

WSR 12-13-007
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket TB-111493, General Order R-565—Filed June 7, 2012, 8:06 a.m., effective July 8, 2012]

In the matter of amending, adopting, and repealing rules in chapter 480-15 WAC relating to household goods carriers.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 11-17-140, filed with the code reviser on August 24, 2011. The commission brings this proceeding pursuant to RCW 80.01.040, 81.04.160, and 81.80.075.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 The commission amends, adopts, and repeals the rules regarding entry and fitness standards for household good[s] carriers. Entry standards for household goods carriers are minimal. Applicants must properly complete the application, pay the fee, and provide proof of both liability and cargo insurance. Once these simple steps are completed, the utilities and transportation commission (UTC) grants a permit. The existing rules may be insufficient, perhaps granting permits to companies that are unfit to operate. The amended rules will allow qualified companies to operate and, at the same time, protect the public from unscrupulous, unsafe, or unfit household goods moving companies. There are no differences between the text of the proposed rules as published in the register and the text of the rules as adopted. The commission designates the discussion in this order, including appendices, as its concise explanatory statement.

6 REFERENCE TO AFFECTED RULES: This order amends, adopts, or repeals the following sections of the Washington Administrative Code: Amending WAC 480-15-185 Types of household goods permits, 480-15-190 Service territory, 480-15-230 Application fees, and 480-15-340 Commenting on an application for permanent authority; adopting WAC 480-15-186 Application required, 480-15-187 Transfer of an existing permit, 480-15-302 Provisional authority, and 480-15-305 Permanent authority; and repealing WAC 480-15-270 Emergency temporary authority, 480-15-280 Temporary authority, 480-15-285 Rejecting or denying an application for temporary authority, 480-15-290 Granting temporary authority, 480-15-310 Commenting on actions regarding temporary

authority, 480-15-320 Canceling a temporary permit, 480-15-330 Permanent authority, and 480-15-335 Exceptions to permanent authority application process.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on August 24, 2011, at WSR 11-17-140. The statement advised interested persons that the commission was considering initiating a rule making on household goods entry standards. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all permitted households good[s] companies. The commission posted the relevant rule-making information on its internet web site at <http://www.utc.wa.gov/111493>. Pursuant to the notice, the commission received written comments by September 26, 2011, and hosted a stakeholder workshop on October 11, 2011, to discuss possible rule revisions and receive additional comments. On November 10, 2011, the commission issued draft rules to all interested persons with a December 9, 2011, deadline for filing comments.

8 MEETINGS OR WORKSHOPS; ORAL COMMENTS: The commission held one workshop on October 11, 2011, at 9:30 a.m. In addition to staff, the following stakeholders attended the workshop: Jim Tutton, Washington Movers' Conference; Dave Jedlicka, Hansen Brothers Transfer; and Matt Kupka, Ed's Moving and Storage. Mr. Tutton suggested, and Mr. Jedlicka and Mr. Kupka agreed, that the commission should consider additional requirements to entry standards for household goods applicants, as follows:

- (1) Increase levels of cargo insurance.
- (2) Require companies that transport household items packed and loaded by the customer to hold a household goods permit.
- (3) Require companies than [that] move furniture in and out of a home during the course of providing a cleaning service to hold a household goods permit.
- (4) Increase application fee amounts.
- (5) Clarify that receiving a provisional permit does not automatically entitle the applicant to a permanent permit.
- (6) Require each applicant to document its drug and alcohol testing program.
- (7) Verify that applicants stating they will use temporary workers and do not need a Washington department of labor and industries account are actually using temporary workers.
- (8) Require applicants to have a minimum of \$20,000 in assets.

9 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on March 7, 2012, at WSR 12-06-077. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 12-06-077 at 1:30 p.m., Thursday, April 26, 2012, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

10 **WRITTEN COMMENTS:** The commission received written comments in response to the notice of proposed rule making from Jim Tutton, representing the Washington Movers' Conference. A summary of Mr. Tutton's written comments and commission staff responses are contained in Appendix A, shown below, and made part of, this order.

ers' Conference. A summary of Mr. Tutton's written comments and commission staff responses are contained in Appendix A, shown below, and made part of, this order.

APPENDIX A

Rule	Washington Movers' Conference (WMC) Suggested Edits and Comments	Staff Response
<p>New section WAC 480-15-302 Provisional authority. The commission will grant provisional authority to any applicant that meets the following criteria:</p> <p>(1) The applicant has properly completed the household goods moving company permit application.</p> <p>(2) The application does not contain any indication of fraud, misrepresentation, or erroneous information.</p> <p>(3) The applicant has provided a copy of a valid Washington state driver's license for each person named in the application associated with the proposed moving company.</p> <p>(4) The applicant has provided evidence that the applicant possesses sufficient financial resources to operate a moving company. The commission will accept as evidence the completed financial statement form included in the household goods moving company permit application or the alternative documents listed on the financial statement form.</p> <p>(5) The applicant has met the liability and cargo insurance requirements of WAC 480-15-530 and 480-15-550.</p> <p>(6) The applicant has provided evidence of compliance with state tax, labor, employment, business, and vehicle licensing laws and rules. The commission will accept valid account numbers that staff can verify, showing the applicant has established accounts with other state agencies, as evidence.</p> <p>(7) The applicant has provided evidence of its enrollment in a drug and alcohol testing program, or evidence that it has in place its own drug and alcohol</p>	<p>WMC suggests adding the following two subsections:</p> <p>(1) "If the applicant's application for Provisional Authority shows no account opened with the State Department of Labor and Industries or the State Employment Security Department and the applicant intends to use temporary workers in his/her business, the applicant must certify that it will maintain records for three years that describe the date(s) worked, names of temporary worker(s) and the source from where the temporary worker(s) were obtained."</p> <p>WMC gives the following reasons to support this language:</p> <ul style="list-style-type: none"> • Many new applicants state they do not have an account with other agencies because they have no employees on payroll. The lack of accounts should be a red flag that a company is not aware, or at least is not complying with, payroll requirements. • Legally permitted and professionally operated existing companies already keep information on temporary workers. This requirement should apply to all companies. <p>(2) "The provisional application review period shall not be less than six months. One additional period of six months for review work by staff may be granted when supported by justified need for staff to evaluate the applicant, complete applicable required audits, or complete any needed applicant training. If, following the second six-month evaluation period, the application process is still incomplete; the application will be</p>	<p>(1) Staff recommends the commission reject WMC's suggestion in subsection (1) for two reasons. First, this requirement is not applicable to entry standards. This requirement pertains to the records a company is required to keep once it starts business. Second, adding the suggested language to the rules would impose requirements on new applicants that do not apply to currently permitted companies. A company that obtains a permit after the effective date of the rules would be required to keep records for temporary workers. No currently permitted company has or would have a similar requirement.</p> <p>(2) Staff recommends the commission reject WMC's suggestion in subsection (2). Currently, an applicant receives a provisional permit for a minimum of six months. The applicant remains provisional until it has met all requirements for permanent authority. A review of the records for 2010 shows the UTC received twenty-eight applications for household goods authority. For twenty of those applications, staff closed the file within an average of ten months. Ten were granted and ten were canceled. Eight additional are still pending, primarily because the companies have not conducted enough intrastate moves on which to complete a compliance review. In other cases, it may take more than the average of ten months for staff to get the carrier into compliance with UTC rules. Staff's goal is to work with a new company on a cooperative basis to gain voluntary compliance. Staff does not recommend changing this approach.</p>

Rule	Washington Movers' Conference (WMC) Suggested Edits and Comments	Staff Response
<p>testing program, if required by WAC 480-15-570. The commission will accept proof of enrollment in a program, or a detailed description of the applicant's own program, as evidence.</p> <p>(8) Commission staff has completed a criminal background check on each person named in the application associated with the proposed moving company. The commission will not grant provisional authority if any named person has, within the past five years, been convicted of any crime involving theft, burglary, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance.</p> <p>(9) The applicant owns or leases the equipment necessary to provide household goods moving services.</p> <p>(10) The commission has not denied a household goods moving company permit application within the previous six months filed by the same applicant or by any other person named on the application.</p> <p>(11) The commission has not canceled, for cause, a permit held by the applicant, or by any other person named on the application, within the previous one year.</p> <p>(12) The applicant has filed with the application at least three completed statements of support for the proposed service.</p> <p>(13) No other circumstances exist that cause the commission to deny the application.</p>	<p>voided and returned to the applicant with comment."</p> <p>WMC gives the following reasons to support this language:</p> <ul style="list-style-type: none"> • Twelve months is sufficient time to complete an accurate assessment of an applicant's ability to operate. There are fourteen provisional permits still out there from 2010. • A provisional permit allows a company full access to operate. If the commission has not determined the company is fit, qualified, and safe to operate, then the company should not be operating. 	

APPENDIX B

Chapter 480-15 WAC, Household Goods Carriers Amended, Adopted, and Repealed Rules

11 RULE-MAKING HEARING: The commission considered the proposed rules for adoption at a rule-making hearing on Thursday, April 26, 2012, before Chairman Jeffrey D. Goltz, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. The commission heard oral comments from Jim Tutton, representing the Washington Movers' Conference. No other interested person made oral comments.

12 SUGGESTIONS FOR CHANGE THAT ARE REJECTED: Mr. Tutton suggested changing the rules in the same manner as in his written comments as described in Appendix A. The

commission adopts commission staff's recommendations and rejects Mr. Tutton's suggested changes to the rules for the reasons described in the commission staff responses in Appendix A.

13 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that it should amend, adopt, and repeal the rules as proposed in the CR-102 at WSR 12-06-077.

14 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-15-185, 480-15-190, 480-15-230, and 480-15-340 should be amended, WAC 480-15-186, 480-15-187, 480-15-302, and 480-15-305 should be adopted, and WAC 480-15-270, 480-15-280, 480-15-285, 480-15-290,

480-15-310, 480-15-320, 480-15-330, and 480-15-335 should be repealed to read as set forth in Appendix B, as rules of the Washington UTC, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 16, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 4, Repealed 8.

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

ORDER

15 THE COMMISSION ORDERS:

16 WAC 480-15-185, 480-15-190, 480-15-230, and 480-15-340 are amended; WAC 480-15-186, 480-15-187, 480-15-302, and 480-15-305 are adopted; and WAC 480-15-270, 480-15-280, 480-15-285, 480-15-290, 480-15-310, 480-15-320, 480-15-330, and 480-15-335 are repealed to read as set forth in Appendix B, as rules of the Washington UTC, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

17 This order and the rule set out below, after being recorded in the register of the Washington UTC, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

Dated at Olympia, Washington, June 7, 2012.

