

WSR 09-02-023
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
 [Filed December 30, 2008, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-17-039.

Title of Rule and Other Identifying Information: Washington state history and government requirements (WAC 392-410-120).

Hearing Location(s): 600 Washington Street, Olympia, WA 98504, on February 18, 2009, at 9:00 a.m.

Date of Intended Adoption: February 19, 2009.

Submit Written Comments to: Caleb Perkins, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Caleb.Perkins@k12.wa.us, fax (360) 725-6351, by February 17, 2009.

Assistance for Persons with Disabilities: Contact Penny Coker by February 17, 2009, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to this WAC will include specific language from RCW 28A.230.-092 in order to create rules on the subject matter covered in Washington state history and government. Such rules will require the study of: The constitution of the state of Washington; commerce in Washington state and Washington's place in a global economy; politics, geography, and culture in Washington state. Further, such course is encouraged to include information on the culture, history, and government of the American Indian people who were the first inhabitants of the state. It is also encouraged to include instruction on the meaning and history of the pledge of allegiance within the coursework on Washington state politics.

Reasons Supporting Proposal: The proposed changes will ensure the course content of Washington state history meets the current law.

Statutory Authority for Adoption: RCW 28A.230.092, 28A.320.170.

Statute Being Implemented: RCW 28A.230.092, 28A.320.170.

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

Name of Proponent: [Office of superintendent of public instruction], governmental.

Name of Agency Personnel Responsible for Drafting: Caleb Perkins and Kelly Martin, OSPI, (360) 725-6351; Implementation and Enforcement: Caleb Perkins, OSPI, (360) 725-6351.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

December 30, 2008
 Dr. Terry Bergeson
 Superintendent of
 Public Instruction

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-410-120 Washington state history and government requirements. (1) Grades 1-6. A one-semester course—i.e., 90 (50 minute) hours of instruction—or its equivalent in Washington state history and government shall be required in the common schools in grades one through six combined, but not at each grade level.

(2) Grades 7-12. A one-semester course—i.e., 90 (50 minute) hours of instruction—or its equivalent in Washington state history and government shall be required in the common schools in grades seven through twelve combined, but not at each grade level. Such course:

(a) Shall include ((and)) study of the Washington state Constitution ((and));

(b) Shall include study of commerce in Washington state and Washington's place in the global economy;

(c) Shall include the study of history, politics, geography, and culture in Washington state;

(d) Is encouraged to include information on the culture, history, and government of the American Indian people who were the first inhabitants of the state; and

(e) Is encouraged to include instruction on the meaning and history of the pledge of allegiance within the course work on Washington state politics.

WSR 09-02-027
PROPOSED RULES
HOME CARE
QUALITY AUTHORITY
 [Filed December 30, 2008, 2:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-21-112.

Title of Rule and Other Identifying Information: The home care quality authority is adopting new WAC 257-10-130 What information may be considered cause for denying an individual provider or prospective individual provider placement in the referral registry? and amending WAC 257-10-200 Can an individual provider or prospective individual provider be removed from the registry?

Hearing Location(s): Home Care Quality Authority Board Room (link to HCQA map available from http://www.hcqa.wa.gov/Contact/contact_hcqa.html or by calling (360) 493-9350), 4317 6th Avenue S.E., Suite 101, Lacey, WA 98503, on February 20, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 10, 2009.

Submit Written Comments to: Lisa Livingston, HCQA Rules Coordinator, P.O. Box 40940, Olympia, WA 98504-0940, delivery 4317 6th Avenue S.E., Suite 101, Lacey, WA 98503, e-mail llivingston@hcqa.wa.gov, fax (360) 493-9380, by 5:00 p.m. on February 20, 2009.

Assistance for Persons with Disabilities: Contact Lisa Livingston by January 30, 2009, phone (360) 493-9350.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify reasons

for removing an individual provider or prospective provider from the referral registry.

Current rules do not clearly specify reasons for removing an individual provider or prospective provider from the referral registry.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.39A.280(3) Authority duties, Title 74 RCW.

Statute Being Implemented: RCW 74.39A.280(3).

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

Name of Proponent: Home care quality authority, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lisa Livingston, P.O. Box 40940, Olympia, WA 98504-0940, (360) 493-9350; and Enforcement: Rick Hall, P.O. Box 40940, Olympia, WA 98504-0940, (360) 493-9350.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that no new costs will be imposed on small businesses or nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328(5).

December 30, 2008

R. A. Hall

Executive Director

NEW SECTION

WAC 257-10-130 What information may be considered cause for denying an individual provider or prospective individual provider placement on the referral registry? An individual provider may be denied placement on the referral registry for the following reasons:

(1) A background check that results in disqualifying crimes based on criteria as specified in chapter 43.43 RCW.

(2) Lack of disclosure on background authorization form.

(3) Inclusion on any state abuse and neglect directory.

(4) Information that a current and valid protective order exists and was issued in the state of Washington barring contact with children, vulnerable adults or persons with disabilities.

(5) A reasonable, good faith belief that an individual provider or prospective individual provider is unable to meet the care needs of consumers.

AMENDATORY SECTION (Amending WSR 05-14-113, filed 7/1/05, effective 8/1/05)

WAC 257-10-200 Can an individual provider or prospective individual provider be removed from the registry? Yes. An individual provider or prospective individual provider will be removed from the referral registry for the following reasons:

(1) Failure to meet the qualifications identified in WAC 257-10-120 to 257-10-180.

(2) A determination by the HCQA that the person has committed misfeasance in the performance of his or her duties as an individual provider.

(3) A determination of malfeasance.

(4) A request is made by the person to be removed from the registry.

(5) DSHS IP contract termination.

(6) Information considered cause for denial as referenced in WAC 257-10-130.

WSR 09-02-028

PROPOSED RULES

HORSE RACING COMMISSION

[Filed December 30, 2008, 3:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-045.

Title of Rule and Other Identifying Information: WAC 260-84-060 Penalty matrixes and 260-84-065 Licensees—Drug and alcohol penalties.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 12, 2009, at 9:30 a.m.

Date of Intended Adoption: February 12, 2009.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by February 9, 2009.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 9, 2009, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Several of the penalties listed in the agency's penalty matrixes (WAC 260-84-060) are being updated. In addition, the penalties for human drug and alcohol violations (WAC 260-84-065) are being amended to address changes being proposed to WAC 260-34-020, alcohol concentration levels for persons on horseback.

Reasons Supporting Proposal: WAC 260-84-060, several of the violations and corresponding penalties in this section are being updated to address: (1) Discrepancies discovered; (2) fines that need to be adjusted; and (3) the authority of the executive secretary.

