

WSR 21-19-153

PROPOSED RULES

COUNTY ROAD

ADMINISTRATION BOARD

[Filed September 22, 2021, 11:11 a.m.]

Original Notice.

Proposal is exempt under chapter 36.78 RCW.

Title of Rule and Other Identifying Information: Amending chapters 136-130, 136-161, 136-163, 136-165, 136-167 and 136-170 WAC to make housekeeping changes, changes requested by the RAP region(s), and clarifying that indirect costs are not eligible for reimbursement.

Hearing Location(s): On October 28, 2021, at 2:00 p.m., at 2404 Chandler Court S.W., Olympia, WA 98504.

Date of Intended Adoption: October 28, 2021.

Submit Written Comments to: Drew Woods, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, email drew.woods@crab.wa.gov, by October 22, 2021.

Assistance for Persons with Disabilities: Contact Drew Woods, phone 360-753-5989, TTY 800-883-6384, email drew.woods@crab.wa.gov, by October 22, 2021.

Reasons Supporting Proposal: Housekeeping changes.

Statutory Authority for Adoption: Chapter 36.78 RCW.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Steve Johnson, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, 360-753-5989; Enforcement: Drew Woods, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, 360-753-5989.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Is exempt under chapter 36.78 RCW.

September 20, 2021

Jane Wall

Executive Director

OTS-3347.1

AMENDATORY SECTION (Amending WSR 19-04-047, filed 1/29/19, effective 3/1/19)

**WAC 136-130-020 Priorities by project type.** The county road administration board has determined that the interests of the counties in the several regions will be best served by encouraging development of distinct project priority rating systems for each region.

There shall be five project types eligible for RATA funding, with each having separate rating systems for project ranking and selection. The five project types include:

(1) Reconstruction - Emphasis on alignment and grade changes on (~~(fifty)~~) 50 percent or more of the project length, and may include additional travel lanes and right of way costs.

(2) 3R - Resurfacing, restoration, and rehabilitation - Primary focus on extending the service life of existing facility involving less than (~~(fifty)~~) 50 percent vertical or horizontal changes, and on safety improvements. Right of way costs are eligible for RATA reimbursement as a part of this project type.

(3) 2R - Resurfacing and restoration - Primary focus on restoration of the pavement structure on the existing vertical and horizontal alignment and spot safety improvements. Minor widening costs are allowed as a part of this project type. Right of way costs are not eligible for RATA reimbursement in this project type.

(4) Intersection - 3R or reconstruction work limited to the vicinity of an existing intersection, and may include additional travel lanes and right of way costs.

(5) Bridge and drainage structures - Replacement or major rehabilitation of an existing bridge or other drainage structure, and may include additional travel lanes and right of way costs. The bridge or drainage structure(s) cost must be a minimum of 50 percent of the overall project cost.

(a) All National Bridge Inventory (NBI) listed structures are eligible for replacement or rehabilitation. Rehabilitation is the major work required to restore the structural integrity of a bridge as well as work necessary to correct major safety defects.

(b) All non-NBI structures are eligible for replacement of the existing structure.

In consultation with the individual regions, the executive director shall approve the various forms and procedures necessary to allocate available RATA funding, consistent with RCW 36.79.080.

[Statutory Authority: Chapter 36.78 RCW. WSR 19-04-047, § 136-130-020, filed 1/29/19, effective 3/1/19; WSR 11-05-005, § 136-130-020, filed 2/3/11, effective 3/6/11. Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-130-020, filed 12/7/98, effective 1/7/99. Statutory Authority: Chapter 36.78 RCW. WSR 84-16-065 (Order 56), § 136-130-020, filed 7/30/84.]

AMENDATORY SECTION (Amending WSR 13-16-105, filed 8/7/13, effective 9/7/13)

**WAC 136-130-050 Supplemental rules in northeast region (NER).** Each county in the NER may submit projects requesting RATA funds not to exceed (~~(twenty-five)~~) 25 percent of the forecasted NER biennial apportionment.

Bridge projects may be submitted requesting RATA funds under one of the following conditions:

(1) Bridges must be approved for federal bridge funding and RATA funds shall be used only as a match for such federal funding. Bridges will be ranked for RATA funding using the WSDOT priority list and may be added to the NER Category 1 priority array at any time during the biennium upon approval of the bridge for federal bridge funding.