Washington Utilities and Transportation Commission

Jeffrey D. Goltz, Chairman

Patrick J. Oshie, Commissioner

Philip B. Jones, Commissioner

AMENDATORY SECTION (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

WAC 480-15-185 Types of household goods permits.

~~((The commission may issue any of the following types of permits:~~

~~(1) **Emergency temporary authority** for a period of thirty days or less when there is an urgent need for service and time or circumstances do not reasonably allow filing and processing an application for temporary authority.~~

~~(2) **Temporary authority** for up to one hundred eighty days to meet a short-term public need or until the commission makes a decision on the pending application for permanent authority. The applicant must be fit, willing and able and the proposed service must be in the public interest.~~

~~(3) **Permanent authority** has no expiration date or renewal requirement when the applicant is fit, willing and~~

~~able to provide service and meets the current or future public convenience and necessity standards.)) There are two types of household goods permits.~~

~~(1) **Provisional permit:** An applicant must complete a household goods moving company permit application to receive a provisional permit. A provisional permit lasts for a period of not less than six months. In determining whether to grant provisional authority, the commission will consider the criteria outlined in WAC 480-15-302.~~

~~(2) **Permanent permit:** Once the applicant has held a provisional permit for at least six months, the commission will consider whether to grant the applicant a permanent permit. A permanent permit has no expiration date. The applicant does not need to file a second application for permanent authority. In determining whether to grant permanent authority, the commission will consider the criteria outlined in WAC 480-15-305.~~

NEW SECTION

WAC 480-15-186 Application required. An applicant must complete a household goods moving company permit application and meet the criteria for a provisional permit and, after the six-month period has passed, a permanent permit, as described in WAC 480-15-185, to be eligible for any of the following:

(1) New authority to operate as a household goods carrier.

(2) Transfer of existing authority, except as described in WAC 480-15-187. If the holder of a permit wishes to transfer the permit, the person or entity receiving the permit must file an application as described in this section. For the purposes of this section and WAC 480-15-187, the person or entity receiving the permit is the applicant.

(3) Acquisition of control of existing authority.

(4) Additional authority for an existing household goods permit.

NEW SECTION

WAC 480-15-187 Transfer of an existing permit. (1) If the holder of a permit wishes to transfer the permit, the person or entity receiving the permit must file an application as described in this section. For the purposes of WAC 480-15-186 and this section, the person or entity receiving the permit is the applicant.

(2) The commission will grant an application to transfer existing permanent authority, or acquire control of existing permanent authority, without requiring a provisional permit, public notice, or comment if the applicant is fit, willing, and able to provide service and the applicant has filed to transfer or acquire control of permanent authority for any one of the following reasons:

(a) A partnership has dissolved due to the death, bankruptcy or withdrawal of a partner and that partner's interest is being transferred to a spouse or to one or more remaining partners.

(b) A shareholder in a corporation has died and that shareholder's interest is being transferred to a surviving spouse or one or more surviving shareholders.

(c) A sole proprietor has died, the sole proprietor devised or bequeathed the company by will, and the applicant is seeking transfer of the permit in accordance with the bequest or devise set forth in the will.

(d) An individual has incorporated and the same individual remains the majority shareholder.

(e) An individual has added a partner but the same individual remains the majority partner.

(f) A corporation has dissolved and the interest is being transferred to the majority shareholder.

(g) A partnership has dissolved and the interest is being transferred to the majority partner.

(h) A partnership has incorporated, and the partners are the majority shareholders.

(i) Ownership is being transferred from one corporation to another corporation when both are wholly owned by the same shareholders.

(2) The commission will grant an application for permanent authority without requiring a provisional permit after the application has been published on the application docket subject to comment for thirty days if the applicant is fit, willing, and able to provide service, the applicant has filed to transfer or acquire control of permanent authority, and all of the following conditions exist:

(a) Ownership or control of a permit is being transferred to any shareholder, partner, family member, employee, or other person familiar with the company's operations and the household goods moving services provided.

(b) The permit has been actively used by the current owner to provide household goods moving services during the twelve-month period prior to the application.

(c) The application includes a certified statement from the applicant and the current owner explaining why the transfer of ownership or control is necessary to ensure the company's economic viability.

(d) The application includes a certified statement from the applicant and the current owner describing the steps taken by the parties to ensure that safe operations and continuity of service to customers is maintained.

AMENDATORY SECTION (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

WAC 480-15-190 Service territory. Household goods permits authorize statewide operations unless:

(1) ~~((You))~~ An applicant elects to limit ~~((your))~~ the service territory to specific counties; or

(2) The commission, by order, limits ~~((your))~~ an applicant's service territory.

AMENDATORY SECTION (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

WAC 480-15-230 Application fees. Application fees are:

Type of Permit Application:	Fee:
((Emergency temporary authority	\$50.00

Type of Permit Application:	Fee:
Temporary authority	\$250.00))
<u>Provisional and permanent authority. The fee for provisional, and then permanent, authority is a one-time fee</u>	\$550.00
Transfer or acquisition of authority under WAC ((480-15-335)) <u>480-15-186 and 480-15-187</u>	\$250.00
Permit reinstatement ((f)) under ((provisions of)) WAC <u>480-15-450</u> ((g))	\$250.00
Name change only	\$35.00

Part 2.2 - ~~((Emergency Temporary and Temporary Authority))~~ Permanent Authority

NEW SECTION

WAC 480-15-302 Provisional authority. The commission will grant provisional authority to any applicant that meets the following criteria:

(1) The applicant has properly completed the household goods moving company permit application.

(2) The application does not contain any indication of fraud, misrepresentation, or erroneous information.

(3) The applicant has provided a copy of a valid Washington state driver's license for each person named in the application associated with the proposed moving company.

(4) The applicant has provided evidence that the applicant possesses sufficient financial resources to operate a moving company. The commission will accept as evidence the completed financial statement form included in the household goods moving company permit application or the alternative documents listed on the financial statement form.

(5) The applicant has met the liability and cargo insurance requirements of WAC 480-15-530 and 480-15-550.

(6) The applicant has provided evidence of compliance with state tax, labor, employment, business, and vehicle licensing laws and rules. The commission will accept valid account numbers that staff can verify, showing the applicant has established accounts with other state agencies, as evidence.

(7) The applicant has provided evidence of its enrollment in a drug and alcohol testing program, or evidence that it has in place its own drug and alcohol testing program, if required by WAC 480-15-570. The commission will accept proof of enrollment in a program, or a detailed description of the applicant's own program, as evidence.

(8) Commission staff has completed a criminal background check on each person named in the application associated with the proposed moving company. The commission will not grant provisional authority if any named person has, within the past five years, been convicted of any crime involving theft, burglary, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance.

(9) The applicant owns or leases the equipment necessary to provide household goods moving services.

(10) The commission has not denied a household goods moving company permit application within the previous six months filed by the same applicant or by any other person named on the application.

(11) The commission has not canceled, for cause, a permit held by the applicant, or by any other person named on the application, within the previous one year.

(12) The applicant has filed with the application at least three completed statements of support for the proposed service.

(13) No other circumstances exist that cause the commission to deny the application.

NEW SECTION

WAC 480-15-305 Permanent authority. The commission will grant permanent authority to any applicant that meets the following criteria:

(1) The applicant has met all of the criteria required for a provisional permit as described in WAC 480-15-302.

(2) The applicant has completed a provisional period of not less than six months.

(3) The applicant has attended a commission-sponsored household goods carrier training class.

(4) The applicant has provided commission staff with evidence that the applicant has completed a criminal background check on each person it employs or intends to employ that will have contact with a customer or a customer's residence. The commission will not grant permanent authority if any employee has, within the past five years, been convicted of any crime involving theft, burglary, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance.

(5) The applicant has received a satisfactory safety rating in a safety review conducted by commission safety staff.

(6) The applicant has no outstanding commission-issued monetary penalties.

(7) The applicant has paid all outstanding fees or other amounts due to the commission.

(8) The applicant has met all other commission regulatory requirements, including any requirements set by statute, rule, tariff, or order.

(9) The applicant has no unresolved consumer complaints on file with the commission.

(10) No other circumstances exist that cause the commission to deny permanent authority.

Part 2.3 - (~~Permanent Authority~~) Using the Permit

AMENDATORY SECTION (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

WAC 480-15-340 Commenting on an application for permanent authority. (1) The commission publishes applications for permanent authority in the application docket that it mails to each applicant and, upon written request, to any other person interested in application proceedings.

(2) Anyone having an interest in an application appearing on the docket may file written comments within thirty days following publication, unless the application is published in conjunction with a grant of ~~((temporary))~~ provisional authority. If the permanent authority application is published in conjunction with a grant of ~~((temporary))~~ provisional authority, then comments will be accepted for one hundred eighty days or the full term of the ~~((temporary))~~ provisional permit.

(3) Comments may either support or protest the application. Comments must include the commenter's full name, address, telephone number, e-mail address, fax number, and permit number, if available. Comments must be signed and indicate the place and date when they were signed. Comments must indicate support for, or protest of, the permanent authority for any one or more of the following reasons:

- (a) Fitness.
 - (b) Public interest.
 - (c) Levels of service.
 - (d) Business practices.
 - (e) Safety.
 - (f) Operation of equipment.
 - (g) Current or future public need for service.
- (4) A comment protesting an application will not, on its own, cause the commission to set the matter for a hearing.

Part 2.4 - (~~Using the Permit~~) Suspended and Canceled Permits

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-15-270	Emergency temporary authority.
WAC 480-15-280	Temporary authority.
WAC 480-15-285	Rejecting or denying an application for temporary authority.
WAC 480-15-290	Granting temporary authority.
WAC 480-15-310	Commenting on actions regarding temporary authority.
WAC 480-15-320	Canceling a temporary permit.
WAC 480-15-330	Permanent authority.
WAC 480-15-335	Exceptions to permanent authority application process.

WSR 12-13-028

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed June 11, 2012, 2:50 p.m., effective July 12, 2012]

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

Purpose: The purpose of this rule-making order is to repeal chapter 16-05 WAC. The stated purpose of the chapter is to establish procedures for fulfilling the department's requirements under RCW 43.05.020 to compile and maintain lists of individuals and organizations providing technical assistance. Chapter 43.05 RCW does not require rule making and a rule is not the most appropriate way to provide information regarding technical assistance providers. Therefore, chapter 16-05 WAC should be repealed.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-05-001, 16-05-010, and 16-05-040.

Statutory Authority for Adoption: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-08-011 on March 23, 2012.

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

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

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

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

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

Date Adopted: June 6, 2012.