WAC 260-84-065, a new subsection (10) is being added to address changes being contemplated in WAC 260-34-020 Drug and alcohol violations.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Lechner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

December 30, 2008
 R. J. Lopez
 Deputy Secretary

AMENDATORY SECTION (Amending WSR 08-05-086, filed 2/15/08, effective 3/17/08)

WAC 260-84-060 Penalty matrixes. (1) The imposition of reprimands, fines and suspensions will be based on the following penalty matrixes:

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$100	\$200	\$300
Unlicensed or improperly licensed personnel WAC 260-28-230, <u>260-36-150, and 260-28-295</u>	\$100	\$200	\$300
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$75	\$100	\$200
Failure of jockey to report correct weight WAC 260-32-150	\$100	\$200	\$300
Failure of jockey to appear for films WAC 260-24-510	\$50	\$100	\$200
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Jockey easing mount without cause WAC 260-52-040	\$250 and/or suspension	\$500 and/or suspension	\$1000 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	Suspension (riding days) and possible fine		
((Jockey's)) Rider's misuse of whip WAC 260-52-040	Warning to \$2500		
Entering ineligible horse or <u>unauthorized late scratch</u> chapter 260-40 WAC ((260-40-140)) and WAC 260-80-030	((250)) <u>\$200</u>	((500)) <u>\$200 to \$300</u>	((1000)) <u>\$200 to \$500</u>
((Unauthorized late scratch (WAC-260-40-010))	\$200	\$300	\$400))
Arriving late to the paddock or receiving barn WAC 260-28-200	Warning to \$50	\$50 to \$100	\$100 to \$200

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$50	<u>\$50 to \$100</u>	<u>\$100 to \$200</u>
((Failure to have registration papers on file – resulting in a scratch WAC 260-40-090	\$200	\$300	\$400))
Failure to obtain permission for equipment changes WAC 260-44-010	\$50	\$100	\$200
Failure to report performance records WAC 260-40-100	Warning to \$50	\$100	\$150
Failure to submit gelding report WAC 260-28-295	\$100	\$200	\$300
((Insufficient workouts – resulting in scratch WAC 260-40-100	\$200	\$300	\$400))

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel WAC 260-28-230, <u>260-36-150, and 260-28-295</u>	\$50	\$100	\$200
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
Failure of <u>jockey agent</u> to honor riding engagements (call)(agents) WAC 260-32-400	\$25	\$50	\$100
((Reporting incorrect)) Failure of <u>jockey</u> to report correct weight(jockeys) WAC 260-32-150	\$25	\$50	\$100
Failure of <u>jockey</u> to appear for films(jockeys) WAC 260-24-510	\$25	\$50	\$100
Failure of <u>jockey</u> to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
<u>Jockey</u> easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding <u>with no disqualification</u> (jockey at fault) WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
<u>Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040</u>	<u>Suspension (riding days) and possible fine</u>		
((Jockey's)) <u>Rider's misuse of whip WAC 260-52-040</u>	Warning to \$2500		
<u>Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC ((260-40-140)) and WAC 260-80-030</u>	\$100	<u>\$100 to \$200</u>	<u>\$200 to \$300</u>
((Unauthorized late scratch WAC 260-40-010	\$100	\$200	\$300))
<u>Arriving late to the paddock WAC 260-28-200</u>	Warning to \$25	\$50	\$100
<u>Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650</u>	Warning to \$25	\$50	\$100
((Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	\$50	\$100	\$100))
<u>Failure to obtain permission for equipment change WAC 260-44-010</u>	<u>\$25</u>	<u>\$50</u>	<u>\$100</u>
<u>Failure to report performance records WAC 260-40-100</u>	<u>Warning to \$25</u>	<u>\$50</u>	<u>\$100</u>
<u>Failure to submit gelding report WAC 260-28-295</u>	\$50	\$100	\$200
((Failure to obtain permission for equipment changes WAC 260-44-010	\$25	\$50	\$100))

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
<u>Smoking in restricted areas WAC 260-20-030</u>	\$50	\$100	\$250 and/or suspension
<u>Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030</u>	\$200	\$500	\$1000 and/or suspension
<u>Failure to post problem gambling signs WAC 260-12-250</u>	Warning to \$50	\$100	\$200
<u>Issuing a check to the commission with not sufficient funds WAC 260-28-030</u>	\$50	\$100	\$200
<u>Failure to ((follow instructions of the outrider)) ride in a safe or prudent manner WAC ((260-24-690)) 260-80-145</u>	\$50	\$100	\$200

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Use of improper, profane, or indecent language WAC 260-80-130	<u>Warning to \$200</u>	<u>\$200 to \$300</u>	<u>\$300 to \$500</u>
Failure to complete (provisional) <u>temporary</u> license application within fourteen days WAC 260-36-200	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Failure to register employees with the commission (trainers responsibility) WAC 260-28-230	Warning to \$50	\$100	\$200
Failure to furnish fingerprints WAC 260-36-100	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Nonparticipation - licensing WAC 260-36-080	License canceled		
False application WAC (260-36-100 and 260-36-120) <u>260-36-050</u>	\$50 to \$250 and/or possible denial, suspension or revocation of license		
Failure to divulge a misdemeanor or gross misdemeanor WAC (260-36-120) <u>260-36-050</u>	Warning to \$100		
Failure to divulge a felony WAC (260-36-120) <u>260-36-050</u>	\$100 to \$250 and/or denial, suspension, or revocation of license		
Failure to provide full disclosure, refusal to respond to questions, or responding falsely to stewards or commission investigators WAC 260-24-510	\$500 fine and/or denial, suspension or revocation of license		
Failure to pay proper industrial insurance premium(s) (chapter 260-220) WAC 260-36-220 and (WAC) 260-36-230	In addition to being required to pay the full industrial insurance premium, the trainer will be assessed a fine equal to fifty percent of the premium due		
Failure to pay L&I payment agreement (WAC 260-28-235) (<u>per contract</u>)	Immediate suspension until premium paid and \$50 fine for each quarter payment is late		
(Unlicensed person on the backside WAC 260-20-040)	<u>Report violation to the racing association</u>)		
Financial responsibility WAC 260-28-030	Resolution with mutual agreement between the parties - failure to comply with the agreement will result in immediate suspension		
Failure to appear for a ruling conference WAC 260-24-510	Suspension (conference may be held in individual's absence)		
Failure to pay fine within 7 days of ruling conference (no extension granted or no request for hearing filed) WAC 260-24-510	Suspension until fine paid		
Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	<u>Immediate ejection from the grounds</u> , 1 year suspension (plus), <u>and</u> mandatory referral to commission for revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010	<u>Immediate ejection from the grounds</u> , 1 year suspension (plus), <u>and</u> mandatory referral to commission for revocation		

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to wear proper safety equipment WAC 260-12-180 and 260-32-105	\$50	\$100	\$200
Horses shod with improper toe grabs WAC 260-44-150	Horse scratched and \$250 fine to trainer and plater	Horse scratched and \$500 fine to trainer and plater	Horse scratched and \$1000 fine to trainer and plater
Failure to display or possess license badge when in restricted area WAC 260-36-110	\$25	\$50	\$100

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee will include violations which occurred in Washington as well as any other recognized racing jurisdiction. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column will apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards have discretion to impose the penalties as provided in WAC 260-24-510 (3)(a). For violations considered minor, the fine can be up to \$500 and/or suspension for up to sixty days. Fines for violations considered major can be up to \$2,500 and/or suspension up to one year, or revocation.

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty will include, but are not limited to, the following:

- (a) The past record of the licensee or applicant;
- (b) The impact of the offense on the integrity of the parimutuel industry;
- (c) The danger to human and/or equine safety;
- (d) The number of prior violations of these rules of racing or violations of racing rules in other jurisdictions; and/or
- (e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards will follow the penalty guidelines as set forth in WAC 260-84-090, 260-84-100, 260-84-110, 260-84-120, and 260-84-130.

(6) The executive secretary or stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a (~~stewards'~~) referral will not preclude commission action in any matter. (~~(A)~~) An executive secretary's or stewards' ruling will not prevent the commission from imposing a more severe penalty.

AMENDATORY SECTION (Amending WSR 07-03-066, filed 1/16/07, effective 2/16/07)

WAC 260-84-065 Licensees—Drug and alcohol penalties. (1) Engaging in the illegal sale or distribution of alcohol in violation of WAC 260-34-020(2).

- (a) First offense - thirty-day suspension; and
- (b) Second or subsequent offense - one-year suspension and referral to the commission for revocation.

(2) Possessing any equipment, products or materials of any kind, which are used or intended for use in injecting,

ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance, other than marijuana in violation of WAC 260-34-020(5); or possessing or having within their body while on the grounds of a licensed race meet any illegal controlled substance, in violation of WAC 260-34-020 (1) or (4).