(2) A stand-alone bridge project may be submitted as an ordinary reconstruction or 3R RAP project provided that its priority rating has been computed by the bridge rating method in the NER RAP rating procedures. Such projects shall not be considered for funding from the bridge reserve described above.

~~((3) RAP projects that include bridge improvements where the cost of the bridge improvements do not exceed twenty percent of the total project cost are not considered bridge projects as set out in this section.))~~

[Statutory Authority: Chapter 36.78 RCW. WSR 13-16-105, § 136-130-050, filed 8/7/13, effective 9/7/13; WSR 11-05-005, § 136-130-050, filed 2/3/11, effective 3/6/11; WSR 10-05-019, § 136-130-050, filed 2/4/10, effective 3/7/10. Statutory Authority: Chapter 36.79 RCW. WSR 01-05-009, § 136-130-050, filed 2/8/01, effective 3/11/01; WSR 99-16-038, § 136-130-050, filed 7/29/99, effective 8/29/99; WSR 99-01-021, § 136-130-050, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.79.060. WSR 92-13-038 (Order 88), § 136-130-050, filed 6/10/92, effective 7/11/92. Statutory Authority: RCW 36.79.060 and 1983 1st ex.s. c 49. WSR 90-22-083 (Order 82), § 136-130-050, filed 11/6/90, effective 12/7/90. Statutory Authority: Chapter 36.78 RCW. WSR 88-12-080 (Order 69), § 136-130-050, filed 6/1/88; WSR 86-21-076 (Order 63-P), § 136-130-050, filed 10/15/86; WSR 86-06-005 (Order 61), § 136-130-050, filed 2/20/86; WSR 84-16-065 (Order 56), § 136-130-050, filed 7/30/84.]

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

**WAC 136-130-060 Supplemental rules in southeast region (SER).**

Each county in the SER may submit projects requesting RATA funds not to exceed twice the per county limit of the forecasted SER biennial apportionment as follows:

Asotin County	ten percent
Benton County	fourteen percent
Columbia County	eleven percent
Franklin County	thirteen percent
Garfield County	ten percent
Kittitas County	thirteen percent
Klickitat County	fourteen percent
Walla Walla County	fourteen percent
Yakima County	twenty percent

Federally funded bridges for which counties are seeking matching funds shall receive first consideration for bridge funds. Bridges receiving federal funding may be added to this list at any time during

the biennium. Stand-alone bridges may compete for funds in this reserve that remain after all bridges seeking match for federal funds have been funded. Non-NBI drainage structures may compete for funds in this reserve after stand-alone bridges have been funded. Whatever part of the bridge reserve that is not allocated to bridge projects shall be available for allocation to other RAP projects.

[Statutory Authority: Chapter 36.78 RCW. WSR 11-05-005, § 136-130-060, filed 2/3/11, effective 3/6/11. Statutory Authority: Chapter 36.79 RCW. WSR 04-05-001, § 136-130-060, filed 2/4/04, effective 3/6/04; WSR 01-05-009, § 136-130-060, filed 2/8/01, effective 3/11/01; WSR 99-01-021, § 136-130-060, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.79.060. WSR 97-06-006, § 136-130-060, filed 2/24/97, effective 3/27/97; WSR 94-10-020, § 136-130-060, filed 4/27/94, effective 5/28/94; WSR 92-13-038 (Order 88), § 136-130-060, filed 6/10/92, effective 7/11/92. Statutory Authority: RCW 36.79.060 and 1983 1st ex.s. c 49. WSR 90-22-083 (Order 82), § 136-130-060, filed 11/6/90, effective 12/7/90. Statutory Authority: Chapter 36.78 RCW. WSR 88-05-040 (Order 68), § 136-130-060, filed 2/16/88; WSR 84-16-065 (Order 56), § 136-130-060, filed 7/30/84.]

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

**WAC 136-130-080 Limitation on rating points.** In each of the project prioritization procedures and associated approved forms, for purposes of the RAP project prospectus submitted to the county road administration board, (~~geometric condition points shall be assigned only~~) if a county desires points for correcting geometric deficiencies, then all geometric deficiencies shall be listed, with points being assigned for those conditions (~~which~~) that will be corrected by construction of the project.