Dan Newhouse
Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 16-05-001 Statement of purpose.
- WAC 16-05-010 What does an organization, company or individual have to do to get on the applicable list?
- WAC 16-05-040 The department of agriculture is completely held harmless and not liable.

WSR 12-13-035
PERMANENT RULES
BUILDING CODE COUNCIL

[Filed June 12, 2012, 2:36 p.m., effective July 13, 2012]

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

Purpose: To amend WAC 51-11-1200, 2009 Washington State Energy Code Chapter 12—Energy Metering, to repeal the requirements for building energy metering.

Citation of Existing Rules Affected by this Order: Amending WAC 51-11-1200.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.025.

Adopted under notice filed as WSR 11-24-072 on December 6, 2011.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: February 10, 2012.

C. Ray Allhouse
Council Chair

AMENDATORY SECTION (Amending WSR 10-03-115, 10-13-113 and 10-22-056, filed 1/20/10, 6/21/10 and 10/28/10, effective 1/1/11)

~~WAC 51-11-1200 ((Section 1201—General.))
Reserved. ((All buildings shall comply with Chapter 12. Whole building energy supply sources shall be metered to supply energy consumption data to the building owner to effectively manage energy. The building shall have a totalizing meter for each energy source.~~

~~**1202 Whole Building Energy Supply Metering.** Meters with remote metering capability or automatic meter reading (AMR) capability shall be provided to collect energy use data for each energy supply source to the building including gas, electricity and district steam, that exceeds the thresholds listed in Table 12-1. Utility company service entrance/interval meters are allowed to be used provided that they are configured for automatic meter reading (AMR) capability.~~

TABLE 12-1
Energy Source Meter Thresholds

Energy Source	Main Metering Threshold
Electrical service	> 500 kVA
On-site renewable electric power	> 10 kVA (peak)

Energy Source	Main Metering Threshold
Gas and steam service	> 300 kW (1,000,000 Btu/h)
Geothermal	> 300 kW (1,000,000 Btu/h) heating
On-site renewable thermal energy	> 10 kW (30,000 Btu/h)

Master submetering with remote metering capability (including current sensors or flow meters) shall be provided for the systems that exceed the thresholds in Table 12-1 to collect overall totalized energy use data for each subsystem in accordance with Table 12-2.

**TABLE 12-2
Component Energy Master Submetering Thresholds**

Component	Submetering Threshold
Chillers/heat pump systems	> 70 kW (240,000 Btu/h) cooling capacity
Packaged AC unit systems	> 70 kW (240,000 Btu/h) cooling capacity
HVAC fan systems	> 15 kW (20 hp)
Exhaust fan systems	> 15 kW (20 hp)
Make-up air fan systems	> 15 kW (20 hp)
Pump systems	> 15 kW (20 hp)
Cooling towers systems	> 15 kW (20 hp)
Boilers, furnaces and other heating equipment systems	> 300 kW (1,000,000 Btu/h) heating capacity
General lighting circuits	> 15 kVA
Miscellaneous electric loads	> 15 kVA

Metering shall be digital type meters for the main meter. Current sensors or flow meters are allowed for submetering. For subsystems with multiple similar units, such as multiple cooling towers, only one meter is required for the subsystem. Existing buildings are allowed to reuse installed existing analog type utility company service/interval meters.

~~**1203 Metering:** Where new or replacement systems or equipment is installed that exceeds the threshold in Table 12-1 or Table 12-2, metering shall be installed for that system or equipment in accordance with Section 1201.)~~

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 11-24-047 on December 2, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 6, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: June 8, 2012.

Katherine I. Vasquez
Rules Coordinator

**WSR 12-13-040
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**
(Aging and Disability Services Administration)
[Filed June 13, 2012, 11:51 a.m., effective July 14, 2012]

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

Purpose: The department is revising WAC 388-106-1200 through 388-106-1230, respite care services, to add language regarding the new tailored caregiver assessment and referral (TCARE) process and clarifying who is eligible to receive respite care services. Also, it is important to clarify that access to respite services is limited to caregivers providing care to adults not already receiving another state or medicaid funded long-term care services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-1200, 388-106-1210, 388-106-1215, 388-106-1220, 388-106-1225, and 388-106-1230.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-1200 What definitions apply to respite care services through the family caregiver support program? The following definitions apply to respite care services:

"Caregivers" means a spouse, relative, or friend who has primary responsibility for the ((daily)) care or supervision of an adult with a functional disability without receiving direct

public or private payment for the caregiver services (~~(provided)) they provide.~~

"Continuous care or supervision" means daily assistance or oversight of an adult with a functional disability.

"Family caregiver support program or FCSP" means a statewide program offered by area agencies on aging to provide support for unpaid caregivers who provide care to an adult with a functional disability.

~~((Functionally))~~ Functional disability" means a physical, mental or cognitive condition requiring ~~((substantial assistance))~~ continuous care or supervision in completing activities of daily living ~~((and community living skills))~~ or instrumental activities for daily living.

~~((Participant))~~ Care receiver" means an adult ~~(age eighteen and over)~~ with a functional disability who needs ~~((substantial))~~ daily continuous care or supervision.

"Service provider" means an ~~((individual))~~ agency, or organization under contract to the area agency on aging (AAA) or its subcontractor.

"Supervision" means providing oversight of an individual to assure his/her safety and well-being.

"TCARE®, tailored caregiver assessment and referral system" means the process ~~(screening, assessment and care planning)~~ to establish eligibility for respite care and other caregiver support services for unpaid family caregivers.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-1210 Who is eligible to receive respite care services through the family caregiver support program? (1) To be eligible to receive respite care services, the caregivers must:

(a) Have primary responsibility for the ~~((daily continuous))~~ care or supervision of an adult with a functional disability who is not receiving a state or medicaid funded, long-term care service (e.g., COPEs, personal care services, DD waiver); and

(b) Provide a minimum of an average of ~~((twelve))~~ forty hours per ~~((day for))~~ week of care, and/or supervision, or live with an adult who needs continuous care or supervision; and

(c) Not ~~((be compensated))~~ receive financial payment for the care; and

(d) Be assessed ~~((as being at risk of placing the participant in a long term care facility if home and community support services, including respite care, are not available))~~ in the TCARE®, tailored caregiver assessment and referral system and determined to meet the eligibility threshold levels determined by state level policy and have TCARE® recommend the strategy to introduce alternate sources for care to provide respite.

(2) An eligible participant is an adult who:

(a) Has a functional disability;

(b) ~~((Needs daily substantial continuous care or supervision))~~ Has a caregiver who is assessed in the TCARE® system and meets the criteria in WAC 388-106-1210(1); and

(c) ~~((Is assessed as requiring placement in a long term care facility if home and community support services, including respite care, are not available))~~ Is not receiving a state or

medicaid funded, long-term care service (e.g., COPEs, personal care services, DD waiver).

~~((3))~~ The area agency on aging (AAA) determines how many hours of continuous care or supervision a day an unpaid caregiver must provide to a participant to become eligible for respite care services, as long as it is a minimum of twelve hours per day, as outlined in subsection (1)(b) of this section.)

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-1215 Who may provide respite care services through the family caregiver support program? Respite care providers include, but are not limited to the following:

(1) Nursing homes (chapter 388-97 WAC).

(2) Adult day ~~((services))~~ service providers, ((which)) whose services includes adult day care, dementia day services and adult day health.

(3) Home care and/or home health~~((care))~~ agencies licensed through the department of health for in-home services.

(4) Hospitals.

(5) Licensed residential care facilities such as boarding homes, adult family homes, and assisted living facilities.

(6) Providers such as volunteer ~~((home workers))~~ services, and senior companions(, and individual providers)).

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-1220 How are respite care providers reimbursed for their services through the family caregiver support program? The department reimburses:

(1) Respite care providers for the number of hours or days of services authorized and ~~((used))~~ provided. ((The)) If the provider already has a medicaid rate ((that is)) established for ((the services)) providing a similar service, that rate is ((negotiated between the respite care program of the local area agency on aging and the respite care service provider)) to be reimbursed by the local area agency on aging. If there is no established rate for the service, one can be negotiated between the local area agency on aging and the respite care service provider.

(2) Medicaid-certified ~~((nursing homes and DDD-certified group homes))~~ licensed residential facilities providing respite services at the medicaid rate approved for that facility. Medicaid contracted ((nursing homes)) providers must not charge more than the medicaid rate for any services covered from the date of eligibility, unless authorized by the department (see RCW 18.51.070). Participants must pay for services not included in the medicaid rate.

(3) Private nursing homes at their published daily rate.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-1225 Are participants required to pay for the cost of their respite care services through the family caregiver support program? (1) There is no charge to

the ~~((participant))~~ care receiver whose income is at or below forty percent of the state median income, based on family size.

(2) If the ~~((participant's))~~ care receiver's gross income is above forty percent of the state median income, he or she is required to pay for part or all of the cost of the respite care services. The department will determine what amount the participant must contribute based on the state median income and family size.

(3) If the ~~((participant's))~~ care receiver's gross income is one hundred percent or more of the state median income, the participant must pay the full cost of the respite care services.

(4) If the care receiver is experiencing extreme financial hardship (e.g., high medical expenses) and cannot pay for their share of the cost of the respite care services, the area agency on aging may grant an exception to policy and then must document this in the client's records.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-1230 ~~((Are there waiting lists for respite services))~~ **What determines emergent and non-emergent respite care services through the family caregiver support program?** (1) The department and the area agency on aging (AAA) must first consider requests for emergency respite care. An example of an emergency is when the caregiver becomes ill or injured to the extent that the caregiver's ability to care for the ~~((participant))~~ care receiver is impaired. AAA policies will determine how best to serve caregivers in crisis depending on available local FCSP funding. A caregiver must be screened in TCARE® within thirty days following the crisis if ongoing services exceeding five hundred dollars are requested.

(2) In nonemergency situations, respite care is allocated based upon ~~((available respite funds at the local level))~~ the results of the TCARE® assessment and available local FCSP funds. ((Respite care must be provided on a first-come, first-served basis.)) If sufficient funds are not available when ~~((respite care is requested, services are made available using waiting lists and department approved priority categories, developed by the AAA, including caregiver vulnerability and health condition, availability of other support systems, and whether other family members need care))~~ an eligible caregiver requests services, AAA may establish wait lists to prioritize clients receiving services as funding becomes available.

WSR 12-13-043

PERMANENT RULES DEPARTMENT OF

FINANCIAL INSTITUTIONS

[Filed June 13, 2012, 4:00 p.m., effective July 14, 2012]

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

Purpose: On both the federal and state level, "accredited investor" standards are used to determine the availability of certain exemptions to securities registration. As mandated by the Dodd-Frank Wall Street Reform and Consumer Protec-

tion Act enacted July 21, 2010, the Securities and Exchange Commission has recently revised its net worth standards to determine whether an individual is an "accredited investor." Washington exemptions from registration, both under the Washington Securities Act and the Washington Franchise Investment Protection Act, incorporate the federal definition of "accredited investor." The rules adopted realign Washington's definition of "accredited investor" with the federal definition of "accredited investor."

