



PROPOSED RULE MAKING

CR-102 (August 2017) (Implements RCW 34.05.320)

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FILED

DATE: December 12, 2018

TIME: 11:07 AM

WSR 19-01-034

Agency: Department of Children, Youth, and Families

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 18-09-120 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) New Chapter 110-300D WAC Outdoor Preschool Pilot Project. New WACs 110-300D-0001 Authority; 110-300D-0005 Findings and intent; 110-300D-0010 Definitions; 110-300D-0015 Pilot project licenses-licensing rules; 110-300D-0020 Denial, modification, suspension, and revocation of a pilot project license-Right of review; and 110-300D-0025 Process of seeking review.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 24, 2019	1:00 PM	1110 Jefferson St. SE, St. Helens Conference Room, Olympia, Washington	

Date of intended adoption: January 30, 2019 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: DCYF Rules Coordinator

Address: P. O. Box 40975

Email: dcyf.rulescoordinator@dcyf.wa.gov

Fax: (360) 902-7903

Other: Submit comments online at <https://del.wa.gov/PolicyProposalComment/Detail.aspx>

By (date) January 24, 2019

Assistance for persons with disabilities:

Contact DCYF Rules Coordinator

Phone: (360) 902-7956

Fax: (360) 902-7903

TTY:

Email: dcyfrulescoordinator@dcyf.wa.gov

Other:

By (date) January 21, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed rules establish (1) how to apply to participate in an outdoor preschool pilot, (2) the criteria the department will consider when reviewing applications and selecting pilot participants, and (3) the minimum terms and conditions applicants must agree to in order to participate in the pilot. The proposed rules also establish what constitutes enforcement actions for pilot participants and clarify their appeal rights.

Reasons supporting proposal: The department is implementing a legislatively mandated pilot project to explore the possibility of licensing outdoor preschools. The proposed rules establish an application and selection process that promotes consistent fair treatment for applicants. Additionally, the department must actively protect the health and safety of children enrolled in regulated programs and the proposed rules ensure that pilot participants are completing background checks and adhering to health and safety requirements the department determines are necessary for the pilot. Finally, the department is the lead agency that administers the federal Child Care Development Fund for the state of Washington and must ensure that pilot participants comply with federal requirements if they enroll children who participate in the Working Connections Child Care program.

Statutory authority for adoption: RCWs 43.216.055, 43.216.065, and 43.216.740; chapter 43.216 RCW.

Statute being implemented: RCW 43.216.740

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Department of Children, Youth, and Families

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Debbie Groff	Tri-Cities	(509) 380-4247
Implementation:	DCYF	statewide	
Enforcement:	DCYF	statewide	

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: A cost benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328(5)(i). DCYF does not voluntarily make that section applicable to the adoption off the proposed rules.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency’s analysis showing how costs were calculated. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

SECTION 1:

Describe the proposed rule, including: a brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

RCW 43.216.740 requires DCYF to establish a four year pilot project to license “outdoor nature-based early learning and child care programs” (“outdoor preschools”). As provided in RCW 43.216.740, the pilot began on August 31, 2017 and ends June 30, 2021.

Proposed chapter 170-300D WAC will establish procedural requirements for participating in the pilot. These proposed rules reference a separate document that outdoor preschool pilot participants must sign in order to participate in the pilot project, the Outdoor Classroom Agreement (“Agreement”). One stipulation of this agreement is that outdoor preschools must adhere to the programmatic, health, and safety standards set out in another document, the Touchstone Standards (“Standards”). These standards can be found on the DCYF website at https://www.dcyf.wa.gov/sites/default/files/pdf/outdoor_preschool_pilot_standards.pdf. Section 0100 of these standards requires all participating outdoor preschool provider position types--licensees, directors, assistant directors, program supervisors, lead teachers, assistant teachers, instructional aides, aides, and volunteers—to obtain certain professional credentials. To comply with this section, an outdoor preschool program and its employees must achieve or complete each requirement listed under the applicable subsection prior to assuming the responsibilities of that position. Subsections include qualifications such as age limits, educational achievements, time commitments, training requirements, creating a program curriculum, ensuring staff-to-child ratios are met, and more. Section 0106 of the Standards requires only those staff at programs that are located more than 30 minutes from emergency medical care to obtain a Wilderness First Aid certificate. This certificate is in lieu of the regular First Aid certificate. Additionally, operating standards require pilot participants to provide meals and snacks for children in attendance who do not bring their own food as well as comply with safety requirements.