[Statutory Authority: Chapter 36.78 RCW. WSR 11-05-005, § 136-130-080, filed 2/3/11, effective 3/6/11. Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-130-080, filed 12/7/98, effective 1/7/99. Statutory Authority: Chapter 36.78 RCW. WSR 84-16-065 (Order 56), § 136-130-080, filed 7/30/84.]

#### OTS-3348.1

AMENDATORY SECTION (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

**WAC 136-161-040 RAP program cycle—Field review by county road administration board.** After all preliminary prospectuses are received, the county road administration board will schedule and conduct an on-site field review of each project. During the field review, conducted jointly with the county engineer or his/her designee (unless waived by the county engineer), the assigned county road administra-

tion board staff person will review the overall project scope with the county representative and, using that region's priority rating process, determine the rating score of all priority elements which are based on a visual examination. To ensure both uniformity and professional judgment in the visual ratings, the assigned county road administration board staff person shall be a licensed professional civil engineer in the state of Washington, and the same person shall review and rate all projects within a region. All field reviews will be completed, each project's type will be set, and the visual rating scores returned to each submitting county, by July 1st of each even-numbered year prior to a funding period.

[Statutory Authority: Chapter 36.79 RCW. WSR 01-05-009, § 136-161-040, filed 2/8/01, effective 3/11/01; WSR 99-01-021, § 136-161-040, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.79.060. WSR 94-16-111, § 136-161-040, filed 8/2/94, effective 9/2/94.]

AMENDATORY SECTION (Amending WSR 19-04-047, filed 1/29/19, effective 3/1/19)

**WAC 136-161-080 Limitations on allocations of RATA funds to counties.** For any project program period, no county shall receive a RATA fund allocation greater than the following maximum project RATA contribution, or percentage of the forecasted regional apportionment amount:

- (1) PSR: No maximum project RATA contribution; 40% limit on percentage of the forecasted regional apportionment amount;
- (2) NWR: No maximum project RATA contribution; twenty percent limit on percentage of the forecasted regional apportionment amount;
- (3) NER: No maximum project RATA contribution; maximum RATA contribution to each county for 2R and drainage projects combined is seven hundred fifty thousand dollars; twelve and one-half percent limit on percentage of the forecasted regional apportionment amount;
- (4) SWR: No maximum project RATA contribution; fifteen percent limit on percentage of the forecasted regional apportionment amount;
- (5) SER: No maximum project RATA contribution; percentage varies by county as follows:

(a) Asotin County	ten percent
(b) Benton County	fourteen percent
(c) Columbia County	eleven percent
(d) Franklin County	thirteen percent
(e) Garfield County	ten percent
(f) Kittitas County	thirteen percent
(g) Klickitat County	fourteen percent
(h) Walla Walla County	fourteen percent
(i) Yakima County	twenty percent

(6) The county limits for all eligible and applying counties in each region will be adjusted to include by equal share the funding limit of any ineligible or nonapplying county.

(7) Projects must have a total estimated cost of two hundred fifty thousand dollars or greater to be eligible for RATA funding.

[Statutory Authority: Chapter 36.78 RCW. WSR 19-04-047, § 136-161-080, filed 1/29/19, effective 3/1/19; WSR 11-05-005, § 136-161-080, filed 2/3/11, effective 3/6/11; WSR 10-05-018, § 136-161-080, filed 2/4/10, effective 3/7/10. Statutory Authority: Chapter 36.79 RCW. WSR 08-16-042, § 136-161-080, filed 7/29/08, effective 8/29/08; WSR 07-17-020, § 136-161-080, filed 8/6/07, effective 9/6/07; WSR 03-11-046, § 136-161-080, filed 5/16/03, effective 6/16/03; WSR 99-01-021, § 136-161-080, filed 12/7/98, effective 1/7/99; WSR 98-09-070, § 136-161-080, filed 4/20/98, effective 5/21/98. Statutory Authority: RCW 36.79.060. WSR 94-16-111, § 136-161-080, filed 8/2/94, effective 9/2/94.]