Citation of Existing Rules Affected by this Order: Amending WAC 460-44A-501 and 460-80-108.

Statutory Authority for Adoption: For WAC 460-44A-501 is RCW 21.20.450; 21.20.320 (1), (9) and (17); and for WAC 460-80-108 is RCW 19.100.250 and 19.100.030(5).

Adopted under notice filed as WSR 12-06-011 on February 27, 2012.

Changes Other than Editing from Proposed to Adopted Version: The only changes made to the proposed versions of WAC 460-44A-501 and 460-80-108 were changes made to correct typographical errors.

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

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

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

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

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

Date Adopted: June 13, 2012.

Scott Jarvis
Director

AMENDATORY SECTION (Amending WSR 12-10-051, filed 4/30/12, effective 5/31/12)

WAC 460-44A-501 Definitions and terms. As used in rules WAC 460-44A-501 through 460-44A-508, the following terms shall have the meaning indicated:

(1) "Accredited investor" shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(a) Any bank as defined in section 3 (a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in section 3 (a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2 (a)(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development

company as defined in section 2 (a)(48) of that act; any small business investment company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(b) Any private business development company as defined in section 202 (a)(22) of the Investment Advisers Act of 1940;

(c) Any organization described in section 501 (c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;

(d) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

(e) Any natural person whose individual net worth, or joint net worth with that person's spouse, ~~((at the time of his purchase))~~ exceeds \$1,000,000 ~~((excluding the value of the primary residence of such natural person;)).~~

(i) Except as provided in (e)(ii) of this subsection, for purposes of calculating net worth under (e) of this subsection:

(A) The person's primary residence shall not be included as an asset;

(B) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of the sale of securities exceeds the amount outstanding sixty days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(C) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence shall be included as a liability.

(ii) Paragraph (e)(i) of this subsection will not apply to any calculation of a person's net worth made in connection with a purchase of securities in accordance with a right to purchase such securities, provided that:

(A) Such right was held by the person on July 20, 2010;

(B) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and

(C) The person held securities of the same issuer, other than such right, on July 20, 2010;

(f) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or

joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(g) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in 17 C.F.R. Sec. 230.506 (b)(2)(ii); and

(h) Any entity in which all of the equity owners are accredited investors.

(2) "Affiliate" an "affiliate" of, or person "affiliated" with, a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified;

(3) "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and noncash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Such valuations of noncash consideration must be reasonable at the time made;

(4) "Business combination" shall mean any transaction of the type specified in paragraph (a) of Rule 145 under the Securities Act of 1933 and any transaction involving the acquisition by one issuer, in exchange for all or a part of its own or its parent's stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition);

(5) "Calculation of number of purchasers." For purposes of calculating the number of purchasers under WAC 460-44A-504 and 460-44A-505 the following shall apply:

(a) The following purchasers shall be excluded:

(i) Any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as the purchaser;

(ii) Any trust or estate in which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (ii) collectively have more than fifty percent of the beneficial interest (excluding contingent interests);

(iii) Any corporation or other organization of which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (ii) collectively are beneficial owners of more than fifty percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(iv) Any accredited investor.

(b) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under WAC 460-

44A-501 (1)(h), then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of WAC 460-44A-501 through 460-44A-508, except to the extent provided in (a) of this subsection.

(c) A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

Note: The issuer must satisfy all the other provisions of WAC 460-44A-501 through 460-44A-505 for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker-dealer shall be considered the "purchasers" under WAC 460-44A-501 through 460-44A-505 regardless of the amount of discretion given to the investment adviser or broker-dealer to act on behalf of the client or customer.

(6) "Executive officer" shall mean the president, any vice-president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer((-));

(7) "Issuer" as defined in Section 2(4) of the Securities Act of 1933 or RCW 21.20.005 shall apply, except that in the case of a proceeding under the Federal Bankruptcy Code (11 U.S.C. 101 et seq.), the trustee or debtor in possession shall be considered the issuer in an offering under a plan or reorganization, if the securities are to be issued under the plan((-));

(8) "Purchaser representative" shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(a) Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of ten percent or more of any class of the equity securities or ten percent or more of the equity interest in the issuer, except where the purchaser is:

(i) A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;

(ii) A trust or estate in which the purchaser representative and any person related to him as specified in WAC 460-44A-501 (8)(a)(i) or (iii) collectively have more than fifty percent of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or

(iii) A corporation or other organization of which the purchaser representative and any persons related to him as specified in WAC 460-44A-501 (8)(a)(i) or (ii) collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests;

(b) Has such knowledge and experience in financial and business matters that he is capable of evaluating, alone, or together with other purchaser representatives of the purchaser, or together with the purchaser, the merits and risks of the prospective investment;

(c) Is acknowledged by the purchaser in writing, during the course of the transaction, to be his purchaser representative in connection with evaluating the merits and risks of the prospective investment; and

(d) Discloses to the purchaser in writing a reasonable time prior to the sale of securities to that purchaser any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

Note 1: A person acting as a purchaser representative should consider the applicability of the registration and anti-fraud provisions relating to broker-dealers under chapter 21.20 RCW and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended) and relating to investment advisers under chapter 21.20 RCW and the Investment Advisers Act of 1940.

Note 2: The acknowledgment required by paragraph (8)(c) and the disclosure required by paragraph (8)(d) of this WAC 460-44A-501 must be made with specific reference to each prospective investment. Advance blanket acknowledgment, such as for "all securities transactions" or "all private placements," is not sufficient.

Note 3: Disclosure of any material relationships between the purchaser representative or his affiliates and the issuer or its affiliates does not relieve the purchaser representative of his obligation to act in the best interest of the purchaser.

AMENDATORY SECTION (Amending WSR 11-01-139, filed 12/21/10, effective 1/21/11)

WAC 460-80-108 Exemption for offer and sale to accredited investors pursuant to RCW 19.100.030(5). For the purpose of the exemption of RCW 19.100.030(5), an "accredited investor" shall mean any person who comes within any of the following categories, or who the franchisor reasonably believes comes within any of the following categories, at the time of the sale of the franchise to that person:

(1) Any bank as defined in section 3 (a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in section 3 (a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2 (a)(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2 (a)(48) of that act; any small business investment company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(2) Any private business development company as defined in section 202 (a)(22) of the Investment Advisers Act of 1940;

(3) Any organization described in section 501 (c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the franchise offered, with total assets in excess of \$5,000,000;

(4) Any director, executive officer, or general partner of the franchisor of the franchises being offered or sold, or any director, executive officer, or general partner of a general partner of that franchisor;

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, ~~((at the time of his purchase))~~ exceeds \$1,000,000 ~~((excluding the value of the primary residence of such natural person;))~~.

(a) Except as provided in (b) of this subsection, for purposes of calculating net worth under subsection (5) of this section:

(i) The person's primary residence shall not be included as an asset;

(ii) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of the franchise, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of the franchise exceeds the amount outstanding sixty days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(iii) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence shall be included as a liability.

(b) Subsection (5)(a) of this section will not apply to any calculation of a person's net worth made in connection with a purchase of additional franchises in accordance with a right to purchase such franchises, provided that:

(i) Such right was held by the person on July 20, 2010;

(ii) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and

(iii) The person operated a franchise of the franchisor, other than such right, on July 20, 2010.

(6) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(7) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the franchise offered, whose purchase is directed by a sophisticated person as described in 17 CFR Sec. 230.506 (b)(2)(ii); and

(8) Any entity in which all of the equity owners are accredited investors.

WSR 12-13-053

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed June 15, 2012, 9:12 a.m., effective July 16, 2012]

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

Purpose: This rule-making order amends the apple maggot quarantine boundaries designated in chapter 16-470 WAC, Quarantine—Agricultural pests, by: (1) Adding a portion of Chelan County to the quarantine; and (2) decreasing the size of the quarantine portion of Kittitas County.

Citation of Existing Rules Affected by this Order: Amending WAC 16-470-105.

Statutory Authority for Adoption: RCW 17.24.041 and chapter 34.05 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-09-086 on April 18, 2012, and WSR 12-12-045 on May 31, 2012.

Changes Other than Editing from Proposed to Adopted Version: The GIS coordinate in WAC 16-470-105 (2)(d) was changed from N120°43.02' to W120°43.02' because of a typographical error.

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

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

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

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

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

Date Adopted: June 15, 2012.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 09-18-086, filed 9/1/09, effective 10/2/09)

WAC 16-470-105 Area under order for apple maggot—Pest free area—Quarantine areas. (1) A pest free area for apple maggot is declared for the following portions of Washington state:

(a) Counties of Adams, Asotin, Benton, ~~((Chelan,))~~ Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Lincoln, Okanogan, Pend Oreille, Stevens, Walla Walla, and Whitman.

(b) The portion of Kittitas County designated as follows: Beginning at the point where Interstate Highway No. 90 crosses longitude 120°31' W; thence southerly to the Kittitas-Yakima County line; thence easterly along the county line ~~((to the Yakima River; thence northerly along the Yakima River to its confluence with Lmuma Creek; thence easterly along Lmuma Creek to Interstate Highway No. 82; thence southerly along Interstate Highway No. 82 to the Kittitas-~~

~~Yakima County line; thence east~~) to the Columbia River; thence northerly along the Columbia River to Interstate Highway No. 90; thence westerly along Interstate Highway No. 90 to the point of beginning.

(c) Yakima County, except for the area designated in subsection (2)(c) of this section.

(d) Chelan County, except for the area designated in subsection (2)(d) of this section.

(2) A quarantine for apple maggot is declared for the following portions of Washington state:

(a) Counties of Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Klickitat, Lewis, Mason, Pacific, Pierce, Snohomish, Spokane, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom.

(b) Kittitas County, except for the area designated in subsection (1)(b) of this section.

(c) The portion of Yakima County designated as follows: Beginning at the northeastern corner of Yakima County on the west bank of the Columbia River; thence southerly along the Columbia River to the Yakima-Benton County line; thence southerly along the county line to latitude N46°30'; thence west to longitude W120°20'; thence north to latitude N46°30.48'; thence west to longitude W120°25'; thence north to latitude N46°31.47'; thence west to longitude W120°28'; thence north to latitude N46°32'; thence west to longitude W120°36'; thence south to latitude N46°30'; thence west to longitude W120°48'; thence southerly to the Klickitat-Yakima County line; thence westerly along the county line to the Yakima-Skamania County line; thence northerly along the county line to the Lewis-Yakima County line; thence easterly and northerly along the county line to the Pierce-Yakima County line; thence northerly and easterly along the county line to the Kittitas-Yakima County line; thence easterly and southerly along the county line to the west bank of the Columbia River and the point of beginning.