SECTION 2:

Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

Table A:

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
624410	child day care services*	40**	\$1,548***	937.9591562****

*The NAICS category for child day care services is believed to be for traditional, indoor care offered in child care centers and family home. There is no NAICS category specific to outdoor programs as defined under RCW 43.216.740.

**According to notes of RCW 43.216.740, the legislature estimated that there were more than 40 outdoor nature-based early learning and child care programs in Washington as of July 2017. However, there are currently only ten such programs participating as “implementers” of the outdoor preschool pilot project. Implementers, like all participants, must comply with the proposed requires of chapter 110-300D WAC. Additionally, implementers are the subset of pilot project participants who contractually agree to adhere to the Agreement and Standards throughout the project.

***These costs are derived from the NAICS category of child day care service and are thus a comparable estimate. At this time, these numbers cannot be provided specifically for outdoor preschools operating in Washington state or for outdoor preschools participating as implementers in the pilot project.

SECTION 3:

Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

Proposed chapter 110-300D WAC, through the use of the Agreement and Standards, requires outdoor preschool pilot project participants to be of a certain age, achieve educational requirements, meet regulatory standards (such as developing a program curriculum or adhering to staff-to-child ratios), complete training, perform duties applicable to their role, etc. For the most part, the requirements of this section do not have a cost associated with them because they are duties a provider must perform such as providing support to staff, setting educational goals, having a certain number of years’ experience in a child care setting, etc. However, the requirements to obtain educational certificates do impose new costs on provider roles that did not have these requirements before. Under proposed chapter 110-300D WAC, the Agreement, and the Standards; the roles below require the following early childhood education (ECE) or other certifications:

Outdoor preschool implementing programs:

- Directors – ECE State Certificate
- Assistant Directors – ECE State Certificate
- Program Supervisors – ECE State Certificate
- Lead Teachers – ECE Short Certificate
- Assistant Teachers – ECE Initial Certificate

The estimated cost to complete each certification without any prerequisite courses is as follows:

- ECE State Certificate = \$8,648
- ECE Short Certificate = \$3,680
- ECE Initial Certificate = \$2,208

The estimated cost for pre-service screening of all providers:

- Tuberculosis Screening = \$55
- Comprehensive Background Check = \$68

Child Care Basics training is required in section 0106 of the Standards and must be completed by all outdoor preschool staff. Child Care Basics is a series of training modules that cover recognizing and reporting child abuse, emergency preparedness, serving children experiencing homelessness, child restraint procedures, and medication management.

- Child Care Basics = \$250

Additional training requirements are first aid, bloodborne pathogens, and CPR and outdoor preschool staff who will serve food must obtain a Food Worker card. Probable cost of these trainings:

- First Aid, CPR, and Bloodborne Pathogens = \$120

- Food Worker = \$10.

The estimated cost to obtain a certificate that may be specific to outdoor preschools located 30 minutes from emergency medical services:

- Wilderness First Aid = \$235

Lastly, if an outdoor preschool elects to engage in developmentally appropriate water activities in bodies of water more than 24 inches deep, there will have to be a lifeguard present. Outdoor preschools may elect to have a staff member be the lifeguard. The estimated cost of lifeguard training is \$239.

Additionally, proposed chapter 110-300D WAC, through the use of the Agreement and Standards, requires outdoor preschool pilot project participants to provide meals and snacks to children in care, unless the children bring their food. The USDA Child Care meal and snack rates per child are:

- Breakfast, \$1.31
- Lunch and supper, \$2.46
- Snack, 73¢

Finally, there are safety standards to keep children within the preschool boundaries, outfitted with weather appropriate clothing, and to keep a first aid kit on premises and replenish the contents as they are used. Pilot participants must purchase a \$30 first aid kit and replenish the contents as needed and traffic cones at an approximate cost of \$12 each to establish program boundaries. The cost for weather appropriate clothing varies widely since programs receive donations and purchase used clothing. Some parents and families provide extra clothes for their own child.

SECTION 4:

Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.

The cost to complete certification requirements are available online, typically through a college of learning program's website. This statement assumes an Implementer is required to complete a new certification under proposed chapter 110-300D WAC, the Agreement, and the Standards without having completed any prerequisite courses. Costs are estimated based on completing each certificate from the starting point. Accordingly, even the least expensive certificate (\$2,208) costs more than both the minor-cost threshold based on payroll (\$1,548) and the minor-cost threshold based on receipts (\$938) for the child care/early learning industry in Washington state.

If an outdoor preschool Implementer program elects to cover the cost for providers already working in the program, or those promoted from one role to another within the program, the proposed rule would impose more-than-minor-costs. The cost would also depend on how many providers working for an Implementer would be required to complete new certifications. Alternatively, if a program elects not to cover the cost for a provider to complete applicable certifications, proposed chapter 110-300D WAC, the Agreement, and the Standards would not impose any cost on the program.

SECTION 5:

Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10% of businesses that are the largest businesses required to comply with the proposed rule. Use one or more of the following as a basis for comparing costs:

- Cost per employee
- Cost per hour of labor
- Cost per \$100 of sales

Proposed chapter 110-300D WAC, the Agreement, and the Standards only impact small businesses. There are no large businesses that operate as outdoor preschools in Washington state.

SECTION 6:

If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced, provide a clear explanation of why.

Education Requirements: The proposed rules are expressly for administering the pilot described in Section 1. For Implementers who do not meet the education requirements, DCYF has established equivalencies that will satisfy the education requirements. Equivalencies are department-recognized alternative credentials or demonstrated competency (skills and experience).

Meals: DCYF is allowing parents and families to provide their child's food. If any pilot participant supplies food, it is limited to a snack.

When the pilot ends on June 30, 2018, DCYF will assess the feasibility of licensing outdoor preschools. If licensing occurs, DCYF will determine if chapter 110-300 WAC Foundational Quality Standards for Early Learning Programs is sufficient for licensing these programs or if it must engage in rule making.

SECTION 7:

Describe how small businesses were involved in the development of the proposed rule.

RCW 43.216.740 requires that DCYF convene an advisory group of outdoor nature-based early learning practitioners. In August, 2017, DCYF and stakeholders in the outdoor preschool industry formed the Outdoor Preschool Advisory Group (OPAG) and began meeting regularly. From January 2018 – July 2018, the OPAG met monthly via webinar or in-person meeting to discuss and develop the proposed standards, and all OPAG members were encouraged to work with their communities to provide feedback via survey, as well.

SECTION 8:

Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

None. Participation in the pilot is voluntary and DCYF has establish equivalencies of training, skills, and experience for staff members of the participating preschools who do not meet the education requirement.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: DCYF Rules Coordinator
Address: P. O. Box 40975
Phone: (360) 902-7956
Fax: (360) 902-7903
TTY:
Email: dcyf.rulescoordinator@dcyf.wa.gov
Other:

Date: December 12, 2018	Signature: 
Name: Brenda Villarreal	
Title: DCYF Rules Coordinator	

Chapter 110-300D WAC
OUTDOOR PRESCHOOL PILOT PROJECT

NEW SECTION

WAC 110-300D-0001 Authority. (1) Chapter 43.216 RCW establishes the department of children, youth, and families' responsibility and authority to set and enforce licensing requirements and standards for licensed child care agencies in Washington state, including the authority to adopt rules to implement chapter 43.216 RCW.

(2) Under RCW 43.216.740(1), the department must establish a pilot project to license outdoor, nature-based early learning and child care programs (the "pilot project") to commence August 31, 2017, and conclude June 30, 2021.

(3) Pursuant to RCW 43.216.740(2), the department shall adopt rules to implement the pilot project and may waive or adapt licensing requirements when necessary to allow for the operation of outdoor preschools in Washington state.

NEW SECTION

WAC 110-300D-0005 Findings and intent. (1) Under section 1, chapter 162, Laws of 2017, the legislature made the following findings:

(a) Over the past decade, more than forty outdoor, nature-based early-learning and child care programs have opened in Washington, several of which are in high demand based on existing waitlists;

(b) These programs are currently unlicensed and unable to offer full-day programs, which many working families are seeking;

(c) Unlicensed outdoor programs are also unable to serve families who are eligible to receive assistance through the department's working connections child care program;

(d) The outdoor preschool model could help expand the number of high quality early learning opportunities available to families throughout Washington, particularly in areas where preschool-appropriate indoor space is unavailable or unaffordable;

(e) When early learning programs spend less on physical facilities, they are able to spend more on recruiting and retaining teachers and other early learning professionals; and

(f) Research on outdoor preschools operating in Scandinavian countries for decades has demonstrated a positive impact on children's development, including improved cognitive and social skills when children transition to grade school.