- (a) First offense - thirty-day suspension; and
- (b) Second offense - one-year suspension and referral to the commission for revocation.

(3) Possessing any equipment, products or materials of any kind, which are used or intended for use in ingesting, inhaling or otherwise introducing into the human body marijuana, in violation of WAC 260-34-020(5); or possessing or having within their body marijuana, an illegal controlled substance, while on the grounds of any licensed race meet, in violation of WAC 260-34-020(1).

- (a) First offense - three-day suspension;
- (b) Second offense - thirty-day suspension; and
- (c) Third or subsequent offenses - one-year suspension and referral to commission for revocation.

(4) Being under the influence of or affected by intoxicating liquor and/or drugs in violation of WAC 260-34-020(1), excluding persons on horseback.

- (a) First offense - warning to one-day suspension;
- (b) Second offense - three-day suspension;
- (c) Third offense - thirty-day suspension; and
- (d) Subsequent offenses - one-year suspension and referral to commission for revocation.

(5) Being under the influence of or affected by intoxicating liquor and/or drugs, and being on horseback in violation of WAC 260-34-020(1).

- (a) First offense - warning to three-day suspension;
- (b) Second offense - up to a thirty-day suspension; and
- (c) Third offense - up to a one-year suspension and referral to commission for revocation.

(6) Refusing to submit to a drug or alcohol test, in violation of WAC 260-34-020(6) will result in a penalty of a one-year suspension plus referral to the commission for revocation.

(~~(6)~~) (7) Possessing any equipment or material used to manufacture or distribute any controlled substance, or engaging in the sale, manufacturing or distribution of any illegal controlled substance or possessing an illegal controlled substance with intent to deliver on the grounds of any licensed race meet in violation of WAC 260-34-020 (3) or (5), imme-

diate ejection from the grounds, a one-year suspension plus referral to the commission for revocation.

~~((7))~~ (8)(a) For violations of WAC 260-34-020 (1) and (4), the board of stewards may stay a suspension if the licensee or applicant shows proof of participation in a drug rehabilitation or alcohol treatment program approved or certified by the department of social and health services. Individuals will only be allowed a stay of a suspension under this subsection once in a five-year period. If during the period of the stay a licensee or applicant violates the provisions of chapter 260-34 WAC, the violation for which the stay of suspension was entered will be considered as a prior violation for penalty purposes. Before being granted a stay of the suspension, the licensee or applicant must also agree to comply with the following conditions during the duration of the treatment program:

(i) Remain in compliance with the rehabilitation and/or treatment program.

(ii) Submit to random drug or alcohol testing at the discretion of the board of stewards or commission security investigators.

(iii) Have no violations of chapter 260-34 WAC.

Upon completion of the rehabilitation or treatment program, the licensee or applicant must provide documentation of completion to the board of stewards. Upon making a determination that the licensee or applicant successfully completed the rehabilitation or treatment program, the board of stewards may direct that the final disposition of the violation will be that the licensee or applicant completed a treatment program in lieu of suspension.

(b) If the board of stewards, after a conference, finds that the licensee or applicant failed to comply with the conditions required in (a)(iii) of this subsection, the board of stewards has discretion to impose the original suspension authorized by this rule. If the failure to comply with the conditions of the stay is a violation of chapter 260-34 WAC, the board of stewards may also hold a ruling conference for that rule violation and impose such penalty as is provided for that violation.

~~((8))~~ (9) Any licensee or applicant who tests positive (presumptive or confirmatory) for the presence of an illegal controlled substance is prohibited from performing any duties for which a license is required until the licensee does not test positive (presumptive or confirmatory) for the presence of any illegal controlled substance.

~~((9))~~ (10) Any licensee or applicant who is affected by intoxicating liquor or who has an alcohol concentration of 0.08 percent or higher is prohibited from performing any duties for which a license is required until the licensee is not affected by intoxicating liquor and his/her alcohol concentration is below 0.08 percent.

(11) Any licensee or applicant who has an alcohol concentration of 0.02 percent or higher while on horseback is prohibited from being on horseback until his/her alcohol concentration is below 0.02 percent.

WSR 09-02-063
PROPOSED RULES
HORSE RACING COMMISSION

[Filed January 6, 2009, 7:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-21-063.

Title of Rule and Other Identifying Information: WAC 260-70-675 Bicarbonate testing.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 12, 2009, at 9:30 a.m.

Date of Intended Adoption: February 12, 2009.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by February 9, 2009.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 9, 2009, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to amend WAC 260-70-675 Bicarbonate testing to (1) specify that split samples for bicarbonate testing will be done the same as all other split samples; (2) the trainer or groom escorting the horse to the receiving barn will specify at the time whether or not a split sample is to be taken; and (3) the trainer will be responsible for the cost of collecting, shipping, and testing of the split sample.

Reasons Supporting Proposal: The proposed amendments to this section will transfer responsibility for collection, shipping and testing of split sample to the trainer consistent with other split samples.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

January 6, 2009

R. J. Lopez

Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-036, filed 3/12/07, effective 4/12/07)

WAC 260-70-675 Bicarbonate testing. No bicarbonate-containing substance or alkalizing substance that effectively alters the serum or plasma pH or concentration of bicarbonates or total carbon dioxide in a horse may be administered to a horse within twenty-four hours of post time of the race in which the horse is entered.

An official veterinarian, the board of stewards or the executive secretary acting on behalf of the commission may at their discretion and at any time order the collection of test samples from any horses either in the horse's stall or within the receiving or test barn to determine the serum or plasma pH or concentration of bicarbonate, total carbon dioxide, or electrolytes.

Test samples must not exceed 37.0 millimoles of total carbon dioxide concentration per liter of serum or plasma. A serum or plasma total carbon dioxide level exceeding this value is a violation of this rule. Penalties will be assessed as a Class 4 violation as provided in WAC 260-84-110(6).

Split samples will be ~~((taken from all horses entered to run in a race when bicarbonate testing is to be done))~~ collected as provided in WAC 260-70-600(1), if the trainer or groom escorting the horse requests a split sample be taken. When a split sample ~~((s are))~~ is taken, ~~((they))~~ it will be shipped as soon as practical to the commission-approved ~~((laboratories))~~ laboratory for total carbon dioxide split sample testing. The ~~((commission))~~ trainer is responsible for the cost of collection supplies, shipping, and testing of split samples taken under this section.

WSR 09-02-068

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed January 6, 2009, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-23-089.

Title of Rule and Other Identifying Information: Chapter 246-978 WAC, Death with Dignity Act requirements, creating a new chapter to implement the Washington Death with Dignity Act, Initiative Measure No. 1000.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on February 10, 2009, at 9:00 a.m.

Date of Intended Adoption: February 11, 2009.

Submit Written Comments to: Carol Wozniak, P.O. Box 47814, Olympia, WA 98504-7814, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 753-4135, by February 10, 2009.

Assistance for Persons with Disabilities: Contact Carol Wozniak by January 27, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules are necessary to carry out the department's responsibility to collect information regarding compliance with Initiative Measure No. 1000 and to define qualifications of witnesses designated by long-term care facilities. The proposed rules clarify definitions, reporting requirements for health care providers, confidentiality of the collected information, and qualifications of a witness for patients in long-term care facilities.

Reasons Supporting Proposal: Initiative Measure No. 1000 requires the department to adopt rules to facilitate the collection of information regarding compliance. Section 15 of this initiative requires the department to adopt rules to

facilitate the collection of information regarding compliance with the initiative. Section 3 requires the department to specify in rule the qualifications of the witness designated by a long-term care facility, if the patient is a patient of such a facility.