(d) The portion of Chelan County designated as follows: Beginning at the point where the northern boundary of the county crosses longitude W120°43.02' following the longitudinal line due south to the fork of Highway 207 and Chiwawa Loop Road; thence south following the eastern edge of Highway 207 which becomes Beaver Valley Road and then Chumstick Highway; thence southeast along the eastern edge of Highway 2 to the point where the northern ridgeline of Boundary Butte drops to meet Highway 2; thence southerly following the ridgeline of Boundary Butte gaining in elevation into the Stuart Range to the highest point of McClellan Peak; thence due south from McClellan Peak to the southern boundary of the county; thence following the county line west, then north, and then east to the beginning point.

(3) A quarantine for apple maggot is declared for all states or foreign countries where apple maggot is established. The area under quarantine includes, but is not limited to, the states of Idaho, Oregon, Utah, and California, and, in the eastern United States, all states and districts east of and including North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, and any other areas where apple maggot is established.

WSR 12-13-068
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 18, 2012, 1:18 p.m., effective July 19, 2012]

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

Purpose: The department revised its assessment process for allocating personal care hours to disabled children as a result of the Washington state supreme court decision in the *Samantha A. v. DSHS*.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0125.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 11-24-095 on December 7, 2011.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: June 13, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-11-050, filed 5/12/10, effective 6/12/10)

WAC 388-106-0125 ((If I am age twenty-one or older,)) How does CARE use criteria to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours. Each classification group is assigned a number of base hours as described below based upon the level of funding provided by the legislature for personal care services, and based upon the relative level of functional disability of persons in each classification group as compared to persons in other classification groups.

(1) If you meet the criteria for exceptional care, then CARE will place you in **Group E**. CARE then further classifies you into:

(a) **Group E High** with ~~((416))~~ 393 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with ~~((346))~~ 327 base hours if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with ~~((277))~~ 260 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with ~~((234))~~ 215 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with ~~((185))~~ 168 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with ~~((138))~~ 120 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with ~~((194))~~ 176 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with ~~((174))~~ 158 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with ~~((132))~~ 115 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with ~~((87))~~ 73 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B**. CARE further classifies you into:

(a) **Group B High** with ~~((147))~~ 129 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium-High** with ~~((82))~~ 69 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with ~~((47))~~ 39 base hours if you have an ADL score of 0-4; or

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in **Group B**. CARE further classifies you into:

(a) **Group B High** with ~~((147))~~ 129 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with ~~((101))~~ 84 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with ~~((82))~~ 69 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with ~~((47))~~ 39 base hours if you have a behavior point score greater than 1.

(6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A**. CARE further classifies you into:

(a) **Group A High** with ~~((71))~~ 59 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with ~~((56))~~ 47 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with ~~((26))~~ 22 base hours if you have an ADL score of 0-4.

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 12-13-083

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed June 19, 2012, 11:49 a.m., effective July 20, 2012]

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

Purpose: WAC 388-02-0580 does not specifically address whether a party disagreeing with an initial order can submit a petition for review to the board of appeals (BOA) by fax, alone. WAC 388-02-0075 (1)(c) and 388-02-0040(4), does allow filing or sending of documents to BOA by fax if a copy of the document is also mailed the same day. "Filing" is defined in WAC 388-02-0070 as the act of delivering documents to BOA or the office of administrative hearings (OAH). It has been the practice of BOA to accept for review timely faxed transmissions of petitions for review whether or not a "hard copy" of the petition is eventually mailed to BOA. This practice is not in compliance with the regulations when reading and applying WAC 388-02-0580, 388-02-0075, and 388-02-0040 together. The proposed amendment (addition) to WAC 388-02-0580 would clarify and implement BOA's current practice of accepting for review timely faxed petitions for review while still encouraging follow-up with a mailed copy. The term "should" is defined in WAC 388-02-0010 as meaning that an action is recommended but not required. Using the term "should" in the proposed changes would allow accepting faxed petitions for review and would not require a "hard copy" to be mailed in order for BOA to assume jurisdiction to review the case. Without the rule change, there exists a serious question as to whether BOA has jurisdiction to review a timely faxed petition for review that has not also been mailed the same day as the facsimile transmission. The proposed rule change addresses an access to justice issue for all parties (department and clients) involved in the administrative hearing process.

Citation of Existing Rules Affected by this Order: Amending WAC 388-02-0580.

Statutory Authority for Adoption: RCW 34.05.020.

Adopted under notice filed as WSR 12-10-029 on April 24, 2012.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: June 7, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-04-074, filed 1/31/11, effective 3/3/11)

WAC 388-02-0580 What is the deadline for requesting review by a review judge? (1) BOA must receive the written review request on or before 5:00 p.m. on the twenty-first calendar day after the initial order was mailed. A party may submit the review request by facsimile transmission (fax). A copy of the review request should also be mailed to the BOA.

(2) A review judge may extend the deadline if a party:

- (a) Asks for more time before the deadline expires; and
- (b) Gives a good reason for more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The BOA receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good cause for missing the deadline.

(4) If you ask a review judge to review an ALJ decision, the time period provided by this section for requesting review of an initial order, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order.

WSR 12-13-097

PERMANENT RULES

SECRETARY OF STATE

[Filed June 20, 2012, 8:09 a.m., effective July 21, 2012]

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

Purpose: To remove restrictions on expedited service for limited liability companies filing initial reports, license renewals, annual reports, or amended reports. These restrictions have been removed for corporations and nonprofits, as well as partnerships in 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 434-130-080.

Statutory Authority for Adoption: RCW 25.15.007, [25.15.]805, [25.15.]810, and 43.07.120.

Adopted under notice filed as WSR 12-09-030 on April 10, 2012.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: June 19, 2012.

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 10-15-035, filed 7/13/10, effective 8/13/10)

WAC 434-130-080 In-person or expedited counter service—Special fees. (1) The corporations division counter is open to in-person requests from 8:00 a.m. to 5:00 p.m. each business day. Staff provides expedited services for corporate documents or requests received in-person, by fax, mail, or on-line with the appropriate expedite fee. Expedite services are available for the following transactions:

(a) Document review and filing;

(b) Document copying, certification, and status certificates.

(2) The fee for expedited service is fifty dollars for single or multiple paper transactions within each new or existing limited liability company file. On-line transactions are expedited for twenty dollars, but may be charged fifty dollars for in-person completion at front counter. In addition, a regulatory fee for each transaction may apply.

(3) There is no expedited fee for the following transactions:

(a) ~~(Initial reports;~~

~~(b) License renewal and required annual report;~~

~~(c) Amended annual reports;~~

~~(d))~~ In-person inspection or review of limited liability company files or other public documents located in the corporations division office;

~~((e))~~ ~~(b)~~ Documents left at the counter for processing with mail-in documents received the same day.

(4)(a) If staff cannot complete an expedited service request before the end of the same day, the transaction will be completed within the next two business days.

(b) Emergency services needed outside regular business hours requiring employee overtime are one hundred fifty dollars per hour plus regulatory or statutory fees due for the specific form. When the division receives an emergency request, staff notifies the customer of the service fee and any other reasonable conditions set by the director. The customer must agree to pay the fees before emergency services are provided.

(5) Over-the-counter service hours may be shortened under extraordinary circumstances. Separate service requests by one person may be limited to those relating to three corporations per transaction.

Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.

WSR 12-13-104
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Naturopathy)

[Filed June 20, 2012, 11:10 a.m., effective July 21, 2012]

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

Purpose: Chapter 246-836 WAC, the amendments to the existing rules implement HB 1181 (2011), which creates the board of naturopathy; and SSB 5152 (2011), which modified portions of naturopathic scope of practice. The amendments also make general housekeeping edits, add language for temporary permits and sexual misconduct, and update the education program standards to accept accreditation from national organizations.

Citation of Existing Rules Affected by this Order: Amending chapter 246-836 WAC, WAC 246-836-010 Definitions, 246-836-020 Eligibility for licensure examinations, 246-836-030 Licensure examination, 246-836-050 Reexaminations, 246-836-080 Continuing competency program, 246-836-100 Applicants educated and/or licensed in another country, 246-836-110 Licensing by endorsement, 246-836-130 Approval of colleges of naturopathic medicine, 246-836-140 Provisional approval of colleges of naturopathic medicine, 246-836-150 Full approval of colleges of naturopathic medicine, 246-836-160 Unapproved college of naturopathic medicine, 246-836-170 Appeal of board's decisions, 246-836-180 Standards for approval of colleges of naturopathic medicine, 246-836-200 Site review procedures for approval of college of naturopathic medicine, 246-836-210 Authority to use, prescribe, dispense, and order, 246-836-211 Authorization regarding controlled substances, 246-836-330 Mandatory reporting, 246-836-340 Health care institutions, 246-836-350 Naturopathic associations or societies, 246-836-360 Health care service contractors and disability insurance carriers, 246-836-370 Professional liability carriers, 246-836-380 Courts, 246-836-390 State and federal agencies, and 246-836-990 Naturopathic physician licensing fees and renewal cycle.

Statutory Authority for Adoption: RCW 18.36A.160, HB 1181 (2011), SSB 5152 (2011).

Adopted under notice filed as WSR 12-08-042 on March 30, 2012.

A final cost-benefit analysis is available by contacting Susan Gragg, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4941, fax (360) 236-2901, e-mail susan.gragg@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 24, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 24, Repealed 0.

Date Adopted: May 11, 2012.

Daniel Newman, MD, ND
Board of Naturopathy, Chair

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-836-010 Definitions. ~~((For the purposes of this chapter, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise.))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) ~~"((Department)) Board" means the ((department of health, whose address is:~~

Department of Health
Professional Licensing Service
P.O. Box 1099
Olympia, Washington 98507)) board of naturopathy.

(2) "Department" means the department of health.

(3) "Hospital" means any health care institution licensed ((pursuant to)) under chapter 70.41 RCW.

~~((3) "Mentally or physically disabled naturopath" means a naturopath who is currently mentally incompetent or mentally ill as determined by a court, or who is unable to practice naturopathy with reasonable skill and safety to patients by reason of any mental or physical condition and who continues to practice while so impaired.))~~

(4) "Naturopath" or "naturopathic physician" means a person licensed ((pursuant to)) under chapter 18.36A RCW.

(5) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.

(6) "Unprofessional conduct" means the conduct described in RCW 18.130.180.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-836-020 Eligibility for licensure examination. (1) Graduates holding a degree/diploma from a college of naturopathic medicine approved by ~~((Washington state department of health))~~ the board shall be eligible to take the examination, provided all other requirements of RCW 18.36A.090 are met.

(2) All applicants shall file with the ~~((department))~~ board a completed application, with the required fee, at least ~~((60))~~ sixty days prior to the exam.

(3) Applicants shall request that the college of naturopathic medicine send official transcripts directly to the ~~((department))~~ board.

(4) Applicants who have filed the required applications, whose official transcript has been received by the ((department)) board, and who meet all qualifications shall be notified of their eligibility, and only such applicants will be admitted to the exam.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-836-030 Licensure examination. (1) The licensure examination shall consist of the following components and tests:

(a) Basic science component which may include but not be limited to tests in the following subjects: Pathology, anatomy, physiology, microbiology and biochemistry.

(b) Clinical science component which may include but not be limited to tests in the following subjects: Physical diagnosis; nutrition; physical medicine; botanical medicines and toxicology; psychological and lifestyle counseling; emergency medicine, basic skills and public health; lab and X-ray diagnosis.

(c) Law of the state and administrative regulations as they relate to the practice of naturopathic medicine.

(d) The ((department)) board, at its discretion, may require tests in other subjects. Candidates will receive information concerning additional tests prior to the examination.

(2) Candidates may take the basic science component of the exam after two years of training. A candidate who has achieved a passing score on the basic science component after two years of training must achieve a passing score on the clinical science component and the state law test within twenty-seven months after graduation; otherwise, the candidate's basic science component exam results will be null and void and the candidate must again take the basic science component of the exam. All exam candidates are required to obtain a passing score on all tests before a license is issued. A candidate who takes the basic science component of the exam after two years of training must submit an application for reexamination, along with reexamination fees, to take the clinical science component and the state law test at a later exam administration.

(3) Examinations shall be conducted twice a year.

(4) The minimum passing score for each test in the examination is seventy-five.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-836-050 Reexaminations. (1) A candidate wishing to retake the examination or any portion thereof must file with the ((department)) board the required reexamination fees and an application to retake the examination at least sixty days before the administration of the exam.

(2) A candidate must retake the entire basic science component if he or she failed to achieve a passing score in three or more basic science tests. A candidate must retake the entire clinical science component if he or she failed to achieve a passing score in four or more clinical science tests. A candidate must retake any test(s) for which the candidate failed to achieve a passing score.

(3) A candidate who failed to achieve a passing score in three or more basic science tests and/or four or more clinical science tests must achieve a passing score on those tests within the next two administrations of the examination. A candidate who does not achieve a passing score within those next two administrations of the exam will be required to retake the entire component.

(4) A candidate must achieve passing scores on all tests in the entire exam within a twenty-seven month period; otherwise the candidate's exam results are null and void and the candidate must retake the entire exam. Provided: WAC 246-836-030(2) shall apply to a candidate who took the basic science component of the exam after two years in training.

(5) A candidate is required to pay a reexamination fee to retake the exam or any portion thereof.

(6) A candidate who took the basic science component of the exam after two years of training must submit an application for reexamination, along with reexamination fees, to take the clinical science component and the state law test at a later exam administration.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-836-080 Continuing competency program.

(1) Licensed naturopathic physicians must demonstrate completion of ((20)) twenty hours of continuing education as provided in chapter 246-12 WAC, Part 7. Only courses in diagnosis and therapeutics as listed in RCW 18.36A.040 shall be eligible for credit.

(2) In emergency situations, such as personal or family illness, the ((department)) board may in its discretion, for good cause shown, waive all or part of the continuing education requirement for a particular one year period for an individual licensee. The ((department)) board may require such verification of the emergency as is necessary to prove its existence.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-836-100 Applicants educated and/or licensed in another country. (1) Applicants for licensure educated in a country outside the United States or its territories shall meet the following requirements for licensure.

(a) Satisfactory completion of a basic naturopathic medical program in a naturopathic school or college officially approved by the country where the school is located.

(i) The naturopathic education program at the time of graduation shall be equivalent to or exceed the minimum required standards for Washington state approved colleges of naturopathic medicine.

(ii) Any deficiencies in the naturopathic medical program shall be satisfactorily completed in a Washington state approved college of naturopathic medicine.

(b) Applicants licensed under the laws of a country outside of the United States or its territories shall be required to take the current licensing examinations noted in WAC 246-836-030: Provided, That those persons meeting the requirements of WAC 246-836-110, (Licensing by endorsement), are exempt from this requirement.

(c) All other requirements of chapter 18.36A RCW and this chapter must be met, including the requirement that the applicant be of good moral character; not have engaged in unprofessional conduct; and not be unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

(2) Applicants for examination shall:

(a) File with the ~~((department))~~ board a completed notarized license application with the required fee at least sixty days prior to examination.

(b) Request the college of naturopathic medicine to submit an official transcript directly to the ~~((department))~~ board.

(c) Request the licensing agency in the country of original license to submit evidence of licensure to the ~~((department))~~ board.

(d) If the applicant's original documents (education and licensing) are on file in another state, the applicant may request that the other state send to the ~~((department))~~ board notarized copies in lieu of the originals.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-836-110 Licensing by endorsement. A license to practice as a naturopathic physician in the state of Washington may be issued without examination at the discretion of the ~~((secretary))~~ board provided the applicant meets all of the following requirements:

(1) The candidate has graduated from and holds a degree/diploma from a college of naturopathic medicine approved by the state or jurisdiction where the school is located and which prepares candidates for licensure as a naturopathic physician: Provided, That such program at the time of the candidate's graduation is equivalent to or exceeds the minimum naturopathic medical educational standards required for Washington state approved schools;

(2) The candidate holds a current valid license in good standing to practice as a naturopathic physician in another state or jurisdiction. Official written verification of such licensure status must be received by the ~~((department))~~ board from the other state or jurisdiction;

(3) The candidate has completed and filed with the ~~((department))~~ board a notarized application for licensure by endorsement, a true and correct copy of the current valid license, and the required application fee;

(4) The candidate has successfully passed a naturopathic physician licensure examination in another state or jurisdiction. Written official verification of successful completion of the licensure examination and of licensure in good standing must be requested of the state or jurisdiction by the candidate and must be received by the ~~((department))~~ board directly from the state or jurisdiction;

(5) The candidate must meet all other requirements of chapter 18.36A RCW and this chapter, including the requirement that the applicant be of good moral character; not have engaged in unprofessional conduct; and not be unable to practice with reasonable skill and safety as a result of a physical or mental impairment; and

(6) The state or jurisdiction in which the candidate is currently licensed grants similar privilege of licensure without

examination to candidates who are licensed in Washington as naturopathic physicians.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-836-130 Approval of colleges of naturopathic medicine. (1) For the purposes of this chapter, "college" means a college, university, educational institution, or educational program.

(2) The minimum educational requirement for licensure to practice naturopathic medicine in Washington is graduation from a naturopathic college approved by the ~~((secretary))~~ board which teaches adequate courses in all subjects necessary to the practice of naturopathic medicine.

~~((2))~~ (3) These rules provide the standards and procedures by which naturopathic colleges may obtain approval by the ~~((secretary))~~ board in order that graduates of those schools may be permitted to take examinations for license.

(4) The board determines the accreditation standards adopted June 2009 by the Council on Naturopathic Medical Education (CNME) to be substantially equivalent to the requirements of RCW 18.36A.100 and this chapter. Any naturopathic college holding current CNME accreditation shall be deemed to have met all requirements for approval.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-836-140 Provisional approval of colleges of naturopathic medicine. Provisional approval is ~~((the initial))~~ approval given to ~~((a previously))~~ an unapproved program while the program is undergoing the process of gaining full program approval. The ~~((secretary))~~ board may grant provisional approval to a naturopathic college which has been in continuous operation for at least one year. Provisional approval may be granted for a period not to exceed two and one-half years and may not be renewed or extended. Provisional approval shall neither imply nor assure eventual full approval.

(1) In order to obtain provisional approval, a naturopathic college must demonstrate compliance with, or adequate planning and resources to achieve compliance with, the standards contained in this chapter and ~~((chapter 18.36A))~~ RCW 18.36A.100.

(2) The procedures for application, examination, review and revocation of provisional approval shall be the same as those specified for full approval in this chapter.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-836-150 Full approval of colleges of naturopathic medicine. (1) Full approval of a college of naturopathic medicine is the approval given a program that meets the requirements of ~~((chapter 18.36A))~~ RCW 18.36A.100 and this chapter.

(a) Colleges of naturopathic medicine seeking full approval shall apply to the ~~((secretary))~~ board on a form and in a manner prescribed by the ~~((secretary))~~ board.

(b) Those naturopathic colleges holding current accreditation by the CNME need only reference their current CNME accreditation, which will be verified by the board; however, such colleges shall be subject to all other provisions of this chapter.

(2) The ~~((secretary))~~ board may grant full approval to naturopathic colleges which have demonstrated compliance with the standards contained in this chapter and ~~((chapter 18.36A))~~ RCW 18.36A.100.

(3) To be eligible for full approval a naturopathic college must have been in continuous operation for a period of at least three years.

(4) After approval by the ~~((secretary))~~ board, periodic reports may be required. Failure to conform to or maintain established standards may result in loss of approval. No naturopathic college shall receive full approval for a period longer than five years. Prior to the expiration of the period of approval, the college must apply to the ~~((secretary))~~ board for renewal of approval using the same criteria required under subsection (1) of this section. The responsibility for renewal rests solely with the naturopathic college. The ~~((secretary))~~ board shall review the application and make a final decision of approval or disapproval in not more than one hundred twenty days.

(5) If a naturopathic college fails to maintain the required standards or fails to report significant institutional changes, including changes in location, within ninety days of the change, the ~~((secretary))~~ board may revoke or suspend approval. The ~~((secretary))~~ board may contact a naturopathic college at any time, either through an evaluation committee or representative, to audit, inspect or gather information concerning the ~~((operating of the school or college))~~ college's compliance with the required standards.

(6) After suspension of approval of a naturopathic college, the ~~((secretary))~~ board may reinstate approval upon receipt of satisfactory evidence that the college meets the standards of chapter 18.36A RCW and this chapter.

(7) After revocation of approval of a naturopathic college, a college may seek provisional approval, if otherwise qualified.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-836-160 Unapproved college of naturopathic medicine. (1) An "unapproved college of naturopathic medicine" is a program that has been removed from the ~~((secretary's))~~ board's list of approved colleges of naturopathic medicine for failure to meet the requirements of ~~((chapter 18.36A))~~ RCW 18.36A.100 and/or this chapter, or a program that has never been approved by the ~~((secretary))~~ board.

