



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: September 22, 2021

TIME: 12:16 PM

WSR 21-20-001

Agency: Department of Children, Youth, and Families

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR 21-18-109

- Preproposal Statement of Inquiry was filed as WSR 21-12-013 ; 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) WAC 110-300E-0001 Authority, 110-300E-0005 Definitions, 110-300E-0015 Outdoor nature-based licensing agreement-Uniform rules, 110-300E-0020 Enforcement actions-Right of review-Process of seeking review, and 110-300E-0400 Outdoor nature-based licenses-Application.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
October 26, 2021		Telephonic	Oral comments may be made by calling (360) 902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where DCYF will send its response. Comments received through and including October 26, 2021 will be considered.

Date of intended adoption: October 27, 2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DCYF Rules Coordinator
 Address: P. O. Box 40975, Olympia, WA 98504-0975
 Email: dcyf.rulescoordinator@dcyf.wa.gov
 Fax:
 Other: Submit comments online at <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>
 By (date) October 26, 2021

Assistance for persons with disabilities:

Contact DCYF Rules Coordinator
 Phone: (360) 902-7956
 Fax:
 TTY:
 Email: dcyf.rulescoordinator@dcyf.wa.gov
 Other:
 By (date) October 22, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: For Licensing-Outdoor Nature-Based Programs: Proposed new chapter 110-300E WAC applies the Early Achievers quality standards to outdoor nature-based programs and explains the application process, licensing terms and conditions, and enforcement procedures for these programs.

Reasons supporting proposal: The proposed new rules are necessary to implement chapter 304 § 28, Laws of 2021, which authorizes the department to license outdoor nature-based programs. Application of the Early Achievers quality standards is necessary for these programs to receive child care subsidy payments. Rules governing the application process, licensing terms and conditions, and enforcement procedures are necessary to establish consistent and transparent licensing procedures.

Statutory authority for adoption: Chapter 304 § 28, Laws of 2021

Statute being implemented: Chapter 304 § 28, Laws of 2021

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:	Tyler Farmer		(360) 628-2151
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:

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

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

Date: September 22, 21

Name: Brenda Villarreal

Title: DCYF Rules Coordinator

Signature:

Chapter 110-300E WAC
OUTDOOR NATURE-BASED PROGRAMS

NEW SECTION

WAC 110-300E-0001 Authority. (1) Chapter 43.216 RCW establishes the responsibility and authority for the department of children, youth, and families 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) Pursuant to section 28, chapter 304, Laws of 2021:

(a) The department must establish a licensed outdoor nature-based child care program.

(b) The department must adopt rules to implement the outdoor nature-based child care program and may waive or adapt licensing requirements when necessary to allow for the operation of outdoor classrooms in Washington state.

(c) The department must apply the early achievers program to the outdoor nature-based child care program to assess quality in outdoor learning environments and may waive or adapt early achievers requirements when necessary to allow for the operation of outdoor classrooms.

(d) A child care or early learning program operated by a federally recognized tribe may participate in the outdoor nature-based child care program through an interlocal agreement between the tribe and the department. The interlocal agreement must reflect the government-to-government relationship between the state and the tribe, including recognition of tribal sovereignty.

(3) Pursuant to RCW 43.216.250 (2)(b), the provisions of this chapter governing the physical facility, including buildings and other physical structures attached to buildings and premises, do not apply to licensed school-age programs that operate in facilities used by public or private schools. The department regulates only health, safety, and quality standards that do not relate to the physical facility for programs operating in facilities used by public or private schools.

NEW SECTION

WAC 110-300E-0005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Agency" has the same meaning as described in RCW 43.216.010.

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

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

"Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(1) or assessment of civil monetary penalties (fines) pursuant to RCW 43.216.325(3).

"Outdoor nature-based program" has the same meaning as "outdoor nature-based child care" in RCW 43.216.010 (1)(e), which is an agency or an agency-offered program that:

(a) Enrolls preschool or school-age children;

(b) Provides early learning services to the enrolled children in an outdoor natural space approved by the department for not less than four hours per day or fifty percent of the daily program hours, whichever is less; and

(c) Teaches a nature-based curriculum to enrolled children.

"Provider" as used in this chapter means an early learning program that offers outdoor nature-based early learning services, and is licensed under and subject to the provisions of this chapter (also "licensee").

NEW SECTION

WAC 110-300E-0015 Outdoor nature-based licensing agreement—Uniform rules. (1) Licensees under this chapter must agree, enter into, and comply with the terms and conditions of an outdoor, nature-based licensing agreement prepared by the department. The outdoor nature-based licensing agreement will require compliance with the following minimum terms and conditions:

(a) The terms and conditions detailed in the outdoor nature-based licensing agreement;

(b) The requirements of this chapter;

(c) The background check requirements contained in chapter 110-06 WAC, early learning background checks; and

(d) The requirements of the federal Child Care Development Fund (45 C.F.R. Part 98).

(2) To establish a uniform set of requirements for outdoor nature-based programs, the department may periodically update the outdoor nature-based licensing agreement, amend existing rules in this chapter, or draft new rules to be published under this chapter.

NEW SECTION

WAC 110-300E-0020 Enforcement actions—Right of review—Process of seeking review. (1) The department is authorized by RCW 43.216.020, 43.216.065, 43.216.250, and 43.216.325 to take enforcement actions when a provider fails to comply with this chapter, chapter 110-06 WAC, early learning background checks, or chapter 43.216 RCW. Enforcement actions include civil monetary penalties and the denial, suspension, revocation, modification, or nonrenewal of a license.