Statutory Authority for Adoption: Initiative Measure No. 1000.

Statute Being Implemented: Initiative Measure No. 1000.

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

Name of Proponent: Department of Health, 101 Israel Road S.E., Tumwater, WA 98501, governmental.

Name of Agency Personnel Responsible for Drafting: Kara Wagner, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-4206; Implementation and Enforcement: Carol Wozniak, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-4369.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

January 6, 2009

Mary C. Selecky
Secretary

Chapter 246-978 WAC

DEATH WITH DIGNITY ACT REQUIREMENTS

NEW SECTION

WAC 246-978-001 Purpose and authority. This chapter is adopted by the Washington state department of health to implement the provisions of Initiative Measure No. 1000, the Washington Death with Dignity Act.

NEW SECTION

WAC 246-978-010 Definitions. For the purpose of this chapter, the following definitions apply:

(1) "Act" means the "Washington Death with Dignity Act" or Initiative Measure No. 1000 as adopted by the voters on November 4, 2008.

(2) "Adult" means an individual who is eighteen years of age or older.

(3) "Attending physician" means the physician, as defined in chapter 18.72 or 18.57 RCW, who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(4) "Competent" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate an informed decision to

health care providers, including communication through persons familiar with the patient's manner of communicating, if those persons are available.

(5) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(6) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is competent and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

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

(8) "Dispensing record" means a copy of the Pharmacy Dispensing Record form, DOH 422-067.

(9) "Health care facility" means a facility licensed under chapter 70.41, 18.51, or 72.36 RCW.

(10) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by the law to administer health care or dispense medication in the ordinary course of business or practice of a profession and includes a health care facility.

(11) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

- (a) His or her medical diagnosis;
- (b) His or her prognosis;
- (c) The potential risks associated with taking the medication to be prescribed;
- (d) The probable result of taking the medication to be prescribed; and
- (e) The feasible alternatives including, but not limited to, comfort care, hospice care, and pain control.

(12) "Long-term care facility" means a facility licensed under chapter 18.51 or 72.36 RCW.

(13) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

(14) "Patient" means a person who is under the care of a physician.

(15) "Physician" means a doctor of medicine, as defined in chapter 18.71 RCW, or osteopathy, as defined in chapter 18.57 RCW, licensed to practice medicine in the state of Washington.

(16) "Qualified patient" means a competent adult who is a resident of Washington state and has satisfied the requirements of this act in order to obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner.

(17) "Self-administer" means a qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner.

(18) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.

NEW SECTION

WAC 246-978-020 Reporting. (1) To comply with the act, within thirty calendar days of writing a prescription for medication to end the life of a qualified patient, the attending physician shall send the following completed, signed, and dated documentation by mail to the State Registrar, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504:

(a) The patient's completed written request for medication to end life, either using the Written Request for Medication to End My Life in a Humane and Dignified Manner form, DOH 422-063, or in substantially the same form as described in the act;

(b) Attending Physician's Compliance form, DOH 422-064;

(c) Consulting Physician's Compliance form, DOH 422-065; and

(d) Psychiatric/Psychological Consultant's Compliance form, DOH 422-066, if an evaluation was performed.

(2) Within thirty calendar days of a qualified patient's ingestion of lethal medication obtained pursuant to the act, or death from any other cause, whichever comes first, the attending physician shall complete the Attending Physician's After Death Reporting form, DOH 422-068.

(3) To comply with the act, within thirty calendar days of dispensing medication, the dispensing health care provider shall file a copy of the Pharmacy Dispensing Record form, DOH 422-067, with the State Registrar, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504. Information to be reported to the department shall include:

- (a) Patient's name and date of birth;
- (b) Patient's address;
- (c) Prescribing physician's name and phone number;
- (d) Dispensing health care provider's name, address and phone number;
- (e) Medication dispensed and quantity;
- (f) Date the prescription was written; and
- (g) Date the medication was dispensed.

NEW SECTION

WAC 246-978-030 Confidentiality—Liability. All information collected by the department under the act shall not be a public record and may not be available for inspection by the public under chapter 42.56 RCW. This information includes, but is not limited to, the identity of patients, health care providers, and health care facilities.

NEW SECTION

WAC 246-978-040 Qualifications of witness in a long-term care facility. If the patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses must be designated by the long-term care facility. The witness designated by the long-term care facility shall be a person who is not:

(1) A relative of the patient by blood, marriage, or adoption;

(2) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law;

(3) An owner, operator, or employee of a long-term care facility where the qualified patient is receiving medical treatment or is a resident. This witness may be, but is not limited to, an ombudsman, chaplain, or social worker; or

(4) The patient's attending physician at the time the request is signed.

WSR 09-02-076
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed January 7, 2009, 8:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-22-086.

Title of Rule and Other Identifying Information: The department is amending WAC 388-15-021 How does CPS respond to reports of alleged child abuse or neglect?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), or by calling (360) 664-6094, on February 10, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 11, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m., February 10, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by January 27, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To meet the requirements from chapter 220, Laws of 2007.

Reasons Supporting Proposal: The department is amending the child protective services (CPS) rule to establish a ninety day timeline for a CPS investigation. The new language is essential for children's administration to implement the legislature's intent in chapter 220, Laws of 2007.

Statutory Authority for Adoption: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tina Stern, Children's Administration, P.O. Box 45710, Olympia, WA, (360) 902-0860.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rule changes are dictated by statute. An economic analysis was not required under RCW 19.85.025(3), 34.05.328 (5)(b) and (c) as the

proposed rule changes are adopted by reference without material change from chapter 220, Laws of 2007 (SSB 5321).

A cost-benefit analysis is not required under RCW 34.05.328. Rule change is dictated by statute. Rules are dictated by incorporating chapter 220, Laws of 2007 (SSB 5321) and are not considered significant rule changes under RCW 34.05.328 (5)(b)(iii).

December 31, 2008

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-15-098 and 02-17-045, filed 7/16/02 and 8/14/02, effective 2/10/03)

WAC 388-15-021 How does CPS respond to reports of alleged child abuse or neglect? (1) CPS must assess all reports that meet the definition of child abuse or neglect using a risk assessment process to determine level of risk and response time.

(2) CPS must provide an in-person response to alleged victims and must attempt an in-person response to the alleged perpetrator of child abuse and neglect in referrals assessed at moderate to high risk.

(3) CPS may refer reports assessed at low to moderately low risk to an alternative response system.

(4) CPS may interview a child, outside the presence of the parent, without prior parental notification or consent (RCW 26.44.030(10)).

(5) Unless the child objects, CPS must make reasonable efforts to have a third party present at the interview so long as the third party does not jeopardize the investigation (RCW 26.44.030).

(6) CPS may photograph the alleged child victim to document the physical condition of the child (RCW 26.44.050).

(7) CPS ~~((must establish in procedure, timelines for the completion of investigations and standards for written findings))~~ attempts to complete investigations within forty-five days. In no case shall the investigation extend beyond ninety days unless the investigation is being conducted under local protocol, established pursuant to chapter 26.44 RCW, and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary.

WSR 09-02-079

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 08-12—Filed January 7, 2009, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-15-021.

Title of Rule and Other Identifying Information: Upper Kittitas ground water rule, chapter 173-539A WAC.

Hearing Location(s): Walter Strom Middle School, Multi-Purpose Room, 2694 State Route 903, Cle Elum, WA, on February 11, 2009, at 7:00 p.m.; and at the Hal Holmes Center, 209 Ruby Street, Ellensburg, WA, on February 12, 2009, at 7:00 p.m.

Date of Intended Adoption: March 10, 2009.

Submit Written Comments to: Melissa Downes, 15 West Yakima Avenue, Suite 200, Yakima, WA 98902-3452, e-mail mnih461@ecy.wa.gov, fax (509) 575-2809, by February 20, 2009.

Assistance for Persons with Disabilities: Contact Judy Beitel, (360) 407-6878, by February 2, 2009. Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule establishes a partial withdrawal of ground water within a portion of WRIA 39 in Kittitas County, Washington for the purpose of implementing a memorandum of agreement (MOA) entered into with Kittitas County on April 7, 2008. The partial withdrawal and restrictions are designed to minimize the potential for new a [a new] use of water that negatively affect flows in the Yakima River and its tributaries and does this in a way that minimizes effects on economic development.

Under RCW 34.05.350 the agency for good cause finds:

- The Yakima Basin is one of the state's most water-short areas.
- Water rights with priority dates as old as 1905 were shut off during the 2001 and 2005 droughts, including the town of Roslyn's municipal supply.
- Water supply in the Yakima Basin is limited and over-appropriated.
- Western portions of Kittitas County are experiencing rapid growth and this growth is being largely served by exempt wells.
- Exempt wells in this area may negatively affect the flow of the Yakima River or its tributaries.

Statutory Authority for Adoption: RCW 90.54.050, 90.03.360, chapters 43.27A, 90.44 RCW.

Statute Being Implemented: RCW 90.54.050, 90.03.-360, chapters 43.27A, 90.44 RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Tom Tebb, Central Regional Office, (509) 574-3989; Implementation and Enforcement: Melissa Downes, Central Regional Office, (509) 454-4259.

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

Small Business Economic Impact Statement

Note: Due to size limitations relating to the filing of documents with the code reviser, the small business economic impact statement (SBEIS) does not contain the appendices that further explain ecology's analysis. Additionally, it does not contain the raw data used in this analysis, or all of ecology's analysis of this data. However, this information is being placed in the rule-making file, and is available upon request, Publication # 09-11-002.

Executive Summary

1. BACKGROUND: The Washington state department of ecology (ecology) is proposing a new rule, chapter 173-539A

WAC, for the upper Kittitas County groundwater area. The rule is designed to minimize future adverse effects on flows in the Yakima River and its tributaries, while minimizing adverse effects on the local economy. This chapter puts in place permit-exempt well management measures identified in the memorandum of agreement (MOA) between Kittitas County and department of ecology. It creates a partial withdrawal of groundwater within upper Kittitas County by limiting the use of the groundwater exemption (RCW 90.44.050) for residential purposes.

Chapter 90.44 RCW regulates the use of groundwater of the state of Washington, and is supplemental to chapter 90.03 RCW, which regulates the use of surface waters of the state. The legislature enacted chapter 90.44 RCW to extend application of surface water statutes to the appropriation and beneficial use of groundwater within the state.

Ecology is developing and issuing this SBEIS as part of its rule adoption process and to meet chapter 19.85 RCW. Ecology intends to use the information in the SBEIS to ensure that the proposed rule is consistent with legislative policy.

Rule Proposals: The key elements of the proposed rule include:

- Restricting permit-exempt groundwater withdrawals.
- Allowing Kittitas County to require hydraulic assessments.
- Measuring and reporting new groundwater withdrawals.

2. ANALYSIS OF COMPLIANCE COSTS FOR WASHINGTON BUSINESSES: We have assessed the impacts of the proposed rule by analyzing and comparing water right management under the proposed rule, in contrast to current practices. The current framework or "baseline" includes the use of water by permit-exempt wells (RCW 90.44.050) and any administrative procedures for considering applications for both new water rights and changes to existing water rights. Chapter 90.44 RCW is also part of this legal baseline.

We provide a brief description of compliance requirements below.

Water Rights Administration Under the Rule: Under the proposed rule, Kittitas County and ecology will manage groundwater supplies until more is known about the aquifers and water supplies in northern Kittitas County. The proposed rule limits groundwater withdrawals in northern Kittitas County and addresses water supply issues for newly created residential developments and existing parcels.

It limits new residential developments served by wells to a withdrawal of 5,000 gallons per day (gpd) for each forty acres of land.

It limits parcels less than ten acres created after March 28, 2002 to 1,250 gpd.

It limits parcels greater than ten acres created after March 28, 2002, and those that create public water systems to an average of 125 gpd per acre, up to a maximum of 5,000 gpd.

For more detail on changes to water right administration, see the cost-benefit analysis.

Surface Water: There are no changes under this rule to surface water permit processing. In some cases, there may be

expedited processing to place surface water rights into the trust water program. Ecology may also issue new surface water permits where trust water rights are held for mitigation purposes in the Yakima pilot water bank.

Groundwater Permits: Under the proposed rule, expedited processing of applications for groundwater hydraulically associated with the Yakima River may occur if the proposed use is for:

- Domestic.
- Group domestic.
- Watering lawn or noncommercial garden.
- Municipal water supply purposes.

Ecology may also issue new ground water permits when trust water rights are held for mitigation purposes in the Yakima pilot water bank. This cannot occur until ecology reaches a new agreement with the Yakima Nation and the United States Bureau of Reclamation that replaces or amends the 1999 settlement agreement.

Permit-Exempt Ground Water: Under the proposed rule, permit-exempt well users may use to 5,000 gpd for a new residential development¹.

¹ Any division of land involving an application that vested after July 8, 2008.

When outdoor watering may occur, ecology assumes each parcel will use 1,250 gpd for residential purposes, unless a condition is recorded as a covenant to use a lesser amount. If a covenant placed on the parcels restricts all use of permit-exempt ground water for watering lawn or garden, ecology and the county will assume each parcel will use a maximum of 350 gpd.

Changes and Transfers of Water Rights: Ecology will continue to process changes and transfers of existing water rights as allowed by chapters 90.03 and 90.44 RCW.

Impacts to Businesses in the Kittitas Groundwater Area: Most businesses are not directly affected by the proposed rule for the Kittitas groundwater area. Those that are required to comply with the rule are residential users of permit-exempt groundwater. Although not directly required to comply with the rule, residential land development businesses can be affected by the rule indirectly. The indirect effects may include adding well-use limit provisions to covenants that would then be passed on to the residential purchasers with their deed.

The proposed rule will also not directly affect existing water right holders.

Impacts to Businesses Dependant on Residential Permit Exempt Wells: As stated above, the proposed rule does not directly affect businesses but there is one possible cost for land development businesses.

Costs to Firms and Required Professional Services: As mentioned above, generally no business entities are required to comply with the proposed rule. The exception is if they would be required to place limits on permit-exempt well use in covenants for their residential developments.

Reporting and Recordkeeping: Permit Exempt Well Users: The proposed rule adds no reporting or record-keeping requirements for small businesses using permit-exempt wells. This rule restricts only residential uses.

Additional Professional Services: Ecology expects no added professional services for businesses, other than devel-

opers. The rule affects only new residential uses of permit-exempt wells. Developers may need to hire persons to install and calibrate source meters.

Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: We expect no additional equipment, supplies, labor, or administrative costs from the proposed rules.

Other Compliance Requirements: As mentioned above, business entities that do residential land development may be required to comply with the proposed rule by adding well withdrawal limits to the covenants of the developed land.

3. QUANTIFICATION OF COSTS AND RATIOS: It is the purpose of this section to evaluate whether:

The proposed rules could cause businesses to lose sales or revenue.

The proposed rules would have a disproportionate impact on small businesses.

Revenue Impacts: As noted previously, only residential land development businesses may be required to comply with the proposed rule.

Existing water right holders might see some loss in the value of existing water rights. This in theory could lower revenues. Ecology recognizes this effect is likely to be very small and so we do not consider it further.

Distribution of Compliance Costs: No business is required to curtail water withdrawals as required by the rule for residential permit-exempt water uses.

It is possible that small businesses could have costs under the proposed rules if they provide service to residential development. However, these businesses are not required to comply with the rule therefore, are exempt from evaluating associated costs. This rule, for the most part, only places conditions of use on residential water uses, not the industries that serve them.

Known Costs: Businesses complying with the rule will incur very small, if any, costs. Businesses' entities that do residential land development may be indirectly required to comply with the proposed rule by adding well withdrawal limits to the covenants of the development. Ecology is unable to determine the very small costs of adding further wording to a development covenant. We are also unsure if the rule will affect future permit-exempt water rights.

Ecology has determined that this is a minor cost as defined in RCW 19.85.020(2) and 19.85.030 exempts ecology from needing to prepare a small business economic impact analysis.

The small costs to those required to comply with the proposed rule, may impose disproportionate costs to small businesses.

Conclusions: Only residential land development businesses may be indirectly required to comply with the proposed rule. Because the costs associated with adding some extra wording to development covenants is so small, ecology was unable to determine any costs to small businesses from this proposed rule.

Ecology has determined that this is a minor cost as defined in RCW 19.85.020(2) and 19.85.030 exempts ecology from needing to prepare a small business economic

impact analysis. Ecology prepares this analysis for informational purposes only.

4. ACTIONS TAKEN TO REDUCE THE IMPACT OF THE RULE ON SMALL BUSINESS: As noted above, it is unlikely that there will be significant adverse impacts on businesses (small or large) as part of this rule making versus the baseline. Therefore, ecology took no specific measures to reduce or mitigate these rule impacts. In general, only residential land development businesses may be affected.

5. THE INVOLVEMENT OF SMALL BUSINESS IN THE DEVELOPMENT OF THE PROPOSED RULE AMENDMENTS: Ecology and Kittitas County entered into a MOA calling for a study to better define the hydrogeology of upper Kittitas County. The study will provide information about water availability and the relationship between surface waters and groundwater. Ecology will use the information from the study to develop long-term water management strategies.

The proposed rule limits groundwater withdrawals in northern Kittitas County and addresses water supply issues for newly created residential developments and existing undeveloped parcels. It limits new residential developments served by wells to a withdrawal of 5,000 gallons per day for each forty acres of land.

Small business was involved in this public process.

6. THE STANDARD INDUSTRIAL CODES (SIC) OF IMPACTED INDUSTRIES: The industries listed below may be required to comply with the proposed rule. The following list shows SIC² for small businesses that may be affected in complying with the rule. This serves as a representative sample of potential future businesses that may be affected.

² Ecology has used North American Industry Classification System (NAICS) codes rather than SIC. It is a comparable system, used at the federal and state level, and has replaced SIC codes in common use.

Table 1. Industries potentially affected by proposed rules (NAICS):

Land Subdivision and Development	Code 2331
Land Subdivision	Code 2372

7. IMPACTS ON JOBS: Ecology expects that small businesses will rely on land use planning professionals (planners, architects, hydrogeologists, and engineers) to help prepare materials to show how their proposals meet the requirements described in WAC 173-539A-050 and 173-539A-055 of the proposed rule. These small businesses would also likely rely on attorneys to develop the covenants that are required to develop lots with water supplies using less than 1,250 gpd. These services would already be required for land development and would not be a result of this rule. Ecology expects little or no job impacts to come from the minor costs associated with this proposed rule.

A copy of the statement may be obtained by viewing the web site at http://www.ecy.wa.gov/programs/wr/cro/kittitas_wp.html, or contacting Lanessa Inman, Water Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6862, fax (360) 407-6574, e-mail linm461@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by viewing the web site at <http://www.ecy.wa.gov/>

[programs/wr/cro/kittitas_wp.html](http://www.ecy.wa.gov/programs/wr/cro/kittitas_wp.html), or contacting Lanessa Inman, Water Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6862, fax (360) 407-6574, e-mail linm461@ecy.wa.gov.

January 6, 2009

Polly Zehm

Deputy Director

Chapter 173-539A WAC

UPPER KITTITAS GROUND WATER RULE

NEW SECTION

WAC 173-539A-010 Purpose. (1) This chapter implements the exempt well management measures identified in the memorandum of agreement between Kittitas County and the department of ecology (ecology) by creating a partial withdrawal of ground water within upper Kittitas County that limits the use of the ground water exemption (RCW 90.44.-050) for residential purposes. This chapter also requires measuring of new uses for residential purposes of ground water under the exemption within all of Kittitas County.

(2) Ecology designed the partial withdrawal and related requirements to minimize the adverse effects on flows in the Yakima River and its tributaries, while minimizing adverse effects on the local economy.

(3) Based on technical research, Kittitas County may consider the potential for impairment of existing water rights, along with any other environmental impacts, during review of certain land use applications. The county may require mitigation or other ways to manage risks to reduce or eliminate impacts.

(4) The requirements in this chapter do not apply to areas outside of Kittitas County.

NEW SECTION

WAC 173-539A-020 Authority. RCW 90.54.050 provides that when lacking enough information to support sound decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing committees of the legislature on water management. Further, RCW 90.44.050 authorizes ecology to establish metering requirements for exempt wells where needed.

In 2007, ecology received a petition seeking unconditional withdrawal of all unappropriated ground water in Kittitas County until enough is known about potential effects from new exempt wells on senior water rights and stream flows. Ecology consulted with standing committees of the Washington state legislature on the petition and proposed withdrawal. Ecology then rejected the proposed unconditional withdrawal, and instead signed a memorandum of agreement (MOA) with Kittitas County, which this chapter implements by establishing a partial withdrawal and other requirements.

NEW SECTION

WAC 173-539A-030 Definitions. The definitions provided below are intended to be used only for this chapter.

"Adjacent" means all parcels that either:

- Have any common boundary;
- Are separated only by roads, easements, or parcels in common ownership; or
- Are within five hundred feet at the nearest point.

"Application" as used in WAC 173-539A-050 and 173-539A-055 means a land use application to Kittitas County requesting:

- A subdivision;
- Short subdivision;
- Large lot subdivision;
- Administrative or exempt segregation;
- Binding site plan; or
- Performance based cluster plat.

"Common ownership" means any type of ownership interest held by an applicant including an oral or written contract for joint development between the applicant and any owner of adjacent lands. A contract for joint development includes, but is not limited to, contracts providing for shared use of services for permitting, engineering, architecture, environmental review, clearing or preparing land, or building roads, structures, or common water or sewer infrastructure.

"Ecology" means the department of ecology.

"Exemption" or **"ground water exemption"** means the exemption from the permit requirement for a withdrawal of ground water provided under RCW 90.44.050.

"Group use" means use of the ground water exemption for two or more parcels. A group use includes use of the exemption for all parcels of a proposed development and all parcels that are adjacent and held in common ownership with the proposed new residential development where use of the exemption commenced or will commence within five years of the date the current application was filed.

"Hydrogeologic assessment" means the report prepared by a licensed hydrogeologist addressing the elements identified in WAC 173-539A-060.

"Lands" refers to both singular "land" and plural "lands."

"MOA" or **"Memorandum of Agreement"** means the "Memorandum of Agreement between Kittitas County and the State of Washington, Department of Ecology Regarding Management of Exempt Ground Water Wells in Kittitas County" of April 7, 2008.

"New residential development" means any division of land involving an application that vested after July 8, 2008.

"New use of the ground water exemption" means a use begun on or after July 8, 2008.

"New use for residential purposes" means any new use of the ground water exemption for a new or additional residential purpose associated with an existing or new structure.

"Parcel" means any parcel, land, tract or other unit of land.

"Residential purposes" means all domestic use and/or lawn and noncommercial garden use of water on the parcel(s) in question under the ground water exemption. A dwelling unit is not required for a residential purpose to be present.

Domestic use is a separate and distinct purpose of use from lawn and noncommercial garden use. Each use may have a different commencement date under the exemption. For purposes of this chapter all use limits refer to combined domestic and lawn and noncommercial garden use. All use of the lawn and noncommercial garden use may not exceed a one-half acre as required in RCW 90.44.050 for either a group domestic use or a single domestic use.

"Total water supply available" means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.

"Upper Kittitas County" is the area of Kittitas County delineated in WAC 173-539A-990.

"Vested" means that under the applicable land use laws an application is considered complete such that the application shall generally be reviewed under laws existing at the time of vesting, unless a special exception may apply. All applications for plat approvals including preliminary plat approvals which were approved by Kittitas County prior to July 8, 2008, are considered to be vested.

NEW SECTION

WAC 173-539A-050 New use of the exemption for new residential developments in upper Kittitas County.

(1) This section applies only to applications for residential developments that vest or vested on or after July 8, 2008.

(2) Any new residential development within upper Kittitas County must not use more than 5,000 gallons per day (gpd) from the ground water exemption for residential purposes. When filing an application for a new residential development, the applicant must file a sworn statement to this effect with ecology and Kittitas County, to be recorded against the parcels in question. The residential development includes all parcels that are part of the proposed development or a larger group use.

(3) For use of the 5,000 gpd exemption limit for a new residential development, ecology and the county will assume each parcel will use 1,250 gpd for residential purposes, unless a condition is recorded as a covenant to use a lesser amount. If no exempt lawn or noncommercial garden watering will occur, and a covenant so restricting such use is placed on the parcel, ecology and the county will assume each parcel will use a maximum of 350 gpd.

NEW SECTION

WAC 173-539A-055 New uses of the exemption for residential purposes in upper Kittitas County. (1) **New uses for residential purposes on parcels created after March 28, 2002, in upper Kittitas County:**

(a) **Parcels less than ten acres** created after March 28, 2002, may use water under the ground water exemption for residential purposes in an amount that does not exceed the lowest amount below:

(i) The amount stated in conditions or covenants on water use placed on the plat that created the parcel;

(ii) The amount stated in conditions on water use specified in the permit/approval of the public water system that is intended to serve the parcel; or

(iii) 1,250 gpd.

(b) Parcels **ten acres and greater** created after March 28, 2002, may use water under the ground water exemption for residential purposes in an amount that does not exceed the lowest amount below:

(i) The amount stated in conditions or covenants on water use placed on the plat that created the parcel;

(ii) The amount stated in conditions on water use specified in the permit/approval of the public water system that is intended to serve the parcel; or

(iii) An average rate of use of 125 gpd per acre up to a maximum of 5,000 gpd.

(c) This section does not restrict an owner from using more water through other legal permitted water rights.

(2) New uses for residential purposes on parcels created on or before March 28, 2002, in upper Kittitas County:

(a) Parcels created on or before March 28, 2002, must use no more than 5,000 gpd for all residential purposes.

(b) Such use may be further restricted by covenants or conditions on water use placed on the plat or in a land use approval, conditions on a public water system approval, or if a legal restriction applies to such use.

NEW SECTION

WAC 173-539A-060 Hydrogeologic assessment. (1) If Kittitas County requires a hydrogeologic assessment, the hydrogeologic assessment must be:

(a) Submitted to Kittitas County and ecology in the form of a written report, signed by a licensed hydrogeologist; and

(b) Available as part of the project review under the State Environmental Policy Act.

(2) The hydrogeologic assessment may be based on available existing information or other new information as required by Kittitas County.

(3) The required elements of the report are as follows:

(a) Scope of the proposal including all of the following:

- The location;
- Proposed water source(s);
- Water use amounts; and
- The timing of the proposed use.

(b) General description including all of the following:

- The local geologic, hydrogeologic, and hydrologic setting;
- Identification of surface water and ground water features;

- Water sources;
- Recharge/discharge characteristics; and
- Surface water and ground water interactions.

(c) Site-specific description.

(d) Inventory and description of all of the following:

- All state issued surface water and ground water rights;
- All state issued surface water and ground water claims;

and

- Exempt wells located within a one-year and five-year area of pumping influence.

(e) Identification and description of existing surface water or ground water rights that may be adversely affected by the proposed use of the ground water exemption.

(f) The licensed hydrogeologist's written professional opinion on the potential of the proposal to cause impacts to the natural and built environment including surface water flows.

(g) A statement of the report's limitations regarding its intended use, including scope, extent, and available data.

NEW SECTION

WAC 173-539A-070 Measuring and reporting water use.

(1) For all uses of the ground water exemption for residential purposes within upper Kittitas County that commence after July 8, 2008, or within the remainder of Kittitas County that commence after the effective date of this rule, a source meter must be installed at the point of withdrawal, in compliance with such requirements as prescribed by Kittitas County and WAC 173-173-100.

(2) Metering data must be collected daily and reported within thirty days of the end of the recording period to Kittitas County and ecology. The following table shows the recording periods and the due dates for each metering report:

Recording Period	Report Due No Later Than:
October 1 - March 31	April 30
April 1 - June 30	July 30
July 1 - July 31	August 30
August 1 - August 31	September 30
September 1 - September 30	October 30

NEW SECTION

WAC 173-539A-080 Expedited processing of trust water applications and new water right applications associated with trust water rights.

(1) RCW 90.42.100 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.

(2) Ecology may expedite the processing of an application for a new surface water right or a ground water right hydraulically related to the Yakima River, under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:

(a) The application must identify an existing trust water right or pending application to place a water right in trust, if that such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.

(b) The proposed use on the new application must be for domestic, group domestic, lawn or noncommercial garden, and/or municipal water supply purposes of use within the

Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water rights.

(3) If an application for a new water right is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be expedited.

(4) Upon determining that the application is eligible for expedited processing ecology will do the following:

(a) Review the application to withdraw ground water to ensure that ground water is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.

(b) Condition the permit to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit.

(c) Condition each permit to ensure that the tie to the trust water right is clear, and that any constraints in the trust water right are accurately reflected.

(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."

NEW SECTION

WAC 173-539A-090 Educational information, technical assistance and enforcement. (1) To help the public comply with this chapter, ecology and Kittitas County may prepare and distribute technical and educational information on the scope and requirements of this chapter.

(2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.

(3) To mitigate for potential impact of an exempt use to the total water supply available and to avoid potential future regulation in favor of senior water rights, ecology encourages exempt users to participate in a mitigation program through the Yakima Basin Pilot Water Bank or to obtain a senior water right.

(4) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable, including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.

NEW SECTION

WAC 173-539A-100 Appeals. All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

WAC 173-539A-110 Regulation review. (1) The exempt well management requirements in this chapter will be reviewed and may be revised as part of a long-term management program. Ecology and Kittitas County intend to develop the long-term management program after they have completed a ground water study that focuses on portions of Kittitas County not fully addressed by the current USGS ground water study of the Yakima River Basin.