AMENDATORY SECTION (Amending WSR 07-17-020, filed 8/6/07, effective 9/6/07)

**WAC 136-161-090 Limitations on use of RATA funds.** RATA funds requested and ((allocated)) allowed to a project are limited to ((eighty percent in the NWR for projects approved by the CRABoard on and prior to April 30, 2008, and ninety percent in the NWR for projects approved thereafter, and ninety percent in the PSR, SWR, NER and SER, of the total eligible project development costs, which include preliminary engineering and construction costs in all regions, and)) the match requirements established by county road administration board policy following 36.79.120 RCW. The match requirements will be applied to the total eligible project development costs, which include preliminary engineering and construction costs in all regions, and non 2R project type right-of-way costs in the PSR, NWR, NER and SER.

Even though additional and eligible project development costs may be incurred by a county for a specific project, the maximum amount of RATA funds for that project is limited to the amount allocated and shown in the CRAB/county contract (see chapter 136-170 WAC), unless the allocation is increased pursuant to chapter 136-165 WAC.

[Statutory Authority: Chapter 36.79 RCW. WSR 07-17-020, § 136-161-090, filed 8/6/07, effective 9/6/07; WSR 99-01-021, § 136-161-090, filed 12/7/98, effective 1/7/99; WSR 98-09-070, § 136-161-090, filed 4/20/98, effective 5/21/98. Statutory Authority: RCW 36.79.060. WSR 94-16-111, § 136-161-090, filed 8/2/94, effective 9/2/94.]

AMENDATORY SECTION (Amending WSR 07-17-020, filed 8/6/07, effective 9/6/07)

**WAC 136-161-110 Use of other funds to match RATA funds.** A county with an approved RAP project may use any other funds available for such project including federal, other state, private, and local funds ((, provided that the county will be required to use such other funds to match any RATA funds allocated to the project with a minimum of twenty percent other funds in the NWR for projects approved by the CRABoard on and prior to April 30, 2008, and ten percent other funds in the NWR for projects approved thereafter, and ten percent other funds in the PSR, SWR, NER, and SER)). The minimum match of RATA funds

allocated to the project shall be set by county road administration board policy following RCW 36.79.120.

[Statutory Authority: Chapter 36.79 RCW. WSR 07-17-020, § 136-161-110, filed 8/6/07, effective 9/6/07; WSR 99-01-021, § 136-161-110, filed 12/7/98, effective 1/7/99.]

#### OTS-3349.1

AMENDATORY SECTION (Amending WSR 20-04-077, filed 2/4/20, effective 3/6/20)

**WAC 136-163-050 Limitations and conditions.** All projects for which rural arterial program funding is being requested under this chapter are subject to the following:

(1) The requesting county has the sole burden of making a clear and conclusive showing that the project is emergent as described in this chapter; and

(2) The requesting county shall clearly demonstrate that the need for the project was unable to be anticipated at the time the current six-year transportation program was developed; and

(3) The requesting county agrees to a reduction in the next funding period's maximum RATA eligibility to the county equal to the RATA that may be (~~provided; however,~~) awarded. Should that region not have a maximum RATA eligibility for each county, the requesting county agrees to withdraw, amend or delay an existing approved project or portion thereof in an amount equal to the RATA that may be provided for the project.

[Statutory Authority: Chapter 36.78 RCW. WSR 20-04-077, § 136-163-050, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapter 36.79 RCW. WSR 01-05-009, § 136-163-050, filed 2/8/01, effective 3/11/01; WSR 99-01-021, § 136-163-050, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.79.060. WSR 96-17-014, § 136-163-050, filed 8/12/96, effective 9/12/96.]

#### OTS-3350.1

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

**WAC 136-165-020 Requirements for consideration of RATA fund increases.** (1) When a county submits its final prospectus as described in WAC 136-161-050, the county road administration board presumes that the amount of RATA funds requested, plus any non-RATA funds that may be designated for the project, are sufficient to fully, and in a timely manner, complete the project as described.

(2) All cost increases during the course of construction shall be the responsibility of the county. In extraordinary circumstances, a

county may request an increase in the amount of RATA funds allocated to a project. A county may request an increase in a project's RATA allocation once during the course of a project's development, and such request may occur only after completion of preliminary engineering, but prior to commencing construction. A project shall be considered to have commenced construction if:

(a) The construction contract for the work has been awarded; or

(b) If done by county forces, the work has commenced, except for construction engineering.