(2) Based on the findings described in this section the legislature declared its intent to establish a pilot project to license outdoor preschools in order to expand access to affordable, high quality early learning programs, and to further investigate the benefits of outdoor, nature-based classrooms for Washington's children and families.

(3) The data collected from the pilot project will be evaluated by the department to determine whether an outdoor preschool program in Washington can be implemented, consistent with the intent and purposes of chapter 43.216 RCW, to provide access to affordable, high quality early learning programs.

NEW SECTION

WAC 110-300D-0010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Agency" shall have the same meaning as described in RCW 43.216.010.

"Department" or "DCYF" means the Washington state department of children, youth, and families.

"Early learning" shall have the same meaning as described in RCW 43.216.010.

"Outdoor, nature-based early learning and child care program," "outdoor classroom," or "outdoor preschool" means an agency-offered program operated primarily outdoors in which children are enrolled on a regular basis for three or more hours per day. For the purposes of this section "primarily" means that a participant must operate an outdoor classroom for more than fifty percent of program hours per day. Such programs may be offered as:

(a) An outdoor component of a licensed early learning program;

(b) A program operating entirely outdoors on private or public park land, with or without a permanently located outdoor classroom.

"Participants" refers to the entities operating nature-based early learning and child care programs licensed by the department to participate in the outdoor preschool pilot project.

NEW SECTION

WAC 110-300D-0015 Pilot project licenses—Licensing rules. (1) To participate in the outdoor, nature-based early learning and child care program pilot project, the applicant must apply to the department for and obtain a license to operate a pilot project.

(2) The department will select outdoor classroom sites after considering:

(a) The criteria described in RCW 43.216.740 (4) and (5);

(b) The characteristics of an applicant's outdoor classroom and whether those characteristics are a part of any existing licensed outdoor classroom; and

(c) The department's ability to monitor the applicant's outdoor classroom sites identified in the application.

(3) To protect the health and safety of children enrolled in outdoor classrooms, agency participants in this pilot project must agree, enter into, and comply with the terms and conditions of an outdoor classroom agreement prepared by the department. The outdoor classroom

agreement shall require compliance with the following minimum terms and conditions:

(a) Compliance with the background check requirements contained in chapter 110-06 WAC;

(b) Compliance with the outdoor classroom agreement; and

(c) Compliance with the federal Child Care Development Fund (45 C.F.R. Part 98) requirements.

(4) Pursuant to RCW 34.05.310 (2)(b), the department will use this pilot project to test the feasibility of complying with or administering draft new rules or draft amendments to existing rules.

(5) To establish a uniform set of requirements for outdoor classrooms, the department may draft new rules or add amendments to existing rules; or add or amend current licensed child care rules under chapters 110-300, 110-300A, and 110-300B WAC.

NEW SECTION

WAC 110-300D-0020 Denial, modification, suspension, and revocation of a pilot project license—Right of review. (1) A license authorized to be issued under this chapter may be denied pursuant to chapter 43.216 RCW, this chapter, and chapter 110-06 WAC.

(2) A license issued under this chapter may be suspended, modified, or revoked if the licensee fails to comply with the requirements contained in chapter 43.216 RCW, this chapter, or chapter 110-06 WAC.

NEW SECTION

WAC 110-300D-0025 Process of seeking review. (1) Pursuant to RCW 43.216.250 and 43.216.325, the department is authorized to take enforcement action against an applicant or licensee if the licensee fails to comply with this chapter, chapter 110-06 WAC or chapter 43.216 RCW. For purposes of this chapter enforcement actions only include the denial, suspension, revocation, modification, or nonrenewal of a license to participate in the outdoor, nature-based early learning and child care program.

(2) An applicant or licensee has the right to appeal an enforcement action by requesting an adjudicative proceeding (or "hearing") pursuant to the hearing rules codified in chapter 170-03 WAC.

(3) The department must issue a notice of violation to an early learning provider when taking enforcement actions. A notice of violation must be sent certified mail or personal service and must include:

(a) The reason why the department is taking the action;

(b) The rules the provider failed to comply with;

(c) The provider's right to appeal enforcement actions; and

(d) How the provider may appeal and request a hearing.