(2) A naturopathic college may be removed from the board's list of approved colleges when they no longer hold current accreditation through the CNME. Any college failing to maintain CNME accreditation is required to apply for approval to the board in accordance with the requirements in WAC 246-836-150.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-836-170 Appeal of ~~((secretary's))~~ board's decisions. A college of naturopathic medicine ~~((deeming itself aggrieved by a decision of))~~ removed from the ~~((secretary affecting its approval status))~~ board's approved list may appeal that decision in writing within thirty calendar days of the decision. If the board denies the appeal, the college shall have the right to appeal the ~~((secretary's decision))~~ board's denial in accordance with the provisions of the Administrative Procedure Act, ~~((chapter 34.05 RCW))~~ brief adjudicative proceedings, RCW 34.05.482 through 34.05.494.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-836-180 Standards for approval of colleges of naturopathic medicine. The following standards shall be used by the ~~((secretary))~~ board in considering a naturopathic college's application for approval:

(1) Objectives. The objectives of the ~~((institution))~~ college shall be clearly stated and address the preparation for the naturopathic physician to provide patient care. The implementation of the objectives should be apparent in the administration of the ~~((institution))~~ college, individual course objectives, and in the total program leading to graduation.

(2) Organization.

(a) For independent naturopathic colleges, the institution shall be incorporated under the laws of the state of its residence as an education corporation. Control shall be vested in a board of directors composed of naturopathic physicians and others. No less than one-third plus one of the directors shall be naturopathic physicians. Under no circumstances shall more than one-third of the directors have administrative or instructional positions in the college. The directors must demonstrate ~~((collective responsibility in))~~ their knowledge of ~~((, and))~~ the objectives of the college through policy decisions ~~((consistent with, the objectives of the college;)),~~ support of college programs and active participation in college governance(±), and selection and oversight of the chief administrative officer.

(b) For naturopathic colleges governed by a multidiscipline university, the institution shall be incorporated under the laws of the state of its residence as an education corporation and control vested in a governing board of directors or trustees composed of qualified members with diverse professional backgrounds. At least one of the directors shall be a naturopathic physician. Under no circumstances shall more than one-third of the directors have administrative or instructional positions in the institute. The institute shall have an established means by which the college can formally, regularly, and effectively communicate to the governing body its needs for resources and provide input on relevant institutional and programmatic issues.

(3) Administration. The education and experience of directors, administrators, supervisors, and instructors should be sufficient to ensure that the student will receive educational services consistent with institutional objectives. The administration of the ~~((institution))~~ college shall be such that the lines of authority are clearly drawn. The ~~((institution))~~

college shall present with its application a catalog and a brief, narrative explanation of how the administration of the ((~~institution~~)) college is, or is to be, organized and how the administrative responsibility for each of the following is, or is to be, managed:

- (a) Faculty and staff recruitment;
- (b) Personnel records management;
- (c) Faculty pay scale and policies;
- (d) Standards and practices relating to evaluation, improvement of instruction, promotion, retention and tenure;
- (e) Admissions policies including procedures used to solicit students;

(f) Development and administration of policies governing rejection and retention of students, job placement, and student counseling and advising services;

- (g) Curriculum requirements;
- (h) Tuition and fee policies; and
- (i) Financial management policies.

(4) Financial condition. The ((~~institution~~)) college shall demonstrate its financial stability by submitting certified audits once every three years and, reports, or other appropriate evidence annually.

(5) Records. The ((~~institution~~)) college shall maintain ((~~an adequately~~)) a detailed system of records for each student beginning with application credentials through the entire period of attendance. The records, including matriculation, attendance, grades, disciplinary action, and financial accounts, shall be the permanent property of the ((~~institution~~)) college, to be safeguarded from all hazards and not to be loaned or destroyed.

(6) Educational credentials.

(a) Upon satisfactory completion of the educational program, the student shall receive a degree from the ((~~institution~~)) college indicating that the course of study has been satisfactorily completed by the student.

(b) In addition, for each student who graduates or withdraws, the ((~~institution~~)) college shall prepare, permanently file, and make available a transcript which specifies all courses completed. Each course entry shall include a title, the number of credits awarded, and a grade. The transcript shall separately identify all credits awarded by transfer or by examination.

(c) Upon request, all student records and transcripts shall be made available to the ((~~secretary~~)) board.

(7) Catalog. The ((~~institution~~)) college shall publish a current catalog at least every two years containing the following information:

- (a) Name, mailing address, and physical address of the school;
- (b) Date of publication;
- (c) Admission requirements and procedures;
- (d) A statement of tuition and other fees or charges for which a student is responsible and a statement on refund policies;
- (e) A school calendar designating the beginning and ending dates of each term, vacation periods, holidays, and other dates of significance to students;
- (f) Objectives of the ((~~institution~~)) college;

(g) A list of trustees (directors), administrative officers and faculty members including titles and academic qualifications;

(h) A statement of policy about standards of progress required of students, including the grading system, minimum satisfactory grades, conditions for interruption for unsatisfactory progress, probation, and reentry, if any;

(i) A description of each course indicating the number of hours and course content, and its place in the total program;

(j) A description of facilities and major equipment, including library, laboratory and clinical training facilities;

(k) Statements on the nature and availability of student financial assistance, counseling, housing, and placement services, if any;

(l) A statement indicating whether the ((~~school~~)) college is recognized by other agencies or associations for the licensing or certification of naturopathic physicians; and

(m) Any other material facts concerning the ((~~institution~~)) college which are reasonably likely to affect the decision of the potential student.

(8) Admission policies and procedures. The ((~~institution~~)) college shall not deny admission to a prospective student because of ((~~sex~~)) gender, race, color, religion, physical handicap and/or ethnic origin.

(9) Attendance. The ((~~institution~~)) college shall have a written attendance policy ((~~relative to attendance~~)).

(10) Curriculum. The curriculum of the ((~~institution~~)) college shall be designed and presented to meet or exceed the requirements of this chapter. Each student shall complete a minimum of three thousand hours instruction, which shall include no less than two hundred post-graduate hours in the study of mechanotherapy. ((~~A~~)) Minimum ((~~total~~)) clinical training shall be one thousand one hundred hours, of which no less than eight hundred hours shall be training with student actively involved in diagnosis and treatment in accordance with RCW 18.36A.050(3). The remainder, if any, may be preceptorships overseen by the college. The clinical training shall be in naturopathic procedures. The following standards are intended not as an exact description of a college's curriculum, but rather as ((~~guidelines~~)) a guide for the typical acceptable program. It is expected that the actual program taught by each naturopathic college will be prepared by the academic departments of the college to meet the needs of their students and will exceed the outline present here. The ((~~secretary's~~)) board's policy is to preserve the autonomy and uniqueness of each naturopathic college, and to encourage innovative and experimental programs to enhance the quality of education in colleges of naturopathic medicine.

- (a) Basic science
 - Anatomy (includes histology and embryology)
 - Physiology
 - Pathology
 - Biochemistry
 - Public health (includes public health, genetics, microbiology, immunology)
 - Naturopathic philosophy
 - Pharmacology

- (b) Clinical sciences
- (i) Diagnostic courses
 - Physical diagnosis
 - Clinical diagnosis
 - Laboratory diagnosis
 - Radiological diagnosis
- (ii) Therapeutic courses
 - Materia medica (botanical medicine)
 - Homeopathy
 - Nutrition
 - Physical medicine
(includes mechanical and manual manipulation, hydrotherapy, and electrotherapy)
 - Psychological medicine
- (iii) Specialty courses
 - Organ systems (cardiology, dermatology, endocrinology, EENT, gastroenterology)
 - Human development (gynecology, obstetrics, pediatrics, geriatrics)
 - State law and regulations as they relate to the practice of naturopathy
 - Medical emergencies
 - Office procedures
- (iv) Clinical externship/preceptorship

(11) Academic standards. The ~~((institution))~~ college must regularly evaluate the quality of its instruction and have a clearly defined set of standards of competence required of its students. Promotion to each successive phase of the program and graduation shall be dependent on mastery of the knowledge and skills presented in the program.

(12) Faculty. Faculty members shall be qualified by training and experience to give effective instruction in the subject(s) taught; advanced degrees in their respective disciplines are expected. The faculty should participate in development and evaluation of curriculum instructional methods and facilities; student discipline, welfare, and counseling; establishment of administrative and educational policies; scholarly and professional growth. Provisions shall be made to allow and encourage faculty involvement in these noninstructional functions, including a plan for peer observation and evaluation among faculty. The ~~((institution))~~ college shall not discriminate on the basis of ~~((sex))~~ gender, race, age, color, religion, physical handicap, or national or ethnic origin in the recruitment and hiring of faculty. The ~~((institution))~~ college shall have stated policies on faculty hiring, compensation, fringe benefits, tenure, retirement, firing, grievance, and appeals procedures. The ~~((institution))~~ college shall submit to the ~~((secretary))~~ board for each faculty member a resume which includes the following information.

- (a) Academic rank or title;
- (b) Degree(s) held, the institution(s) that conferred the degree(s), the date(s) thereof, and whether earned or honorary;
- (c) Other qualifying training or experience;
- (d) Name and course number of each course taught;

(e) Other noninstructional responsibilities, if any, and the proportion of the faculty member's time devoted to them; and

(f) The length of time associated with the ~~((institution))~~ college.

(13) Library. The library shall be staffed, equipped, and organized to adequately support the instruction, and research of students and faculty.

(14) Clinical training. The clinical facilities shall be adequate in size, number, and resources to provide all aspects of naturopathic diagnosis and treatment. There shall be properly equipped rooms for consultation, physical examination and therapy, and a pharmacy, a laboratory, and radiological equipment each consistent with the definition of practice in chapter 18.36A RCW as now or hereafter amended. A licensed and adequately experienced naturopathic physician must be in direct supervision of and have final decision in the diagnosis and treatment of patients by students, and must be present in the clinic at all times when the clinic is open.

(15) Physical plant, materials and equipment. The ~~((institution))~~ college shall own or enjoy the full use of buildings and equipment adequate to accommodate the instruction of its students, and administrative and faculty offices. There shall be adequate facilities ~~((of))~~ for the safekeeping of valuable records. The plant and grounds, equipment, and facilities shall be maintained in an efficient, sanitary, and presentable condition. All laws relating to safety ~~((and))~~, sanitation, and other regulations concerning public buildings shall be observed. There shall be sufficient personnel employed to carry out proper maintenance.

