to and including termination of employment and permanent dismissal (students).

(b) Applicants for admission or employment or any employees, students, or participants in college activities or programs who believe that they have been discriminated against may pursue an institutional complaint and/or may pursue other remedies provided by law.

(c) Administrators, supervisors and faculty members shall assist in ensuring that no retaliation occurs against persons who make complaints, persons who are complained against or persons who are involved in the investigation of complaints.

(3) Responsibility.

(a) The president of the college, and all administrative employees shall have ultimate responsibility for overseeing compliance with this policy at his or her respective unit of the college.

(b) In addition, each vice-president, executive officer, administrative officer, faculty member or other person with supervisory responsibility shall be required to report any complaint of discrimination, sexual harassment, or any harassment that violates this policy.

(c) All members of the college community are required to cooperate in any investigation of the discrimination/harassment complaint.

(4) Complaint procedure. Persons who believe that they have been the subject of unlawful discrimination or harassment are encouraged to bring such issues to the attention of their supervisor, instructor, or human resource services, or follow the established complaint procedures.

**WSR 12-08-041**

**PERMANENT RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed March 30, 2012, 11:49 a.m., effective April 30, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order adopts:

(1) The 2012 edition of the National Institute of Standards and Technology (NIST) Handbook 130 (Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality);

(2) Modifications to NIST Handbook 130 that address current industry needs and standards, including additional modifications with regard to gasoline-ethanol blends; and

(3) Amendments that increase rule clarity and readability.

Citation of Existing Rules Affected by this Order: Amending WAC 16-662-105, 16-662-115, and 16-662-125.

Statutory Authority for Adoption: RCW 19.94.190, 19.112.020, 19.112.140, and chapter 34.05 RCW.

Adopted under notice filed as WSR 12-05-118 on February 22, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: March 30, 2012.

Dan Newhouse  
Director

AMENDATORY SECTION (Amending WSR 12-02-021, filed 12/28/11, effective 1/28/12)

**WAC 16-662-105 Standards adopted by the Washington state department of agriculture (WSDA).** Except as otherwise modified in this chapter, the WSDA adopts the following national standards:

National standard for:	Contained in the:
(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment	2011 Edition of <i>NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices</i>

National standard for:	Contained in the:
(2) The procedures for checking the accuracy of the net contents of packaged goods	2011 Edition of <i>NIST Handbook 133 - Checking the Net Contents of Packaged Goods</i>
(3) The requirements for packaging and labeling, method of sale of commodities, examination procedures for price verification, and engine fuels, petroleum products and automotive lubricants	<del>((2009))</del> 2012 Edition of <i>NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality.</i> <del>((Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1 Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation.))</del> Specifically:
(a) Weights and measures requirements for all food and nonfood commodities in package form	<i>Uniform Packaging and Labeling Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , <del>((2009))</del> 2012 Edition. <del>((Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation.))</del>
(b) Weights and measures requirements for the method of sale of food and nonfood commodities	<i>Uniform Regulation for the Method of Sale of Commodities</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , <del>((2009))</del> 2012 Edition. <del>((Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation.))</del>

National standard for:	Contained in the:
(c) Weights and measures requirements for price verification	<i>Examination Procedure for Price Verification</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2009)) 2012 Edition. ((Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of <i>NIST Handbook 130</i> to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation))
(d) Definitions ((and requirements for)); standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks and dispenser filters; condemned product; product registration; and test methods and reproducibility limits	<i>Uniform Engine Fuels and Automotive Lubricants Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2009)) 2012 Edition. ((Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of <i>NIST Handbook 130</i> to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation))

AMENDATORY SECTION (Amending WSR 10-18-088, filed 9/1/10, effective 10/2/10)

**WAC 16-662-115** ((Does the WSDA modify)) **Modifications to NIST Handbook 130** (?). The WSDA adopts the following modifications to the listed sections of the *Uniform Regulation for the Method of Sale of Commodities* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(b):

Modified Section:	Modification:
(1) Section 2.20.1. ((Gasoline-Oxygenate Blends)) <u>Method of Retail Sale</u>	Modify section 2.20.1. Method of Retail Sale. Type of Oxygenate must be Disclosed, to read: "All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol." (Example: E85 Ethanol.)"

Modified Section:	Modification:
(2) <u>Section 2.20.2. Documentation for Dispenser Labeling Purposes</u>	Modify section 2.20.2. Documentation for Dispenser Labeling Purposes, to read: "At the time of delivery of the fuel, the retailer shall be provided, on an invoice, bill of lading, shipping paper, or other documentation a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol."
(3) Section 2.23. Animal Bedding	Add a new subsection which reads: <del>((2.23.1.))</del> <u>2.23.2. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products.</u> As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof."
<del>((3))</del> (4) Section 2.31.2. Labeling of Retail Dispensers	Add a new subsection which reads: <u>2.31.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel.</u> Each retail dispenser of biodiesel or biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel." Add a new subsection which reads: <u>2.31.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel.</u> Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel Blend)."
<del>((4))</del> (5) Section 2.31.4. Exemption	Delete section 2.31.4.

The WSDA adopts the following modifications to the listed sections of the Uniform Engine Fuels and Automotive Lubricants Regulation requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(d):

Modified Section:	Modification:
(1) <u>Section 2.1.3. Gasoline-Ethanol Blends</u>	<p>Modify section 2.1.3. to read: "When gasoline is blended with 1 to 10 volume percent ethanol, the ethanol shall meet the requirements of ASTM D4806 and either:</p> <p>(a) <u>The base gasoline used for blending with ethanol shall meet the requirements of ASTM D4814; except that the base gasoline shall meet the minimum temperature for a Vapor-Liquid Ratio of 20 for the applicable vapor lock protection class as follows:</u></p> <ul style="list-style-type: none"> <li>(1) <u>Class 1 shall be 60°C (140°F)</u></li> <li>(2) <u>Class 2 shall be 56°C (133°F)</u></li> <li>(3) <u>Class 3 shall be 51°C (124°F)</u></li> <li>(4) <u>Class 4 shall be 47°C (116°F)</u></li> <li>(5) <u>Class 5 shall be 41°C (105°F)</u></li> </ul> <p>or</p> <p>(b) <u>The blend shall meet the requirements of ASTM D4814."</u></p> <p>Add a new subsection to read: <u>"2.1.3.1. Maximum Vapor Pressure. The maximum vapor pressure of a gasoline-ethanol blend shall not exceed ASTM D4814 limits by more than 1.0 psi for:</u></p> <ul style="list-style-type: none"> <li>(a) <u>Only 9 to 10 volume percent ethanol blends from June 1 through September 15.</u></li> <li>(b) <u>All blends of 1 to 10 volume percent ethanol from September 16 through May 31."</u></li> </ul>
(2) Section 2.12. Motor Oil	Delete section 2.12.