(2) Ecology may review this chapter whenever:

(a) New information is available;

(b) A change of condition occurs;

(c) Statutory changes warrant the review; or

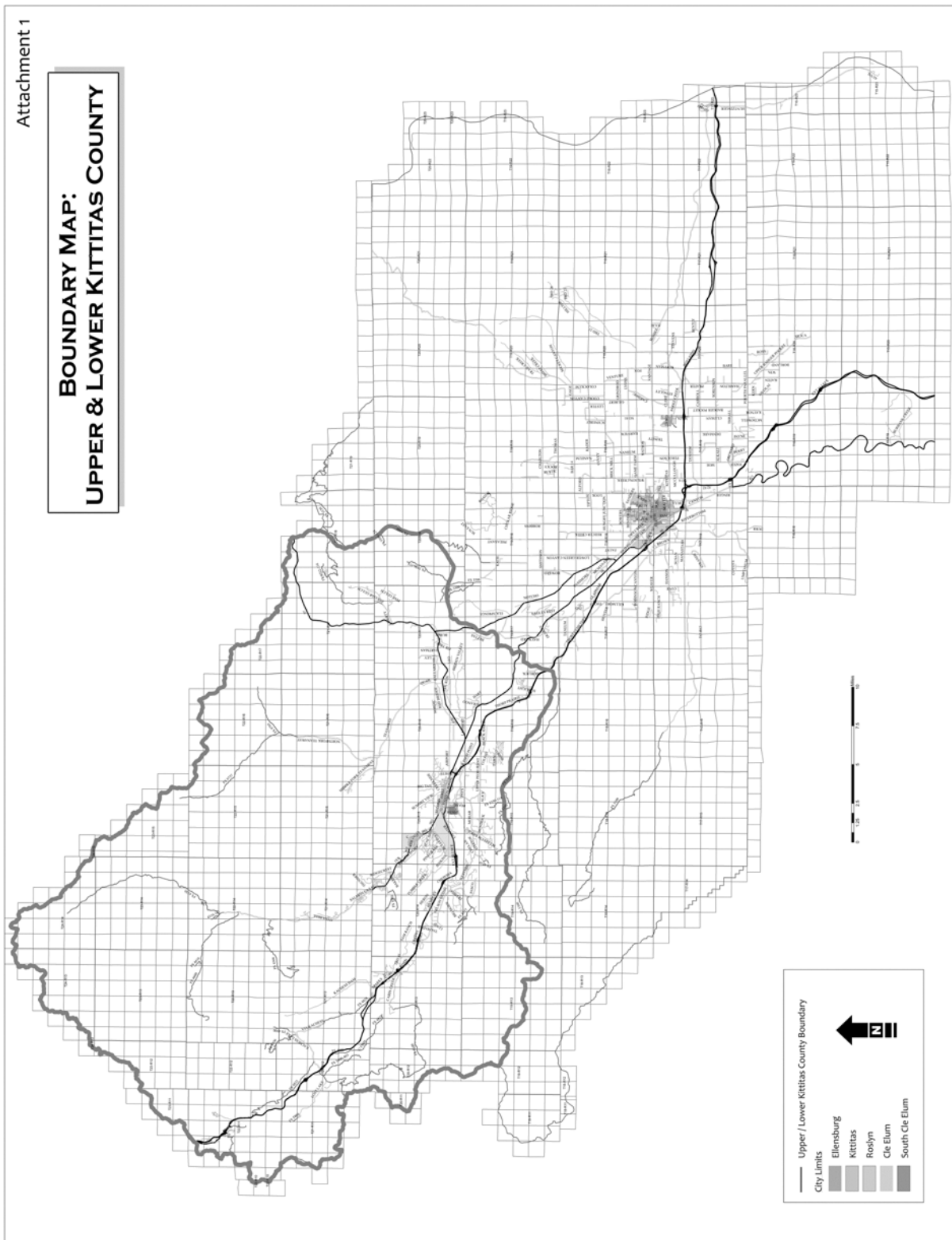
(d) Reviews described in WAC 173-539A-060 show changes are necessary.

(3) Kittitas County, or interested citizens may request that ecology exercise its discretion to review this chapter at any time.

(4) If ecology begins a review of this chapter, it will consult with Kittitas County.

NEW SECTION

WAC 173-539A-990 Appendix 1—Map of upper Kittitas County boundaries.



WSR 09-02-084

PROPOSED RULES

BELLEVUE COMMUNITY COLLEGE

[Filed January 7, 2009, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-23-014.

Title of Rule and Other Identifying Information: Chapter 132H-106 WAC, Bylaws and standing orders of Community College District VIII.

Hearing Location(s): BCC Library Media Center, 3000 Landerholm Circle S.E., D126, Bellevue, WA 98007, on February 11, 2009, at 10:00-11:00 a.m. and 3:00-4:00 p.m.

Date of Intended Adoption: March 11, 2009.

Submit Written Comments to: Lucinda Taylor, 3000 Landerholm Circle S.E., A201, Bellevue, WA 98007, e-mail ltaylor@bellevuecollege.edu, fax (425) 564-2261, by February 11, 2009.

Assistance for Persons with Disabilities: Contact Sallee Hibbard by February 5, 2009, TTY (425) 564-4184 or (425) 564-2209.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal changes the name of "Bellevue Community College" to "Bellevue College."

All references to Bellevue Community College in Title 132H WAC will need to be changed accordingly.

Reasons Supporting Proposal: The phrase "community college" in our name is widely understood to mean an institution that educates students to the associate-degree level. Since we will graduate our first bachelor degree students this spring, we plan to change our name to Bellevue College to reflect our authority to award bachelor degrees and so it may appear on the credentials of our first bachelor graduates.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Proponent: Bellevue Community College District VIII, governmental.

Name of Agency Personnel Responsible for Drafting: Lucinda Taylor, Bellevue Community College, A201, (425) 564-2302; Implementation: Gaynor Hills, Bellevue Community College, A102, (425) 564-2282; and Enforcement: Jean Floten, Bellevue Community College, A201, (425) 564-2301.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This policy does not impact small business.

A cost-benefit analysis is not required under RCW 34.05.328. The costs associated are minimal and can be absorbed under normal operating expenses. The benefits are intangible and accrue more to students receiving their degrees from the college than to the college itself.

January 7, 2009
Lucinda A. Taylor
Rules Coordinator

Title 132H WAC

Bellevue (~~Community~~) College

AMENDATORY SECTION (Amending Order 111, Resolution No. 202, filed 6/17/92)

WAC 132H-106-010 Board of trustees. The board of trustees is an agency of the state and derives its authority as described in (~~chapter 8, Laws of 1967 ex. Sess~~) RCW 28B.50.100 and RCW 28B.50.140. It shall be the responsibility of the board of trustees to establish policy and to evaluate the total college program. The board of trustees shall appoint a college president to administer the college and shall delegate to him/her the authority and responsibility for implementation of board policy.

AMENDATORY SECTION (Amending Order 111, Resolution No. 202, filed 6/17/92)

WAC 132H-106-020 Offices of the board of trustees. The board of trustees shall maintain an office at Bellevue (~~Community~~) College, 3000 Landerholm Circle S.E., Bellevue, Washington 98007-6484, where all records, minutes and the official college seal shall be kept.

Persons may obtain information from and submit written comments or requests to the secretary of the board who is located in this office.

AMENDATORY SECTION (Amending Order 111, Resolution No. 202, filed 6/17/92)

WAC 132H-106-040 Officers of the board. (~~Annually, at its June meeting~~) The board elects from its membership a chair and vice-chair to serve for the ensuing year. (~~In addition,~~) The president of Bellevue (~~Community~~) College or the president's designee serves as secretary to the board of trustees as specified by state law.

AMENDATORY SECTION (Amending Order 111, Resolution No. 202, filed 6/17/92)

WAC 132H-106-050 Seal and name of the college. The board of trustees of Community College District VIII shall maintain an official seal for use upon any or all official documents of the board. The seal shall have inscribed upon it the name of the college which shall be: Bellevue (~~Community~~) College.