Requests for increases in excess of twenty-five percent of the original RATA allocation will not be considered or granted; the county must secure other funds, withdraw or request the termination of the project, or request a change in scope and/or project limits. If current funding sources are not sufficient to cover the costs beyond a twenty-five percent increase, the county may resubmit the same project for funding in the next funding period. Upon funding of the new project by the county road administration board, the previous contract shall become void. All RATA funds expended on the previous contract shall be repaid to the county road administration board unless waived by the county road administration board in keeping with provisions of WAC 136-167-030.

(3) A request by a county for an increase in RATA funds allocated to a project shall demonstrate that:

(a) The county at the time of preparing its final project prospectus considered the factors listed in subsection (4) of this section;

(b) The request for an increased allocation is based on extraordinary and unforeseeable circumstances of the type listed in subsection (5) of this section;

(c) It is not feasible to reduce the scope and/or project limits so the project can be substantially constructed within the initial RATA allocation;

(d) The request is not to pay for an expansion of the originally approved project;

(e) If the work is to be done by contract, the county has supplied to the CRABoard, an updated engineer's cost estimate prior to, and within three months of, advertisement of the project for construction bids; and

(f) If the work is to be done by county forces, the county has supplied to the CRABoard, an updated engineer's cost estimate prior to, and within three months of, commencement of the work.

(4) At the time of preparation and submittal of the final project prospectus, a county is expected to consider all information which may affect the cost of the project. In cases where the information is incomplete or poorly defined, the county is to exercise good professional judgment and/or seek outside professional assistance and advice in order to prepare a reasonable RATA fund request. The information which a county is expected to consider includes, but is not limited to, the following:

(a) The availability at the needed time of matching funds and other supplementary funds;

(b) All technical data reasonably available such as topographic maps, reconnaissance reports, surface and subsurface geotechnical data, hydraulic and hydrological data, sources of materials, applicable design standards, and any earlier preliminary engineering;

(c) Required permits, including preproject scoping consultations with the permitting agencies and an estimate of the costs of complying with permit requirements;

(d) Required right of way or other easements, and the time and cost of acquisition;

(e) Availability of qualified contractors to perform the work;

(f) Ownership, type, amount, and time requirements of any required utility relocation;

(g) Historical and projected labor, equipment and material costs; and

(h) The project development timetable leading to completed construction and the interrelation of this project to all other work activities under the control of the county engineer.

(5) The county road administration board will increase RATA funds allocated to a project only if it finds that the request for an increased allocation is based on extraordinary and unforeseeable circumstances, including but not limited to the following:

(a) The county relied on existing technical data which were later found to be in error, and which will necessitate a significant design change prior to proceeding with construction;

(b) Project permit requirements were substantially changed, or new permits were required;

(c) Supplementary funds, such as impact fees, developer contributions, grants, etc., which were forecasted to be available for the project, were withdrawn or otherwise became unavailable;

(d) Design or other standards applicable to the project were changed; and/or

(e) The start of construction will be significantly delayed or additional construction requirements will be added as a direct result of legal action; provided however, that the failure of a county to exercise its statutory powers, such as condemnation, will not be grounds for increasing RATA funds.

(6) Extraordinary and unforeseeable market-wide fluctuations in standard bid item costs will not be considered a basis for project cost increases by the county road administration board.

[Statutory Authority: Chapter 36.78 RCW. WSR 11-05-005, § 136-165-020, filed 2/3/11, effective 3/6/11; WSR 09-23-044, § 136-165-020, filed 11/9/09, effective 12/10/09. Statutory Authority: Chapter 36.79 RCW. WSR 06-11-067, § 136-165-020, filed 5/12/06, effective 6/12/06; WSR 99-01-021, § 136-165-020, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.79.060. WSR 94-16-109, § 136-165-020, filed 8/2/94, effective 9/2/94.]

## OTS-3351.1

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

**WAC 136-167-030 Termination of approved project after RATA reimbursement.** (1) If a county terminates an uncompleted RATA funded project for which RATA reimbursement has been made, for other than an unanticipated scope change, and is prepared to repay the RATA for all

RATA funds received, the county shall, by means of a letter signed by the chair of the board of county commissioners or the county executive as appropriate, inform the county road administration board of its termination of the project. The letter shall state the reasons for termination and commit to repaying all RATA funds received for the project. Upon acknowledgment of such termination by the county road administration board, the county shall repay the county road administration board for all RATA funds paid to the county on that project within ~~((sixty))~~ 60 days of such acknowledgment. After receipt of the RATA repayment, the county road administration board will void the CRAB/county contract and allocate the RATA funds to other projects within the region.

(2) If a county terminates an uncompleted RATA funded project for which RATA reimbursement has been made, for other than an unanticipated scope change, and does not want to be required to repay the county road administration board for all RATA funds received, a letter of request signed by the chair of the board of county commissioners or the county executive as appropriate must be sent to the county road administration board. The request must include:

(a) An explanation of the reasons that the project will not proceed to completion;

(b) A statement of the amount of RATA funds which the county does not want to repay; ~~((and))~~

(c) An explanation of why the county believes full repayment should not be made; and

(d) Agreement to provide supporting documentation for amounts the county does not want to repay.

If the county road administration board grants the request, the county shall repay all RATA funds not exempted from repayment within 60 days of the county road administration board's action, the CRAB/county contract will be amended, and the remaining RATA funds will be allocated to other projects within the region. If the county road administration board denies the request, full repayment shall be made as provided in subsection (1) of this section.

~~((3) If after an engineering design study for the RATA funded project has been completed, and as a result of that study it is found that the project scope submitted the final project prospectus must be significantly altered due to factors not anticipated at the time of final prospectus submittal, a county may voluntarily withdraw the project and resubmit a revised project during a later RAP cycle.~~

~~A county wishing to voluntarily withdraw a project for an unanticipated scope change shall submit a request signed by the chair of the board of county commissioners or the county executive as appropriate, to the county road administration board notifying the board of the county's intention to withdraw the project and the nature of the unanticipated project scope change. The county may retain up to five percent of the RATA request amount, not to exceed seventy-five thousand dollars for the RATA share of the cost to perform the engineering design study. In order to be eligible to retain the RATA share of the cost to perform the engineering design study, the project must have begun the engineering design within one year of project approval by the county road administration board and it must be documented in the request that the changed conditions could not have been reasonably anticipated at the time of final prospectus submittal. The director shall make the determination of eligibility for the following conditions:~~

~~(a) Unanticipated subsurface conditions identified in a geotechnical report resulting from subsurface explorations (i.e., drilling) that would not normally be completed prior to the final prospectus;~~

~~(b) Unanticipated environmental and/or cultural resource issues identified in an environmental or cultural resource discipline report that would not normally be completed prior to the final prospectus submittal;~~

~~(c) Changes in project eligibility resulting from annexation or functional classification changes not anticipated prior to final prospectus submittal;~~

~~(d) Inability to obtain necessary rights of way from agencies/entities that are not subject to eminent domain (i.e., federal or tribal agencies); or~~

~~(e) Major geometric changes required to mitigate impacts identified by the public and/or adjacent property owners as the result of a formal environmental determination, formal public involvement process, or unanticipated costs for utility relocations that were not reasonably anticipated prior to final prospectus submittal.~~

~~Upon a determination of eligibility by the director, the county shall repay the county road administration board for all costs in excess of the eligible amount within sixty days of such acknowledgment, the CRAB/county contract will be amended, and the remaining RATA funds will be allocated to other projects within the region. Any determination made by the director under this subsection may be appealed to the full board for a final determination of eligibility. Nothing in this subsection is intended to limit or restrict a county from making a request to the county road administration board as allowed under subsection (2) of this section.)~~

[Statutory Authority: Chapter 36.78 RCW. WSR 11-05-005, § 136-167-030, filed 2/3/11, effective 3/6/11. Statutory Authority: Chapter 36.79 RCW. WSR 00-05-043, § 136-167-030, filed 2/11/00, effective 3/13/00; WSR 99-01-021, § 136-167-030, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.79.060. WSR 94-16-110, § 136-167-030, filed 8/2/94, effective 9/2/94.]

## OTS-3352.2

AMENDATORY SECTION (Amending WSR 13-16-105, filed 8/7/13, effective 9/7/13)

**WAC 136-170-030 Terms of CRAB/county contract.** (1) The CRAB/county contract shall include, but not be limited to, the following provisions:

(a) The contract shall be valid and binding, and the county shall be entitled to receive RATA funding in accordance with the vouchering/payment process as described in chapter 136-180 WAC, only if the contract is properly signed and returned to the county road administration board within forty-five calendar days of its mailing by the county road administration board.

(b) The county certifies that it is in compliance with the provisions of chapter 136-150 WAC.

(c) The project will be constructed in accordance with the scope, design and project limits as described in the final prospectus and in accordance with the plans and specifications approved by the county engineer, and, if applicable, the phased construction plan submitted by the county engineer to the county road administration board.

(d) The county will notify the county road administration board:

(i) If a single construction contract is intended to fully complete the project, at the time of project advertisement, construction contract, and when the project has been completed. Should the small works roster process be utilized, then the initial notice must occur prior to initiating the contractor selection process.

(ii) If county forces are utilized to fully complete the project, at the time of project notice, as required in RCW 36.77.070, commencement of construction activities, and when the project has been completed.

(iii) If the project applies a phased construction methodology, at those times described in a phased construction plan, consistent with subsection (2) of this section.

(e) The county road administration board will reimburse counties on the basis of monthly progress payment vouchers received and approved on individual projects in the order in which they are received in the county road administration board office, subject to the availability of RATA funds apportioned to the region; or subject to a minimum regional balance determined by the CRABoard for the purposes of cash flow; provided however, that if insufficient RATA funds are available or the legislature fails to appropriate sufficient RATA funds, payment of vouchers may be delayed or denied. Counties are ineligible to receive RATA funded construction cost reimbursements prior to satisfaction of the initial project notice requirement described in subsection (1)(d) of this section.

(f) The county will reimburse the RATA in the event a project post-audit reveals ineligible expenditures of RATA funds.

(g) The county may be required to reimburse the RATA in the event of early termination in accordance with the provisions of chapter 136-167 WAC.

(h) The county agrees to amend the contract in cases where:

(i) Additional RATA funds have been requested and approved under chapter 136-165 WAC;

(ii) Other relief from the original scope, design or project limits has been approved by the county road administration board under chapter 136-165 WAC; or

(iii) A project has been terminated without full RATA reimbursement under WAC 136-167-030(2).

(i) The county agrees to provide periodic project development progress reports as requested by the county road administration board.

(2) Counties may implement a phased construction methodology in the completion of RATA funded projects. A phased construction methodology is described as the process to implement multiple construction contracts through competitive bid and award, contracts awarded through exercise of the small works roster process, or construction by county forces, or a combination of two or more of these three methods, in order to complete a single RATA funded project. If a county elects to use phased construction methodology, construction of at least one of the project phases must commence by the lapsing date and all remaining phases must commence within two years of commencement of the first phase. In the event the county fails to meet either of these timelines, repayment of expended RATA funds for all phases of the project

will be required unless waived by the county road administration board in keeping with the provisions of this section.

(a) In order to be considered phased construction, each phase must:

- (i) Be distinct, independent, and nonoverlapping construction activities as to location and type of work;
- (ii) Result in separate function and utility;
- (iii) Be part of related and sequential construction activities that lead to overall project completion;
- (iv) Separately and collectively comply with state laws as to procurement of contract work and use of county forces; and
- (v) Not be implemented in a way that would otherwise be considered a split project, as described in WAC 136-170-060, without first obtaining approval as a split project.

(b) In order to satisfy notification requirement of subsection (1)(d) of this section, a phased construction plan must be developed and submitted to the county road administration board at least fifteen calendar days prior to contract bid advertisement, beginning the selection process for a contractor through a small works roster process, or commencement of construction by county forces, whichever occurs first. The phased construction plan must:

- (i) Include a description of each construction phase, the contracting method to be employed or that county forces will be used;
- (ii) Include an estimated cost and begin and end dates for each construction phase; and
- (iii) Describe the relationship between construction phases and ultimate completion of the overall project.

[Statutory Authority: Chapter 36.78 RCW. WSR 13-16-105, § 136-170-030, filed 8/7/13, effective 9/7/13; WSR 11-05-005, § 136-170-030, filed 2/3/11, effective 3/6/11. Statutory Authority: Chapter 36.79 RCW. WSR 01-05-008, § 136-170-030, filed 2/8/01, effective 3/11/01; WSR 99-01-021, § 136-170-030, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 36.79.060. WSR 96-17-013, § 136-170-030, filed 8/12/96, effective 9/12/96. Statutory Authority: RCW 36.79.060. WSR 94-16-112, § 136-170-030, filed 8/2/94, effective 9/2/94. Statutory Authority: Chapter 36.78 RCW. WSR 84-16-065 (Order 56), § 136-170-030, filed 7/30/84.]

AMENDATORY SECTION (Amending WSR 09-23-044, filed 11/9/09, effective 12/10/09)

**WAC 136-170-040 Combining of CRAB/county contracts.** In those cases when a county desires to combine two or more adjacent RATA funded projects into a single (~~construction~~) contract, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by county forces, must make a formal written request to the county road administration board to combine the projects into a single project, assuring that the original prospectus work will be accomplished as originally proposed or as previously revised by the county road administration board, regardless of the applicable maximum project RATA contribution.

Upon receipt of a letter of request to combine, and consideration and approval by the director of the county road administration board,

a revised CRAB/county contract will be prepared and sent to the county for its execution and returned in the same manner as for the original contract(s). Projects shall be considered adjacent if they have a common terminus.

[Statutory Authority: Chapter 36.78 RCW. WSR 09-23-044, § 136-170-040, filed 11/9/09, effective 12/10/09. Statutory Authority: Chapter 36.79 RCW. WSR 08-16-044, § 136-170-040, filed 7/29/08, effective 8/29/08; WSR 99-01-021, § 136-170-040, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.79.060. WSR 94-16-112, § 136-170-040, filed 8/2/94, effective 9/2/94.]

#### NEW SECTION

**WAC 136-170-045 Bundling of construction projects.** In those cases when a county desires to bundle two or more RATA funded projects into a single construction contract, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by county forces, must make a formal written request to the county road administration board to bundle the projects into a single construction contract. This request must describe the benefit to bundling the projects into a single construction contract and demonstrate how the county will separately track each individual project/item cost.

Upon receipt of a letter of request to bundle funded projects for construction, a letter approving or denying the request will be prepared and sent to the county from the county road administration board executive director.

[ ]

AMENDATORY SECTION (Amending WSR 09-23-044, filed 11/9/09, effective 12/10/09)

**WAC 136-170-050 Combining of RATA funded project with non-RATA funded project.** In those cases when a county desires to combine a RATA funded project with one or more adjacent non-RATA funded projects, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by county forces, shall notify the county road administration board in writing of its plans to combine the projects into a single construction project, assuring in writing that the work items assigned to the RATA funded section will remain distinct and separate through the bid documents and contract plans.

Upon verification that the request is submitted in a timely manner, that the combined project will meet the conditions of the CRAB/county contract and prospectus requirements, and that RATA funded items of work will be sufficiently separated from other work, the CRAB director will respond in writing, to grant the combination. Projects shall be considered adjacent if they have a common terminus.

[Statutory Authority: Chapter 36.78 RCW. WSR 09-23-044, § 136-170-050, filed 11/9/09, effective 12/10/09. Statutory Authority: Chapter 36.79 RCW. WSR 08-16-044, § 136-170-050, filed 7/29/08, effective 8/29/08.]

### OTS-3353.1

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-180-030 Voucher approval.** The county constructing each RAP project may submit vouchers monthly as the work progresses and shall submit a final voucher after completion of each RAP project for the payment of the RATA share of the project cost. Each voucher shall include total project costs to date, including costs covered by other funding sources. The county shall include with each voucher sufficient documentation to verify costs. Reimbursable costs include all eligible direct costs for the design phase, right-of-way phase in allowed regions, and construction phase. Indirect costs shall not be included. The chair of the county road administration board or his/her designee shall approve such vouchers for payment to the county submitting the voucher.

[Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-180-030, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 36.79.060. WSR 96-17-013, § 136-180-030, filed 8/12/96, effective 9/12/96. Statutory Authority: Chapter 36.78 RCW. WSR 84-16-065 (Order 56), § 136-180-030, filed 7/30/84.]