Modified Section:	Modification:
(( <del>2</del> )) (3) Section 2.13. Products for Use in Lubricating Manual Transmissions, Gears, or Axles	Delete section 2.13.
(( <del>3</del> )) (4) Section 2.14. Products for Use in Lubricating Automatic Transmissions	Delete section 2.14.
(( <del>4</del> )) (5) Section 3.2.6. Method of Retail Sale( <del>(Type of Oxygenate must be Disclosed)</del> )	Modify section 3.2.6. to read: " <u>Type of Oxygenate must be Disclosed.</u> All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol)."
(( <del>5</del> )) (6) Section 3.2.7. Documentation for Dispenser Labeling Purposes	Modify section 3.2.7. to read: "The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol."
(( <del>6</del> )) (7) Section 3.8.2. Labeling Requirements	Add a new subsection which reads: "(c) Each retail dispenser of greater than ten percent fuel ethanol by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol)."
(( <del>7</del> )) (8) Section 3.9.2. Retail Dispenser Labeling	Add a new subsection which reads: "(c) Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value maximum volume percent and ending with the word "methanol." (Example: M85 Methanol)."
(( <del>8</del> )) (9) Section 3.13. Oil	Delete section 3.13.
(( <del>9</del> )) (10) Section 3.14. Automatic Transmission Fluid	Delete section 3.14.
(( <del>40</del> )) (11) Section 3.15.2. Labeling of Retail Dispensers	Add a new subsection which reads: "3.15.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel.""

Modified Section:	Modification:
	Add a new subsection which reads: "3.15.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend)."
(((4))) (12) Section 3.15.4. Exemption	Delete section 3.15.4.
(((12)) Section 7. Test Methods and Reproducibility Limits	Add a new subsection which reads: 7.3. Biodiesel Blends. The test method for determining the percent biodiesel in a blend of biodiesel and diesel fuel shall be EN 14078 "Liquid petroleum products – Determination of fatty methyl esters (FAME) in middle distillates – Infrared spectroscopy method." When ASTM develops a comparable standard test method, the ASTM method will become the standard method for purposes of this rule.))

AMENDATORY SECTION (Amending WSR 05-10-088, filed 5/4/05, effective 6/4/05)

**WAC 16-662-125** ~~((When does WSDA take))~~ **Enforcement actions** ~~((when conducting))~~ **for price verification inspections under NIST Handbook 130** ~~((?))~~. WSDA uses *NIST Handbook 130*, Examination Procedure For Price Verification, ~~((Paragraph))~~ Section 11.2., Model Enforcement Levels. Overcharges will be used to determine price accuracy for enforcement actions under chapter 19.94 RCW. ~~((WSDA may issue a civil penalty after failure of the third price accuracy inspection.))~~

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: March 30, 2012.

Gregg L. Grunenfelder  
Deputy Secretary  
for Mary C. Selecky  
Secretary

**WSR 12-08-043**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**

[Filed March 30, 2012, 3:52 p.m., effective April 4, 2012]

Effective Date of Rule: April 4, 2012.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This action is required by Initiative 1163 (effective January 7, 2012) to implement the change of the effective date. The rules replace emergency rules expiring on April 4, 2012.

Purpose: WAC 246-980-020, 246-980-040, and 246-980-070, the amended rule changes the effective dates for requiring certification and to obtain a background check for home care aides. The rule also clarifies who is exempt from certification. The rule implements Initiative [Initiative] 1163 (2011).

Citation of Existing Rules Affected by this Order: Amending WAC 246-980-020, 246-980-040, and 246-980-070.

Statutory Authority for Adoption: Initiative 1163 (2011, chapter 18.88B RCW).

Adopted under notice filed as WSR 12-04-054 on January 30, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-020 Who must be certified as a home care aide?** (1) Any person who is hired on or after January ~~((4, 2011))~~ 7, 2012, as a long-term care worker for the elderly or persons with disabilities, regardless of the employment title, must obtain certification as a home care aide. This includes, but is not limited to:

- (a) An individual provider of home care services who is reimbursed by the state;
- (b) A direct care employee of a home care agency;
- (c) A provider of home care services to persons with developmental disabilities under Title 71A RCW;
- (d) A direct care worker in a state licensed boarding home;
- (e) A direct care worker in a state licensed adult family home;
- (f) A respite care provider who is reimbursed by the state or employed by a private agency or facility licensed by the state to provide personal care services;
- (g) A community residential service provider who is reimbursed by the state or employed by a private agency or facility licensed by the state to provide personal care service; and

(h) Any other direct care workers providing home or community-based services to the elderly or persons with developmental disabilities.

(2) Long-term care workers who meet the above criteria but are exempted under WAC 246-980-070 are not required to obtain certification.

**AMENDATORY SECTION** (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-040 What must a nonexempt long-term care worker do to be eligible for a home care aide certification and what documentation is required?** (1) To qualify for certification as a home care aide, the applicant must:

(a) Successfully complete the entry level training required by RCW 74.39A.073 before taking the examination;

(b) Successfully pass the home care aide certification examination; and

(c) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(2) Applicants must submit directly to the examination contractor:

(a) A completed application for examination provided by the examination contractor;

(b) The fee required by the examination contractor; and

(c) A certificate of completion signed by an instructor approved by the department of social and health services. The certificate must indicate that the applicant has successfully completed the entry level training required by RCW 74.39A.073. The certificate of completion may also be submitted directly from the approved instructor or training program.

(3) Applicants must submit to the department:

(a) A completed application for certification on forms provided by the department;

(b) The required fee; and

(c) A certificate of completion indicating that the applicant has successfully completed the entry level training required by RCW 74.39A.073.

(4) ~~((Beginning January 1, 2012,))~~ Applicants must submit to a state and federal background check as required by RCW 74.39A.055.

**AMENDATORY SECTION** (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-070 Who is exempt from obtaining a home care aide certification?** (1) The following individuals are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must successfully pass the entry level training required by RCW 74.39A.073, successfully complete the home care aide certification examination and meet all other requirements of WAC 246-980-080(1).

(a) An individual who is employed by a nursing home subject to chapter 18.51 RCW, hospital, or other acute care setting; hospice agency subject to chapter 70.127 RCW; adult day care center; or adult day health center, and who does not hold a current health care credential described under subsection (2)(a) of this section.

(b) An individual provider caring only for a biological, step, or adoptive child or parent.

(c) An individual hired prior to June 30, 2014, as an individual provider who provides twenty hours or less of care for one person in any calendar month. Individual providers hired after June 30, 2014, will be required to obtain certification.

(d) An individual employed by a supported living provider.

(e) An individual employed by a residential habilitation center licensed under chapter 71A.20 RCW or a facility certified under 42 CFR, Part 483.

(f) Direct care employees who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(2) The following long-term care workers are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must successfully pass the home care aide certification examination and meet all other requirements of WAC 246-980-080(2). The training requirements under RCW 74.39A.073 are not required.

(a) An individual who holds an active credential by the department as a:

(i) Registered nurse, a licensed practical nurse, or advanced registered nurse practitioner under chapter 18.79 RCW;

(ii) Nursing assistant-certified under chapter 18.88A RCW;

(iii) Certified counselor or advisor under chapter 18.19 RCW;

(iv) Speech language pathologist assistant or audiologist under chapter 18.35 RCW;

(v) Occupational therapist under chapter 18.59 RCW; or

(vi) Physical therapist assistant under chapter 18.74 RCW.

(b) A home health aide who is employed by a medicare certified home health agency and has met the requirements of 42 CFR, Part 483.35.

(c) An individual with special education training and an endorsement granted by the superintendent of public instruction under RCW 28A.300.010.

(d) An individual employed as a long-term care worker on ~~((December 31, 2010))~~ January 6, 2012, or who was employed as a long-term care worker ~~((at some point during the calendar year 2010))~~ between January 1, 2011, and January 6, 2012, and who completes all of the training requirements in effect as of the date of hire. This exemption expires if the long-term care worker has not provided care for over three years.

(i) The department may require the exempt long-term care worker who is employed ~~((on or before December 31, 2010))~~ between January 1, 2011, and January 6, 2012, to provide proof of that employment. Proof may include a letter or similar documentation from the employer that hired the long-term care worker ~~((on or before December 31, 2010))~~ between January 1, 2011, and January 6, 2012, indicating the first and last day of employment, the job title, a job description, and proof of completing training requirements. Proof of training will also be accepted directly from the approved instructor or training program, if applicable. For an individ-

ual provider reimbursed by the department of social and health services, the department will accept verification from the department of social and health services or the Training Partnership.

(ii) A long-term care worker who is employed on or before January ~~((1, 2011))~~ 6, 2012, but has not completed all of his or her training requirements in effect the day he or she was hired, must complete the training within one hundred twenty days of the date of hire to qualify for this exemption.

#### WSR 12-08-044

##### PERMANENT RULES

##### DEPARTMENT OF HEALTH

[Filed March 30, 2012, 3:54 p.m., effective April 30, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-290-72010(3) Report contents—Required additional health information; to incorporate the federal lead and copper rule short-term revisions. This rule requires Group A public water systems to report lead-specific information in the annual consumer confidence report (CCR) whether or not the system has monitored for lead during the reporting year. This makes the rule consistent with the federal rule.

Citation of Existing Rules Affected by this Order: Amending WAC 246-290-72010.

Statutory Authority for Adoption: RCW 43.20.050(2).

Other Authority: RCW 70.119A.080.

Adopted under notice filed as WSR 12-04-052 on January 30, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 30, 2012.

Gregg L. Grunenfelder  
Deputy Secretary  
for Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 11-17-062, filed 8/15/11, effective 10/1/11)

**WAC 246-290-72010 Report contents—Required additional health information.** All reports must prominently display the following language: Some people may be

more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. Environmental Protection Agency/Centers for Disease Control guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium* and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).

(1) Beginning in the report due by July 1, 2002, a system which detects arsenic levels above 0.005 mg/L and up to and including 0.010 mg/L:

(a) Must include in its report a short informational statement about arsenic, using language such as: While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the cost of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.

(b) May write its own educational statement, but only in consultation with the department.

(2) A system which detects nitrate at levels above 5 mg/l, but below the MCL:

(a) Must include a short informational statement about the impacts of nitrate on children using language such as: Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue-baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant, you should ask for advice from your health care provider.

(b) May write its own educational statement, but only in consultation with the department.

(3) ~~((Systems that monitor for lead within the reporting period:))~~ All reports must include a short informational statement about lead in drinking water and its effects on children.

~~((Must include short informational statement about the special impact of lead on children.))~~ The statement must include the following information: If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. (NAME OF UTILITY) is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for thirty seconds to two minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe



Drinking Water Hotline or at <http://www.epa.gov/safewater/lead>.

(b) A system may write its own educational statement, but only in consultation with the department.

### WSR 12-08-060

#### PERMANENT RULES

#### TRANSPORTATION IMPROVEMENT BOARD

[Filed April 3, 2012, 3:55 p.m., effective May 4, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To comply with chapter 120, Laws of 2011, which eliminated the urban arterial trust account (UATA) and transferred that funding into the transportation improvement account (TIA); to comply with chapter 14, Laws of 2011, which gives cities the option of including or excluding population of any state correctional facility located within the city when applying for transportation improvement board (TIB) funds for small cities; to set rules to implement RCW 47.26.185, which allows the TIB to adopt rules establishing qualifications for cities and counties administering and supervising the design and construction of projects financed in part from funds administered by the TIB.

Citation of Existing Rules Affected by this Order: Repealing chapter 479-12 WAC; WAC 479-05-013, 479-05-041 and 479-05-171; and amending chapters 479-01, 479-05, 479-10, and 479-14 WAC.

Statutory Authority for Adoption: Chapter 47.26 RCW.

Adopted under notice filed as WSR 12-04-067 on January 30, 2012.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 479-14-261 was changed to increase the population size from five hundred to one thousand.

2. WAC 479-14-461 (2)(a) was changed to increase the population size from five hundred to one thousand.

3. WAC 479-14-461 (2)(b) was changed to increase the population size from five hundred to one thousand.

4. WAC 479-14-161 (1)(a) was changed to remove the new language that had been added.

5. WAC 479-14-431(4) was changed to correct a typo that misrepresented the statement.

6. WAC 479-05-171 was deleted.

7. WAC 479-05-040 was changed to remove any dollar amounts.

8. WAC 479-05-213(2) was changed to clarify the correct concept.

9. WAC 479-05-051(2) was changed to add language for clarification.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 20, Amended 31, Repealed 31.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 3.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 20, Amended 30, Repealed 32.

Date Adopted: March 23, 2012.

Stevan Gorcester  
Executive Director

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-01-010 Organization of the transportation improvement board.** The transportation improvement board is a twenty-one member board, organized under the provisions of RCW 47.26.121. The board administers ~~(the urban arterial trust account,)~~ the transportation improvement account~~(s))~~ and the small city pavement and sidewalk account.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-01-040 Definitions and acronyms.** The following definitions and acronyms apply:

(1) TIB - The transportation improvement board.

(2) Board - The transportation improvement board refers to the group of board members defined in RCW 47.26.121 and does not include the executive director or staff.

(3) Director - The executive director of the transportation improvement board.

(4) Staff - Refers to the employees of the transportation improvement board excluding the executive director.

(5) Agency - All cities, towns, counties, and transportation benefit districts eligible to receive board funding.

(6) Local agency official - Refers to a local agency elected official or staff who is authorized to sign contracts on the city, town, county, or transportation benefit district's behalf.

(7) Urban area - Refers to the portion of a county within the federal urban area boundary as designated by the Federal Highway Administration and/or Washington state's Growth Management Act.

(8) Six-year transportation plan - Refers to the city or county six-year transportation plan for coordinated transportation program expenditures per RCW 35.77.010 and 36.81.121.

(9) Small city - Refers to an incorporated city or town with a population of less than five thousand.

(10) Sidewalk program - Refers to both the urban and small city sidewalk programs.

(11) Population - Is defined as office of financial management official published population at the time of application.

(12) Highway urban area population - As published by the office of financial management.

(13) Scope change - Refers to a change in the physical characteristics and/or dimensions of a project.

~~(14) ((RJT—route jurisdiction transfer.~~

~~(15) RTP—road transfer program (also known as the) CHAP - City Hardship Assistance Program ((or CHAP)).~~

~~((16) UATA—urban arterial trust account.~~

~~(17)) (15) TIA - Transportation improvement account.~~

~~((18)) (16) Matching funds - All funds contributed to a project other than TIB funds.~~

(17) Construction ready - Is defined as a project that has design, plans specifications and estimates, right of way, permits, and all sources of match funding to enable advertisement for bids.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-01-050 Administrative costs.** The costs for board activities, staff services, and facilities will be paid out of the transportation improvement account ~~((and the urban arterial trust account))~~ as determined by the biennial appropriation.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-01-060 Executive director—Powers and duties.** The board appoints an executive director who will serve at its pleasure to carry out the board priorities and the mission of the agency including the following administrative duties:

(1) The executive director will direct and supervise all day-to-day activities of the staff.

(2) The executive director is the appointing authority of the staff and may authorize subordinates to act in the executive director's place to carry out administrative duties.

~~(3) ((The executive director has waiver authority for value engineering studies as described in WAC 479-05-040.~~

~~(4)) The executive director has sidewalk deviation authority as described in WAC ((479-12-500 and)) 479-14-200.~~

~~((5)) (4) The executive director has administrative increase authority for projects up to the following levels:~~

~~(a) Urban ((corridor)) program – Fifteen percent of project costs or seven hundred fifty thousand dollars whichever is less.~~

~~(b) ((Urban arterial program—fifteen percent of project costs or seven hundred fifty thousand dollars whichever is less.~~

~~((c)) Small city arterial program – Up to one hundred twenty-five thousand dollars.~~

~~((d) Road transfer)) (c) City hardship assistance program – Up to seventy-five thousand dollars.~~

~~((e)) (d) Sidewalk program – Up to fifty thousand dollars for small city projects; zero for urban projects.~~

~~((f)) (e) Small city preservation program – Up to two hundred thousand dollars within available funding limitations.~~

(f) Small city federal match within the limits set by the board in accordance with WAC 479-14-215.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-020 Six-year transportation plan.** Projects selected in the priority array must be included in the local agency's six-year transportation plan prior to receiving authorization to proceed on the project.

Small city preservation projects identified through pavement condition ratings are not required to appear in the local agency's six-year transportation plan.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-030 A registered professional engineer must be in charge.** All projects using ~~((UATA or))~~ TIA funds will be supervised by a professional engineer registered in the state of Washington.

#### NEW SECTION

**WAC 479-05-035 Qualifications for small city projects administered by another agency.** A local agency that has a small city arterial program or small city preservation project may elect to have, or the executive director may require, the project administered by another city, a county, state department of transportation, or state transportation improvement board when:

(1) The local agency does not have certification acceptance from the state department of transportation per the Washington state department of transportation local agency guidelines manual, chapter 13; or

(2) The executive director determines that the local agency has no internal capacity to directly administer transportation projects.

AMENDATORY SECTION (Amending WSR 08-10-012, filed 4/24/08, effective 5/25/08)

**WAC 479-05-040 Value engineering study requirements.** ~~((A value engineering study is required for urban projects with total cost exceeding two and one-half million dollars or when determined by))~~ The executive director ((to be in the best interest of the project)) will determine whether a value engineering study is required based on project risk factors summarized below. The agency will be notified if a value engineering study is required during the design process and must complete the study prior to authorization to bid.

(1) Significant project complexity;

(2) Significant structures;

(3) Significant right of way;

(4) Multiple alignment options;

(5) Environmentally sensitive areas;

(6) Complex interagency involvement.

The value engineering study ~~((requirement))~~ is completed when the local agency submits the recommendation report to TIB. TIB may consider what recommendations are accepted or rejected when evaluating any funding increase or scope change request.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-051 Project phases.** Projects authorized by the board are divided into the following phases:

(1) Design phase – Documents that must be received prior to phase approval include:

(a) Signed funding status form confirming that the funding partners are fully committed;

(b) Page from the adopted six-year transportation plan which lists the project;

(c) Signed fuel tax agreement; ~~((and if applicable))~~

(d) Consultant agreement (small city arterial and small city sidewalk programs only).

(2) Bid advertisement phase – Documents that must be received prior to phase approval include:

(a) Signed bid authorization form that contains:

(i) Plans and specification package;

(ii) Written confirmation of funding partners; and

(iii) Confirmation that full funding is available for the project;

(b) Signed confirmation that right of way is acquired or possession and use agreement is in place;

(c) Engineer's estimate is in final format; ~~((and if applicable:))~~

~~((+))~~ (d) Consultant agreement (small city arterial and small city sidewalk programs only);

~~((+))~~ (e) Certification that a cultural resource assessment was completed;

~~((+))~~ (f) Traffic signal warrants.

(3) Construction phase – Documents that must be received prior to phase approval include:

(a) Updated cost estimate form signed by a local agency official and the project engineer;

(b) Bid tabulations; and

(c) Description of cost changes.

(4) Project closeout phase – Documents that must be received prior to phase approval include:

(a) Updated cost estimate form signed by a local agency official and the project engineer;

(b) Final summary of quantities; and

(c) Accounting history signed by a local agency official or the financial manager.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-060 Methods of construction.** All construction using ~~((UATA or))~~ TIA funds shall be advertised, competitively bid and contracted, except:

(1) Utility and railroad relocations and adjustments;

(2) Government force work;

(3) Work eligible from the small works roster; and

(4) Local agencies may be otherwise exempt from bidding requirements if so authorized by an applicable statute contained in chapter 36.77, 35.22, 35.23, or 35.27 RCW.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-080 Standard specifications.** The current edition of *the Standard Specifications for Road, Bridge, and Municipal Construction* or equivalent, will be used as the standard for design and construction of board funded projects.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-100 Utility adjustments or relocations.** Utility adjustments or relocations may be reimbursed using the following criteria:

(1) If it is a direct cost for utility adjustments that are owned by the local government;

(2) If the utility provider owns the property in fee title; or

(3) If the utility franchise agreement requires the local agency to pay for those utility adjustments or relocations required by state or local government.

Upgrading of utilities is not eligible for reimbursement by ~~((UATA or))~~ TIA funds.

If the proposed work will cause a significant change in scope, the agency must seek board approval.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-120 Street illumination and traffic control devices.** Traffic control devices for an approved project may be purchased and installed under RCW 35.22.620(3), 35.23.352(1), and 36.77.065(3) by:

(1) The contractor for the construction phase of the project; or

(2) Local agency employees.

~~((UATA or))~~ TIA funds may be used in the costs to underground service connections for street illumination and traffic signal services within the approved project scope.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-130 Project landscaping and aesthetic improvements.** Cost of landscaping and aesthetic improvements is limited to ~~((three))~~ five percent of the total eligible ~~((authorized project costs))~~ construction contract amount.

(1) Landscaping includes:

(a) Cost of trees, shrubs, sod, and other plant material.

(b) Top soil and bark.

(c) Irrigation and tree grates.

(d) Labor for installation.

(2) Aesthetic improvement includes:

(a) Ornamental lighting.

(b) The local agency share of the cost of undergrounding of utilities.

(c) Public art.

(d) Special surfacing treatments (stamped concrete, pavers).

(e) Labor for installation.

(3) Items not considered landscaping or aesthetic improvements are:

- (a) Erosion control treatments.
- (b) Wetland mitigation (plantings) required by federal or state regulations.
- (c) Property restoration.

Requests for increases in landscaping and related costs are subject to WAC 479-05-201, 479-05-202, and 479-05-203. Landscaping costs in excess of the ~~((three))~~ five percent limit may be paid for by funding sources other than TIB funds.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-131 Mitigation costs and limitations.** Mitigation costs may include:

- (1) Sound walls/berms: Unless required by specific regulations, TIB will not participate in this cost.
- (2) Superfund sites: TIB funds will not participate in the cost of cleanup.
- (3) Bridges: Bridge designs exceeding the most cost effective are not eligible for participation.
- (4) Wetlands: Mitigation in excess of what is required by federal or state requirements is not eligible to be reimbursed.

~~((UATA or))~~ TIA funds may not be used for excessive design, mitigation beyond federal or state requirements, or other unusual project features.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-140 Acquisition of rights of way.** Right of way for board funded projects shall be acquired in accordance with chapters 8.26 RCW and 468-100 WAC. Reimbursement of right of way acquisition costs are eligible within the design phase of the project.

At bid phase, right of way acquisitions should be completed and certified. If all right of way cannot be certified, the local agency must have possession and use agreements for the remaining parcels.

If under any circumstances right of way purchased with board funds is subsequently sold or transferred to a nontransportation purpose, the proceeds of the sale or equivalent value shall be placed in the local agency's appropriate transportation fund and expended solely for street or road improvement purposes.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-141 What is eligible for reimbursement of right of way costs.** Only the square footage needed for the roadway is eligible to be reimbursed, unless:

- (1) It is deemed by TIB to be in the best interest of the project to purchase the entire parcel;
  - (2) An entire parcel take is required by local resolution;
- or
- (3) An uneconomic remnant will remain.

If after the completion of the project, the uneconomic remnant is sold, transferred, or rezoned to make it an economic remnant, the proceeds of any sale will be placed back in the local agency's ~~((motor vehicle))~~ appropriate transportation fund to be used for street or road improvement purposes only.

In the event the project is not built, TIB funds expended for right of way may be requested to be refunded to the board.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-170 Reimbursement of engineering costs.** Design and construction engineering costs eligible for reimbursement are limited to ~~((twenty-five))~~ thirty percent, or twenty percent if funded as construction ready, of the approved contract bid amount, ~~((excluding special studies or right-of-way))~~ plus costs designated as construction other.

Surveying and materials testing costs, even if they are part of the contract costs, are considered part of construction engineering and are subject to the ~~((twenty-five))~~ thirty percent limit or twenty percent limit if funded as construction ready. Exceptions to the ~~((twenty-five))~~ thirty percent engineering limit, or twenty percent engineering limit if funded as construction ready, may be considered for small city projects when an unforeseen issue arises that is beyond the control of the local agency. The local agency may request an increase through WAC 479-05-202 processes.

AMENDATORY SECTION (Amending WSR 09-09-002, filed 4/1/09, effective 5/2/09)

**WAC 479-05-211 When a project is considered delayed.** Projects are considered delayed when one of the following occurs:

- (1) Urban ~~((corridor))~~ program projects do not reach construction phase within ~~((five))~~ four years and six months.
- (2) ~~((Urban arterial program projects do not reach construction phase within four years and six months.~~
- ~~((3)))~~ Projects awarded funding as "construction ~~((only))~~ ready" will be considered delayed if construction does not begin within one year of funding becoming available.
- ~~((4)))~~ (3) All other programs must reach construction phase within two years and six months.

The award date or date funding is made available to the local agency by TIB, whichever is earlier, is the starting point in calculating the delay date.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-212 The stages of delayed projects.** For TIB funded projects, there are ~~((three))~~ two stages of delay:

- (1) Stage 1 delay - If the project does not meet the project target date per WAC 479-05-211.
- (2) ~~((Stage 2 delay - if the project does not meet the revised bid date as agreed in Stage 1 delay under WAC 479-05-213(1), or one year after Stage 1 delay.~~
- ~~((3)))~~ Stage ~~((3))~~ 2 delay - If the project does not meet the revised bid date as agreed to under Stage ~~((2))~~ 1 delay under

WAC 479-05-213(~~((2))~~) (1), or one year after (~~(Stage 2 delay)~~) being designated as a Stage 1 delayed project.

~~((The executive director has discretion when moving projects from one stage of delay to the next and may consider pending bid dates or other indications of impending progress.))~~

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-05-213 Review and consequences of delay.**

Delayed projects will be reviewed as follows:

(1) Stage 1 - (~~(agency plan letter)~~) Delayed project. The TIB staff report the delayed project to the board at a regularly scheduled board meeting. The executive director requests a letter from the local agency (~~(to respond with a progress plan to get back on schedule.~~

~~(2) Stage 2 — explanation and commitment. The local agency provides TIB staff with an explanation of)~~ explaining why the project continues to be delayed and a commitment date which is acceptable to the executive director or board.

~~((3)) (2) Stage (~~3—hearing~~) 2 - Contingency project.~~ If the agency misses the agreed upon date(s) or deadlines set in the Stage (~~(2)~~) 1 review, the (~~(agency will be provided a hearing in front of the board at the next regularly scheduled meeting. The result of the hearing will include an absolute date for resolution which is agreed to by the board.~~

If the local agency does not meet the absolute date for resolution as agreed to by the board in the Stage 3 hearing, the project may be suspended or the agency may be requested to withdraw the project and reapply for funding in a later application cycle)) project will be designated a contingency project. The board must restore a contingency project to active status before the executive director authorizes the next project phase.

A project remaining on the contingency list for twelve months will have the grant funds terminated. The agency may reapply for funding in a later grant application cycle.

The executive director has discretion when moving projects from one stage of delay to the next and may consider pending bid dates or other indications of impending progress.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 479-05-013	Urban project transfer for completion.
WAC 479-05-041	When a value engineering study may be waived.
WAC 479-05-171	Reimbursement of cultural resource assessment costs for TIB funded projects.

AMENDATORY SECTION (Amending WSR 08-21-005, filed 10/2/08, effective 11/2/08)

**WAC 479-10-110 Who is eligible for small city preservation program funds.** Agencies eligible to receive small city pavement program funding are incorporated cities with a population less than five thousand. For the purposes of determining population, cities may exclude the population of any state correctional facility located within the city.

AMENDATORY SECTION (Amending WSR 10-14-027, filed 6/28/10, effective 7/29/10)

**WAC 479-10-170 Small city match funding eligibility and application.** Cities may request matching funds for projects that meet TIB eligibility requirements for small city preservation program funding as described in WAC 479-10-120 and 479-10-121. A TIB funding application form must be submitted to apply for match funding.

The executive director may award match funding on a first-come, first-served basis to the limit established in WAC 479-14-215 or otherwise set by the board.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-14-011 Programs funded from the transportation improvement account.** The transportation improvement account funds the (~~(urban corridor)~~) following programs:

- (1) The urban program;
- (2) The small arterial city program:
  - (a) Grants; and
  - (b) Federal match funding.
- (3) The sidewalk programs:
  - (a) Urban sidewalk program; and
  - (b) Small city sidewalk program.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-14-111 Who is eligible to receive urban (~~(corridor)~~) program funding.** Eligible agencies are:

- (1) Counties that have an urban area;
- (2) Incorporated cities with a population of five thousand or more. For the purposes of determining population, cities may include the population of any state correctional facility located within the city. Agencies exceeding population of five thousand are eligible pending designation as a federal urban area following the next federal census; and
- (3) Transportation benefit districts.

Generally, the eligible agency will be designated as the project lead. However, the executive director may designate another agency as lead in the best interest of project completion or for convenience to both parties.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-14-121 What projects are eligible for urban (~~(corridor)~~) program funding.** Eligible projects are:

(1) Improvements on federally classified arterials; ~~((or))~~

(2) Within a city qualifying for urban designation upon the next federal census as long as the project carries a federal arterial functional classification; or

(3) Within the urban growth area in counties which are in full compliance with Washington state's Growth Management Act.

Any urban street that is not functionally classified at the time of award must obtain federal functional classification prior to approval to expend board funds.

Sidewalks with five feet minimum clear width are required on both sides of the arterial unless a deviation is granted under WAC 479-14-200.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-14-131 Award criteria for the urban ~~((corridor))~~ program.** The board establishes the following criteria for use in evaluating urban ~~((corridor))~~ program grant applications:

(1) Mobility improvements - Includes system connectivity, improves flow of vehicles and freight, and extends or completes corridor for network connections.

~~((Local support demonstrates initiative to achieve full funding and project completion.))~~ Physical condition - Includes pavement, structural, and geometric design features of the arterial.

(3) Growth and development improvements - Provides or improves access to urban centers, economic development, supports annexation agreements, and increases residential density.

(4) Safety improvements - Addresses accident reduction, elimination of roadway hazards, corrects roadway deficiencies, and eliminates railroad at-grade crossing.

~~((Mode accessibility - additions to or enhancements of high occupancy vehicle and nonmotorized transportation modes.))~~ Sustainability - Improves mode accessibility, reduces or eliminates water detention, and encourages energy reduction technology and use of recycled materials.

(6) Constructability - Demonstrates a strong likelihood to achieve full funding, obtain permits, acquire right of way, and reach construction within the timelines established in WAC 479-05-211.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-14-141 Regions of the urban ~~((corridor))~~ program.** The board allocates urban ~~((corridor))~~ program funding across ~~((three))~~ five regions to ensure statewide distribution of funds. The ~~((three))~~ five regions are as follows:

(1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.

~~((East region includes eligible agencies within Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.~~

~~((3) West region includes eligible agencies within Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap,~~

~~Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom counties.))~~ Northwest region includes eligible agencies within Clallam, Island, Jefferson, Kitsap, San Juan, Skagit, and Whatcom counties.

~~((3) Northeast region includes eligible agencies within Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman counties.~~

~~((4) Southeast region includes eligible agencies within Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla, and Yakima counties.~~

~~((5) Southwest region includes eligible agencies within Clark, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Skamania, Thurston, and Wahkiakum counties.~~

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-14-151 Funding distribution formula for the urban ~~((corridor))~~ program.** The statewide distribution of urban ~~((corridor))~~ program funds is allocated between regions according to the following formula:

The average of the ratios of region urban area population (RUP) divided by the statewide urban population (SUP) plus region functionally classified lane miles within the urban area (RFC) divided by statewide functionally classified lane miles within urban areas (SFC).

$$\frac{(RUP/SUP) + (RFC/SFC)}{2}$$

The board may adjust the regional allocation by plus or minus five percent to fully fund the approved list of regional projects. When requested by the board, TIB staff will update the regional allocation to ensure equitable distribution of funds.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-14-161 Matching requirement for the urban ~~((corridor))~~ program.** The urban ~~((corridor))~~ program provides funding which will be matched by other funds as follows:

(1) For cities:

(a) If the city valuation is under \$1.0 billion, the matching rate is ten percent of total project costs.

(b) If the city valuation is \$1.0 billion to \$2.5 billion, the rate is fifteen percent of total project costs.

(c) If the city valuation is over \$2.5 billion, the rate is twenty percent of total project costs.

(2) For counties:

(a) If the road levy valuation is under \$3.0 billion, the rate is ten percent of total project costs.

(b) If the road levy valuation is between \$3.0 billion to \$10.0 billion, the rate is fifteen percent of total project costs.

(c) If the road levy valuation is over \$10.0 billion, the rate is twenty percent of total project costs.

The board uses the current published valuation from the department of revenue.

(3) For transportation benefit districts, the match is based on the valuation of the city or county in which it is located. If

the project lies within more than one city or county, the match is determined by the city or county that has the greatest valuation.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-14-200 Sidewalk deviation authorities for the urban (~~corridor~~) program.** The board recognizes the need for pedestrian facilities on arterial roadways and has required that sidewalks be provided under the urban (~~corridor~~) program. A sidewalk deviation may be requested by the lead agency and may be granted under the following authorities:

(1) The executive director has administrative authority to grant sidewalk deviations as follows:

(a) On both sides if the roadway is a ramp providing access to a limited access route;

(b) On both sides of a designated limited access facility if:

(i) Route is signed to prohibit pedestrians; or

(ii) Pedestrian facilities are provided on an adjacent parallel route;

(c) On one side if the roadway is a frontage road immediately adjacent to a limited access route; or

(d) On one side if the roadway is immediately adjacent to a railroad or other facility considered dangerous to pedestrians.

(2) All other sidewalk deviation requests require board action.

NEW SECTION

**WAC 479-14-211 Who is eligible to receive small city arterial program funding.** An eligible agency is an incorporated city or town that has a population of less than five thousand. For the purposes of determining population, cities may exclude the population of any state correctional facility located within the city.

NEW SECTION

**WAC 479-14-215 Small city match funding allocation.** Within the small city arterial program, ten percent of the annual allocation may be portioned as an amount available for small cities to match federal funding provided for local government federal aid of transportation, on a first come/first served basis.

NEW SECTION

**WAC 479-14-221 What projects are eligible for small city arterial program funding.** To be eligible for funding, a proposed project must improve an arterial that meets at least one of the following standards:

(1) Serves as a logical extension of a county arterial or state highway through the city; or

(2) Acts as a bypass or truck route to relieve the central core area; or

(3) Serves as a route providing access to local facilities such as:

(a) Schools;

(b) Medical facilities;

(c) Social centers;

(d) Recreational areas;

(e) Commercial centers;

(f) Industrial sites.

Sidewalks are required on one side of the roadway unless a deviation is granted under WAC 479-14-200.

NEW SECTION

**WAC 479-14-231 Award criteria for the small city arterial program.** The board establishes the following criteria for use in evaluating small city arterial program grant applications:

(1) Safety improvement - Projects that address accident reduction, hazard elimination, and roadway deficiencies.

(2) Pavement condition - Replaces or rehabilitates street surfaces and structural deficiencies.

(3) Local support - Projects that improve network development and address community needs.

(4) Sustainability - Improves network development of street system, reduces or eliminates water detention, and encourages energy reduction technology and use of recycled materials.

NEW SECTION

**WAC 479-14-241 Regions of the small city arterial program.** The board allocates small city arterial program funding across three regions to ensure statewide distribution of funds. The three regions are as follows:

(1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.

(2) East region includes eligible agencies within Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.

(3) West region includes eligible agencies within Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom counties.

NEW SECTION

**WAC 479-14-251 Funding distribution formula for the small city arterial program.** The statewide distribution of small city arterial program funds is allocated between regions according to the following formula:

Region small city population divided by statewide small city population.

The board may adjust the regional allocation by plus or minus five percent to fully fund the approved list of regional projects. When requested by the board, staff will update the regional allocations to ensure equitable distribution of funds.

NEW SECTION

**WAC 479-14-261 Matching requirement for the small city arterial program.** There is no match requirement

for cities with a population of one thousand or less. Cities with a population over one thousand must provide a minimum match of five percent of the total project cost.

#### NEW SECTION

**WAC 479-14-270 Small city federal match funding eligibility and application.** Cities with a population under five thousand may request grant funds to match a federal grant. The project must meet TIB eligibility requirements for the small city arterial program described under WAC 479-14-221. A TIB funding application form must be submitted to apply for federal match funding.

#### NEW SECTION

**WAC 479-14-271 Restriction on use of small city federal match funding.** Federal match funds are only for transportation projects funded through federal transportation grants. All other local funding sources must be sought before applying for federal match funds from TIB.

#### NEW SECTION

**WAC 479-14-272 Small city federal match funding priority.** The priority for funding federal match applications is the order in which the applications are received until the funds are fully allocated.

#### NEW SECTION

**WAC 479-14-273 If small city federal match funding is fully allocated.** If an eligible application is received after all of the apportioned funding is committed, TIB may use small city preservation program funds as described in WAC 479-10-011 and 479-10-174. If all SCAP and SCPP funds are committed, the local agency may present their project to the board at the next scheduled board meeting after receiving the notice of denial from TIB staff. The notice of denial may be in the form of an e-mail or letter.

#### NEW SECTION

**WAC 479-14-274 Small city match funding increases.** Increases in federal match funding for chosen projects may be made within the executive director's authority in accordance with WAC 479-01-060.

#### NEW SECTION

**WAC 479-14-402 Sidewalk program subprograms.** In order to provide equity for project grant funding, the sidewalk program is divided into the urban sidewalk program and the small city sidewalk program.

#### NEW SECTION

**WAC 479-14-411 Who is eligible to receive sidewalk program funding.** Each of the subprograms has separate criteria for agency eligibility as follows:

- (1) Urban sidewalk program agency eligibility:

- (a) Incorporated cities with a population of five thousand and over.

- (b) Incorporated cities with a population less than five thousand which are located within a federally designated urban area.

- (c) Counties with a federally designated urban area.

- (2) Small city sidewalk program agency eligibility: Incorporated cities with a population under five thousand.

#### NEW SECTION

**WAC 479-14-421 What projects are eligible for sidewalk program funding.** Minimum project requirements for each subprogram are as follows:

- (1) Urban sidewalk program project eligibility:

- (a) Must be on or related to a functionally classified route; and

- (b) Primary purpose of the project is transportation and not recreation.

- (2) Small city sidewalk program project eligibility:

- (a) The project must be located on or related to a street within the TIB designated arterial system; and

- (b) Primary purpose of the project is transportation and not recreation.

For both of the subprograms, TIB does not participate in the cost for right of way acquisitions.

For the urban sidewalk program, TIB does not provide funding increases.

#### NEW SECTION

**WAC 479-14-431 Award criteria for the sidewalk program.** The board establishes the following criteria for use in evaluating sidewalk program grant applications for both urban and small city sidewalk projects:

- (1) Safety improvement - Projects that address hazard mitigation and accident reduction.

- (2) Pedestrian access - Projects that improve or provide access to facilities including:

- (a) Schools;

- (b) Public buildings;

- (c) Central business districts;

- (d) Medical facilities;

- (e) Activity centers;

- (f) High density housing (including senior housing);

- (g) Transit facilities;

- (h) Completes or extends existing sidewalks.

- (3) Local support - Addresses local needs and is supported by the local community.

- (4) Sustainability - Improves sidewalk width, provides hardscaping and appropriate plantings, addresses low impact development or natural drainage practices, and encourages pervious surface use.

#### NEW SECTION

**WAC 479-14-441 Regions of the sidewalk program.** The board allocates sidewalk program funding across three regions to ensure statewide distribution of funds. The three regions are as follows:



(1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.

(2) East region includes eligible agencies within Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.

(3) West region includes eligible agencies within Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom counties.

#### NEW SECTION

**WAC 479-14-451 Distribution formula for the sidewalk program.** For the purpose of allocating funds, the sidewalk program is divided into two subprograms, the urban sidewalk program and the small city sidewalk program. The distribution formulas are as follows:

(1) Urban sidewalk program - The average of the ratios of region urban area population (RUP) divided by statewide urban population (SUP) plus region functionally classified lane miles within the urban area (RFC) divided by statewide functionally classified lane miles within urban areas (SFC).

The equation is as follows:

$$\frac{(RUP/SUP) + (RFC/SFC)}{2}$$

(2) Small city sidewalk program - Region small city population divided by statewide small city population.

For either program, the board may adjust regional allocations by plus or minus five percent to fully fund the approved list of regional projects. When requested by the board, staff will update the regional allocations to ensure equitable distribution of funds.

#### NEW SECTION

**WAC 479-14-461 Matching requirement for the sidewalk program.** The sidewalk program provides funding which will be matched by other funds as follows:

(1) The urban sidewalk program requires a match of at least twenty percent of total project costs.

(2) Small city sidewalk program matching rates are dependent on the city population as follows:

(a) Cities with a population of one thousand and below are not required to provide matching funds.

(b) Cities with a population over one thousand but less than five thousand, require a match of at least five percent of the total project costs.