

**WSR 06-01-008**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
 [Filed December 8, 2005, 4:30 p.m.]

Continuance of WSR 05-24-081.

Preproposal statement of inquiry was filed as WSR 05-10-104.

Title of Rule and Other Identifying Information: Access permit rules. This continuance is solely for notification of the Fish and Wildlife Commission conference call that will consider these rules. The commission has changed the day from the first and third Thursdays of each month to the first and third Fridays of each month.

Hearing Location(s): Natural Resource Building, Commission Office, 1111 Washington Street, Olympia, WA, on January 20, 2006, at 9:00 a.m.

Date of Intended Adoption: January 20, 2006.

Submit Written Comments to: Wildlife Program, 600 Capitol Way, Olympia, WA 98501-1091, e-mail wildthing@dfw.wa.gov, fax (360) 902-2612, by November 23, 2005.

Assistance for Persons with Disabilities: Contact Susan Yeager by January 17, 2006, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: See WSR 05-24-081.

Reasons Supporting Proposal: See WSR 05-24-081.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: Department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Dave Brittell, 1111 Washington Street, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules regulate recreational hunters and do not directly regulate small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposal do not affect hydraulics.

December 8, 2005

Evan Jacoby

Rules Coordinator

**WSR 06-01-014**  
**PROPOSED RULES**  
**ENERGY FACILITY SITE**  
**EVALUATION COUNCIL**  
 [Filed December 9, 2005, 3:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-01-181.

Title of Rule and Other Identifying Information: Chapter 463-78 WAC, General and operating permit regulations for air pollution sources.

Hearing Location(s): Energy Facility Site Evaluation Council, 925 Plum Street S.E., Building 4, Conference Room 308, Olympia, WA 98504-3172, on February 14, 2006, at 1:30 p.m.

Date of Intended Adoption: February 14, 2006.

Submit Written Comments to: Allen J. Fiksdal, EFSEC Manager, P.O. Box 43172, Olympia, WA 98504-3172, e-mail efsec@cted.wa.gov, fax (360) 956-2158, by February 7, 2006, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Irina Makarow by February 7, 2006, (360) 956-2047.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update energy facility site evaluation council's (EFSEC's) air rules (chapter 463-78 WAC) to make them consistent with the federal prevention of significant deterioration (PSD) and ecology's new source review (NSR) programs, and to clarify procedures for appeals of air permits and source registration. The following changes are being made: WAC 463-78-005, update adoption by reference of ecology regulations; WAC 463-78-030, make consistent with current ecology rules; WAC 463-78-100, clarify registration requirements with text that can be approved into the state implementation plan; WAC 463-78-115, update adoption by reference of federal regulations; and WAC 463-78-140, clarify permit appeals procedures and make consistent with state statute.

Reasons Supporting Proposal: In February 2005, ecology finalized revision of its rules relating to air emission regulation (in particular chapter 173-400 WAC), to incorporate new federal requirements under the PSD program that became effective in 2003, and to reorganize and simplify their rules. In order to implement its own air emission rules, EFSEC adopts ecology and federal rules for air emissions. EFSEC has been delegated authority to issue federal air emission permits by the United States Environmental Protection Agency (US EPA). EFSEC must adopt the proposed rules to maintain consistency with federal requirements. Consistency is necessary for EFSEC to retain and exercise its delegated authority from the US EPA to implement federal Clean Air Act programs and regulations for facilities under EFSEC jurisdiction. Updating the rules will also make the review and control of air emissions consistent with current state requirements.

Statutory Authority for Adoption: RCW 80.50.040 (1) and (12).

Statute Being Implemented: Chapter 80.50 RCW.

Rule is necessary because of federal law, Federal Clean Air Act.

Name of Proponent: Energy facility site evaluation council, governmental.

Name of Agency Personnel Responsible for Drafting: Irina Makarow, Olympia, (360) 956-2047; Implementation: Allen J. Fiksdal, Olympia, (360) 956-2152; and Enforcement: Mike Mills, Olympia, (360) 956-2151.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes to chapter 463-78 WAC are exempt from the requirements to prepare a small business economic impact statement because they are adopting federal requirements without material change, adopting rules of another Washington state agency without material change, and clarifying language of a rule without changing its effect. See RCW 19.85.025(3) and 34.05.310 (4)(c) and (d).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes to chapter 463-78 WAC are exempt from the requirements of RCW 34.05.328 because they are adopting federal requirements without material change, adopting rules of another Washington state agency without material change, and clarifying language of a rule without changing its effect. See RCW 34.05.328 (5)(b) (iii) and (iv).

December 9, 2005  
Allen J. Fiksdal  
EFSEC Manager

**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 06-02 issue of the Register.

**WSR 06-01-019**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed December 12, 2005, 10:51 a.m.]

Supplemental Notice to WSR 05-12-142.

Preproposal statement of inquiry was filed as WSR 04-22-091.

Title of Rule and Other Identifying Information: Commercial fishing rules, this supplemental filing is for purposes of further consideration of modified rule language by the fish and wildlife commission, and the taking of additional public testimony.

Hearing Location(s): Natural Resources Building, 1111 Washington Street, Olympia, on January 13-14, 2006, begins at 8:00 a.m., January 13, 2006.

Date of Intended Adoption: January 13, 2006.

Submit Written Comments to: Evan Jacoby, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail [jacobesj@dfw.wa.gov](mailto:jacobesj@dfw.wa.gov), fax (360) 902-2155, by January 6, 2006.

Assistance for Persons with Disabilities: Contact Susan Yeager by December 30, 2005, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule will establish the license that is statutorily required to sell wild shellfish harvested from nonpublic tidelands. A recent increase in wild geoduck harvest from sites other than DNR tidelands, and harvest of wild shellfish from tidelands that never have been commercially harvested is consistent with using the emerging commercial fishery license for this purpose. Allowing use of water pumps to harvest geoduck clams conforms to the industry standard method of harvest.

Reasons Supporting Proposal: Allows for commercialization of wild embedded shellfish taken from nonpublic tidelands. Utilization of the emerging commercial fishery license and reporting on shellfish receiving tickets will provide for resource management, accurate catch reporting, and enforcement.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, WA, (360) 902-2930; Implementation: Lew Atkins, 1111 Washington Street, Olympia, WA, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, WA, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: No reporting requirement of sale for harvesters. The catch is to be reported by wholesale dealers on fish receiving tickets. Harvesters who wish to harvest cultured shellfish within the presumptive wild shellfish reporting period will need to contact the department on a case-by-case basis. Harvesters who are intending to culture aquatic products will need to register the site as an aquatic farm and file quarterly reports of production, but this is a current requirement and not an effect of the proposed rule.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None required.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: Purchase of an emerging commercial fisheries license (\$185 for residents; \$295 for nonresidents), and payment of the excise tax on enhanced food fish. The tax is 2.1% for shellfish other than oysters, and .08% for oysters.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No loss of sales or revenue is anticipated.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

- a. Cost per employee;
- b. Cost per hour of labor; or
- c. Cost per one hundred dollars of sales.

A harvester who is a single entity will pay \$185 for a resident license or \$295 for a nonresident license. The tax is proportional to production. Using geoduck as an example, DNR has estimated that geoduck at a wholesale value of \$5/pound. Thus, if an acre of geoduck produces \$65,000 in revenue, the cost is the license (\$185) and the enhanced fish tax (\$1,365) total \$1,550 or \$2.38 per \$100 in sales. Oysters are approximately \$.10 each at wholesale, and a medium

beach (Triton Cove) produces 105,000 per acre, or roughly \$10,500 per acre, with the license (\$185) and excise tax (\$80) totaling \$2.52 per \$100 in sales. This presumes the harvest tract is one acre in size. Costs are proportionally higher for smaller tracts and lower for larger tracts.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: Licensing for harvest of wild shellfish and the excise taxes are required by statute. The department has proposed a presumptive wild shellfish reporting period, after which the product will be reported as private sector cultured aquatic product. If a harvester waits out the reporting period, there is no license cost or tax, as private sector cultured aquatic products are not subject to licensing or enhanced fish excise taxes.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department has held multiple meetings with shellfish growers and tribes affected by the proposed rule. There have been four public meetings before the fish and wildlife commission. The department has mailed drafts of the proposals to all registered growers.

8. A List of Industries That Will Be Required to Comply with the Rule: Wild shellfish harvesters taking clams, mussels and oysters from private tidelands.

A copy of the statement may be obtained by contacting Evan Jacoby, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail [jacobesj@dfw.wa.gov](mailto:jacobesj@dfw.wa.gov).

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

December 12, 2005

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 94-23, filed 5/19/94, effective 6/19/94)

**WAC 220-52-018 Clams—Gear.** It shall be unlawful to take, dig for or possess clams, geoducks, or mussels taken for commercial purposes from any of the tidelands in the state of Washington except with a pick, mattock, fork or shovel operated by hand, except ~~((that))~~:

(1) Permits for the use of mechanical clam digging devices to take clams other than geoducks may be obtained from the director of fisheries subject to the following conditions:

~~((1))~~ (a) Any or all types of mechanical devices used in the taking or harvesting of shellfish must be approved by the director of fisheries.

~~((2))~~ (b) A separate permit shall be required for each and every device and the permit shall be attached to the specific unit at all times.

~~((3))~~ (c) All types of clams to be taken for commercial use must be of legal size and in season during the proposed operations unless otherwise provided in specially authorized permits for the transplanting of seed to growing areas or for research purposes.

~~((4))~~ (d) The holder of a permit to take shellfish from tidelands by mechanical means shall limit operations to privately owned or leased land.

~~((5))~~ (e) The taking of clams from bottoms under navigable water below the level of mean lower low water by any mechanical device shall be prohibited except as authorized by the director of fisheries. Within the enclosed bays and channels of Puget Sound, Strait of Juan de Fuca, Grays Harbor and Willapa Harbor, the operators of all mechanical devices shall confine their operations to bottoms leased from the Washington department of natural resources, subject to the approval of the director of fisheries. The harvesting of shellfish from bottoms of the Pacific Ocean westward from the western shores of the state shall not be carried out in waters less than two fathoms deep at mean lower low water. In said waters more than two fathoms deep the director of fisheries may reserve all or certain areas thereof and prevent the taking of shellfish in any quantity from such reserves established on the ocean bottoms.

~~((6))~~ (f) Noncompliance with any part of these regulations or with special requirements of individual permits will result in immediate cancellation of and/or subsequent nonrenewal of all permits held by the operator.

~~((7))~~ (g) Applications must be made on the forms provided by the department of fisheries and permits must be in the possession of the operator before digging commences.

~~((8))~~ (h) All permits to take or harvest shellfish by mechanical means shall expire on December 31 of the year of issue.

~~((9))~~ (i) All mechanical clam harvesting machines must have approved instrumentation that will provide deck readout of water pressure.

~~((10))~~ (j) All clam harvest machines operating on intertidal grounds where less than ten percent of the substrate material is above 500 microns in size must be equipped with a propeller guard suitable for reducing the average propeller wash velocity at the end of the guard to approximately twenty-five percent of the average propeller wash velocity at the propeller. The propeller guard must also be positioned to provide an upward deflection to propeller wash.

~~((11))~~ (k) Clam harvest machines operating in fine substrate material where less than ten percent of the substrate material is above 500 microns in size, shall have a maximum harvest head width of 3 feet (overall) and the maximum pump volume as specified by the department of fisheries commensurate with the basic hydraulic relationship of 828 gpm at 30 pounds per square inch, pressure to be measured at the pump discharge.

~~((12))~~ (l) Clam harvest machines operating in coarser substrate material where more than ten percent of the substrate material is above 500 microns in size, shall have a maximum harvest head width of 4 feet (overall) and a maximum pump volume as specified by the department of fisheries commensurate with a basic hydraulic relationship of 1,252 gpm at 45 pounds per square inch, pressure to be measured at the pump discharge.

~~((13))~~ (m) All clam harvest machine operators must submit accurate performance data showing revolutions per minute, gallons per minute, and output pressure for the water pump on their machine. In addition, they shall furnish the

number and sizes of the hydraulic jets on the machines. If needed, the operator shall thereafter modify the machine (install a sealed pressure relief valve) as specified by the department of fisheries to conform with values set forth in either WAC 220-52-018 (11) or (12) of this section. Thereafter, it shall be illegal to make unauthorized changes to the clam harvester water pump or the hydraulic jets. Exact description of the pump volume, maximum pressure and number and size of the hydraulic jet for each harvester machine shall be included in the department of fisheries' clam harvest permit.

~~((14))~~ (n) All clam harvest machines shall be equipped with a 3/4-inch pipe thread tap and valve that will allow rapid coupling of a pressure gauge for periodic testing by enforcement personnel.

~~((15))~~ (o) Each mechanical clam harvester must have controls so arranged and situated near the operator which will allow the operator to immediately cut off the flow of water to the jet manifold without affecting the capability of the vessel to maneuver.

~~((16))~~ (p) Licensing: A hardshell clam mechanical harvester fishery license is the license required to operate the mechanical harvester gear provided for in this section.

(2) Aquatic farmers may harvest geoducks that are private sector cultured aquatic product by means of water pumps and nozzles.

(3) Persons may harvest nonstate tideland wild geoducks under a nonstate lands commercial wild clam, mussel and oyster trial fishery permit by means of water pumps and nozzles.

AMENDATORY SECTION (Amending Order 00-264 [03-176], filed 12/29/00 [8/6/03], effective 1/29/01 [9/6/03])

**WAC 220-52-020 Clams—Commercial harvest.** It shall be unlawful to take, dig for or possess clams except razor clams, cockles, borers or mussels taken for commercial purposes from the tidelands of the state of Washington except from registered aquaculture farms or from nonstate tidelands under a nonstate lands commercial wild clam, mussel and oyster trial fishery permit.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

#### NEW SECTION

**WAC 220-88D-010 Emerging commercial fishery—Commercial wild clams, mussels, and oyster shellfish fishery on nonstate tidelands and bedlands.** The purpose of this chapter is to establish the commercial harvest of wild clams, mussels, and oysters on nonstate lands as an emerging commercial fishery. For purposes of this chapter, "wild" or "wild stocks of" clams, mussels, and oysters means shellfish that are not "private sector cultured aquatic product," as defined in chapter 15.85 RCW. These terms, and all provisions of this chapter pertaining to "wild" or "wild stocks of" clams, mussels, and oysters, or to "private sector cultured

aquatic product," are for state resource management, catch reporting, and enforcement purposes only. They are neither intended to be, nor should be characterized as, any determination or evidence of whether "wild" or "wild stocks of" clams, mussels, and oysters (or any portion thereof) are naturally occurring, are subject to treaty sharing, or are part of natural or artificial shellfish beds as those concepts and terms are used and defined in *United States v. Washington*, 157 F.3d 630 (9th Cir. 1998), the Shellfish Implementation Plan of *United States v. Washington*, C70-9213, Subproceeding 89-3 (W.D. Wash, rev. April 8, 2002), and other applicable court orders relating to shellfish.

#### NEW SECTION

**WAC 220-88D-020 Designation of the commercial wild clams, mussels, and oyster harvest on nonstate lands as an emerging commercial fishery.** The director designates the commercial harvest of wild clams, mussels, and oysters from nonstate tidelands and bedlands as an emerging commercial fishery for which use of a vessel is not required.

#### NEW SECTION

**WAC 220-88D-030 Eligibility to participate in the nonstate lands commercial wild clams, mussels, and oyster shellfish fishery.** (1) Persons having an ownership interest or contractual right to take shellfish from nonstate owned tidelands or bedlands and who intend to commercially harvest wild stocks of clams, mussels, or oysters are eligible to obtain a nonstate lands commercial wild clam, mussel, and oyster trial fishery permit and to purchase an emerging commercial fishery license.

(2) "Commercial harvest" of wild clams, mussels, and oysters includes both harvest for sale or barter and harvest of the presumptive commercial quantities defined in RCW 69.30.010.

#### NEW SECTION

**WAC 220-88D-040 Nonstate lands commercial wild clams, mussels, and oysters—Application requirements—Notification requirements—Incidental take prohibited.** (1) A person making application for a nonstate lands commercial wild clam, mussel, and oyster trial fishery permit must provide the following:

(a) Documentation of ownership interest in or contractual right to harvest from the lands from which the wild clams, mussels, or oysters are to be harvested.

(b) A shellfish growing area certificate of approval issued by the state department of health for the lands from which the wild clams, mussels, or oysters are to be harvested.

(c) A copy of the application for a nonstate lands commercial wild clam, mussel, and oyster trial fishery permit will be provided to the affected tribes by the department.

(d) If a person registers nonstate lands as an aquatic farm, a copy of the aquatic farm registration will be provided to the affected tribes by the department.

(2) Prior to conducting harvest activities under a nonstate lands commercial wild clam, mussel, and oyster trial fishery permit, the permit holder must complete the following:

(a) Provide a copy of the notice required to be given to affected tribes under the Stipulation and Order Amending Shellfish Implementation Plan, *United States v. Washington*, Case No. C70-9214, W.D.Wa., if such notice is required.

(b) Clearly and visibly mark with stakes and/or buoys the property boundaries of the nonstate lands to be harvested, using standard marking methods.

(c) Failure to comply with the requirements of this subsection invalidates the emerging commercial fishery license issued for the harvest of wild clams, mussels, and oysters.

(3) A nonstate lands commercial wild clam, mussel, and oyster trial fishery permit allows harvest only of clams, mussels, and oysters, and it is unlawful to harvest any other shellfish or any fin fish.

(4) It is unlawful to commercially harvest wild clams, mussels, or oysters without a valid emerging commercial fishery license and a nonstate lands commercial wild clam, mussel, and oyster trial fishery permit valid for the lands from which harvest is occurring.

#### NEW SECTION

**WAC 220-88D-050 Reporting requirements for non-state lands commercial wild clams, mussels, and oyster harvest.** It is unlawful to fail to report the sale of wild stocks of clams, mussels, and oysters on shellfish receiving tickets. Any person selling wild stocks of clams, mussels, and oysters must sell the harvest to a licensed Washington wholesale fish dealer, or, if selling at retail or having the harvest transported out-of-state, must be a licensed wholesale dealer and complete a fish receiving ticket for each day's sales or for each shipment. Wild stock sales may not be reported on aquatic farm quarterly production reports. Only private sector cultured aquatic products may be reported on quarterly production reports.

#### **WSR 06-01-022**

##### **WITHDRAWAL OF PROPOSED RULES WASHINGTON STATE LOTTERY**

[Filed December 13, 2005, 8:32 a.m.]

WAC 315-06-125, proposed by the Washington State Lottery in WSR 05-12-009 appearing in issue 05-12 of the State Register, which was distributed on June 15, 2005, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

#### **WSR 06-01-044**

##### **PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Health and Recovery Services Administration)**

[Filed December 15, 2005, 4:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-13-138.

Title of Rule and Other Identifying Information: WAC 388-513-1380 Determining a client's participation in the cost of care for long-term care (LTC) services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on January 24, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 25, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., January 24, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 20, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules:

- To change the community spouse income and family allocation standard to \$1,604 (effective April 1, 2005);
- To increase the shelter allocation standard to \$481 (effective April 1, 2005).
- To change the personal needs allowance (PNA) allowed for clients residing in a medical facility who are not receiving general assistance to \$51.62 (effective July 1, 2005);
- To change the community spousal resource share standard to \$99,540 (effective January 1, 2006);
- To include information regarding health insurance premiums for the Medicare/Medicaid integration project (MMIP) and program of all-inclusive care for the elderly (PACE); and
- To improve the clarity and readability of the rule.

Reasons Supporting Proposal: This updates standard changes in determining eligibility for long-term care Medicaid programs and clarifies information regarding health insurance premiums for the MMIP program.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530.

Statute Being Implemented: Section 207, chapter 518, Laws of 2005; Sec. 1924 Social Security Act (42 U.S.C. 1396r-5).

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Lori Rolley, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1304; and Implementation: Mary Lou Percival, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2318.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule amendment does not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules for medical and financial assistance programs are exempt from the cost-benefit analysis requirement according to RCW 34.05.328 (5)(b)(vii).

December 7, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-07-033, filed 3/9/05, effective 4/9/05)

**WAC 388-513-1380 Determining a client's participation in the cost of care for long-term care (LTC) services.**

This rule describes how the department allocates income and excess resources when determining participation in the cost of care (in the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical ~~((facility))~~ institution, the department applies all subsections of this rule.

(2) For a client receiving ~~((waivered))~~ waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with income under the Medicaid special income level (SIL), if the client is not otherwise eligible for another noninstitutional categorically needy Medicaid program. (Note: For hospice applicants with income over the Medicaid SIL, medically needy Medicaid rules apply.)

(4) Excess resources are reduced in an amount equal to ~~((incurred))~~ medical expenses incurred by the client (for definition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:

(a) Health insurance and Medicare premiums, deductions, and co-insurance charges;

(b) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; and

(c) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program, the amount described in WAC 388-513-1315(3); or

(ii) For LTC services provided under the medically needy (MN) program, the amount described in WAC 388-513-1395 (2)(a) or (b).

(5) The department allocates nonexcluded income ~~((up to a total of the medically needy income level (MNIL)))~~ in the following order and the combined total of (5)(a), (b), (c), and (d) cannot exceed the medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) One hundred sixty dollars for a client living in a state veterans' home;

(ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives ~~((a))~~ the ninety dollar VA improved pension and does not live in a state veterans' home; or

(iii) Forty-one dollars and sixty-two cents for all ~~((other))~~ clients in a medical ~~((facility))~~ institution receiving general assistance.

(iv) Effective July 1, 2005, fifty-one dollars and sixty-two cents for all other clients in a medical institution.

(b) Federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC 388-503-0510(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(6) The department allocates nonexcluded income after deducting amounts described in subsection (5) in the following order:

(a) Income garnished for child support:

(i) For the time period covered by the PNA; and

(ii) Not deducted under another provision in the post-eligibility process.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, ~~((2005))~~ 2006, two thousand ~~((three))~~ four hundred ~~((seventy-eight))~~ eighty-nine dollars, unless a greater amount is allocated as described in subsection (8) of this section. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) An amount added to the community spouse's gross income to provide a total of one thousand ~~((five))~~ six hundred ~~((sixty-two))~~ four dollars, effective April 1, 2005; and

(B) Excess shelter expenses as ~~((specified))~~ described under subsection (7) of this section; and

(ii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized ~~((spouse))~~ person who:

(i) Resides with the community spouse~~((s))~~;

(A) In an amount equal to one-third of ~~((the amount that))~~ one thousand ((five)) six hundred ~~((sixty-two))~~ four dollars ~~((exceeds))~~ less the dependent family member's income; and

(B) Is effective April 1, 2005.

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the MNIL for the number of dependent family members in the home less ~~((the income of))~~ the dependent family ((members)) member's income.

(iii) Child support received from noncustodial parent is the child's income.

(d) Incurred medical expenses described in subsections (4)(a) and (b) not used to reduce excess resources with the following exceptions:

(i) Private health insurance premiums for Medicare/Medicaid integration project (MMIP); and

(ii) Managed care health insurance premiums for program of all-inclusive care for the elderly (PACE).

(e) Maintenance of the home of a single client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents initial need for the income exemption ~~((and reviews the client's circumstances after ninety days))~~.

(7) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (7)(b) less the standard shelter allocation under subsection (7)(a). For the purposes of this rule:

(a) The standard shelter allocation is four hundred ~~((sixty-nine))~~ eighty-one dollars, effective April 1, ~~((2004))~~ 2005; and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(8) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(9) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

**WSR 06-01-048**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed December 16, 2005, 8:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-062.

Title of Rule and Other Identifying Information: WAC 415-501-485 How do I obtain a distribution?

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on January 25, 2006, at 1:30 p.m.

Date of Intended Adoption: January 26, 2006.

Submit Written Comments to: Leslie L. Saeger, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail [leslies@drs.wa.gov](mailto:leslies@drs.wa.gov), fax (360) 753-3166, by 5:00 p.m., January 25, 2006.

Assistance for Persons with Disabilities: Contact Leslie Saeger, Rules Coordinator, by January 17, 2006, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule action amends WAC 415-501-485 to more accurately reflect the IRS code, and eliminate changes for misinterpretation.

Statutory Authority for Adoption: RCW 41.50.780(10).

Statute Being Implemented: RCW 41.50.770 and 41.50.780.

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

Name of Proponent: Department of Retirement Systems, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Saeger, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Dave Nelsen, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no affect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Department of Retirement Systems is not one of the named departments in RCW 34.05.328.

December 16, 2005

Leslie Saeger

Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-22-053, filed 10/29/04, effective 11/29/04)

**WAC 415-501-485 How do I obtain a distribution?**

Distribution from the plan is governed by Internal Revenue Code Sections 401 (a)(9) and 457(d); the treasury regulations interpreting these sections; and these rules to the extent they are not inconsistent with the Internal Revenue Code. The options for distribution are set forth in the *DCP Distribution Booklet*. The booklet will be mailed to you when your employer notifies the department of your termination of employment.

(1) **Date of distribution.** You may choose the date on which to begin distribution from your deferred compensation account, subject to the requirements in (a) through (c) of this subsection. The department must receive a properly completed distribution form from you at least thirty days prior to the date distribution is to begin.

(a) **Earliest date.** You may not begin distribution prior to your termination of employment, with the following exceptions:

(i) A distribution for an unforeseeable emergency under WAC 415-501-510;

(ii) A voluntary in-service distribution under subsection (4) of this section; or

(iii) A distribution from funds that were rolled into the deferred compensation account.

(b) **Latest date.** You must begin distribution on or before April 1st of the calendar year following the latter of:

(i) The calendar year in which you reach age seventy and one-half; or

(ii) The calendar year in which you retire.

(c) If you do not make a timely choice of distribution date, the department will begin distribution according to the minimum distribution requirements in IRC Section 401 (a)(9).

(2) **Method of distribution.** You must choose a distribution method (amount and frequency) from the payment options outlined in the *DCP Distribution Booklet*. Payment options include a lump sum payment, periodic payments, or an annuity purchase.

(a) Periodic payments must be at least fifty dollars per month (if paid monthly) or six hundred dollars per year.

(b) Beginning at age seventy and one-half or when you terminate employment, whichever comes later, payment must be in an amount to satisfy minimum distribution requirements in IRC Section 401 (a)(9).

(3) **Voluntary in-service distribution.** You may choose to withdraw the total amount payable to you under the plan while you are employed if the following three requirements are met:

(a) ~~((The total amount payable to you))~~ Your entire account value does not exceed five thousand dollars;

(b) You have not previously received an in-service distribution; and

(c) Your deferrals have been suspended during the preceding two-year period ending on the date of the in-service distribution.

(4) **Unforeseeable emergencies.** See WAC 415-501-510.

(5) **Rehire.** If you terminate and then return to employment for an eligible employer, you may reenroll in the plan. The department will stop your distribution, if applicable, and void any choices of distribution date and method made prior to reenrollment.

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on January 25, 2006, at 1:30 p.m.

Date of Intended Adoption: January 26, 2006.

Submit Written Comments to: Leslie L. Saeger, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail [leslies@drs.wa.gov](mailto:leslies@drs.wa.gov), fax (360) 753-3166, by 5:00 p.m., on January 25, 2006.

Assistance for Persons with Disabilities: Contact Leslie Saeger, Rules Coordinator, by January 17, 2006, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments correct technical errors and clarify language.

Statutory Authority for Adoption: RCW 41.40.020 and 41.50.050(5).

Statute Being Implemented: Chapter 41.40 RCW.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Saeger, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Dave Nelsen, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named departments in RCW 34.05.328.

December 16, 2005

Leslie Saeger

Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-06-042, filed 2/27/03, effective 4/1/03)

**WAC 415-108-443 PERS (~~(reportable)~~) compensation earnable table.** The following table (~~((will help you determine))~~) indicates whether certain types of payments are (~~(reportable)~~) compensation earnable under PERS Plan((s)) 1, 2, or 3(~~(-Be sure to read the referenced rule to ensure that you have correctly identified the payment in question. The department determines reportable compensation based upon the nature of the payment, not the name applied to it. See WAC 415-108-445))~~) and provides a cross-reference to the specific WAC.

#### WSR 06-01-049

#### PROPOSED RULES

#### DEPARTMENT OF

#### RETIREMENT SYSTEMS

[Filed December 16, 2005, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-06-040.

Title of Rule and Other Identifying Information: WAC 415-108-443 PERS compensation earnable table, 415-108-470 Nonmoney maintenance. Are payments from my employer in any form other than money considered compensation earnable?, and 415-108-800 When do I enter retirement status?

Type of Payment	PERS 1 ((Reportable)) Compensation <u>Earnable</u> ?	PERS 2 or 3 ((Reportable)) Compensation <u>Earnable</u> ?
Annual Leave Cash Outs	Yes - WAC 415-108-456	No - WAC 415-108-456
Assault Pay (State Emp.)	Yes - WAC 415-108-468	Yes - WAC 415-108-468
Base Rate	Yes - WAC 415-108-451	Yes - WAC 415-108-451
Car Allowances	No - WAC 415-108-485 <sup>1</sup>	No - WAC 415-108-485 <sup>1</sup>
Cafeteria Plans	Yes - WAC 415-108-455	Yes - WAC 415-108-455
Deferred Wages	Yes - WAC 415-108-459	Yes - WAC 415-108-459
Disability Payments	No - WAC 415-108-477	No - WAC 415-108-477
Disability: Salary lost while on disability leave	Yes - WAC 415-108-468 RCW 41.40.038	Yes - WAC 415-108-468 RCW 41.40.038
Employer Provided Vehicle	No - WAC 415-108-480 <sup>2</sup>	No - WAC 415-108-480
Employer taxes/contributions	No - WAC 415-108-459	No - WAC 415-108-459
Fringe Benefits, including insurance	No - WAC 415-108-475	No - WAC 415-108-475
Illegal Payments	No - WAC 415-108-482	No - WAC 415-108-482
Legislative Leave	Yes - WAC 415-108-464	Yes - WAC 415-108-464
Longevity/Education Attainment Pay	Yes - WAC 415-108-451	Yes - WAC 415-108-451
Nonmoney Maintenance	Yes - WAC 415-108-470 <sup>3</sup>	No - WAC 415-108-470
Optional Payments	No - WAC 415-108-483	No - WAC 415-108-483
Payments in Lieu of Excluded Items	No - WAC 415-108-463	No - WAC 415-108-463
Performance Bonuses	Yes - WAC 415-108-453	Yes - WAC 415-108-453

<sup>1</sup>A portion of the value of an employer car allowance may be ((reportable)) compensation earnable. See WAC 415-108-485.

<sup>2</sup>A portion of the value of an employer provided vehicle may be ((reportable)) compensation earnable in Plan 1 only. See WAC 415-108-480.

<sup>3</sup>A portion of the value of nonmoney maintenance provided may be ((reportable)) compensation earnable in Plan 1 only. See WAC 415-108-470.

Type of Payment	PERS 1 ((Reportable)) Compensation <u>Earnable</u> ?	PERS 2 or 3 ((Reportable)) Compensation <u>Earnable</u> ?
Retroactive Salary Increase	Yes - WAC 415-108-457	Yes - WAC 415-108-457
Reimbursements	No - WAC 415-108-484	No - WAC 415-108-484
Reinstatement Payments	Yes - WAC 415-108-467	Yes - WAC 415-108-467
Retirement or Termination Bonuses	No - WAC 415-108-487	No - WAC 415-108-487
Severance Pay - Earned Over Time	Yes - WAC 415-108-458	No - WAC 415-108-458
Severance Pay - Not Earned Over Time	No - WAC 415-108-488	No - WAC 415-108-488
Shared Leave - State Emp.	Yes - WAC 415-108-468	Yes - WAC 415-108-468
Shared Leave - Local Government Employees	No - WAC 415-108-468	No - WAC 415-108-468
Sick Leave Cash Outs - State Employees	No - WAC 415-108-456	No - WAC 415-108-456
Sick Leave Cash Out - Local Government Employees	Yes - WAC 415-108-456	No - WAC 415-108-456
Standby Pay	Yes - WAC 415-108-469	Yes - WAC 415-108-469
Time Off with Pay	Yes - WAC 415-108-456 WAC 415-108-465	Yes - WAC 415-108-456 WAC 415-108-465
Union Leave <sup>4</sup>	Yes - WAC 415-108-466	Yes - WAC 415-108-466
Workers' Compensation	No - WAC 415-108-479	No - WAC 415-108-479

<sup>4</sup>Only specific types of union leave are ((reportable)) compensation earnable. See WAC 415-108-466.

AMENDATORY SECTION (Amending WSR 95-22-006, filed 10/18/95, effective 11/18/95)

**WAC 415-108-470 Nonmoney maintenance. Are payments from my employer in any form other than money considered compensation earnable?**

(1) ((PERS Plan I members:

(a) If your employer provides you with materials in lieu of reimbursement for your business expenses, the value of the materials is not compensation earnable.

(i) The value of employer-provided materials is not compensation earnable if you use the materials solely in connection with your employer's business.

(ii) "Materials" includes, but is not limited to, living quarters, food, board, equipment, clothing, laundry, transportation, fuel, and utilities.

Example: An employer provides an employee with uniforms which the employee must wear in performing services for his employer. Because the uniforms are to be used solely in connection with the employer's business, they do not qualify as nonmoney maintenance compensation. Therefore, the value of the uniforms is not compensation earnable.

(b) The department presumes that your employer provides you materials solely in lieu of reimbursement for business expenses. Unless you or your employer can show by corroborating evidence that your employer provided you materials in whole or in part as payment for your personal expenses, as opposed to business expenses, the value of the materials is not compensation earnable.

(c) If your employer provides you with materials for your personal use, the value of that use is nonmoney maintenance compensation and is included in your earnable compensation.

(i) "Nonmoney maintenance compensation" means the fair market value of any form of materials other than cash legally furnished by your employer to you or your dependents for personal use.

(ii) Nonmoney maintenance does not include any form of payment other than cash that is excludable from taxation under provisions of the Internal Revenue Code. This applies regardless of whether you or your employer reported the compensation to the Internal Revenue Service as taxable income.

(d) Your use of employer-provided materials will qualify as nonmoney maintenance compensation if your employer substantiates that they were provided to you as payment for personal services. In order for employer-provided materials to qualify as nonmoney maintenance compensation, your employer must:

(i) Establish and regularly update a written schedule reflecting the monthly fair market value of each item of employer-provided materials claimed as nonmoney maintenance compensation. Typically, the fair market value would be the cost of the item if it were acquired in a purchase or lease transaction;

(ii) Report the fair market value of employer-provided materials as nonmoney maintenance compensation to the department as compensation earnable. If you pay any amount

to your employer in order to own or use the materials, your employer must report as compensation earnable the amount by which the fair market value of the materials exceeds the amount of your payment;

(iii) Substantiate by adequate records or by other sufficient corroborating evidence the following:

(A) That the fair market value of each item of nonmoney maintenance compensation as reported to the department is accurate;

(B) That each item of nonmoney maintenance compensation is provided to you for your personal use as payment for your services to the employer; and

(C) That each item of nonmoney maintenance compensation is includable in your taxable income for federal income tax purposes.

Example: An employer leases an apartment for \$700.00 per month. The employer charges an employee \$300.00 per month to use the apartment for temporary living quarters. Because the employee uses the apartment for personal, rather than business, purposes, the amount by which the lease value exceeds the employee's payment is nonmoney maintenance compensation. The employer must report \$400.00 per month to the department as compensation earnable for the employee.

(e) How to corroborate that your use of employer-provided materials qualifies as nonmoney maintenance compensation. In addition to the records required under (d) of this subsection, you may provide the department with any oral or written evidence which you or your employer believe corroborates that your use of employer-provided materials qualifies as compensation earnable. However, oral evidence alone has considerably less value than written evidence. Written evidence prepared at or near the time your employer provides you with the item of compensation is generally much stronger than oral evidence or written evidence created years later.

(2) PERS Plan II members. If you are a PERS Plan II member, you are not entitled to count the value of any nonmoney maintenance compensation you receive from your employer as compensation earnable.)) Nonmoney maintenance compensation, as defined in this section:

(a) Is compensation earnable to the extent authorized by this section, for Plan 1 members; and

(b) Is not compensation earnable for Plan 2 and 3 members.

(2) Nonmoney maintenance compensation is compensation legally provided to you in a form other than money. For example, nonmoney maintenance compensation may include the provision of materials such as living quarters, food, board, equipment, clothing, laundry, transportation, fuel, and utilities. To be considered nonmoney maintenance compensation, the materials must be provided for your personal use and/or the personal use of your dependents, not for a business use. The materials are not nonmoney maintenance compensation if:

(a) You use them solely in connection with your employer's business; or

(b) They are provided in lieu of reimbursement for your business expenses.

(3) To prove that the provision of materials constitutes nonmoney maintenance compensation:

(a) Your employer must substantiate by adequate records or other sufficient corroborating evidence that the materials were provided to you for your personal use as payment for your services to the employer.

(b) Your employer must substantiate that the fair market value of the materials provided is includable in your taxable income for federal income tax purposes.

(c) You may provide corroborating evidence to the department. Written documentation prepared at or near the time the materials were provided is generally preferred.

(d) In the absence of clear proof, the department will presume that employer-provided materials were not nonmoney maintenance compensation.

(4) Your employer must report nonmoney maintenance compensation to the department as compensation earnable. The amount reported as compensation earnable is the fair market value of materials legally provided by your employer. To substantiate the value of nonmoney maintenance compensation:

(a) Your employer must establish and regularly update a written schedule reflecting the monthly fair market value of the materials provided. Typically, the fair market value would be the cost of the item if it were acquired in a purchase or lease transaction. Your employer must be able to substantiate the accuracy of this schedule with adequate records.

(b) If you pay any amount to your employer in order to own or use the materials, your employer must report as compensation earnable the amount by which the fair market value exceeds the amount of your payment.

Example: Your employer leases an apartment for \$700.00 per month and charges you \$300.00 per month to use the apartment for temporary living quarters. Because you use the apartment for personal, rather than business purposes, the amount by which the lease value exceeds your payment is nonmoney maintenance compensation. Your employer must report \$400.00 per month to the department as compensation earnable for you.

AMENDATORY SECTION (Amending WSR 02-02-060, filed 12/28/01, effective 1/1/02)

**WAC 415-108-800** ~~When ((does a member of the public employees' retirement system (PERS))) do I enter retirement status?~~ As a member of PERS, you enter((s)) retirement status when ((he or she)) you:

(1) ((Has)) Have separated from service as defined in RCW 41.40.010(((41))) (42);

(2) ((Has)) Have no written or oral agreement to return to employment ((prior to entering "retiree status")); and

(3) ((Has)) Have applied for retirement, the accrual date has been determined under RCW 41.40.193, 41.40.680, or 41.40.801, and ((the)) your benefit begins to accrue.

Example: Sally is eligible for retirement on July 1st. She submits an application on June 1st with a July 1st retirement date. Her last day of employment is June 30th and she does not have an agreement to return to work.

Sally's retirement date (accrual date) is July 1st and the benefit begins to accrue. The first retirement payment will be paid at the end of July. Sally entered "retiree status" effective July 1st.

**WSR 06-01-061**  
**PROPOSED RULES**  
**INTERAGENCY COMMITTEE**  
**FOR OUTDOOR RECREATION**

[Filed December 19, 2005, 1:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-030.

Title of Rule and Other Identifying Information: (A) Match requirements, WAC 286-13-045: In most IAC grant programs, local agency sponsors must provide 20% or more of the resources needed to complete a project. Sponsors must show that they have these resources in hand, before IAC will award the grants. Called the applicant's "matching share," the resources can come in a variety of forms, including appropriations, tax levies, bond issues, force account labor, volunteer labor, and donations. However, current rules require that an IAC grant in one program may not be used as the matching share for an IAC grant in another program.

(B) Supplementing versus supplanting local capacity, WAC 286-13-080: An IAC grant is intended to supplement the existing capacity of a sponsor. It is not intended to replace programs or to reimburse the cost of projects that would have been undertaken without state matching money.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA, on February 2, 2006, at 1 p.m.

Date of Intended Adoption: February 2, 2006.

Submit Written Comments to: Greg Lovelady, IAC Rules Coordinator, 1111 Washington Street S.E., Natural Resources Building, P.O. Box 40917, Olympia, WA 98504-0917, e-mail GregL@iac.wa.gov, fax (360) 902-3026, phone (360) 902-3008, by January 23, 2006.

Assistance for Persons with Disabilities: Contact Greg Lovelady by January 25, 2006, TTY (360) 902-1996 or (360) 902-3008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (A) Match requirements, WAC 286-13-045: As IAC is provided more grant programs to administer, its rule of not allowing one IAC grant to match another IAC grant is becoming burdensome. For example, since IAC was directed to begin administration of the ALEA grant program in 2003, it is no longer possible for project sponsors to use an ALEA grant as a match for an IAC WWRP-water access grant. This means that project sponsors now have fewer sources of funding and are less likely to complete their projects. This WAC proposal removes the prohibition against using an IAC grant in one program to match an IAC grant in another program.

(B) Supplementing versus supplanting local capacity, WAC 286-13-080: This policy has been difficult to apply consistently and fairly due to the difficulty in developing

clear definitions for "existing capacity" and "supplant." Because of the impracticality of retaining policies that cannot be applied, this WAC proposal removes the "supplement the existing capacity" and "not intended to supplant" provisions from WAC.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 79A.15.060(1), 79A.15.070(5), 79A.25.005, 79A.25.080(2), 79A.25.210.

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

Name of Proponent: Interagency committee for outdoor recreation (IAC), governmental.

Name of Agency Personnel Responsible for Drafting: Greg Lovelady, P.O. Box 40917, Olympia, WA 98504, 1111 Washington Street, Olympia, (360) 902-3008; Implementation and Enforcement: Laura Eckert Johnson, P.O. Box 40917, Olympia, WA 98504, 1111 Washington Street, Olympia, (360) 902-3000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. Only affected parties are local governments, state and federal agencies.

A cost-benefit analysis is not required under RCW 34.05.328. IAC is not a listed agency in section 201, and proposed rules are technical, affecting governmental parties only.

December 15, 2006 [2005]

Greg Lovelady  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

**WAC 286-13-045 What rules govern eligible matching resources**~~(\*)~~ (1) When requiring a match from an applicant for committee administered funds, or giving preference to an applicant that provides a match, it is the intent of the committee to do so to foster local commitment to the proposed project and to demonstrate that commitment, and to make funds from a given grant program (and revenue source) available to a greater number of projects.

(2) Applicant resources used to match committee funds ~~((may))~~ include, but are not limited to: Cash~~((;))~~; local impact/mitigation fees~~((;))~~; certain federal funds~~((;))~~; the value of donations such as privately owned ~~((donated))~~ real estate, equipment, equipment use, materials, and labor~~((;))~~; or any combination thereof.

~~((2) Agencies and organizations may))~~ (3) An agency's or organization's match ~~((with state funds so long as the state funds are not))~~ may include state and federal funds, including funds from other grant programs administered by the committee. However, the committee may require the agency or organization to provide a portion of the match in local resources.

~~((3))~~ (4) Private donated real property, or the value of that property, must consist of real property (land and facilities) that would normally qualify for committee grant funding.

~~((4))~~ (5) State agency projects may be assisted by one hundred percent funding from committee sources *except* where prohibited by law.

~~((5))~~ (6) The eligibility of some federal and state funds to be used as a match is governed by federal and state requirements and thus may vary with individual program policies.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

**WAC 286-13-080 ~~((Committee funds intended to supplement.))~~ What rules govern expenses incurred before execution of a project agreement?** ~~((State grants through the committee are intended to supplement the existing capacity of a sponsor; they are not intended to supplant programs, or to reimburse the cost of projects that would have been undertaken without state matching money. Furthermore.))~~ Except as hereinafter provided, the committee will not approve the disbursement of funds for ~~((a project when otherwise reimbursable activities have been undertaken))~~ expenses incurred before execution of a project agreement ~~((has been executed)).~~

## WSR 06-01-062

### PROPOSED RULES

### INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION

[Filed December 19, 2005, 1:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-031.

Title of Rule and Other Identifying Information: Washington wildlife and recreation program (WWRP), chapter 286-27 WAC. Amending WAC 286-27-010, Scope (purpose), 286-27-040, Planning eligibility, 286-27-055, Acquisition projects—Long-term obligations, 286-27-065, Development projects—Long-term obligations and 286-27-075, Matching amounts and caps; new WAC 286-27-045, Conversions defined, 286-27-061, Restoration projects—Long-term obligations, 286-27-066, Conversions of use—Additional rules and 286-27-071, Sale of farmlands; and repealing WAC 286-27-020, Effective date and 286-27-060, Conversions (see WAC 286-27-045 and 286-27-066).

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA, on February 2, 2006, at 1 p.m.

Date of Intended Adoption: February 2, 2006.

Submit Written Comments to: Greg Lovelady, IAC Rules Coordinator, 1111 Washington Street S.E., Natural Resources Building, P.O. Box 40917, Olympia, WA 98504-0917, e-mail GregL@iac.wa.gov, fax (360) 902-3026, phone (360) 902-3008, by January 23, 2006.

Assistance for Persons with Disabilities: Contact Greg Lovelady by January 25, 2006, TTY (360) 902-1996 or (360) 902-3008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: IAC proposes to revise this WAC chapter to: (1) Provide updates necessary to

include the four new grant programs provided by the 2005 legislature in ESSB 5396 (chapter 79A.15 RCW), farmlands preservation, riparian protection, state agency lands restoration-enhancement, state agency lands development-renovation; (2) clarify existing language.

The following describes some of the proposed updates.

WAC 286-27-045, 286-27-055, 286-27-061 and 286-27-066, conversions, provisions from elsewhere in chapter 286-27 WAC are brought into these sections and expanded to include restoration and enhancement; included is information regarding the contents of required document(s) and the conditions for IAC approval of conversions.

WAC 286-27-055, 286-27-061 and 286-27-065, long-term obligations, provides information on the responsibilities of project sponsors that use WWRP funds for land acquisition, restoration, and/or development.

WAC 286-27-071, sale of farmlands, the disposition of funds resulting from the sale of farmlands and required approval are discussed.

WAC 286-27-075, matching amounts and caps, continues to specify that IAC will establish sponsor matching requirements and request limits. Deletes the provision that these amounts are "normally" established six months before program funding consideration (intent is to add this provision to the IAC policy manual).

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 79A.15.030(8), 79A.15.060(1), 79A.15.070(5), 79A.15.120(4), 79A.15.130(4).

Statute Being Implemented: Chapter 79A.15 RCW.

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

Name of Proponent: Interagency committee for outdoor recreation (IAC), governmental.

Name of Agency Personnel Responsible for Drafting: Greg Lovelady, P.O. Box 40917, Olympia, WA 98504, 1111 Washington Street, Olympia, (360) 902-3008; Implementation and Enforcement: Laura Eckert Johnson, P.O. Box 40917, Olympia, WA 98504, 1111 Washington Street, Olympia, (360) 902-3000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. Affected parties are local governments, state and federal agencies.

A cost-benefit analysis is not required under RCW 34.05.328. IAC is not a listed agency in section 201, and proposed rules are technical, affecting governmental parties only.

December 15, 2005

Greg Lovelady  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

**WAC 286-27-010 ((Scope-)) What is the purpose of this chapter?** This chapter contains rules affecting the Washington wildlife and recreation grant program (WWRP) administered by the committee under chapter 79A.15 RCW ((43.98A.060(1) and 43.98A.070(5))). Additional provisions

are contained in "General grant assistance rules," chapter 286-13 WAC. These moneys are available through the committee for projects in ((state parks, local parks, trails, water access, critical habitat, natural areas and urban wildlife habitat)) the following accounts and categories:

(1) Farmlands preservation account.

(2) Habitat conservation account:

(a) Critical habitat category;

(b) Natural areas category;

(c) Urban wildlife habitat category; and

(d) Restoration-enhancement on state lands category.

(3) Outdoor recreation account:

(a) State parks category;

(b) Local parks category;

(c) Trails category;

(d) Water access category; and

(e) Development-renovation on state lands category.

(4) Riparian protection account.

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

**WAC 286-27-040 Does the WWRP have planning requirements(-)?** Yes. Except as noted under subsection (2) of this section, to be eligible for grant consideration under this chapter, applicants must complete a plan in accordance with WAC 286-13-040(2).

(1) At minimum the plan must include:

~~((+))~~ (a) A statement of the applicant's long-range goals and objectives;

~~((2))~~ (b) An inventory, or description of the planning area;

~~((3))~~ (c) An analysis of demand and need, that is, why actions are required;

~~((4))~~ (d) A description of how the planning process gave the public ample opportunity to be involved in development of the plan;

~~((5))~~ (e) A current capital improvement program of at least ~~((five))~~ six years;

~~((6))~~ (f) Evidence that this plan has been approved by the applicant's governing entity ~~((most appropriate to the plan's scope))~~. For example, a city ~~((or county-wide))~~ plan ~~((must))~~ would be approved at the council level and a county-wide plan at the county council or commission level. Plans with a different scope ~~((will))~~ would be approved by department heads, ~~((district rangers,))~~ regional managers/supervisors, etc.;

~~((7))~~ Excepted are riparian zone habitat protection projects under RCW 43.98A.040 (1)(d), where planning requirements in section 329(6), chapter 235, Laws of 1997, shall apply rather than those listed in subsections (1) through (6) of this section.) (2) A plan is not required for projects submitted in the farmland preservation account.

NEW SECTION

**WAC 286-27-045 What is a conversion of use?** A "conversion" occurs when interests in real property and facilities acquired, developed, renovated, enhanced or restored with WWRP funds are converted to uses other than those for which the funds were originally approved and described in

the project agreement with the committee. Interests in real property include, but are not limited to, options, rights of first refusal, conservation easements, leases, and mineral rights.

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

**WAC 286-27-055** (~~(Acquisition projects—Deed of right, conversions, leases and easements.)~~) **Are there long-term obligations for acquiring interest in real property?** (~~(For acquisition projects,)~~) Yes. Sponsors must execute an instrument(s) (~~(or instruments which contain)~~) containing these provisions:

(1) For ~~((fee, less than fee, and easement))~~ acquisition ~~((projects))~~ of perpetual interest in real property:

(a) A legal description of the property acquired;

(b) A conveyance to the state of Washington of the right to use the described real property for farmland, habitat conservation, and/or outdoor recreation purposes (~~(in perpetuity unless a term is specified in the project agreement)~~); and

(c) ~~((A restriction on conversion of use of the land. That is, without prior approval of the committee, a facility acquired with money granted by the committee shall not be converted to a use other than that for which funds were originally approved. The committee shall only approve such a conversion under conditions which assure the substitution of other land of at least equal fair market value at the time of conversion, and of as nearly as feasible equivalent usefulness and location.~~

(2) For lease acquisition projects, a binding agreement which contains a legal description of the property and rights acquired and which meets the following criteria. The interest:

(a) Must be for at least fifty years unless precluded by state law;

(b) May not be revocable at will;

(c) Must have a value supported through standard appraisal techniques;

(d) Must be paid for in lump sum at initiation;

(e) May not be converted, during the lease period, to a use other than that for which funds were originally approved, ~~without prior approval of the committee.~~) Except as provided in WAC 286-27-066, agreement to a prohibition on conversion of use.

(2) For acquisition of nonperpetual interest in real property:

(a) A legal description of the property and a description of the interests acquired;

(b) A conveyance to the state of Washington of the right to use the described real property for farmland, habitat conservation, and/or outdoor recreation purposes for the term of the lease or easement;

(c) Except as provided in WAC 286-27-066, agreement to a prohibition on conversion of use;

(d) A lease(s) or easement(s) period of at least fifty years except for:

(i) Farmlands preservation account projects which shall be for at least twenty-five years;

(ii) Projects that extend conservation reserve enhancement program leases which shall be for at least twenty-five years;

(e) Is not revocable at will;

(f) Has a value supported through appraisal methods approved by the committee;

(g) Terms of payment between the sponsor and seller.

#### NEW SECTION

**WAC 286-27-061** **Are there long-term obligations for restoration projects?** Yes.

(1) Unless otherwise approved by the committee, environmental restoration and enhancement projects granted WWRP funds must continue to provide the functions for which the funds were originally approved and not be converted to any other use.

(2) When approving such a conversion, the committee shall require the grant recipient or successor to provide for environmental restoration or enhancement as a replacement. When approving the replacement, committee considerations shall include the intended ecological benefits of the replacement compared to those of the original project and likelihood that the replacement project will be successful.

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

**WAC 286-27-065** (~~(Development projects—Conversion to other uses.)~~) **Are there long-term obligations for development projects?** (~~((1) Without prior approval of the committee, a facility developed with money granted by the committee, to state, county, municipality or native American tribal government sponsors, shall not be converted to a use other than that for which funds were originally approved.~~

(2) ~~The committee shall only approve such a conversion under conditions which assure that:~~

(a) All practical alternatives to the conversion have been evaluated and rejected on a sound basis;

(b) A new development, in the spirit of WAC 286-13-080 ("...aid through the committee is intended to supplement the existing capacity of sponsor..."), will serve as a replacement which:

(i) Is of reasonably equivalent recreation utility and location;

(ii) Will be administered by the same political jurisdiction as the converted development;

(iii) Will satisfy need(s) identified in the sponsor's outdoor recreation or habitat plan (see WAC 286-27-040); and

(iv) Includes only elements eligible under the committee's program from which funds were originally allocated.) Yes.

(1) Properties, structures, and facilities developed with the assistance of money granted by the committee shall not be converted except as provided in WAC 286-27-066.

(2) Properties, structures, and facilities developed with the assistance of money granted by the committee shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health standards to assure a reasonably safe condition and to prevent premature deterioration.

(3) Properties, structures, and facilities intended for public use shall meet state and federal accessibility guidelines and nondiscrimination laws, regulations, and policies; be

maintained to a standard that encourages use; and be open and available to the public at reasonable hours and times of the year.

#### NEW SECTION

**WAC 286-27-066 What additional rules apply to conversions of use?** (1) Except as provided in this section, interest in real property and facilities acquired, developed, renovated, enhanced or restored with WWRP funds shall not, without prior approval of the committee be converted to uses other than those for which the funds were originally approved.

(2) The committee shall assure the substitution or replacement of interest in real property and/or facilities in accordance with this chapter.

(3) The committee shall only approve conversions when:

(a) All practical alternatives to the conversion have been evaluated and rejected; and

(b) The sponsor or successor will provide another interest in real property(s) and/or facilities to serve as a replacement. The replacement must:

(i) Be of equivalent or greater usefulness and location;

(ii) Be administered by the same sponsor or successor unless otherwise approved by the committee;

(iii) Satisfy need(s) identified in the most recent plan(s) required under WAC 286-27-040;

(iv) Be eligible to receive a grant in the WWRP account or category from which funds were originally allocated, unless otherwise authorized by the committee;

(v) If acquisition of interests in real property: Be interest in real property(ies) of at least equal fair market value and public benefit at the time of replacement;

(vi) If a development: Provide a facility of at least equal fair market value and public benefit as that which existed at the time of the original investment of WWRP funds; and

(vii) If a restoration or enhancement project: Provide restoration or enhancement activities necessary to replicate the ecological benefit intended by the project.

(4) Projects authorized by the Interstate Commerce Commission under section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) shall convert to railroad purposes automatically upon reactivation of a line for rail purposes under an ICC order. Substitution or replacement with interest in real property, facilities or moneys which are of at least equal fair market value at the time of replacement may be required.

#### NEW SECTION

**WAC 286-27-071 What rules apply to the sale of farmlands?** (1) Any moneys from the sale of farmland acquired by a city or county in fee simple with farmland preservation account funds, along with any net income derived from agricultural activities on the property, shall be returned to the farmland preservation account, or, used by the city or county to purchase interests in additional farmland properties. The city or county may deduct expenses associated with the transaction and management of the property as authorized by the committee.

(2) The sale of the farmland and use of funds to purchase additional farmland properties must be approved by the committee.

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

**WAC 286-27-075 (~~Matching amounts and caps determined.~~) Are matching resources required—Are there caps?** Yes. Consistent with RCW ((43-98A-060)) 79A.15.060(4) and ((43-98A-070)) 79A.15.070(4), the committee will establish sponsor matching share requirements and ((acquisition-development)) fund request limits. ((Any changes will normally be done at a committee meeting six months before program funding consideration.))

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 286-27-020 Effect.

WAC 286-27-060 Project conversions.

#### **WSR 06-01-064**

#### **PROPOSED RULES**

#### **DEPARTMENT OF LICENSING**

[Filed December 19, 2005, 3:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-03-111.

Title of Rule and Other Identifying Information: Fees for on-site wastewater treatment designers and inspectors, chapter 196-30 WAC.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Olympia, WA 9850 [98502], on January 25, 2006, at 3:00 p.m.

Date of Intended Adoption: January 31, 2006.

Submit Written Comments to: George A. Twiss, Executive Director, Board of Registration, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by January 24, 2006.

Assistance for Persons with Disabilities: Contact Kim King, Secretary Administrative, by January 17, 2006, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal is to amend selected fees in chapter 196-30 WAC by suspending portions of those fees for a two-year period.

Reasons Supporting Proposal: This proposal will reduce the fees that individuals pay the state thus making their access to state services less burdensome and their cost to do business lower. The limited suspension (two years) will enable the department and the program to more quickly respond to changing economic impacts.

Statutory Authority for Adoption: RCW 43.24.086.

Statute Being Implemented: Chapter 18.210 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George A. Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no negative economic impact to small business. This proposal reduces fees paid to the state thus reducing the cost of doing business.

A cost-benefit analysis is not required under RCW 34.05.328. See statement regarding small business economic impact statement.

December 9, 2005

Andrea C. Archer

Assistant Director

Business and Professions Division

**Chapter 196-30 WAC**

**FEEES FOR ON-SITE WASTEWATER TREATMENT DESIGNERS AND INSPECTORS**

NEW SECTION

**WAC 196-30-100 Suspended fees.** Effective March 1, 2006 the following fees will have the listed portions suspended from collection until July 1, 2008.

Fee categories	Current Fees	Portion Suspended	Temporary Fees
<b>Designer licensing:</b>			
Designer license application	\$ 175	\$ 25	\$ 150
<b>Certificate of Competency:</b>			
Certificate of Competency application	\$ 175	\$ 25	\$ 150

NEW SECTION

**WAC 196-30-110 Suspended fees.** Effective July 1, 2006 the following fees will have the listed portions suspended from collection until July 1, 2008.

Fee categories	Current Fees	Portion Suspended	Temporary Fees
<b>Certificate of Competency:</b>			
Certificate of Competency renewal	\$ 250	\$ 100	\$ 100
Certificate of Competency late renewal	\$ 350	\$ 100	\$ 250

**WSR 06-01-065**

**PROPOSED RULES**

**DEPARTMENT OF LICENSING**

[Filed December 19, 2005, 3:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-15-079.

Title of Rule and Other Identifying Information: Registered professional engineers and land surveyors fees, chapter 196-26A WAC.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Olympia, WA 9850 [98502], on January 25, 2006, at 3:00 p.m.

Date of Intended Adoption: January 31, 2006.

Submit Written Comments to: George A. Twiss, Executive Director, Board of Registration, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by January 24, 2006.

Assistance for Persons with Disabilities: Contact Kim King, Secretary Administrative, by January 17, 2006, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal is to amend selected fees in chapter 196-26A WAC by suspending portions of those fees for a two-year period.

Reasons Supporting Proposal: This proposal will reduce the fees that individuals pay the state thus making their access to state services less burdensome and their cost to do business lower. The limited suspension (two years) will enable the department and the program to more quickly respond to changing economic impacts.

Statutory Authority for Adoption: RCW 43.24.086.

Statute Being Implemented: Chapter 18.43 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George A. Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no negative economic impact to small business. This proposal reduces fees paid to the state thus reducing the cost of doing business.

A cost-benefit analysis is not required under RCW 34.05.328. See statement regarding small business economic impact statement.

December 9, 2005

A. C. Archer

Assistant Director

Business and Professions Division

**Chapter 196-26A WAC**

**REGISTERED PROFESSIONAL ENGINEERS AND LAND SURVEYOR FEES**

NEW SECTION

**WAC 196-26A-100 Suspended fees.** Effective March 1, 2006 the following fees will have the listed portions suspended from collection until July 1, 2008.

Fee categories	Current Fees	Portion Suspended	Temporary Fees
<b>Structural Engineering:</b>			
Structural III Examination & application fee	\$ 365	\$ 35	\$ 330
Structural III Examination retake:	\$ 330	\$ 30	\$ 300
<b>Comity Licensure:</b>			
Engineering	\$ 110	\$ 40	\$ 70
Surveyor comity	\$ 140	\$ 40	\$ 100

**NEW SECTION**

**WAC 196-26A-110 Suspended fees.** Effective July 1, 2006 the following fees will have the listed portions suspended from collection until July 1, 2008.

Fee categories	Current Fees	Portion Suspended	Temporary Fees
<b>License Renewals:</b>			
Engineer	\$ 116	\$ 16	\$ 100
Engineer late renewal penalty	\$ 174	\$ 24	\$ 150
Surveyor	\$ 116	\$ 16	\$ 100
Surveyor late renewal penalty	\$ 174	\$ 24	\$ 150

**WSR 06-01-080****WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF PERSONNEL**

[Filed December 20, 2005, 10:42 a.m.]

The department of personnel hereby withdraws the proposed modifications to WAC 357-16-175 and 357-16-177. These modifications were proposed under WSR 05-24-128 filed on December 7, 2005.

Michael P. Sellars  
Deputy Director

**WSR 06-01-087****PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed December 20, 2005, 4:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-069.

Title of Rule and Other Identifying Information: WAC 388-450-0055 How does money from other agencies or organizations count against my benefits?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at

<http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on January 24, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 25, 2005 [2006].

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., January 24, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 20, 2006, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments will more clearly explain the department policy on the treatment on needs-based assistance payments from other agencies when determining eligibility for cash, medical, and food assistance programs.

Reasons Supporting Proposal: The rule as it is currently written uses a subjective standard when determining whether money received from another agency should be disregarded when determining the payment level for cash assistance. This proposed rule will establish specific criteria that will clarify when money issued from another agency duplicates items contained in the department's standard of need and therefore can be disregarded.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steve Ebben, 1009 College S.E., Lacey, WA 98504, (360) 725-4618.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by outlining the rules clients must meet in order to be eligible for the department's cash assistance or food benefit programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

December 19, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 02-14-022, filed 6/21/02, effective 6/22/02)

**WAC 388-450-0055 How does ~~(money)~~ needs-based assistance from other agencies or organizations count against my benefits?** (1) For cash assistance and medical programs for children, pregnant women, and families:

(a) We do not count (~~money~~) needs-based assistance payments given to you by other agencies or organizations if the (~~money~~) assistance is given to you for reasons other than ongoing living expenses which do not duplicate the purpose of cash assistance programs. Ongoing living expenses include the following items:

- (i) Clothing;
- (ii) Food;
- (iii) Household supplies;
- (iv) Medical supplies (nonprescription);
- (v) Personal care Items;
- (iv) Shelter;
- (vii) Transportation; and
- (viii) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(b) If the (~~money~~) needs-based assistance given to you is supposed to be used for ongoing living expenses, then it duplicates the purpose of cash assistance programs. We count the amount remaining after we subtract the difference between the need standard and the payment standard for your family size as described in chapter 388-478 WAC.

(c) "Needs-based" means eligibility is based on an asset test of income and resources relative to the Federal Poverty Level (FPL). This definition excludes such incomes as retirement benefits or unemployment compensation which are not needs-based.

(2) For food assistance:

(a) We do not count money given to you if:

- (i) It is given to you by a private, nonprofit, charitable agency or organization; and
- (ii) The amount of money you get is no more than three hundred dollars in any one of the following calendar quarters:
  - (A) January - February - March,
  - (B) April - May - June,
  - (C) July - August - September,
  - (D) October - November - December.

(b) We count the entire amount if the requirements in (a) of this subsection are not met.

(3) For cash assistance, food assistance, and medical programs for children, pregnant women, and families, if we do count the (~~money~~) needs-based assistance you get, we treat it as unearned income under WAC 388-450-0025.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 06-01-088**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)  
 [Filed December 20, 2005, 4:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-08-091.

Title of Rule and Other Identifying Information: WAC 388-450-0200 Will the medical expenses of elderly persons

or individuals with disabilities in my assistance unit be used as an income deduction for Basic Food?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on January 24, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 25, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., January 24, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 20, 2006, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule amendments are necessary to indicate the time limit pertaining to certain Basic Food income deductions allowable for persons who have the Medicare prescription drug discount card and transitional assistance program, as specified by Food and Nutrition Service, United States Department of Agriculture for compliance with requirements contained in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

Reasons Supporting Proposal: Federal rules at Title 42 C.F.R. 403.802 and 403.810 describe the definitions, eligibility criteria, and duration of transitional benefits under the Medicare prescription drug discount card and transitional assistance program.

Special food stamp program (Basic Food) policies were mandated by Food and Nutrition Services, United States Department of Agriculture, to comply with the requirements under these rules. These special provisions expire along with the Medicare prescription drug discount card and transitional assistance program, based on the limitations set forth in the aforementioned rules.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.08.090.

Rule is necessary because of federal law, P.L. 108-173.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rebecca Henrie, 1009 College S.E., Lacey, WA 98504, (360) 725-4615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it only affects DSHS clients by outlining the rules clients must meet in order to be eligible for the department's cash assistance or food benefit programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to ... rules of the department of social and

health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

December 15, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 05-05-025, filed 2/8/05, effective 3/11/05)

**WAC 388-450-0200 Will the medical expenses of elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for basic food?**

(1) If your basic food assistance unit (AU) includes an elderly person or individual with a disability as defined in WAC 388-400-0040, your AU may be eligible for an income deduction for that person's out-of-pocket medical expenses, and certain expenses allowable for Medicare prescription drug card holders certified prior to June 1, 2006. We allow the deduction for medical expenses over thirty-five dollars each month.

(2) You can use an out-of-pocket medical expense toward this deduction if the expense covers services, supplies, medication, or other medically needed items prescribed by a state-licensed practitioner or other state-certified, qualified, health professional. Examples of expenses you can use for this deduction include those for:

- (a) Medical, psychiatric, naturopathic physician, dental, or chiropractic care;
- (b) Prescribed alternative therapy such as massage or acupuncture;
- (c) Prescription drugs;
- (d) Over the counter drugs;
- (e) Eye glasses;
- (f) Medical supplies other than special diets;
- (g) Medical equipment or medically needed changes to your home;
- (h) Shipping and handling charges for an allowable medical item. This includes shipping and handling charges for items purchased through mail order or the internet;
- (i) Long distance calls to a medical provider;
- (j) Hospital and outpatient treatment including:
  - (i) Nursing care; or
  - (ii) Nursing home care including payments made for a person who was an assistance unit member at the time of placement.
- (k) Health insurance premiums paid by the person including:
  - (i) Medicare premiums; and
  - (ii) Insurance deductibles and co-payments.
- (l) Out-of-pocket expenses used to meet a spenddown as defined in WAC 388-519-0010. We do not allow your entire spenddown obligation as a deduction. We allow the expense as a deduction as it is estimated to occur or as the expense becomes due;
- (m) Dentures, hearing aids, and prosthetics;
- (n) Cost to obtain and care for a seeing eye, hearing, or other specially trained service animal. This includes the cost of food and veterinarian bills. We do not allow the expense of food for a service animal as a deduction if you receive ongoing additional requirements under WAC 388-473-0040 to pay for this need;

(o) Reasonable costs of transportation and lodging to obtain medical treatment or services; and

(p) Attendant care necessary due to age, infirmity, or illness. If your AU provides most of the attendant's meals, we allow an additional deduction equal to a one-person allotment.

(3) There are two types of deductions for out-of-pocket expenses:

(a) One-time expenses are expenses that cannot be estimated to occur on a regular basis. You can choose to have us:

(i) Allow the one-time expense as a deduction when it is billed or due;

(ii) Average the expense through the remainder of your certification period; or

(iii) If your AU has a twenty-four-month certification period, you can choose to use the expense as a one-time deduction, average the expense for the first twelve months of your certification period, or average it for the remainder of your certification period.

(b) Recurring expenses are expenses that happen on a regular basis. We estimate your monthly expenses for the certification period.

(4) If the elderly person or individual with a disability in your AU has an active Medicare prescription drug card prior to June 1, 2006:

(a) Allow any out-of-pocket expenses that meet the criteria in subsections (2) and (3) above;

(b) Add a standard twenty-three dollars to these expenses; and

(c) Allow an additional fifty dollar monthly deduction to account for the 2004 and 2005 prescription subsidies:

(i) For twenty-four consecutive months if the client applied before January 2005; or

(ii) For the average number of months resulting from dividing the total subsidy amount by fifty dollars if the client applied in January 2005 or later.

(d) Allow the deductions in (b) and (c) of this subsection even if the AU has no out-of-pocket expenses.

(5) AU members with an active Medicare prescription drug card prior to June 1, 2006 have the option of using their verified pre-card out-of-pocket expenses when this amount is greater than using the standards in subsection (4).

(6) We do not allow a medical expense as an income deduction if:

(a) The expense was paid before you applied for benefits or in a previous certification period;

(b) The expense was paid or will be paid by someone else;

(c) The expense was paid or will be paid by the department or another agency;

(d) The expense is covered by medical insurance;

(e) We previously allowed the expense, and you did not pay it. We do not allow the expense again even if it is part of a repayment agreement;

(f) You included the expense in a repayment agreement after failing to meet a previous agreement for the same expense; or

(g) You claim the expense after you have been denied for presumptive SSI; and you are not considered disabled by any other criteria.

**WSR 06-01-094**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**

[Filed December 20, 2005, 4:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-24-078.

Title of Rule and Other Identifying Information: These rules are adopted under RCW 31.04.165 and are intended to implement chapter 208-620 WAC, Washington Consumer Loan Act (formerly chapter 50-20 WAC).

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Room 319, Tumwater, WA 98501, on January 24, 2006, at 10:00 a.m.

Date of Intended Adoption: January 27, 2006.

Submit Written Comments to: Deborah Bortner, 150 Israel Road S.W., Olympia, WA, e-mail dbortner@dfi.wa.gov, fax (360) 704-7030, by January 20, 2006.

Assistance for Persons with Disabilities: Contact Deborah Bortner by January 20, 2006, TTY (360) 664-8126.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules repeal the old rules in order to comply with the Governor's Executive Order 05-03, plain talk. This is intended to make the rules more user friendly for both licensees and the public.

The proposed rules update and clarify existing rules and address some statutory changes made to chapter 31.04 RCW, the Consumer Loan Act, in 2001 and 2002. In summary the proposed rules:

- Adds definitions necessary to incorporate the statutory changes.
- Clarifies what loans are subject to the act.
- Clarifies the transactions covered by the Consumer Loan Act and those covered by the Mortgage Broker Practices Act.
- Expands the documentary requirements for license application.
- Eliminates licensing for certain back office services.
- Clarifies the coverage requirements for the surety bond.
- Clarifies the grounds for denying, conditioning, suspending, and revoking a license.
- Clarifies use of a name other than the name on the license.
- Provides for sanctions for failure to file the annual assessments and worksheet when due.
- Clarifies the calculation of the annual fee.
- Provides for additional reporting for significant events.
- Clarifies the federal and state acts applicable to lending and brokering loans under the Consumer Loan Act.
- Clarifies the authority to maintain electronic records.
- Expands the prohibited business practices.

Reasons Supporting Proposal: These changes were made to reflect changes in the Consumer Loan Act. The plain

talk rewrite and the various clarifications in the rules will assist licensee in operating their businesses in compliance with the Consumer Loan Act as amended.

Statutory Authority for Adoption: RCW 31.04.165.

Statute Being Implemented: Chapter 208-620 WAC.

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

Name of Proponent: Department of Financial Institutions, governmental.

Name of Agency Personnel Responsible for Drafting: Deborah Bortner, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-0511; Implementation and Enforcement: Chuck Cross, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8733.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendments will not have a quantifiable economic impact on the affected small businesses licensed under the Consumer Loan Act.

A cost-benefit analysis is not required under RCW 34.05.328. It is not applicable to these rules.

December 20, 2005

Chuck Cross

Consumer Services

Division Director

AMENDATORY SECTION (Amending WSR 96-04-013, filed 1/26/96, effective 2/26/96)

**WAC 208-620-010 Definitions.** The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter 31.04 RCW.

~~("Add-on method" means the method of precomputing interest payable on a loan by adding the interest to be earned to the principal balance. This total, plus any charges allowed under this chapter, is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms.)~~

"Affiliate" means any person who controls, is controlled by, or is under common control with another.

"Annual percentage interest rate" means the rate of interest specified in the note.

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Section 226 et seq.

"Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Section 103.

"Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

"Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

"Department" means the department of financial institutions.

"Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. § 1735f-7a.

"Director" means the director of the department of financial institutions or his or her designated representative.

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. section 1691 and Regulation B, 12 C.F.R. Section 202.

"Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Section 1681 et seq.

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. sections 1692 through 1692o.

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. section 45(a).

"Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or others documents, or transferring certificates of title to vehicles.

"Gramm-Leach-Bliley Act" means the Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. sections 6801 through 6809 and 6821 through 6827.

"Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. sections 2801 through 2810 and 12 C.F.R. Section 203.

"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.

"Lender" means any person that extends money to a borrower with the expectation of being repaid.

"License" means a license issued under the authority of this chapter with respect to a single place of business.

"Licensee" means a person who holds one or more current licenses.

"Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

"Loan" means a sum of money lent at interest and includes both open-end and closed-end transactions.

"Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

"Out-of-state licensee" means any licensee that does not maintain a physical presence within the state.

"Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

"Principal" means either (1) any person who controls, directly or indirectly through one or more intermediaries, a ten percent or greater interest in a partnership, company, association or corporation; or (2) the owner of a sole proprietorship.

"Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

"Principal balance" means the principal amount plus any allowable origination fee.

"RCW" means the *Revised Code of Washington*.

"Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (**RESPA**), 12 U.S.C. Sections 2601 et seq., and Regulation X, 24 C.F.R. Sections 3500 et seq.

"Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

"Senior officer" means an officer of a consumer loan company at the vice-president level or above.

"Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Each payment shall first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. In using such method, interest shall not be payable in advance or compounded.

"State" means the state of Washington.

"Subsidiary" means a person that is controlled by another.

"Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. § 6101 to 6108.

"Third-party service provider" means any person other than the licensee who provides goods or services to the licensee in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

"Truth in Lending Act" means the Truth in Lending Act (**TILA**), 15 U.S.C. Sections 1601 et seq., and Regulation Z, 12 C.F.R. Sections 226 et seq.

## LICENSING

### NEW SECTION

**WAC 208-620-230 Do I need to apply for a consumer loan license if I am lending money in the state of Washington?** In order to make credit available to high-risk borrowers the act authorizes interest rates up to twenty-five percent for certain types of loans, subject to the requirements of the act. If you are in the business of making secured or unsecured loans of money or credit at rates above those allowed under chapter 19.52 RCW, the Usury Act, and you do not qualify for an exception under RCW 31.04.025, you must hold a license to avoid noncompliance with the Usury Act. The current allowable rate under RCW 19.52.020 is twelve percent or less but that rate may change.

### NEW SECTION

**WAC 208-620-235 Is there a maximum rate of interest allowed under the act?** The legislature authorized interest rates up to twenty-five percent for loans made under the act in order to make credit available to high risk borrowers.

NEW SECTION

**WAC 208-620-240 Once I am licensed, does the act apply to all loans I make or only those above twelve percent?** All loans you make as a licensee are subject to the authority and restrictions of the act including the provisions relating to the calculation of the annual fee.

NEW SECTION

**WAC 208-620-245 Does the Consumer Loan Act allow me to make one or two loans subject to the act without being licensed?** The act applies to all loans made by licensees and does not provide an exemption for a de minimus number of loans. If you are not licensed, the act does not apply to your transactions. See WAC 208-620-230.

NEW SECTION

**WAC 208-620-250 If my out-of-state company applies for a license under the Consumer Loan Act do we have to have a branch in the state of Washington?** You are not required to maintain a physical presence in this state to get a license but any location doing business under the act, wherever located, must be licensed.

NEW SECTION

**WAC 208-620-260 If I get licensed under the Consumer Loan Act, can I broker loans in the state of Washington?** (1) As a consumer loan licensee, you may broker loans in the state of Washington provided that those loans are brokered under either the Consumer Loan Act or the Mortgage Broker Practices Act.

(2) If you broker loans under the Consumer Loan Act, those loans are subject to WAC 208-620-240 and must be counted in the calculation of the annual assessment.

(3) If you broker loans under the Mortgage Broker Practices Act, chapter 19.146 RCW, you must comply with that act.

NEW SECTION

**WAC 208-620-270 Can I make a loan subject to the act without having to get a license?** If you make a loan that is subject to the act, you must either get a license or risk violating the Usury Act which limits the rate of interest a lender can charge Washington state residents. Further, if you make a loan without a consumer loan license and the loan is secured by residential real estate, you risk violating the Mortgage Broker Practices Act, chapter 19.146 RCW.

NEW SECTION

**WAC 208-620-280 How do I apply for a consumer loan license?** (1) **Application.** An applicant for a consumer loan company license must complete a consumer loan license application form and include all of the following:

(a) In regard to each principal, officer or member of the board of directors:

(i) The names, addresses, occupation and prior employment history including a statement of their experience and qualifications;

(ii) A description of any material litigation in which they are involved;

(iii) A signed authorization for a background investigation on a form provided by the department;

(iv) A complete set of fingerprints taken by an authorized law enforcement officer, if requested; and

(v) An independent credit report obtained from a recognized credit reporting agency, if requested;

(b) A current financial statement as of the most recent quarter end, prepared in accordance with generally accepted accounting principles. The statement does not have to be audited but must include a statement of assets and liabilities and a profit and loss statement;

(c) A current, dated organizational chart for the applicant with names and titles of all officers, managers and supervisory personnel;

(d) A current, dated organizational chart identifying the holding companies, affiliates, and subsidiaries of the applicant and percentage owned or controlled;

(e) A certificate of existence/authorization obtained from the Washington secretary of state;

(f) A valid surety bond in the amount specified in WAC 208-620-320;

(g) For out-of-state licensees, the name, address, phone number, and fax number of its registered agent;

(h) The location of its records;

(i) A description of any current material civil litigation involving the company or any of the officers, directors or owners;

(j) A portion of the fees as described in the application.

(2) **Completion of an application.** An application is not considered to be complete unless:

(a) All documents and other information requested by the department have been submitted in a completed form; and

(b) There are no unresolved complaints filed with the department or other outstanding regulatory or law enforcement issues concerning the applicant and its principals, officers and directors.

(3) **Responsible applicants.** Each of the principals, officers and directors of the entity that is applying for a license is deemed responsible for the information submitted as part of the application.

NEW SECTION

**WAC 208-620-285 If my application is incomplete when I file it with the department, what will happen?** For purposes of efficiency, the department may reject an incomplete application. The department may return the submission to the applicant along with an explanation of the items needed to complete the application.

NEW SECTION

**WAC 208-620-290 What fees will I be charged for my application for a consumer loan license?** (1) **Application fees.** The director will charge the applicant or licensee

\$95.55 per hour for review of its application and attendant investigation for the following:

- (a) New consumer loan company license;
- (b) New branch office license;
- (c) Notice of change of control; or
- (d) Opinions rendered regarding interpretations of statutes and rules.

(2) **Licenses.** The licensee will be charged \$106.71 for the issuance of the following licenses:

- (a) New or replacement main office licenses; or
- (b) New or replacement branch licenses.

NEW SECTION

**WAC 208-620-300 If I want to open more than one office, do I have to file an application for each location?** A licensee must complete a consumer loan license application for each consumer loan company branch office, loan servicing location or direct solicitation location, and provide evidence of surety bond coverage for any additional branch. The director may require that all or some of the information provided in the original application be updated.

NEW SECTION

**WAC 208-620-310 Is it necessary to license an office that is only providing underwriting and other back-office services?** A location that is solely providing underwriting and other back-office services on Washington loans and has only incidental contact with the borrower, is not required to be licensed.

NEW SECTION

**WAC 208-620-320 What is the amount of the bond required for my consumer loan license? (1) Loans not secured by real estate.** For licensees making loans not secured by real property, the penal sum of the bond is one hundred thousand dollars for each office up to five locations. For each additional branch office over five, the amount of the bond must be increased by ten thousand dollars.

(2) **Loans secured by real estate.** For a licensee making loans secured by real property, the penal sum of the bond is four hundred thousand dollars for the first location and one hundred thousand dollars for each branch office up to five licensed locations. For each additional branch office over five, the amount of the bond must be increased by ten thousand dollars. For example:

Number of Branch Offices	Penal Sum of Bond - Licensee making non real estate loans	Penal Sum of Bond - Licensee making real estate loans
1	\$100,000	\$400,000
2	\$200,000	\$500,000
3	\$300,000	\$600,000
4	\$400,000	\$700,000
5	\$500,000	\$800,000
6	\$510,000	\$810,000
7	\$520,000	\$820,000

Number of Branch Offices	Penal Sum of Bond - Licensee making non real estate loans	Penal Sum of Bond - Licensee making real estate loans
8	\$530,000	\$830,000
9	\$540,000	\$840,000
10	\$550,000	\$850,000

NEW SECTION

**WAC 208-620-330 Does the surety bond need to reflect coverage for licensee and its W-2 employees and independent contractors?** The surety bond needs to cover both the licensee and all types of employees working for the licensee. If a licensee has independent contractors, exclusive or otherwise, the bond needs to cover them, as well as employees of the licensee.

NEW SECTION

**WAC 208-620-340 Do I have any alternative to maintaining a surety bond? Bond substitute.**

(1) **Washington business corporation.** A licensee that is a Washington business corporation may maintain a bond substitute, as defined in WAC 208-620-010, in lieu of a surety bond.

(2) **Amount of the bond substitute.** The licensee must maintain unimpaired capital in an amount so that the aggregate sum of the licensee's debt, including outstanding promissory notes or other evidences of debt, does not at any time exceed three times the amount of its bond substitute.

(3) **Long-term subordinated debt.** Long-term subordinated debt, as defined in WAC 208-620-010, may be excluded from the licensee's debt for purposes of calculating the bond substitute only if any claim by the subordinate debt-holder on the licensee's assets is junior to claims by the state or a consumer under the act. The licensee must file with the director a subordination agreement in favor of the state.

(4) **Bad debts and uncollectible judgments.** A licensee that maintains a bond substitute may not consider bad debts and uncollectible judgments as assets for purposes of calculating the bond substitute. A bad debt is any debt owed to the licensee upon which any payment is six months or more past due. An uncollectible judgment is any judgment which is more than two years old and which has not been paid.

(5) **Review of requirements.** The director may evaluate the documentation submitted by the licensee or other documentation requested by the director to determine whether the bond substitute meets the requirements of RCW 31.04.045 (3).

NEW SECTION

**WAC 208-620-350 If I qualify to use a bond substitute in lieu of a surety bond, what documentation do I have to provide to the department? (1) Semiannual financial statements required.** A licensee that maintains a bond substitute must submit semiannually to the director year-to-date financial statements prepared in accordance with generally accepted accounting principles, including at a minimum

a statement of assets and liabilities and a profit and loss statement.

(2) **More frequent financial reporting.** The director may require that financial reports be submitted more frequently if past financial reports have been prepared incorrectly or were misleading or if there is substantial risk that the licensee will violate the bond substitute standard.

(3) **Additional information to be filed.** The director may require other documents, agreements and information deemed necessary to properly evaluate and ensure that the licensee remains in compliance with this section.

(4) **Failure to file financial statements as required.** The director may require a licensee that fails to file its financial statements under subsection (1) of this section to obtain a surety bond within thirty days of that failure. Failure to obtain the bond as required may result in suspension or revocation of the licensee's license.

#### NEW SECTION

**WAC 208-620-360 What if I choose the bond substitute alternative and my unimpaired capital falls below the minimum? (1) Failure to maintain sufficient unimpaired capital.** A licensee that does not maintain a sufficient bond substitute shall notify the director within ten days as required by WAC 208-620-490. The licensee must then obtain and file with the director a surety bond in the amount required by WAC 208-620-320 within twenty days after receiving notice from the director. A licensee that files a surety bond under this section must maintain the surety bond for five years after the date of noncompliance. During this five-year period, the director will not accept a bond substitute.

(2) **Failure to obtain a surety bond.** Failure to file a surety bond as required in this section may result in suspension or revocation of the licensee's license(s).

#### NEW SECTION

**WAC 208-620-370 What are the grounds for denying or conditioning my license application?** The director may deny or condition approval of a license application if the applicant or any principal, officer, or board director of the applicant:

(1) **Failing to pay.** Fails to pay a fee due the department;

(2) **Failing to demonstrate financial responsibility or fitness.** Fails to demonstrate financial responsibility, experience, character, and general fitness to operate a business honestly, fairly, and efficiently within the purposes of the Consumer Loan Act. The director may find that the person has failed to make the demonstration if, among other things:

(a) The person is or has been subject to an injunction or an administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act, the Insurance Code, the Securities Act, or similar laws in this or another state; or

(b) An independent credit report issued by a recognized credit reporting agency indicates that the person has a history of unpaid debts; or

(c) The person is the subject of a criminal felony indictment, or a criminal misdemeanor charge involving dishonesty or financial misconduct; or

(d) The person is insolvent in the sense that the value of the applicant's or licensee's liabilities exceeds its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature;

(3) **Misrepresentations or omissions.** Has omitted or concealed a material fact from the department or has misrepresented a material fact to the department;

(4) **Prior business conduct.** Has been found to have committed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(5) **Failure to complete the application.** Has failed to complete its application as defined in WAC 208-620-280, within a reasonable time after being notified that the department considers the file abandoned for failure to provide requested information or documentation.

#### NEW SECTION

**WAC 208-620-380 Are there any additional requirements for out-of-state licensees? (1) All locations must be licensed.** Any person that conducts business under the act with Washington residents must obtain a license for all locations from which business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310.

(2) **Keeping records out-of-state.** The director may approve the maintenance of a licensee's records at an out-of-state location. The licensee must request approval in writing and must agree to provide the director access to the records and pay the hourly rate plus travel costs pursuant to WAC 208-620-590. Agreement to allow access to the records is a condition of licensing of an out-of-state location.

(3) **Service on out-of-state licensee.** An out-of-state licensee's registered agent is the licensee's agent for service of process, notice, or demand.

#### NEW SECTION

**WAC 208-620-390 If I am offering loans by mail or internet to Washington residents, do I have to license those locations?** Any person that conducts business under the act with Washington residents must obtain a license for all locations including those that offer loans by mail or internet.

#### NEW SECTION

**WAC 208-620-395 Do I need to display my license in my place of business?** Yes. The main office and branch office license must be conspicuously displayed at the licensed location.

#### NEW SECTION

**WAC 208-620-400 Can I share an office with another business? (1) A licensee may conduct its business in a licensed location in which other persons are engaged in business.**

(2) If the licensee has effective control over the person sharing space, or the person sharing space with the licensee has effective control over the licensee or is under common control with the other by a third person or is a corporation related to another corporation as parent to subsidiary and one refers business incident to or a part of a real estate settlement service to the other, the licensee must comply with RESPA Sec. 3500.15, including required disclosures and prohibitions on referral fees.

#### NEW SECTION

**WAC 208-620-410 May I sell other types of products from my licensed location?** A licensee may engage in the sale of incidental products on the premises of the licensed location only after receiving approval from the director. For the purpose of this section "incidental" means products or services not related to the original loan, including, but not limited to, warranties, insurance, and prepaid legal services. The cost of the products may, at the consumer's option, be paid from the proceeds of the loan and included in the principal balance provided that:

(1) The purchase of the product is not a factor in the approval of credit and this fact is clearly disclosed in writing to the consumer; and

(2) The consumer gives the licensee written permission to purchase the product after receiving disclosure of the terms and cost.

#### NEW SECTION

**WAC 208-620-420 May I transact business in a name other than the name on my license?** No. A licensee may transact business such as making a loan or providing applicable disclosures only under the name on the license. A licensee may apply to the department to add a trade name to its license but it may not use the DBA (doing business as) alone to transact business.

#### NEW SECTION

**WAC 208-620-425 May I transfer my license?** No. A license is given to a specific entity with specific individuals. If all or part of the business is transferred or sold to another person, the licensee is required to notify the department prior to transfer so the department can determine if the new person is qualified to own all or part of the business.

### LICENSEE REPORT REQUIREMENTS

#### NEW SECTION

**WAC 208-620-430 What are my annual filing requirements as a consumer loan licensee?** (1) **Annual report due March 1st.** Each year a licensee is required to file a consolidated annual report on a form provided by the department and pay a fee based upon the amount of business conducted under the act. The director will notify each licensee at its official address of the method to calculate the annual fee due along with a worksheet for such purpose and the consolidated annual report form. The licensee will calcu-

late the annual fee on the worksheet. The licensee must deliver its completed consolidated annual report, worksheet and annual fee to the department by March 1st of the following year.

(2) **Late penalties.** A licensee that fails to submit the required annual report and worksheet by the March 1st due date is subject to a penalty of fifty dollars per report for each day of delay. For example, if the department receives the consolidated annual report and worksheet on March 4th, the licensee would have to pay an additional three hundred dollars as a late penalty.

(3) **Failure to file.** If a licensee fails to pay its annual assessment and file a worksheet by April 1st the director may file a claim against the licensee's surety bond for failing to faithfully conform to and abide by the Consumer Loan Act. The department may make a claim on the licensee's surety bond for the late penalties under subsection (2) of this section and the greater of:

- (a) The assessment paid the previous year;
- (b) The average annual assessment paid in the previous two years; or
- (c) Fifteen hundred dollars.

#### NEW SECTION

**WAC 208-620-440 How do I calculate my annual fee?** (1) **Calculation of the annual fee.** Each licensee will pay an annual assessment fee based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment fee is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.

(2) **All loans counted in fee calculation.** The "adjusted total loan value" is the sum of:

- (a) The total unpaid balance of all loans as of year end, both under and over twelve percent interest, made or brokered under the act to Washington residents that were retained, brokered or purchased by the licensee; and
- (b) The total unpaid balance of all loans as of year end, both under and over twelve percent, made or brokered under the act to Washington residents that were sold by the licensee with servicing retained (if any); and
- (c) The total amount of all loans as of year end, both under and over twelve percent interest, made or brokered under the act to Washington residents that were sold by the licensee during the previous calendar year with servicing released (if any).

#### NEW SECTION

**WAC 208-620-460 Do I have to file my annual report even if I go out of business during the year?** (1) A licensee that ceases operations during the year must file the consolidated annual report and pay the annual assessment required in WAC 208-620-430 within thirty days of closure.

(2) Failure to file will trigger bond claim as described in WAC 208-620-430(3).

NEW SECTION

**WAC 208-620-470 Do I need to notify the director if I move the location of my office?** Before doing business under the act from a new location, either a main office or a branch office, a licensee must file an amendment for a change of address and obtain approval from the director.

NEW SECTION

**WAC 208-620-475 Must I notify the department if I cease doing business in this state if I am doing business in other states?** You must either notify the department when you cease doing business in the state of Washington or continue to file your annual report and worksheet each year. In order to end your filing responsibilities, you must file a Consumer Loan Closure Form along with your final annual report and worksheet, any fees owed, and return your license certificate.

NEW SECTION

**WAC 208-620-480 What are my filing responsibilities if my company files for bankruptcy?** (1) **Chapter 7 bankruptcy.** A licensee that files for chapter 7 bankruptcy must notify the director within ten days, surrender its license(s) and deliver the consolidated annual report and worksheet for the period in business that year within sixty days of filing bankruptcy.

(2) **Chapter 11 bankruptcy.** A licensee that files for chapter 11 bankruptcy must notify the director within ten days.

NEW SECTION

**WAC 208-620-490 What are my reporting responsibilities when something of significance happens to my business?** (1) **Prior notification required.** A licensee must notify the director in writing ten days prior to a change of the licensee's:

- (a) Principal place of business or any of its branch offices;
- (b) Name or legal status (e.g., from sole proprietor to corporation, etc.);
- (c) Name and mailing address of the out-of-state licensee's registered agent;
- (d) Legal or trade name; or
- (e) A change of ownership control of ten percent or more.

(2) **Post notification within ten days.** A licensee must notify the director in writing within ten days after an occurrence of any of the following:

- (a) Change in mailing address, telephone number, fax number, or e-mail address;
- (b) Cancellation or expiration of its Washington state master business license;
- (c) Change in its standing with the state of Washington secretary of state, including the resignation or change of the registered agent;
- (d) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340; or

(e) Receipt of notification of cancellation of the licensee's surety bond.

(3) **Post notification within twenty days.** A licensee must notify the director in writing within twenty days after the occurrence of any of the following developments:

(a) Receipt of notification of the institution of license revocation procedures in any state against the licensee;

(b) The filing of a felony indictment or information related to lending or brokering activities of the licensee, or any officer, board director, or principal of the licensee or an indictment or information involving dishonesty of the licensee, or any officer, board director, or principal of the licensee;

(c) The licensee, or any officer, director, or principal of the licensee is convicted of a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(d) The filing of any material litigation against the licensee.

NEW SECTION

**WAC 208-620-500 What are my reporting requirements if I want to close one or more of my branch offices?**

(1) **Closing a branch office.** If you close a branch office, you must notify the department using the Consumer Loan Office Closure Form and return the original license.

(2) **Closing the business.** If you are going to close your business, you must notify the department using the Consumer Loan Office Closure Form, along with the annual report and worksheet, any fees due and return the original licenses.

**DISCLOSURE AND OTHER OBLIGATIONS**NEW SECTION

**WAC 208-620-505 In addition to the Consumer Loan Act, what other laws do I have to comply with?** You must ensure you are in compliance with all federal and state laws and regulations that apply to lending or brokering loans when applicable to the transaction including the Truth in Lending Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Bank Secrecy Act, the Real Estate Settlement Procedures Act, the Gramm-Leach-Bliley Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, the Washington State Fair Housing Act, and the Federal Trade Commission Telephone Sales Rule, 16 C.F.R. Part 310.

NEW SECTION

**WAC 208-620-510 What are my disclosure obligations to consumers under the Consumer Loan Act?** (1) **Content requirements.** In addition to complying with the applicable disclosure requirements in the federal and state statutes referred to in WAC 208-620-505 if the loan will be secured by a lien on real property, you must also provide the borrower or potential borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three days of receipt of a loan application.

(2) **Proof of delivery.** The licensee must be able to prove that the disclosures under subsection (1) of this section were provided within the required time frames. In most cases, proof of mailing is sufficient evidence of delivery. If the licensee has an established system of disclosure tracking that includes a disclosure and correspondence log, checklists, and a reasonable system for determining if a borrower did receive the documents, the licensee will be presumed to be in compliance.

(3) Each licensee shall maintain in its files sufficient information to show compliance with state and federal law.

#### NEW SECTION

**WAC 208-620-512 If I pull a credit report on a consumer who has identified a specific property on a purchase and sales agreement or contract, or is refinancing a specific property, is that enough to trigger the required disclosures under RESPA and TILA?** Yes. At that point, you have collected enough information on behalf of the consumer for you to anticipate a credit decision under Regulation X, 24 C.F.R. Sections 3500 et seq. and you must provide the consumers with all required disclosures.

### POWERS AND RESTRICTIONS

#### NEW SECTION

**WAC 208-620-515 What authority do I have as a licensee?** (1) As a licensee you may:

(a) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(b) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(c) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;

(d) The powers listed in (a), (b), and (c) of this subsection apply only to junior lien mortgage loans, lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans and nonmortgage loans.

(2) Agree with the borrower for the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made,

except for reasonable fees actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender.

(3) Charge and collect a penalty of ten cents or less on each dollar of any installment payment delinquent ten days or more.

(4) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee.

(5) Make open-end loans as provided in the act.

(6) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower.

### RECORDKEEPING

#### NEW SECTION

**WAC 208-620-520 How long do I have to maintain my records under the Consumer Loan Act?** (1) **General records.** Each licensee must preserve the books, accounts, records, papers, documents, files, and other information relevant to a loan for a minimum of twenty-five months after making the final entry on that loan at a location approved by the director.

(2) **Advertising records.** A licensee must maintain a copy of all advertising for a period of twenty-five months at a location approved by the director. Such copies shall include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile or computer network.

#### NEW SECTION

**WAC 208-620-530 Can I maintain my records electronically?** (1) **Records must be available.** The records required to be maintained by RCW 31.04.145 may be maintained by means of electronic display equipment if such equipment is made available upon request to the director or his or her representatives for purposes of examination or investigation.

(2) The hardware or software needed to display the record must be maintained during the required retention period under WAC 208-620-520(1).

(3) **Hard copy upon request.** A licensee must provide the records in hard copy upon request of the director.

#### NEW SECTION

**WAC 208-620-540 Do I need to account separately for payments from borrowers for third party service providers?** A licensee must separately account for all deposits and disbursements made by or for borrowers for third party service providers. The funds may not be used for the benefit of the licensee or any person not entitled to such benefit.

## RESTRICTIONS, PROHIBITIONS AND GROUNDS FOR REVOCATION

### NEW SECTION

**WAC 208-620-550 What business practices are prohibited?** Under RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:

(1) **Disclosure of payoff amount.** Failure to provide the exact pay-off amount as of a certain date five or fewer business days after being requested in writing to do so by a borrower of record or their authorized representative;

(2) **Recognition of payment delivery.** Failure to record a borrower's payment as received on the day it is delivered to any of the licensee's locations during its regular working hours;

(3) **Charging a fee for best efforts.** Soliciting or entering into a contract with a borrower that provides in substance that the licensee may earn a fee or commission through its "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(4) **False advertising of rates and fees.** Soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time;

(5) **False filing.** Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department;

(6) **Influencing appraisers.** Making any payment, directly or indirectly, or withholding or threatening to withhold any payment, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(7) **Documents with blanks.** Allowing a borrower to leave blanks on a document that is signed by the borrower;

(8) **False advertising.** Soliciting business using advertising that includes:

(a) An envelope or stationery that contains an official-looking emblem, such as an eagle or a crest, or that is otherwise designed to resemble an official government mailing, such as a mailing from the Internal Revenue Service or the U.S. Department of the Treasury;

(b) An envelope or stationery containing warnings or notices citing codes or form numbers made to appear like government codes or form numbers that are not required to be shown on the mailing by the U.S. Postal Service;

(c) Any suggestion or representation that the licensee is, or is affiliated with, a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent;

(d) Any suggestion or representation that the solicitation is from an entity other than the licensee;

(e) Any suggestion or representation that the information about a consumer's current loan was provided by any source other than the source disclosed pursuant to WAC 208-620-630;

(9) **Inclusion of taxes and insurance.** Failing to clearly disclose to a borrower whether the payment advertised or offered for a real estate loan includes amounts for taxes, insurance or other products sold to the borrower;

(10) **Force placed insurance.** Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower in order to verify that the asset is not otherwise insured;

(11) **Filing an inappropriate lien.** Willfully filing a lien on property without a legal basis to do so;

(12) **Threats and coercion.** Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;

(13) Failure to reconvey title to collateral, if any, within thirty business days when the loan is paid in full unless conditions exist that make compliance unreasonable.

### NEW SECTION

**WAC 208-620-560 What restrictions are there for charging fees other than the loan origination fee?** (1) **Filing fees.** A licensee cannot charge or collect any funds from the borrower for the cost of filing, as defined in WAC 208-620-010, or for any other fees paid or to be paid to public officials, unless such charges are paid or are to be paid within one hundred eighty days by the licensee to public officials or other third parties for such filing. Any fee a licensee collects for releasing or reconveying the security for the obligation must be paid to an unrelated third party.

(2) **Returned check fees.** A licensee may not charge or collect a fee in excess of twenty-five dollars for a check returned unpaid by the bank drawn upon. Only one fee may be collected with respect to a particular check even if it has been redeposited and returned more than once.

(3) **Fees for third-party services.** A licensee may not charge or collect any fee to be paid to a third-party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid. A licensee may charge the borrower for costs of allowable third-party services as provided by RCW 31.04.105(3) at the time of application for the loan or at any time thereafter except as prohibited.

(4) **Credit and noncredit insurance.**

(a) Except for the transaction described in (b) of this subsection, a licensee may include the premiums for credit and noncredit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing and the borrower's confirmation is obtained by signature on the disclosure form.

(b) A licensee may not sell single premium credit insurance to a borrower at the inception of coverage unless the sale is in compliance with chapter 48.18 RCW.

(5) **Fees on existing loans.** Unless otherwise preempted under the Depository Institutions Deregulatory and Monetary Control Act, if a licensee makes a new loan or increases a credit line within one hundred twenty days after originating a previous loan or credit line to the same borrower, the origination fee on the new loan or increased credit line shall be limited as follows:

(a) The licensee may charge an origination fee only on that part of the new loan not used to pay the amount due on the previous loan;

(b) The licensee may charge an origination fee only on the difference between the amount of the existing credit line and the increased credit line;

(c) The limits in (a) and (b) of this subsection do not apply if the licensee refunds the origination fee on the existing loan or credit line.

(6) **Administrative fees.** A licensee may not collect a document preparation fee, a processing fee or a courier fee unless paid to an unrelated third party and agreed to in advance by the borrower.

(7) **Prepayment penalty.** A licensee may not collect a prepayment penalty on the following loans:

(a) Any nonmortgage loan made at rates authorized by the act; or

(b) Any junior lien mortgage loan made at rates authorized by the act; or

(c) Any loan made by a licensee that is not a "creditor" under DIDMCA.

#### NEW SECTION

**WAC 208-620-570 What are the grounds for suspending or revoking a license?** The director may suspend or revoke a license if the licensee, or any principal, officer, or board director of the licensee:

(1) **Failing to pay.** Fails to pay a fee due the department;

(2) **Injunction or administrative action.** Is or has been subject to an injunction or a civil or administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act or similar laws of this state or another state;

(3) **Substantial unpaid debt.** Has accumulated substantial unpaid debt;

(4) **Violation of lending laws.** Has been found in violation of another state's lending laws, securities laws, real estate laws or insurance laws resulting in substantial license limitations or significant fines;

(5) **Criminal charges.** The person is the subject of a criminal felony charge, or a criminal misdemeanor charge involving dishonesty or financial misconduct;

(6) **Bond canceled.** Has had its surety bond canceled or revoked for cause;

(7) **Deterioration of business.** Has allowed the licensed consumer loan business to deteriorate into a condition which would result in denial of a new application for a license;

(8) **Aiding unlicensed practice.** Has aided or abetted an unlicensed person to practice in violation of the Consumer Loan Act or the Mortgage Broker Practices Act;

(9) **Incompetence resulting in injury.** Has demonstrated incompetence or negligence that results in financial harm to a person or that creates an unreasonable risk that a person may be harmed;

(10) **Insolvency.** Is insolvent in the sense that the value of the licensee's liabilities exceeds its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature;

(11) **Failure to comply.** Has failed to comply with an order, directive, subpoena, or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee;

(12) **Misrepresentation or fraud.** Has performed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(13) **Failure to cooperate.** Has failed to cooperate with the director, or his or her designee, including without limitation by:

(a) Not furnishing any records requested by the director for purposes of conducting a lawful investigation for disciplinary actions or denial, suspension, or revocation of a license; or

(b) Not furnishing any records requested by the director for purposes of conducting a lawful investigation into a complaint against the licensee filed with the department, or providing a full and complete written explanation of the circumstances of the complaint upon request by the director;

(14) **Interference with investigation.** Has interfered with a lawful investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

#### EXAMINATIONS

#### NEW SECTION

**WAC 208-620-580 As a licensee, will my business be subject to periodic examinations?** Each consumer loan company can expect to be visited periodically by the department's examiners. The director or designee may examine, wherever located, the records used in the business of every licensee and of every person who is engaged in the consumer loan business, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For that purpose the director or designee shall have free access, at reasonable times during business hours, to the offices and places of business and all books and records of the business.

#### NEW SECTION

**WAC 208-620-590 How much will I be charged for my periodic examinations and when will the payment be due?** (1) **Hourly charge for examinations.** A licensee will be charged \$69.01 per hour for regular and special examinations of the licensee's records.

(2) A licensee that makes loans pursuant to the act from out-of-state locations, maintains records outside the state or services loans pursuant to the act outside the state will be charged the hourly rate plus travel costs.

(3) **Billing for the examinations.** The director will submit an invoice for the charges following the completion of any applicable examination. The charges must be paid within thirty days after the invoice is submitted to the licensee.

NEW SECTION

**WAC 208-620-600 How often will the department visit my business to examine my records?** There is no set schedule to examine each licensee. Licensees will be examined on a flexible schedule based upon the potential risk of the business to the public.

**INVESTIGATIONS**

NEW SECTION

**WAC 208-620-610 What authority does the department have to investigate violations of the Consumer Loan Act?** (1) **Testimony.** The director or designees may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing.

(2) **Production of records or copies.** The director or designee may require the production of books, accounts, papers, records, files, and any other information deemed relevant to the inquiry. The director may require the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, records, files, or other information.

(3) **Subpoena authority.** If a licensee or person does not attend and testify, or does not produce the requested books, accounts, papers, records, files, or other information, then the director or designated persons may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, records, files, or other information.

**ADVERTISING RESTRICTIONS**

NEW SECTION

**WAC 208-620-620 How do I have to identify my business when I advertise?** You must either identify the business using your Washington consumer loan license number or use the whole name on your Washington license.

NEW SECTION

**WAC 208-620-630 If I send out a letter referring to a consumer's existing loan, what source information must I disclose?** When an advertisement includes information about a consumer's current loan that did not come from a solicitation, application, or loan made or purchased by the licensee, the licensee shall provide to the consumer the name of the source from which this information was obtained.

NEW SECTION

**WAC 208-620-640 What are the requirements when I advertise any loan subject to the Consumer Loan Act?** You must comply with all the applicable advertising require-

ments under the federal statutes and regulations including the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Trade Act, the Telemarketing and Consumer Fraud and Abuse Act, and the Equal Credit Opportunity Act and you must conspicuously disclose the annual percentage rate implied by the rate of interest that you are advertising.

**MISCELLANEOUS**

NEW SECTION

**WAC 208-620-650 Will the director waive fees charged under the Consumer Loan Act?** The director or designee may waive any or all of the fees and assessments under this chapter when he or she determines that:

- (1) The financial services regulation account exceeds the projected minimum fund balance level approved by the office of financial management;
- (2) That the waiver is fiscally prudent; and
- (3) Good cause is shown by the applicant for the waiver.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-620-020	License application.
WAC 208-620-030	Surety bond.
WAC 208-620-040	Bond substitute in lieu of surety bond.
WAC 208-620-050	Interstate operations.
WAC 208-620-060	Registered agent and agent's office for out-of-state licensees.
WAC 208-620-070	Change of registered agent or agent's office for out-of-state licensees.
WAC 208-620-080	Resignation of registered agent.
WAC 208-620-090	Service on out-of-state licensee.
WAC 208-620-100	Records.
WAC 208-620-110	The note.
WAC 208-620-120	Contents of disclosure statement to borrower.
WAC 208-620-130	Restrictions as to charges.
WAC 208-620-140	Open-end loans—Increase in interest—Notice to borrower.
WAC 208-620-150	Open-end loans—Periodic statements.
WAC 208-620-160	Advertising—Restrictions and requirements.

WAC 208-620-170	Knowledge of the law and regulations.
WAC 208-620-180	Examinations.
WAC 208-620-190	Schedule of fees.
WAC 208-620-191	Fee increase.
WAC 208-620-192	Waiver of fees.
WAC 208-620-200	Change of place of business.
WAC 208-620-210	Other business in same office.
WAC 208-620-220	Annual report and annual fee—Due date—Late penalties.

**WSR 06-01-096****PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed December 21, 2005, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-17-104.

Title of Rule and Other Identifying Information: The department is making changes to sections in chapter 388-826 WAC, Voluntary placement program:

- Amending WAC 388-826-0085; and
- Creating new sections WAC 388-826-0130 through 388-826-0170.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on January 24, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 25, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., January 24, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 20, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 388-826 WAC governs the program management of the voluntary placement program (VPP). The division of developmental disabilities (DDD) is amending one section of the current rules and adding new rules to include the DDD VPP foster care assessment process and the rate structure.

Reasons Supporting Proposal: Rules for the VPP were adopted in 2002. A foster care assessment process and rate

structure was developed in 2003. DDD determined that amended and new sections of chapter 388-826 WAC are necessary to implement the application of the assessment process and the rate structure.

Statutory Authority for Adoption: RCW 71A.12.030, 74.13.350.

Statute Being Implemented: Title 71A RCW.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail [brinksc@dshs.wa.gov](mailto:brinksc@dshs.wa.gov), (360) 725-3416; Implementation: Rita Dickey, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail [dickerm@dshs.wa.gov](mailto:dickerm@dshs.wa.gov), (360) 725-3444; and Enforcement: Colleen Erskine, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail [erskicm@dshs.wa.gov](mailto:erskicm@dshs.wa.gov), (360) 724-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has determined that these rules do not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt from a cost-benefit analysis pursuant to RCW 34.05.328 (5)(b)(vii) as they relate only to client medical eligibility.

December 15, 2005

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

**WAC 388-826-0085 ((Are)) What other DDD services are available for a child through the voluntary placement program? (1) When a parent signs a voluntary placement agreement and the child ((enters)) is placed in the VPP outside the parental home, the child will no longer be eligible for services from the family support opportunity program, or the Medicaid Personal Care program. ((A parent will not be able to obtain other DDD services when the parent's child is in the VPP. The DDD VPP services will be authorized and obtained through the VPP. Some services will be similar to other DDD services, but they will not be paid for out of any other program, as long as the child is receiving services in the VPP))**

**(2) Children living with their parents may receive personal care services provided under chapter 388-71 WAC.**

**(3) If the child is covered under the DDD Core waiver as described in chapter 388-845 WAC, the child will receive the services identified on the Plan of Care.**

NEW SECTION

**WAC 388-826-0130 How is the foster care rate determined in VPP? (1) The basic foster care room and board rate**

is published by children's administration each year. See WAC 388-25-0120.

(2) The foster care assessment is completed annually by DDD to determine the amount of any specialized rate that will be paid to the foster parent in addition to the basic rate.

(3) The department administers the assessment to the foster parent. Based on information given by the foster parent and information gathered by the department, the standardized assessment will determine a score and assign a level.

(4) Algorithms determine the score corresponding to the care needs for each child. Each level is assigned a rate. The rate will be paid to the foster parent caring for the child.

#### NEW SECTION

**WAC 388-826-0140 What areas are covered in the foster care assessment?** (1) Areas covered in the foster care assessment include:

- (a) Behaviors;
- (b) Physical needs; and
- (c) Therapeutic assistance and other activities requiring the assistance of the foster parent.

(2) These activities are beyond those needed by a typically developing child.

#### NEW SECTION

**WAC 388-826-0150 What happens if the level assigned to the child changes?** The care needs of all children in foster care will be reassessed annually or more often if a major life change occurs.

(1) A "major life change" is an unexpected, documented change in a child's medical or psychological condition that affects the level of care required.

(2) If the assessed level changes and results in a rate change, the foster parent will receive at least thirty days written notice of the rate change. The notice will include the date that the rate change takes effect.

#### NEW SECTION

**WAC 388-826-0160 What limitations exist on administrative hearings regarding foster care payments in VPP?** The foster care provider and the parents are not entitled to request an administrative hearing to dispute the established foster care rates.

#### NEW SECTION

**WAC 388-826-0170 How are rates for licensed staffed residential homes determined in VPP?** Rates for licensed staffed residential homes are determined by the department after review of the needs of the child, the proposal from the licensed staffed residential agency and the proposed staffing schedule.

#### **WSR 06-01-097**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed December 21, 2005, 9:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-20-082.

Title of Rule and Other Identifying Information: Amending WAC 388-550-2598 Critical access hospital (CAH) program.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (behind Goodyear Courtesy Tire), on January 24, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 25, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., January 24, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 20, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The health and recovery services administration (HRSA) is amending this rule to add language to clarify that the department uses both the managed care encounter data and fee-for-service data to set prospective department-weighted costs-to-charges (DWCC) rates. HRSA also removed "medical assistance administration" and "MAA" and replaced the terms with "the department."

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.09.5225.

Statute Being Implemented: RCW 74.04.050, 74.08.-090, 74.09.5225.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45533, Olympia, WA 98504-5533, (360) 725-1342; Implementation and Enforcement: Larry Linn, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-1856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on businesses affected by them. The preparation of a comprehensive SBEIS is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Larry Linn, P.O. Box 45510, Health and Recovery Services Administration, Olympia, WA

98504-5510, phone (360) 725-1856, fax (360) 743-9152, e-mail linnld@dshs.wa.gov.

December 20, 2005  
Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-01-026, filed 12/3/04, effective 1/3/05)

**WAC 388-550-2598 Critical access hospitals (CAHs).**

(1) The ~~((medical assistance administration (MAA)))~~ department reimburses eligible critical access hospitals (CAHs) for inpatient and outpatient hospital services provided to fee-for-service medical assistance clients on a cost basis, using departmental weighted costs-to-charges (DWCC) ratios and a retrospective cost settlement process.

(2) For inpatient and outpatient hospital services provided to clients enrolled in a managed care plan, DWCC rates for each CAH are incorporated into the calculations for the managed care capitated premiums. ~~((MAA))~~ The department considers managed care DWCC rates to be cost. Cost settlements are not performed for managed care claims.

(3) The following definitions and abbreviations and those found in WAC 388-500-0005 and 388-550-1050 apply to this section:

(a) "CAH," see "critical access hospital."

(b) "CAH HFY" see "CAH hospital fiscal year."

(c) "CAH hospital fiscal year" means each individual hospital's fiscal year.

(d) "Cost settlement" means a reconciliation of the fee-for-service interim CAH payments with a CAH's actual costs determined after the end of the CAH's HFY.

(e) "Critical access hospital (CAH)" means a hospital that is approved by the department of health (DOH) for inclusion in DOH's critical access hospital program.

(f) "Departmental weighted costs-to-charges (DWCC) rate" means a rate ~~((MAA))~~ the department uses to determine a CAH payment. See subsection (8) for how ~~((MAA))~~ the department calculates a DWCC rate.

(g) "DWCC rate" see "departmental weighted costs-to-charges (DWCC) rate."

(h) "Interim CAH payment" means the actual payment the department makes for claims submitted by a CAH for services provided during its current hospital fiscal year, using the appropriate DWCC rate, as determined by ~~((MAA))~~ the department.

(4) To be reimbursed as a CAH by ~~((MAA))~~ the department, a hospital must be approved by the department of health (DOH) for inclusion in DOH's critical access hospital program. The hospital must provide proof of CAH status to ~~((MAA))~~ the department upon request. CAHs reimbursed under the CAH program must meet the general applicable requirements in chapter 388-502 WAC. For information on audits and the audit appeal process, see WAC 388-502-0240.

(5) A CAH must have and follow written procedures that provide a resolution to complaints and grievances.

(6) To ensure quality of care:

(a) A CAH is responsible to investigate any reports of substandard care or violations of the facility's medical staff bylaws; and

(b) A complaint or grievance regarding substandard conditions or care may be investigated by any one or more of the following:

(i) Department of health (DOH); or

(ii) Other agencies with review authority for ~~((MAA))~~ department programs.

(7) ~~((MAA))~~ The department may conduct a postpay or on-site review of any CAH.

(8) ~~((MAA))~~ The department prospectively calculates fee-for-service and managed care inpatient and outpatient DWCC rates separately for each CAH. To calculate prospective interim inpatient and outpatient DWCC rates for each hospital currently in the CAH program, ~~((MAA))~~ the department:

(a) Obtains from each CAH its estimated aggregate charge master change for its next HFY;

(b) Obtains from the Medicare HCFA-2552 Cost Report the CAH initially submits for cost settlement of its most recently completed HFY:

(i) The costs-to-charges ratio of each respective service cost center; and

(ii) Total costs, charges, and number of patient days of each respective accommodation cost center.

(c) Obtains from the Medicaid Management Information System (MMIS) the following fee-for-service summary claims data submitted by each CAH for services provided during the same HFY identified in (b) of this subsection:

(i) Medical assistance program codes;

(ii) Inpatient and outpatient claim types;

(iii) Procedure codes, revenue codes, or diagnosis-related group (DRG) codes;

(iv) Allowed charges and third party liability/client and ~~((MAA))~~ department paid amounts; and

(v) ~~((Number of claims; and~~

~~((vi)))~~ Units of service.

(d) Obtains from the managed care encounter data the following data submitted by each CAH for services provided during the same HFY identified in (b) of this section:

(i) Medical assistance program codes;

(ii) Inpatient and outpatient claim types;

(iii) Procedure codes, revenue codes, or diagnosis-related group (DRG) codes; and

(iv) Allowed charges.

(e) Separates the inpatient claims data and outpatient claims data;

~~((e))~~ (f) Obtains the cost center allowed charges by classifying inpatient and outpatient allowed charges from (c) and (d) of this subsection billed by a CAH (using any one of, or a combination of, procedure codes, revenue codes, or DRG codes) into the related cost center in the CAH's Medicare HCFA-2552 cost report the CAH initially submits to ~~((MAA))~~ the department;

~~((f))~~ (g) Determines the ~~((MAA))~~ departmental-weighted costs for each cost center by multiplying the cost center's allowed charges from (c) of this subsection for the appropriate inpatient or outpatient claim type by the related service cost center ratio;

~~((g))~~ (h) Sums all allowed charges from (e) of this subsection;

~~((h))~~ (i) Sums all departmental-weighted costs for inpatient and outpatient claims from ~~((f))~~ (g) of this subsection;

~~((i))~~ (j) Multiplies each hospital's total ~~((MAA))~~ departmental-weighted costs from (h) of this subsection by the Medicare Market Basket inflation rate. The Medicare Market Basket inflation rate is published and updated periodically by the Centers for Medicare and Medicaid Services (CMS);

~~((j))~~ (k) Multiplies each hospital's total allowed charges from ~~((g))~~ (h) of this subsection by the CAH estimated charge master change from (a) of this subsection. If the charge master change factor is not available from the hospital, ~~((MAA))~~ the department will apply a reasonable alternative factor; and

~~((k))~~ (l) Determines the DWCC inpatient and outpatient rates by dividing the total appropriate ~~((MAA))~~ departmental-weighted costs from ~~((h))~~ (i) of this subsection by the total appropriate allowed charges from ~~((g))~~ (h) of this subsection.

(9) For a currently enrolled hospital provider that is new to the CAH program, the basis for calculating DWCC rates for inpatient and outpatient hospital claims for:

(a) Fee-for-service clients is:

(i) The hospital's most recently submitted Medicare cost report, and

(ii) The appropriate MMIS summary claims data for that hospital fiscal year (HFY).

(b) Managed care clients is:

(i) The hospital's most recently submitted Medicare cost report; and

(ii) The appropriate managed care encounter data for that HFY.

(10) For a newly licensed hospital that is also a CAH, ~~((MAA))~~ the department uses the current state-wide average DWCC rates for the initial prospective DWCC rates.

(11) For a CAH that comes under new ownership, ~~((MAA))~~ the department uses the prior owner's DWCC rates.

(12) ~~((To calculate prospective managed care inpatient and outpatient DWCC rates, MAA uses the methodology outlined in subsection (8) of this section, except that managed care encounter data are used rather than MMIS fee-for-service summary claims data.))~~ In addition to the prospective managed care inpatient and outpatient DWCC rates, ~~((MAA))~~ the department:

(a) Incorporates the DWCC rates into the calculations for the managed care capitated premiums that will be paid to the managed care plans; and

(b) Requires all managed care plans having contract relationships with CAHs to pay the inpatient and outpatient DWCC rates applicable to managed care claims. For purposes of this section, ~~((MAA))~~ the department considers the DWCC rates used to reimburse CAHs for care given to clients enrolled in a managed care plan to be cost. Cost settlements are not performed for managed care claims.

(13) For fee-for-service claims only, ~~((MAA))~~ the department performs an interim retrospective cost settlement for each CAH after the end of the CAH's HFY, using Medicare cost report data and claims data from the MMIS related to fee-for-service claims. Specifically, ~~((MAA))~~ the department:

(a) Compares actual ~~((MAA))~~ department total interim CAH payments to the departmental-weighted CAH fee-for-service costs for the period being cost settled; and

(b) Pays the hospital the difference between CAH costs and interim CAH payments if actual CAH costs are determined to exceed the total interim CAH payments for that period. ~~((MAA))~~ The department recoups from the hospital the difference between CAH costs and interim CAH payments if actual CAH costs are determined to be less than total interim CAH payments.

(14) ~~((MAA))~~ The department performs finalized cost settlements using the same methodology as outlined in subsection (13) of this section, except that ~~((MAA))~~ the department uses the hospital's settled Medicare cost report instead of the initial cost report. Whenever a CAH's Medicare cost report is settled by the Medicare fiscal intermediary, the CAH must send the settled cost report to ~~((MAA))~~ the department to be used in a final cost settlement.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 06-01-099**  
**PROPOSED RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2005-03—Filed December 21,  
2005, 9:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-112.

Title of Rule and Other Identifying Information: Exemption from form filing requirements - large commercial accounts.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98501, on March 1, 2006, at 10:00 a.m.

Date of Intended Adoption: March 8, 2006.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, fax (360) 725-7041 by February 15, 2006.

Assistance for Persons with Disabilities: Contact Lorie Villaflora by February 24, 2006, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 284-24-120 currently suspends the rate filing requirements under chapter 48.19 RCW for a "large commercial property casualty account" based on objective criteria defined in the rule. This proposal exempts large commercial accounts from filing forms under chapter 48.18 RCW based on the same objective criteria.

Reasons Supporting Proposal: Large commercial accounts negotiate rates and contract provisions concurrently. The types of products large risks would buy include property insurance programs to cover multiple locations and excess insurance for self-funded liability insurance programs. Large risks often employ risk management staff to administer

these programs, and they are capable of negotiating price and coverage terms with insurance producers and insurers.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.100(6), and 48.18.103 (3)(a).

Statute Being Implemented: RCW 48.18.100(6) and 48.18.103 (3)(a).

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

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Lisa Smego, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7134; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no impact on small business as defined under RCW 19.85.020(1).

A cost-benefit analysis is not required under RCW 34.05.328. No costs are anticipated due to implementation of this rule. Insurers will save money by forgoing the form filing requirements for large commercial accounts, and these savings should offset any minor expenses of record retention.

Mike Kreidler  
Insurance Commissioner

the commissioner before the insurer issues an insurance policy under this rule.

(4) The Washington Insurance Examining Bureau will not audit property forms used to insure large commercial property casualty accounts under WAC 284-20-006.

(5) If grounds exist under RCW 48.18.110(1), the commissioner may subsequently disapprove any form used to insure a large commercial property casualty account. If the form is disapproved under RCW 48.18.110(1), the insurer must construe the form as if it fully complied with the requirements of RCW 48.18.510.

(6) Each insurer must keep copies of policy forms used to insure large commercial property casualty accounts for at least six years from the date each policy is issued under this section. These records must be made available to the commissioner upon request.

(7) Subsection (2) of this section does not apply to:

(a) Professional liability insurance, including medical malpractice insurance;

(b) Directors' and officers' liability insurance purchased by individuals;

(c) Motor vehicle service contract reimbursement insurance, as defined in RCW 48.96.010(4);

(d) Reimbursement insurance policies, as defined in RCW 48.110.020(8); and

(e) Master policies under which certificates of coverage are issued to individual consumers, households, businesses, or other organizations.

## NEW SECTION

**WAC 284-20-150 Rules that exempt certain commercial property casualty forms from filing requirements.** (1) For purposes of this rule, "large commercial property casualty account" means insurance coverage that:

(a) Involves the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, 48.11.070, and/or 48.11.080; and

(b) Is purchased by a business, not-for-profit organization, or public entity with enough insurance buying experience to negotiate with insurers in a largely unregulated environment and that meets any two of the following criteria:

(i) Annual premiums of one hundred thousand dollars or more, excluding workers compensation insurance issued by the department of labor and industries and types of insurance listed in subsection (7) of this section;

(ii) Net revenues or sales in excess of one hundred million dollars;

(iii) More than two hundred employees;

(iv) Net worth over fifty million dollars;

(v) Is a not-for-profit organization or public entity with an annual budget or assets of at least forty-five million dollars;

(vi) Is a municipality with a population over fifty thousand.

(2) This rule exempts forms issued to insure a large commercial property casualty account from the filing requirement of chapter 48.18 RCW, as permitted under RCW 48.18.103 (3).

(3) Each insurer or its agent must notify the insured in writing that the policy forms are not filed with or approved by

## WSR 06-01-101 PROPOSED RULES DEPARTMENT OF HEALTH

[Filed December 21, 2005, 9:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-03-10 [05-03-010].

Title of Rule and Other Identifying Information: Chapter 246-562 WAC, Physician visa waivers.

Hearing Location(s): Washington State Department of Health, Town Center 1, Room 163, 310 Israel Road S.E., Tumwater, WA 98501, on January 24, 2006, at 1:00 p.m.

Date of Intended Adoption: January 25, 2006.

Submit Written Comments to: Jennell Prentice, Office of Community and Rural Health, P.O. Box 47834, Olympia, WA 98504-7834, e-mail [http://www3.doh.wa.gov/policy\\_review/](http://www3.doh.wa.gov/policy_review/), fax (360) 664-9273 by January 24, 2006.

Assistance for Persons with Disabilities: Contact Nicole Fernandus by January 9, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Federal legislation passed in December 2004 specifically allows states to sponsor specialists based on need criteria developed by the state. The amendments to the federal law also allow up to five waivers per year to go to physicians practicing in non-designated health professional shortage areas that serve designated shortage areas.

The proposed amendments add need criteria for specialists, expanding to all physician specialties based on need.

The amendments also allow up to five waivers to be approved for physicians practicing in nondesignated areas who meet the nondesignated area criteria. Other amendments include: Changing the application timing to allow physicians to submit an application once they are in the final year of their training, moving the date from June 1 to April 1 for unfilled waivers, expanding the number of specialist waivers to ten from eight, and general edits for clarity.

The anticipated effect is that Washington rules will be consistent with and meet the intent of the federal law authorizing the program.

Reasons Supporting Proposal: The proposed amendments are in response to changes in the federal law which authorizes the J-1 waiver program, Public Law 108-441.

Statutory Authority for Adoption: Chapter 70.185 RCW.

Statute Being Implemented: Chapter 70.185 RCW and Public Law 108-441.

Rule is necessary because of state court decision, Public Law 108-441.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jennell Prentice, Tumwater, Washington, (360) 236-2814; and Enforcement: Kristina Sparks, Tumwater, Washington, (360) 236-2800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the amendments to chapter 246-562 WAC do not impose more than a minor cost on the affected industry, pursuant to RCW 19.85.030. Also, this is not a mandatory program. It is strictly voluntary in nature intended to provide additional physician resources to underserved communities.

A cost-benefit analysis is not required under RCW 34.05.328. The amendments to this chapter are primarily clarifying and corrective in nature to comply with the federal authorizing statute. The nonhousekeeping amendments increase eligibility and only change procedures for application timing.

December 20, 2005  
B. White  
for Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

**WAC 246-562-010 Definitions.** The following definitions (~~shall~~) apply in the interpretation and implementation of these rules.

(1) "Applicant" means a health care facility that seeks to employ a physician and is requesting state sponsorship or concurrence of a visa waiver.

(2) "Department" means the department of health.

(3) "Board eligible" means having satisfied the requirements necessary to sit for board examinations.

(4) "Employment contract" means a legally binding agreement between the applicant and the physician named in the visa waiver application which contains all terms and con-

ditions of employment, including, but not limited to, the salary, benefits, length of employment and any other consideration owing under the agreement.

(5) "Full time" means a minimum forty hours of medical practice per week, not including call coverage, consisting of at least thirty-two hours seeing patients on an ambulatory or in-patient basis and may include up to eight hours administrative work for at least forty-eight weeks per year.

(6) "Health care facility" means an entity with an active Washington state business license doing business or proposing to do business in the practice location where the physician would be employed, whose stated purposes include the delivery of medical care.

~~((6))~~ (7) "Health professional shortage area" (HPSA) means an area federally designated as having a shortage of primary care physicians or mental health care.

~~((7))~~ (8) "Hospitalist" means a physician, usually an internist, who specializes in the care of hospitalized patients.

(9) "Low income" means that a family's total household income is less than two hundred percent of the federal poverty level as defined by the *U.S. Federal Poverty Guidelines* published annually.

~~((8))~~ (10) "Medically underserved area" (MUA) means a federally designated area based on whether the area exceeds a score for an Index of Medical Underservice, a value based on infant mortality, poverty rates, percentage of elderly and primary care physicians to population ratios.

~~((9))~~ (11) "Physician" means the foreign physician, named in the visa waiver application, who requires a waiver to remain in the United States to practice medicine.

~~((10))~~ (12) "Primary care physician" means a physician board certified or board eligible in family practice, general internal medicine, pediatrics, obstetrics/gynecology, geriatric medicine or psychiatry. Physicians who have completed any subspecialty or fellowship training, excluding OB training, are not considered primary care physicians for the purpose of this chapter.

(13) "Sliding fee discount schedule" means a written delineation documenting the value of charge discounts granted to patients based upon financial hardship.

~~((11))~~ (14) "Specialist" means a physician board certified or board eligible in a specialty other than family practice, general internal medicine, pediatrics, obstetrics/gynecology, geriatric medicine or psychiatry (the current definition of "primary care" for the waiver program).

(15) "Sponsorship" means a request by the department on behalf of a health care facility to federal immigration authorities to grant a visa waiver for the purpose of recruiting and retaining physicians.

~~((12))~~ (16) "Visa waiver" means a federal action that waives the requirement for a foreign physician, in the United States on a J-1 visa, to return to his/her home country for a two-year period following medical residency training.

~~((13))~~ (17) "Vacancy" means a full-time physician practice opportunity that is based on a planned retirement, a loss of an existing physician, or an expansion of physician services in the service area.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

**WAC 246-562-020 Authority to sponsor visa waivers.** (1) The department of health may assist communities to recruit and retain physicians, or other health care professionals, as directed in chapter 70.185 RCW, by exercising an option provided in federal law, 8 U.S.C. Sec. 1184(l) as amended by Public Law ((~~107-273~~) 108-441) and 22 C.F.R. 514.44(e). This option allows the department of health to sponsor a limited number of visa waivers each federal fiscal year if certain conditions are met.

(2) The department may acknowledge sponsorship proposed by federal agencies, including the United States Department of Health and Human Services.

(3) The department may carry out a visa waiver program, or, in the event of resource limitations or other considerations, may discontinue the program. Purposes of the program are:

(a) To increase the availability of physician services in existing federally designated shortage areas for health care facilities that have long standing vacancies;

(b) To improve access to physician services for communities and specific (~~(under served)~~) underserved populations that are having difficulty finding physician services;

(c) To serve Washington communities which have identified a physician currently holding a J-1 visa as an ideal candidate to meet the community's need for primary health care services or specialist services as allowed by WAC 246-562-080.

(4) The department may only sponsor a visa waiver request when:

(a) The application contains all of the required information and documentation;

(b) The application meets the criteria contained in chapter 246-562 WAC.

(5) The department will limit its activities:

(a) Prior to submission of an application, the department may provide information on preparing a complete application;

(b) For applicants that have benefited from department sponsorship previously, the applicant's history of compliance will be a consideration in future sponsorship decisions;

(c) Because the number of sponsorships the department may provide is limited, and because the number of shortage areas is great, sponsorship will be limited. In any single program year, a health care facility in any one designated health professional shortage area or medically underserved area:

(i) Will not be allotted more than two sponsorships; (~~and~~)

(ii) Will not be allotted more than one specialist sponsorship as allowed by WAC 246-562-080(4); and

(iii) Will not be allotted more than one hospitalist sponsorship per hospital;

(d) In any given program year (~~(seventy-five percent)~~) twenty of the federally allocated sponsorships will be allotted for primary care physicians and (~~(twenty-five percent)~~) ten of the federally allocated sponsorships will be allotted for specialists through (~~(May)~~) March 31. Any waiver sponsorships that remain unfilled on (~~(June)~~) April 1 of each program year will be available to:

(i) Both primary care and specialist physicians consistent with the provisions of this chapter; and

(ii) Physicians intending to practice in nondesignated shortage areas in health care facilities that meet the criteria in WAC 246-562-075.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

**WAC 246-562-050 Review criteria.** Applicants and physicians must meet the criteria established in 8 U.S.C. 1184(l) as amended by Public Law ((~~107-273~~) 108-441) and 22 C.F.R. Sec. 514.44(e) which are incorporated by reference. Copies of these provisions may be requested from the department by writing to the Washington State Department of Health, Office of Community and Rural Health, Visa Waiver Program, PO Box 47834, Olympia, WA 98504-7834.

The criteria set out in chapter 246-562 WAC must also be met.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

**WAC 246-562-060 Criteria for applicants.** (1) Applicants must be existing health care facilities that:

(a) Are licensed to do business in Washington state; and

(b) Have provided medical care in Washington state for a minimum of twelve months prior to submitting the application.

(2) Applicants may be for-profit, nonprofit, or government organizations.

(3) Except for state institutional and correctional facilities designated as federal shortage areas, the applicant must:

(a) Currently serve:

(i) Medicare clients;

(ii) Medicaid clients;

(iii) Low-income clients, such as subsidized basic health plan enrollees;

(iv) Uninsured clients; and

(v) The population of the federal designation.

(b) Demonstrate that during the twelve months prior to submitting the application, the health care facility was providing a minimum of ten percent of the applicant's total patient visits to Medicaid clients, and/or other low-income clients.

(c) Agree to implement a sliding fee discount schedule for the physician named in the J-1 visa waiver application. The schedule must be:

(i) Available in the client's principal language and English; and

(ii) Posted conspicuously; and

(iii) Distributed in hard copy to individuals making or keeping appointments with that physician.

(4) Applicants must (~~(have been actively recruiting to fill the practice vacancy from among)~~) provide documentation demonstrating that the employer made a good faith effort to recruit a qualified ((physicians who are)) graduate((s)) of a United States medical school((s)) for a physician vacancy in the same salary range. Active recruitment, specific to the location and physician specialty, must be for a period of not less than six months in the twelve months prior to submitting

a visa waiver application to the department. Active recruitment documentation can ~~((be demonstrated by))~~ include one or more of the following ~~((methods))~~:

- (a) Listings in national publications;
- (b) Web-based advertisements;
- (c) Statewide newspaper advertisements;
- (d) Contractual agreement with a recruiter or recruitment firm; or
- (e) Listing the position with the office of community and rural health, recruitment and retention program.

In-house job postings and word-of-mouth recruitment are not considered active recruitment for the purpose of the J-1 physician visa waiver program; however, they can be used in addition to the methods described in (a) through (e) of this subsection.

(5) Applicants must have a signed employment contract with the physician. ~~((Throughout the period of obligation, regardless of physician's visa status,))~~ The employment contract must:

- (a) Meet state and federal requirements throughout the period of obligation, regardless of physician's visa status;
- (b) Not prevent the physician from providing medical services in the designated shortage area after the term of employment (i.e., no noncompete clauses);
- (c) Specify the period of employment:
  - (i) Three years minimum for primary care sponsorship; or
  - (ii) Five years minimum for specialist sponsorship.
- (6) Any amendments made to the required elements of the employment contract, subsection (5) of this section, during the first three years for primary care physicians or five years for nonprimary care specialist ~~((and subspecialist))~~ physicians of contracted employment must be reported to the department for review and approval. The department will complete review and approval of such amendments within thirty calendar days of receipt.

(7) Applicants must pay the physician prevailing wage as determined and approved by U.S. Department of Labor. Approval must be documented on a U.S. Department of Labor form ETA 9035 signed by an authorized official.

(8) If the applicant has previously requested sponsorship of a physician, WAC 246-562-020 will apply.

(9) If the applicant is not a publicly funded provider, additional criteria apply. The applicant must provide documentation of notification of intent to submit application for J-1 visa physician waiver to all publicly funded providers who provide medical care in HPSA or MUA designated area. Publicly funded providers include, but are not limited to, public hospital districts, local health departments, or community and/or migrant health centers.

Notification must:

- (a) Be sent at least thirty days prior to submitting the application to the department;
- (b) Include a statement giving the publicly funded providers thirty days to provide comment to the department regarding the J-1 physician visa application; and
- (c) Provide the department's address.
- (10) ~~((Applicants must provide written notice to the department and all publicly funded providers in the health~~

~~care facility's HPSA or MUA designated area within thirty days of the physician's start date of employment.~~

~~The notice must include:~~

- ~~(a) The physician's name, employment start date and practice location;~~
- ~~(b) Services to be provided; and~~
- ~~(c) Identification of accepted patients, such as Medicaid, Medicare, or basic health plan.~~

~~((H))~~ Applicants must submit status reports to the department every six months, with required supporting documentation, during the initial term of employment, three years for primary care physicians or five years for specialists.

~~((H2))~~ (11) Applicants must cooperate in providing the department with clarifying information, verifying information already provided, or in any investigation of the applicant's financial status.

AMENDATORY SECTION (Amending WSR 98-20-067, filed 10/2/98, effective 11/2/98)

**WAC 246-562-070 Criteria for the proposed practice location to be served by the physician.** (1) The proposed practice location must be located in:

- (a) A federally designated primary care health professional shortage area(s); or
- (b) A federally designated mental health professional shortage area(s) for psychiatrists; or
- (c) A federally designated whole-county medically ~~((under-served))~~ underserved area(s); or
- (d) A combination of federally designated areas.

(2) If the federal designation is based on a specific population, the health care facility must serve the designated population.

(3) If the practice location is in both a population designation area and a medically ~~((under-served))~~ underserved area, the designated population must be served.

(4) If the practice location is not located in a federally designated shortage area or whole-county medically underserved area, the applicant must meet the criteria in WAC 246-562-075.

(5) The health care facility named in the visa waiver application may be an existing practice location or a new practice location ~~((for the health care facility named in the visa waiver application))~~. If a new practice location is planned, additional criteria apply. New practice locations must:

- (a) Have the legal, financial, and organizational structure necessary to provide a stable practice environment, and must provide a business plan that supports this information;
- (b) Support a full-time physician practice;
- (c) Have written referral plans that describe how patients using the new primary care location will be connected to existing secondary and tertiary care if needed.

NEW SECTION

**WAC 246-562-075 Criteria for waiver sponsorships in nondesignated shortage areas.** Public Law 108-441 allows states to sponsor up to five waivers each program year for physicians who will practice medicine in a health care facility that is not located in a designated health professional

shortage area but serves patients who reside in designated shortage areas. Waivers will not be open to physicians practicing in nondesignated shortage areas until April 1 of each program year. For waiver approval, the health care facility must:

**(1) Provide care to patients who reside in designated shortage areas.**

(a) Describe the facility's service area.

(b) Provide a patient visit report that identifies total patient visits in last six months of service by patient origin zip code.

**(2) Describe who will benefit from the physician's services.**

(a) Identify the percentage of Medicaid and Medicare patients who will have access to this physician.

(b) Describe how the facility will assure access to this physician for low-income or uninsured patients.

(c) Explain if the physician has language skills that will benefit patients at this facility.

**(3) Provide a detailed report of the extensive recruitment efforts made to recruit a U.S. physician for the specific position that the J-1 physician will fill.**

(a) Explain why this physician is necessary at this location.

(b) Explain why it is difficult to recruit a U.S. physician for this location.

(c) Provide the number of physicians interviewed for this position.

(d) Provide the number of physicians offered this position.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

**WAC 246-562-080 Criteria for the physician.** (1) The physician must not have a J-1 visa waiver pending for any other employment offer. Physicians must provide a letter attesting that no other applications are pending.

(2) Physicians must have the qualifications described in recruitment efforts for a specific vacancy.

(3) Physicians are considered eligible to apply for a waiver when:

(a) They have successfully completed their residency or fellowship program; or

(b) They are in the ~~((last six months))~~ final year of a residency or fellowship program, and the physician provides a letter from their program that:

(i) Identifies the date the physician will complete the residency or fellowship program; and

(ii) Confirms the physician is in good standing with the program.

(4) Physicians ~~((applying as primary care physicians))~~ must ~~((:-(a)))~~ provide direct patient care ~~((:-(a)))~~ and

~~((b))~~ Be trained in:

~~((i))~~ Family practice; or

~~((ii))~~ General internal medicine; or

~~((iii))~~ Pediatrics; or

~~((iv))~~ Geriatric medicine; or

~~((v))~~ Obstetrics and gynecology; or

~~((vi))~~ Psychiatry and its subspecialties; and

~~((e))~~ Except for geriatric medicine and psychiatrists, not have any additional specialty training. Continuing medical education (CME) will not be considered specialty training for the purposes of this rule.

~~((5))~~ Physicians applying as specialists must:

~~((a))~~ Provide direct patient care;

~~((b))~~ Be trained in a subspecialty as defined by the Accreditation Council for Graduate Medical Education and published in the 1999-2000 Graduate Medical Education Directory, which is hereby incorporated by reference of:

~~((i))~~ Internal medicine, except for geriatric medicine; or

~~((ii))~~ Family practice, except for geriatric medicine; or a specialty as defined by the Accreditation Council for Graduate Medical Education and published in the 1999-2000 Graduate Medical Education Directory, which is hereby incorporated by reference of

~~((iii))~~ General surgery;

~~((iv))~~ Radiology diagnostic;

~~((v))~~ Anesthesiology;

~~((vi))~~ Otolaryngology (ENT); or

~~((vii))~~ Urology.

~~((6))~~ Copies of the 1999-2000 Graduate Medical Education Directory are available from the American Medical Association or can be viewed at the Washington State Department of Health, Office of Community and Rural Health, 310 Israel Road SE, Tumwater WA 98501).

~~((7))~~ (5) The physician must comply with all provisions of the employment contract.

~~((6))~~ The physician must:

~~((a))~~ Accept Medicaid assignment; and

~~((b))~~ Post and implement a sliding fee discount schedule; and

~~((c))~~ Serve the low-income population; and

~~((d))~~ Serve the uninsured population; and

~~((e))~~ Serve the shortage designation population; or

~~((f))~~ Serve the population of a local, state, or federal governmental institution or corrections facility as an employee of the institution.

~~((7))~~ Physicians must have an active Washington state medical license ~~((, unless unusual circumstances delay licensing. If the application for a Washington state medical license has been received by the Washington state medical quality assurance commission four or more weeks prior to submission of the visa waiver application,)).~~ The applicant may substitute a copy of the license application and request an exception if the application for a Washington state medical license was submitted to the Washington state medical quality assurance commission four or more weeks prior to submission of the visa waiver application.

~~((8))~~ Physicians must be an active candidate for board certification on or before the start date of employment.

~~((9))~~ (Physicians must have at least one letter of recommendation from their residency program if applying as a primary care physician or from their fellowship program if applying as a specialist that:

~~((a))~~ Addresses the physician's interpersonal and professional ability to effectively care for diverse and low-income people in the United States; and

~~(b) Describes an ability to work well with supervisory and subordinate medical staff, and adapt to the culture of United States health care facilities; and~~

~~(c) Documents level of specialty training, if any; and~~

~~(d) Is prepared on residency program letterhead and is signed by residency program staff or faculty; and~~

~~(e) Includes name, title, relationship to physician, address and telephone number of signatory.~~

~~(10) The physician must comply with all provisions of the employment contract.~~

~~(11) Physician must:~~

~~(a) Accept Medicaid assignment; and~~

~~(b) Post and implement a sliding fee discount schedule; and~~

~~(c) Serve the low-income population; and~~

~~(d) Serve the uninsured population; and~~

~~(e) Serve the shortage designation population; or~~

~~(f) Serve the population of a local, state, or federal governmental institution or corrections facility as an employee of the institution.)~~ Physicians must provide the following documentation:

(a) A current Curriculum Vitae;

(b) U.S. Department of State Data Sheet, Form DS-3035;

(c) All DS-2019/IAP-66 Forms (Certificate of Exchange visitor status);

(d) Letter from residency program if applying as a primary care physician or from fellowship program if applying as a specialist that:

(i) Addresses the physician's interpersonal and professional ability to effectively care for diverse and low-income people in the United States; and

(ii) Describes an ability to work well with supervisory and subordinate medical staff, and adapt to the culture of United States health care facilities; and

(iii) Documents level of specialty training, if any; and

(iv) Is prepared on residency or fellowship program letterhead and is signed by residency or fellowship program staff or faculty; and

(v) Includes name, title, relationship to physician, address and telephone number of signatory.

(e) Physician attestation statement;

(f) No objection statement;

(g) Personal statement from physician regarding reason for requesting waiver;

(h) I-94 Entry and Departure cards; and

(i) G-28 from attorney, when applicable.

## NEW SECTION

### WAC 246-562-085 Eligibility for primary care and specialist waivers. (1) Primary care waivers.

(a) Primary care waivers are available to the following physician specialties:

(i) Family medicine;

(ii) General internal medicine;

(iii) Pediatrics;

(iv) Geriatric medicine;

(v) Obstetrics and gynecology; or

(vi) Psychiatry and its subspecialties.

(b) Physicians who have completed any additional subspecialty training are not eligible for a primary care waiver, with the exception of geriatric medicine and psychiatry. Continuing medical education (CME) will not be considered subspecialty training for the purposes of this rule.

(2) **Specialist waivers.** Specialist waivers are available to nonprimary care physician specialties. Applicants submitting an application for a specialist physician must:

(a) **Demonstrate a need for the nonprimary care specialty by addressing one of the following need criteria:**

(i) The physician specialty is needed to meet state or federal health care facility regulations, for example to maintain the hospital trauma designation level.

(A) Identify the regulation; and

(B) Address how the facility is currently meeting this regulation.

(ii) The physician specialty is needed to address a major health problem in the facility service area.

(A) Identify the health problem and how this specialty will address it;

(B) Provide incident rates of the pathology and tie diagnosis codes to payer mix (i.e., how many patients are affected and how many are low-income or uninsured?); and

(C) If this specialty is not available in the community, identify the nearest location where this specialty service can be obtained.

(iii) The physician specialty is needed to address population-to-physician ratio because the current ratio does not meet national standards.

(A) Provide the population-to-physician ratio for the specialty, include source for data provided;

(B) Provide the number of physicians (FTE) practicing this specialty in the same health professional shortage area/facility service area;

(C) Provide the distance to the nearest physician practicing the same specialty; and

(D) Describe how the demand for the specialty has been handled in the past.

(b) **Describe the referral system that includes:**

(i) On-call sharing;

(ii) Affiliation agreements with other health care entities in the service area, specifically with publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations.

(c) **Provide at least one letter of support for this type of physician specialty** from a primary care provider practicing with publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations outside of the applicant's organization.

(d) Provide written notice to the department and all publicly funded providers in the health care facility's HPSA or MUA designated area **within thirty days** of the physician's start-date of employment. The notice must include:

(i) The physician's name, employment start date and practice location;

(ii) Services to be provided; and

(iii) Identification of accepted patients, such as Medicaid, Medicare, or basic health plan.

#### NEW SECTION

**WAC 246-562-087 Eligibility for facilities hiring physicians as hospitalists.** (1) A health care facility is limited to one hospitalist sponsorship per hospital per program year. Multiple employers at the same location are not allowed.

(2) A facility may only use inpatient data on the patient visit report required in WAC 246-562-060 to demonstrate that ten percent of applicant's total patient visits were to Medicaid and/or other low-income patients.

(3) A facility must identify primary care physicians in the community who will accept unattached Medicaid, Medicare or uninsured patients for follow-up care.

AMENDATORY SECTION (Amending WSR 98-20-067, filed 10/2/98, effective 11/2/98)

**WAC 246-562-090 Application form.** (1) Physician visa waiver program application forms are available (~~(and)~~) on-line at [www.doh.wa.gov/hsqa/ocrh](http://www.doh.wa.gov/hsqa/ocrh) or may be requested from: Washington State Department of Health, Office of Community and Rural Health, Visa Waiver Program, PO Box 47834, Olympia, WA 98504-7834.

(2) Applications must be completed (~~(in their entirety, addressing)~~) address all state and federal requirements, and must include all required documents as specified in the application form.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

#### **WAC 246-562-120 Department review and action.**

(1) The department will review applications for completeness in date order received.

(2) Applications must be mailed, sent by commercial carrier, or delivered in person. Applications may not be sent by telefax, or electronically.

(3) The department may limit the time period during which applications may be submitted including cutting off applications after the state has sponsored all applications allowed in a given federal fiscal year.

(4) Should multiple primary care physician applications arrive at the department on the same day, the department will rank those applications according to the following criteria:

(a) Facilities located in federally designated shortage (facilities) areas will rank ((first)) ahead of those facilities located in nondesignated areas.

(b) ~~((Those applicants serving shortage areas that require the greatest number of physicians relative to population to remove them from federal shortage status will rank second.~~

(~~e~~)) Federally designated shortage facilities will rank first.

(c) Publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to (~~(under served)) underserved populations,~~ will rank (~~(third)) second.~~

(d) Critical access hospitals and rural health clinics will rank third.

(e) All other private practice, for profit facilities will rank last.

(f) If multiple applications within a designated category arrive on the same day (~~(those applications will be ranked within that category based on random selection.~~

(~~e~~)) or if a ranked order cannot be determined by using the criteria in (a) through ((~~e~~)) (f) of this subsection, then applications will be ranked ((based on random selection)) by:

(i) Percentage of services provided to low-income, uninsured and sliding fee based patients;

(ii) Distance from applicant's practice location to nearest publicly funded provider;

(iii) Language skill of provider matching those significantly represented in the community;

(iv) Type of services provided, outpatient versus inpatient; and

(v) Facility location, rural versus urban based on RUCA codes to most current census data.

(5) Should multiple specialist applications arrive at the department on the same day, the department will rank these applications according to the following criteria:

(a) Facilities located in federally designated shortage areas will rank ahead of those facilities located in nondesignated areas.

(b) Hospitals or other health care facilities at risk of being out of state compliance standards will rank first. For example: The physician specialty is needed to maintain trauma designation or meet certificate of need requirements.

(c) Federally designated shortage facilities will rank ((first)) second.

(~~b~~)) (d) Publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations will rank ((second)) third.

(~~e~~)) (e) All other private practice, for profit facilities will rank last.

(f) If multiple applications within a designated category arrive on the same day, (~~(those applications will be ranked within that category based on random selection.~~

(~~e~~)) or if a ranked order cannot be determined by using the criteria in (a) through ((~~e~~)) (e) of this subsection, then applications will be ranked ((based on random selection)) by:

(i) Percentage of services provided to low-income, uninsured and sliding fee based patients;

(ii) Distance from applicant's practice location to nearest publicly funded provider;

(iii) Language skill of provider matching those significantly represented in the community;

(iv) Type of services provided, outpatient versus inpatient; and

(v) Facility location, rural versus urban based on RUCA codes to most current census data.

(6) The department will review applications within ten working days of receipt of the application to determine if the application is complete.

(7) The department will return incomplete applications to the applicant, and provide a written explanation of missing items.

(8) Incomplete applications may be resubmitted with additional required information. Resubmitted applications will be considered new applications and will be reviewed in date order received on resubmission.

(9) The department will return applications that are received after the maximum number of sponsorships have been approved. This does not apply to copies of other federal J-1 applications.

(10) The department will return sponsorship applications to applicants who have had two approved sponsorships in the current year for the shortage area.

(11) If the Washington state medical license is pending at the time the application is submitted to the department, the department may:

- (a) Sponsor or concur;
- (b) Hold the application in order received; or
- (c) Return the application as incomplete.

(12) The department will review complete applications against the criteria specified in this chapter.

(13) The department may:

- (a) Request additional clarifying information;
- (b) Verify information presented;
- (c) Investigate financial status of the applicant;
- (d) Further investigate any comments generated by publicly funded provider notification of application for waiver;
- (e) Return the application as incomplete if the applicant does not supply requested clarifying information within thirty days of request. Incomplete applications must be resubmitted. Resubmitted applications will be considered new applications and will be reviewed in date order received.

(14) The department will notify the applicant in writing of action taken. If the decision is to decline sponsorship, the department will provide an explanation of how the application failed to meet the stated criterion or criteria.

(15) The department may deny a visa waiver request or, prior to U.S. Department of State approval, may withdraw a visa waiver recommendation for cause, which shall include the following:

- (a) The application is not consistent with state and/or federal criteria;
- (b) Fraud;
- (c) Misrepresentation;
- (d) False statements;
- (e) Misleading statements; or
- (f) Evasion or suppression of material facts in the visa waiver application or in any of its required documentation and supporting materials.

(16) Applications denied may be resubmitted with concerns addressed. Resubmitted applications will be considered new applications and will be reviewed in date order received.

be denied future participation in the state visa waiver program if:

(a) The required six-month reports are not submitted in a complete and timely manner.

(b) A sponsored physician does not serve the designated shortage area and/or shortage population for the full three years of employment for primary care physicians or the full five years of employment for specialists.

(c) A sponsored physician does not remain employed by the applicant for the full three years of employment for primary care physicians or the full five years of employment for specialists.

(d) The applicant has a history of noncompliance with any of the provisions of this chapter or federal labor law requirements.

(2) A health care facility may request a determination of eligibility prior to submitting an application. The department will review the situation upon receipt of a written request.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

**WAC 246-562-130 Eligibility for future participation in the visa waiver program.** (1) Health care facilities may