(16) Cancellation and refund policy. The ~~((institution))~~ college shall maintain a fair and equitable policy regarding refund of the unused portion of tuition fees and other charges in the event a student fails to enter the course, or withdraws at any time prior to completion of the course. Such a policy shall be in keeping with generally accepted practices of institutions of higher education.

(17) Other information. The applicant ~~((institution))~~ college shall provide any other information about the ~~((institution))~~ college and its programs as required by the ~~((secretary))~~ board.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-836-200 Site review procedures for approval of college of naturopathic medicine. (1) The ~~((secretary))~~ board may send a representative or an examining or evaluation committee to inspect any ~~((institution))~~ college requesting approval or reapproval as a college of naturopathic medicine.

(2) Such inspections may be at any reasonable time during the normal operating hours of the ~~((institution))~~ college. The report of the representative or committee and the ~~((institution's))~~ college's response shall be submitted as part of the documentation necessary for the ~~((secretary's))~~ board's action on the ~~((institution's))~~ college's application for approval.

(3) Expenses incurred for the site review shall be the responsibility of the ~~((program))~~ college requesting approval.

AMENDATORY SECTION (Amending WSR 07-20-101, filed 10/2/07, effective 11/2/07)

WAC 246-836-210 Authority to use, prescribe, dispense and order. (1) Naturopathic medical practice includes the prescription, administration, dispensing, and use of:

(a) Nutrition and food science, physical modalities, minor office procedures, homeopathy, hygiene, and immunizations/vaccinations;

(b) ~~((Non drug))~~ Contraceptive devices;

(c) Nonlegend medicines including vitamins, minerals, botanical medicines, homeopathic medicines, and hormones;

(d) Legend drugs as defined under RCW 69.41.010 with the exception of Botulinum Toxin (commonly known as, among other names, Botox, Vistabel, Dysport, or Neurobloc) and inert substances used for cosmetic purposes; and

(e) Codeine and testosterone products that are contained within Schedules III, IV, and V in chapters 69.50 RCW and 246-887 WAC.

(2) In accordance with RCW 69.41.010(13), all prescriptions must be hand-printed, typewritten, or generated electronically.

(3) Prior to being allowed to administer, prescribe, dispense, or order controlled substances, a naturopathic physician must meet the requirements in WAC 246-836-211 and have obtained the appropriate registration issued by the Federal Drug Enforcement Administration.

(4) Naturopathic physicians may not treat malignancies except in collaboration with a practitioner licensed under chapter 18.57 or 18.71 RCW.

AMENDATORY SECTION (Amending WSR 07-20-101, filed 10/2/07, effective 11/2/07)

WAC 246-836-211 Authorization regarding controlled substances. (1) Upon approval by the ~~((department))~~ board, naturopathic physicians may obtain a current Federal Drug Enforcement Administration registration. The ~~((department))~~ board may approve naturopathic physicians who have:

(a) Provided documentation of a current Federal Drug Enforcement Administration registration from another state; or

(b) Submitted an attestation of at least four hours of instruction. Instruction must be part of a graduate level course from a school approved under chapter 18.36A, 18.71, 18.57, or 18.79 RCW. Instruction must include the following:

(i) Principles of medication selection;

(ii) Patient selection and therapeutics education;

(iii) Problem identification and assessment;

(iv) Knowledge of interactions, if any;

(v) Evaluation of outcome;

(vi) Recognition and management of complications and untoward reactions; and

(vii) Education in pain management and drug seeking behaviors.

(2) The naturopathic physician must retain training documentation at least five years from attestation date.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-836-330 Mandatory reporting. (1) All reports required by this chapter shall be submitted to the ~~((department))~~ board as soon as possible, but no later than twenty days after a determination is made.

(2) A report should contain the following information if known:

(a) The name, address, and telephone number of the person making the report.

(b) The name and address and telephone numbers of the naturopath being reported.

(c) The case number of any patient whose treatment is a subject of the report.

(d) A brief description or summary of the facts which gave rise to the issuance of the report, including dates of occurrences.

(e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number.

(f) Any further information which would aid in the evaluation of the report.

(3) Mandatory reports shall be exempt from public inspection and copying to the extent permitted under RCW 42.17.310 or to the extent that public inspection or copying of the report or any portion of the report would invade or violate a person's right to privacy as set forth in RCW 42.17.255.

(4) A person is immune from civil liability, whether direct or derivative, for providing information to the ~~((department))~~ board pursuant to RCW 18.130.070.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-836-340 Health care institutions. The chief administrator or executive officer or their designee of any hospital or nursing home shall report to the ~~((department))~~ board when any naturopath's services are terminated or are restricted based on a determination that the naturopath has either committed an act or acts which may constitute unprofessional conduct or that the naturopath may be unable to practice with reasonable skill or safety to clients by reason of any mental or physical condition.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-836-350 Naturopathic associations or societies. The president or chief executive officer of any naturopathic association or society within this state shall report to the ~~((department))~~ board when the association or society determines that a naturopath has committed unprofessional conduct or that a naturopath may not be able to practice naturopathy with reasonable skill and safety to patients as the result of any mental or physical condition. The report required by this section shall be made without regard to whether the license holder appeals, accepts, or acts upon the determination made by the association or society. Notification of appeal shall be included.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-836-360 Health care service contractors and disability insurance carriers. The executive officer of every health care service contractor and disability insurer, licensed under chapters 48.20, 48.21, 48.21A, and 48.44 RCW, operating in the state of Washington shall report to the ((department)) board all final determinations that a naturopath has engaged in fraud in billing for services.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-836-370 Professional liability carriers. Every institution or organization providing professional liability insurance directly or indirectly to naturopaths shall send a complete report to the ((department)) board of any malpractice settlement, award, or payment in excess of twenty thousand dollars as a result of a claim or action for damages alleged to have been caused by an insured naturopath's incompetency or negligence in the practice of naturopathy. Such institution or organization shall also report the award, settlement, or payment of three or more claims during a twelve-month period as a result of the naturopath's alleged incompetence or negligence in the practice of naturopathy.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-836-380 Courts. The ((department)) board requests the assistance of the clerk of trial courts within the state to report all professional malpractice judgments and all convictions of licensed naturopaths, other than minor traffic violations.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-836-390 State and federal agencies. The ((department)) board requests the assistance of executive officers of any state or federal program operating in the state of Washington, under which a naturopath is employed to provide patient care services, to report to the ((department)) board whenever such a naturopath has been judged to have demonstrated his/her incompetency or negligence in the practice of naturopathy, or has otherwise committed unprofessional conduct, or is a mentally or physically disabled naturopath. These requirements do not supersede any federal or state law.

NEW SECTION

WAC 246-836-500 Sexual misconduct—Definitions.
(1) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(2) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client

and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian, and person authorized to make health care decisions of the patient or client.

(3) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with community standards of practice for the naturopathic profession. The activity must be within the scope of practice of naturopathic medicine.

(4) "Patient" or "client" means an individual who receives health care from a naturopathic physician.

NEW SECTION

WAC 246-836-510 Sexual misconduct. (1) A naturopathic physician shall not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

- (a) Sexual intercourse;
- (b) Touching the breasts, genitals, anus, or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis, and treatment and within the naturopathic physician's scope of practice;
- (c) Rubbing against a patient or client or key party for sexual gratification;
- (d) Kissing;
- (e) Hugging, touching, fondling, or caressing of a romantic or sexual nature;
- (f) Examination of or touching genitals without using gloves;
- (g) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;
- (h) Not providing the patient or client a gown or draping except as may be necessary in emergencies;
- (i) Dressing or undressing in the presence of the patient, client, or key party;
- (j) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity, or being in a custodial setting;
- (k) Encouraging masturbation or other sex act in the presence of the naturopathic physician;
- (l) Masturbation or other sex act by the naturopathic physician in the presence of the patient, client, or key party;
- (m) Suggesting or discussing the possibility of a dating, sexual, or romantic relationship after the professional relationship ends;
- (n) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;
- (o) Soliciting a date with a patient, client, or key party;
- (p) Discussing the sexual history, preferences, or fantasies of the naturopathic physician;
- (q) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;
- (r) Making statements regarding the patient, client, or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(s) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening, or harming a patient, client, or key party;

(t) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; and

(u) Showing a patient, client, or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) A naturopathic physician shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient, client, or key party for the purpose of engaging in sexual misconduct; or

(c) Use health care information or access to health care information to meet or attempt to meet the naturopathic physician's sexual needs.

(3) A naturopathic physician shall not engage, or attempt to engage, in activities listed in subsection (1) of this section with a former patient, client, or key party within two years after the provider-patient/client relationship ends.

(4) After the two-year period of time described in subsection (3) of this section, a naturopathic physician shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

(a) There is a significant likelihood that the patient, client, or key party will seek or require additional services from the naturopathic physician; or

(b) There is an imbalance of power, influence, opportunity, and/or special knowledge of the professional relationship.

(5) When evaluating whether a naturopathic physician is prohibited from engaging, or attempting to engage, in sexual misconduct, the board will consider factors including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another health care provider;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the naturopathic physician and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the naturopathic physician;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability; and

(i) Normal revisit cycle for the profession and service.

(6) Patient, client, or key party initiation or consent does not excuse or negate the naturopathic physician's responsibility.

(7) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to naturopathic medicine; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the naturopathic physician where there is no evidence of, or potential for, exploiting the patient or client.

NEW SECTION

WAC 246-836-600 How to obtain a temporary practice permit—National background check. Fingerprint-based national background checks may cause a delay in licensing. Individuals who satisfy all other licensing requirements and qualifications may receive a temporary practice permit while the national background check is completed.

(1) A temporary practice permit may be issued to an applicant who:

(a) Holds an unrestricted, active license as a naturopathic physician in another state that has substantially equivalent licensing standards to those in Washington state;

(b) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(c) Does not have a criminal record in Washington state.

(2) A temporary practice permit grants the individual the full scope of practice under this chapter.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), and documentation for the license;

(b) Meet all requirements and qualifications for the license, except for the results from a fingerprint-based national background check, if required;

(c) Provide verification of having an active unrestricted license as a naturopathic physician from another state that has substantially equivalent licensing standards as Washington state; and

(d) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-836-990 Naturopathic physician licensing fees and renewal cycle. (1) Licenses must be renewed every

year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

Title of Fee	Amount
Application initial/retake	\$100.00
State examination (initial/retake)	100.00
Initial license	100.00
License renewal	325.00
Late renewal penalty	62.50
Expired license reissuance	62.50
Duplicate license	15.00
Certification of license	15.00
UW library access fee	<u>*25.00</u>

* The \$25 access fee for the University of Washington HEAL-WA library web portal, required under RCW 43.70.110, is assessed with the initial application fee and the license renewal fee.