(2) An applicant or provider has the right to appeal an enforcement action by requesting an adjudicative proceeding or "hearing" pursuant to the hearing rules codified in chapter 110-03 WAC, Administrative hearings.

(3) The department must issue a notice of violation to a 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.
- (4) Fines must not exceed two hundred fifty dollars per day per violation.
- (5) Fines may be:
- (a) Assessed and collected with interest for each day a violation occurs;
 - (b) Imposed in addition to other enforcement actions; and
 - (c) Withdrawn or reduced if a provider comes into compliance during the notification period.
- (6) A provider must pay fines within twenty-eight calendar days after receiving a notice of violation unless:
- (a) The office of financial recovery establishes a payment plan for the provider; or
 - (b) The provider requests a hearing, pursuant to chapter 110-03 WAC, Administrative hearings and RCW 43.216.335(3).
- (7) The department may suspend or revoke a license if a provider fails to pay a fine within twenty-eight calendar days or becomes delinquent in making payments, pursuant to RCW 43.216.327 and 43.216.335. If a provider's license is due for annual compliance, the department may elect not to continue the license for failure to pay a fine.

NEW SECTION

WAC 110-300E-0400 Outdoor nature-based licenses—Application.

- (1) After submitting to the department a signed outdoor nature-based licensing agreement pursuant to WAC 100-300D-0015, an applicant must submit a complete application to the department to receive an initial license, or be granted a continuation of a full license, to operate an outdoor nature-based program.
- (2) Pursuant to RCW 43.216.305, the department must grant or deny a license or continuation of a full license within ninety days of receiving a complete application.
- (3) After completing a department orientation an applicant must submit to the department a complete license application packet, pursuant to chapter 43.216 RCW. This requirement also applies to a change of ownership. A complete license application packet includes:
- (a) Professional and background information about the applicant:
 - (i) A completed department application form;
 - (ii) A copy of the applicant's orientation certificate (orientation must be taken no more than twelve months prior to applying for a license);
 - (iii) A Washington state business license or a tribal, county, or city business or occupation license, if applicable;
 - (iv) Liability insurance, if applicable;
 - (v) A certificate of incorporation, partnership agreement, or similar business organization document, if applicable;
 - (vi) The license fee;
 - (vii) A copy of current government issued photo identification;

- (viii) A copy of Social Security card or sworn declaration stating that the applicant does not have one;
 - (ix) Employer identification number (EIN) if applicant plans to hire staff; and
 - (x) Employment and education verification. For example, diploma, transcripts, or a sworn declaration stating that the applicant cannot verify education requirements.
- (b) Information about the program to be licensed:
- (i) A site plan, including use of proposed licensed and unlicensed space, with identified emergency exits or emergency exit pathways;
 - (ii) Certificate of occupancy, if applicable;
 - (iii) Documentation, no more than three years old, from a licensed inspector, septic designer, or engineer that states the septic system and drain field are maintained and in working order, if applicable;
 - (iv) E. coli bacteria and nitrate testing results for well water that is no more than twelve months old, if applicable;
 - (v) A lead or arsenic evaluation agreement for program sites located in the Tacoma smelter plume (counties of King, Pierce, and Thurston) or the Everett smelter plume (county of Snohomish); and
 - (vi) Lead and copper test results for drinking water, if applicable.
- (c) Program days and hours of operation, including closure dates and holiday observances; and
- (d) The following information about program staff:
- (i) A list of staff members, and if applicable and known, staff persons and volunteers required to complete the background check process as outlined in chapter 110-06 WAC, early learning background checks; and
 - (ii) A resume for the applicant and each staff person, if applicable.
- (e) The following policy documents, which will be reviewed by the department and returned to the applicant:
- (i) Parent and program policies;
 - (ii) Staff policies;
 - (iii) An emergency preparedness plan; and
 - (iv) Health policies.
- (4) An applicant must submit the completed application packet at least ninety calendar days prior to the planned opening of the outdoor, nature-based program. The department will inspect the program space and all submitted application materials prior to issuing a license.
- (a) The ninety calendar days begins when the department receives a complete application packet.
 - (b) Incomplete application packets will be returned to the applicant for completion.
 - (c) An applicant who is unable to successfully complete the application and licensing process within ninety days may withdraw the application and reapply when the applicant is able to meet the licensing requirements. If the applicant has completed the steps of the application process within ninety days but an external barrier out of the applicant's control exists, the reapplication fee will be waived one time.
 - (d) An applicant who is unable to meet the application requirements and has not withdrawn his or her application will be denied a license, pursuant to RCW 43.216.325.



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Do NOT use for expedited rule making

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 31, 2021

TIME: 3:06 PM

WSR 21-18-109

Agency: Department of Children, Youth, and Families

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 21-12-013 ; or

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

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Date:	Time:	Location: (be specific)	Comment:
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Date of intended adoption: October 6, 2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DCYF Rules Coordinator

Address: P. O. Box 40975, Olympia, WA 98504-0975

Email: dcyf.rulescoordinator@dcyf.wa.gov

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By (date) October 1, 2021

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Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Tyler Farmer		(360) 628-2151
Implementation:	DCYF	statewide	
Enforcement:	DCYF	statewide	

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Date: August 31, 2021

Name: Brenda Villarreal

Title: DCYF Rules Coordinator

Signature: