PROPOSED RULE MAKING

CR-102 (June 2004)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

Agency: Department of Early Learning (DEL)

☒ **Preproposal Statement of Inquiry was filed as WSR** 07-19-028 ; **or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR** _____; **or**
☐ **Proposal is exempt under RCW 34.05.310(4).**

☒ **Original Notice**
☐ **Supplemental Notice to WSR** _____
☐ **Continuance of WSR** _____

Title of rule and other identifying information: (Describe Subject).

WAC Chapter 170-292 Seasonal Child Care

Hearing location(s):

1. **Date:** **December 11, 2008** **Time: 3:00 p.m.**
   Catholic Family and Child Services
   5301 Tieton Drive - Suite C
   Yakima WA 98908-3478
2. **Date:** **December 17, 2008** **Time: 6:30 p.m.**
   Skagit Community College – ROOM N-123
   2405 East College Way
   Mount Vernon, WA 98273

Submit written comments to:
Name: DEL Rules Coordinator
Address: PO Box 40970
Olympia 98504-0970

e-mail rules@del.wa.gov, or by
fax (360) 413-3482

by 5:00 p.m., December 18th, 2008

Date of intended adoption: Not earlier than December 22, 2008
(Note: This is **NOT** the **effective** date)

Assistance for persons with disabilities: Contact
rules@del.wa.gov by **December 1, 2008**
TTY ( ) _____ or (360) 725-4397

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

This proposed rule revision is not intended to update the entire WAC chapter. A subsequent filing will encompass the all other necessary sections. The current proposal will:

- Update WAC number and program name references, mostly changing WAC 388-292, 388-290 references to WAC 170-292 and 170-290 respectively, and changing references from DSHS to DEL where appropriate
- Adding a new definition of "eligible children" as a result of a recent federal program clarification. This program change is the result of a recent federal clarification of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.
- Establish the process for eligibility waivers, and
- Make other editing changes and clarifications that would not change the effect of the rules.

Note: The department will be filing an additional proposal to continue revisions to this chapter described in the pre-proposal statement of inquiry (CR-101 notice) filed as WSR 07-19-028.

Reasons supporting proposal:
The proposed rules will ensure all parties have updated and accurate information that reflect the latest programmatic changes to the seasonal child care subsidy program.

Statutory authority for adoption:
Chapter 43.215 RCW

Statute being implemented:
Chapter 265 Laws of 2006; Chapter 43.215 RCW

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
NOV 5 2008
11:28 AM PM
08-22-102

DATE 10/27/08

NAME (type or print) Jone M. Bosworth, JD

SIGNATURE Jone M Bosworth

TITLE Director

(COMPLETE REVERSE SIDE)

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

Chapter 265 Laws of 2006 (Section 501) transferred responsibilities for seasonal child care from DSHS to the Department of Early Learning, making many references in these rules to DSHS laws, rules and programs obsolete.

Name of proponent: (person or organization) Department of Early Learning

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Jenny Lemstrom	PO Box 40970, Olympia WA 98504-0970	(360) 725-4673
Implementation....	Jenny Lemstrom	PO Box 40970, Olympia WA 98504-0970	(") "
Enforcement.....	Jenny Lemstrom	PO Box 40970, Olympia WA 98504-0970	(") "

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.
A copy of the statement may be obtained by contacting:
Name:
Address:

phone ( ) _____
fax ( ) _____
e-mail _____

☒ No. Explain why no statement was prepared.

A. Under RCW 19.85.025 and 34.05.310(4) a small business economic impact statement is not required for rules that:

1. Adopt without material change requirements of federal or state statutes or rule. The proposed new definition of "eligible child" adopts the requirements of federal law 8 USC 1642 without material change. The department received a clarification of this law from the US Department of Health and Human Services on May 2, 2008, which is available online at http://www.acf.hhs.gov/programs/ccb/law/guidance/current/pi2008-01/pi2008-01.htm; or
2. Only correct typographical errors, make address or name changes, or clarify language of the rule without changing its effect. Other sections of the proposal update name references from: DSHS to DEL, title 388 WAC to title 170 WAC, and related program names. Several WAC sections are amended, and a new definitions section is proposed to clarify the language of, but not change, other current program requirements.

B. The department has determined that a small business economic impact statement is not required for new WAC 170-292-0180, Eligibility waivers. Costs of complying with the rule – if any – to affected small businesses would not be more than "minor" as defined in RCW 19.85.020. Implementation of eligibility waivers may result in increased revenue for seasonal child care contractors and child care providers that may offset incidental administrative costs.

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 ( ) _____
e-mail _____

☒ No: Please explain:

A cost-benefit analysis was not prepared. Under RCW 34.05.328(5)(a)(i), the Department of Early Learning is not listed among the agencies to which the requirements of RCW 34.05.328 applies.

Department of Early Learning (DEL)
Proposed Changes to the Seasonal Child Care WAC chapter 170-292

On November 5, 2008, the Department of Early Learning (DEL) filed the following proposed changes to rules for the Seasonal Child Care subsidy program, WAC chapter 170-292. This is the first of two planned WAC proposals to update and clarify these rules. In the proposed rule text, words that are *underlined* are new wording, and words *lined-through* would be deleted. Proposed WAC 170-292-0002 Definitions, and 170-292-0180 Eligibility waivers, would be completely new rules.

DEL welcomes public input on this proposal. The department will take public testimony at two public hearings: On December 11, 2008 in Yakima, and December 17 in Mount Vernon. See the attached Proposed Rule Making notice for times and locations.

Written comments will be accepted until 5:00 p.m., December 18, 2008. You may give written comments and see comments other have written at the new DEL Rules Comment website, https://apps.dev.del.wa.gov/PolicyProposalComment/Detail.aspx. You may also send comments by e-mail, fax or postal mail – see the attached notice for details.

AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0001 Introduction. The seasonal child care program helps eligible families who are seasonally employed in agriculturally related work to access licensed, culturally and developmentally appropriate child care. Families access this child care subsidy program through contracted community agencies. To be eligible, families must meet income and program guidelines and must not be currently receiving temporary assistance to needy families (TANF). The seasonal child care program prioritizes services for families who are not eligible for working connections child care. The program is subject to available funds and creates waiting lists when budget limits occur.

All references in this chapter to sections within chapters 388-292 and 388-290 WAC are changed to refer to corresponding sections within chapters 170-292 and 170-290 WAC.

NEW SECTION

WAC 170-292-0002 Program definitions. For seasonal child care (SCC):

(1) "Administrative hearing" means a hearing where you say you don't agree with a decision the department of early learning (DEL) made, and you ask for the decision to be reviewed. An administrative law judge, who is a lawyer employed by the state of Washington, decides if the department of early learning's action was correct. The rules for DEL administrative hearings are in chapter 170-03 WAC.

(2) "Adverse action" means an action to lower or stop your SCC subsidies.

(3) "Application interview date" means the first date you meet with the "authorizing worker" to see if you are eligible for subsidy benefits.

(4) "Authorizing worker" is a contractor with the department of early learning. The authorizing worker looks at DEL's rules and the family information and decides if the family is eligible for child care subsidies. The authorizing worker explains the seasonal child care program rules to you.

(5) "Child care plan" means a state form filled out by the authorizing worker. The child care plan tells the parent and the provider that subsidy benefits are approved, when the subsidy benefits begin and when benefits stop, and how many hours a day benefits are approved.

(6) "Copayment" means the amount you owe your provider for child care each month.

(7) "Contact the SCC contractor" means to call or come into the contractor's office to ask for SCC benefits.

(8) "DEL" or "the department" means the department of early learning.

(9) "Eligible children" means children who are legally residing in the country as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), are living in Washington state, and are:

(a) Age twelve or younger; or

(b) Less than age nineteen, and:

(i) Have a verified special need, according to WAC 170-290-0220; or

(ii) Are under court supervision.

(10) "Eligibility requirements" mean the rules in chapter 170-292 WAC describing how a family can get seasonal child care benefits.

(11) "Family" or "families" mean those defined in WAC 170-292-0010 who are the seasonal child care family unit.

(12) "Primary wage earner" means the parent in the two-parent household who earned more income than the other parent in the last twelve months.

(13) "Providers" mean:

(a) Child care centers and family child care homes licensed or certified by the department of early learning; or

(b) Seasonal day camps that have a contract with the department of early learning to provide subsidized child care.

(14) "Overpayment" means money owed to the department because you or your provider:

(a) Received child care subsidy benefits when you or the provider was not eligible; or

(b) Received more child care subsidy benefits than you or the provider should have received.

(15) "Nonstandard hour bonus" means a payment to a child care provider when the provider cares for a child forty-five hours or more per month during these time periods:

(a) Monday - Friday before 6:00 a.m. or after 6:00 p.m.;

(b) Anytime Saturday or Sunday; and

(c) Official state holidays.

(16) "SCC contractor" means the agency that DEL has contracted to meet with families to see if they are eligible for the seasonal child care program. SCC contractors are located in several communities across the state. SCC contractors are responsible to follow the SCC rules that DEL has established.

(17) "Seasonally available labor" means labor that is available only in a specific season during part of the calendar year. The labor is directly related to the cultivation, production,

harvesting or processing of fruit trees or crops.

(18) "State rate" is the current maximum amount paid for child care subsidies. The rate paid is the provider's rate or the state maximum rate, whichever is lower. State rate information can be found on the DEL web site at: http://www.del.wa.gov/.

(19) A "supervisor" means the person who manages the authorizing worker.

(20) "Temporary assistance to needy families (TANF)" is a federal program that gives assistance to qualified families with children.

(21) "Underpayment" means money the state owes to you or the provider because the department did not pay for benefits you were eligible to receive.

(22) "Waiting lists" means a list of families waiting for seasonal child care subsidies when funding is not available to meet the requests from all eligible families.

(23) "We" or "us" means the seasonal child care contractor or the department of early learning.

(24) "Weekend care" means child care on Saturday or Sunday, that is authorized to support the parents' work schedule.

(25) "Working connections child care (WCCC)" is a child care subsidy program that helps parents who are working, looking for work or in specific training programs. The department of social and health services decides who is eligible for WCCC child care benefits. DEL is in charge of the program rules.

(26) "You" or "your" in this chapter refers to the family member applying for or receiving seasonal child care benefits.

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AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0010 How is my family size defined for SCC program eligibility purposes? ((~~For SCC program eligibility purposes,~~)) We determine your family size ((~~is defined~~)) by reviewing the individuals who live together in the same household as follows:

(1) If you are:	We count the following individuals as part of the family for SCC program eligibility:
(a) A single parent, including a minor parent, living independently or residing in her/his parent's home with her/his children;	You and your children.
(b) Unmarried parents living together who have at least one mutual child;	Both parents and all their children living in the household.
(c) Unmarried parents living together with no mutual children;	Each parent and their own children, as separate families.
(d) Married parents living together;	Both parents and all their children living in the household.
(e) A person with parental control as defined in WAC ((~~388-292-0005~~)) 170-292-0005 (1)(c) through (i);	Only the children and their income.
(f) A parental figure who is out of the household because of employment requirements((.));	The parents and the children. All other family rules in this section apply.
(g) A parent who is voluntarily out of the household for reasons other than employment, such as visiting a family member.	You, the absent parent and the children.
(h) A family member who is out of the household because of employer requirements, such as working in a different community, and is expected to return to the household.	You, the absent individual, and the children. Subsection (1)(b) and (d) of this section apply.

(2) If your household includes siblings of the children requiring care who are:	All family rules in this section apply. In addition, we count the sibling as part of the family for SCC program eligibility (unless they are a parent themselves), as follows:
(a) Eighteen year olds who are enrolled in secondary education or general equivalency diploma (GED) program.	The eighteen year olds until they turn nineteen or complete high school/GED, whichever comes first.
(b) Twenty year olds, or less, who are participating in a program through the school district's special education department under RCW 28A.155.0202.	The sibling participating in the approved program up to twenty-one years of age.

AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0025 What additional criteria does my family need to meet to be eligible for SCC program subsidies? Additional eligibility criteria for SCC program subsidies requires that your family:

(1) Live in Washington state;

(2) Not be receiving TANF;

(3) Have ((~~a~~)) an eligible child age twelve or younger, or a child with verified special needs age eighteen or younger;

(4) Have a primary wage earner who was employed in seasonally available agricultural related work for eleven months or less with any one employer in the previous twelve months; and

(5) Fifty percent or more of a family's earned income for the previous twelve months is derived from seasonally available agricultural work as defined in WAC 388-292-0020.

[06-16-130, recodified as § 170-292-0025, filed 8/1/06, effective 8/1/06. 06-15-075, recodified as § 170-15-0025, filed 7/13/06, effective 7/13/06. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0025, filed 6/30/03, effective 8/1/03.]

AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0110 ((~~What additional SCC program subsidy payments can be authorized?~~)) Additional seasonal child care payments. ((~~The following additional SCC program subsidy payments may be authorized for your approved activities, if justified by your employer verification:~~

~~(1) "Extended hour child care" may be authorized, for families whose fluctuating overtime work schedules require more than ten hours per day, up to a maximum of one hundred twenty hours per month. Care is authorized at the provider's usual and customary rate for the time needed - or at the DSHS maximum hourly subsidy rate represented in the chart below, whichever is less.~~

~~CHILD CARE CENTER~~ ~~Centers in Benton, Walla Walla and Whitman Counties paid at Region 6 rates~~				
	~~Infants (under 12 months)~~	~~Toddler (12 to 29 months)~~	~~Preschool (30 months to 5 years)~~	~~School-age (5 to 12 years)~~
~~Region 1~~	~~$4.00~~	~~$3.90~~	~~$3.22~~	~~$3.22~~
~~Region 2~~	~~$4.25~~	~~$3.60~~	~~$3.48~~	~~$2.75~~
~~Region 3~~	~~$4.30~~	~~$4.39~~	~~$3.75~~	~~$4.50~~
~~Region 6~~	~~$4.64~~	~~$3.75~~	~~$3.27~~	~~$3.25~~
~~FAMILY HOMES~~				
~~Region 1~~	~~$2.67~~	~~$2.50~~	~~$2.38~~	~~$2.50~~
~~Region 2~~	~~$3.00~~	~~$2.78~~	~~$2.50~~	~~$2.88~~
~~Region 3~~	~~$3.50~~	~~$3.00~~	~~$2.89~~	~~$3.33~~

~~(2) "Additional hour child care" may be authorized, for families whose nonfluctuating~~

~~work schedules require more than ten hours of care per day, at the provider's usual and customary rate for the time needed - or at the DSHS maximum half-day subsidy rate, whichever is less (under WAC 388-290-0200 and 388-290-0205).~~

~~(3) "Weekend child care" may be authorized at rates under WAC 388-290-0200 and 388-290-0205 if child care is needed more than five days a week.~~)) To decide if you are eligible for additional SCC payments, the authorizing worker compares the provider's rate to the state rate and authorizes care at the lower rate for:

(1) Half-day when care occurs less than five hours per day; or

(2) Full-day when care occurs five or more hours per day; or

(3) Over ten hours per day when care is needed.

AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0115 ((~~If I am determined eligible for the SCC program,~~)) When ((~~does my~~)) do child care ((~~subsidy begin?~~)) subsidies start? ((~~Your SCC program subsidy will begin according to the following situations:~~

~~(1) If you are determined eligible before your employment starts, your subsidy begins on the first day of your job that your children are in approved child care;~~

~~(2) If you are determined eligible after your job begins because:~~

~~(a) You requested an appointment before your job started but were denied one, your subsidy begins on the first day of your job that your children were in approvable child care;~~

~~(b) You did not provide all necessary documents when requested, your subsidy begins on the first day after you are determined eligible for the program, that you work and your children are in authorized child care.~~

~~(c) You did not request an appointment until after your job began, your subsidy begins on the first day after you are determined eligible for the program, that you work and your children are in authorized child care.~~)) (1) The SCC contractor authorizes child care subsidies when:

(a) You turn in all your eligibility paperwork to the SCC contractor;

(b) The authorizing worker determines you are eligible for the program; and

(c) You start your children in care with an approved child care provider.

(2) After the authorizing worker decides you are eligible, the date the subsidy begins depends upon when you applied and when you turn in all the paperwork needed:

(a) If you apply before your job starts, benefits start:

(i) The day your job starts when you turn in your paperwork within fourteen days after starting your job; or

(ii) The day after you turn in your paperwork, when you turn in your paperwork fifteen to twenty-nine days after your job starts.

(b) If you turn in your paperwork thirty days after your job starts, your application is denied.

(c) If you apply and are currently working, benefits start:

(i) The day you contact the SCC contractor if you turn in your paperwork within fourteen days after your application interview date; or

(ii) The day after you turn in your paperwork, if you turn in your paperwork fifteen to twenty-nine days after your application interview date.

(d) If you turn in your paperwork thirty or more days after your application interview, your application is denied. You must reapply to see if you are eligible for benefits.

AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0140 ((~~How are my SCC program subsidies reauthorized and when may they continue?~~)) Keeping SCC program benefits. (1) ((~~Your SCC program subsidies are reauthorized by the SCC program authorizing worker who reviews your SCC program eligibility and~~)) At least every six months, the SCC contractor decides if you can keep getting subsidies. You get subsidy benefits for less than six months when:

(a) Your employer says you might be working less than six months; or

(b) Your child or children may not be age eligible for the next six months because of their age. See WAC 170-292-0025.

(2) The authorizing worker will:

(a) ((~~Request information related to your continued eligibility, prior to the end date of your current SCC program eligibility period;~~

~~(b)~~)) Review ((~~the requested~~)) your updated information; and

((~~(c) Determine~~)) (b) Decide if you are ((~~still~~)) eligible((~~, according to DSHS established criteria~~)) again.

((~~(2) Your SCC program subsidies may continue if~~)) (3) After a decision is made that you are eligible, the date the subsidy begins depends on when you turned in all the paperwork needed. Your benefits will begin again:

(a) ((~~You meet all program, income and work criteria for the SCC program as described in chapter 388-292 WAC;~~

~~(b) Your provider is eligible for payment under WAC 388-292-0085.~~)) On the day after your eligibility period ended, if you contact us within ten days and turn all your paperwork in within twenty-nine days of the eligibility ending; or

(b) On the day after you contact the SCC contractor, if you:

(i) Contact the SCC contractor more than ten days after your eligibility period ended; and

(ii) Turn all your paperwork in between eleven and twenty-nine days after your eligibility period ended.

(c) Your application for SCC subsidy benefits is denied when you do not contact the SCC contractor and turn all your paperwork in within thirty days after your previous eligibility period ends. You must reapply to see if you are eligible for benefits.

AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0160 ((~~When might a child care provider receive an~~)) Licensed or certified provider or DEL contracted seasonal day camp overpayments((?)). (1) ((~~A child care provider may receive a vendor overpayment notice when they receive ineligible payments. This includes payments for:~~

~~(a) Child care that was not provided;~~

~~(b) Services that are not allowed; or~~

~~(c) Child care that is not supported by the provider's attendance records.~~

~~(2) The provider's overpayment is written by DSHS and the child care provider is expected to pay it back.~~

~~(a) Overpayments are written starting the date that child care subsidies were over paid.~~

~~(b) DSHS reduces the overpayment by the amount of an underpayment when applicable.~~)) DEL charges a SCC overpayment to your provider when your provider:

(a) Billed and was paid for SCC services they did not provide;

(b) Is required to keep attendance records under WAC 170-295-7030, 170-296-0520, and 170-151-460 and the provider does not have attendance records that meet licensing requirements. DEL accepts for attendance verification only attendance records meeting WAC requirements;

(c) Billed and was paid for:

(i) More than they are eligible to bill; or

(ii) Services not allowed;

(d) Billed and was paid, and the provider is not eligible based on WAC 170-292-0085; or

(e) Cared for a child outside their licensed allowable age range without a waiver approved by DEL under chapter 170-151 or 170-295 WAC.

(2) DEL or the SCC contractor may request documentation from your provider before DEL establishes an overpayment. Your provider has fourteen calendar days to supply any requested documentation.

NEW SECTION

WAC 170-292-0180 Eligibility waivers. (1) In individual cases, DEL may decide there is a good reason to not follow an eligibility requirement. When we do this it is called a waiver. DEL may waive a specific requirement when the federal rules (45 CFR Part 98 & 99) allow the waiver, if you work with the authorizing worker to:

(a) Explain why you need the waiver; and

(b) Show you have no other way of meeting your child care needs.

(2) You must tell the authorizing worker your family circumstances. The authorizing worker sends the waiver request to DEL.

(3) DEL approves a waiver request if:

(a) You have a good reason and no other choices exist;

(b) The waiver is allowable under federal rules; and

(c) There are enough SCC program funds available to allow the request.

(4) DEL can approve all or part of your request of the waiver.

(5) The DEL director or designee must approve or deny the waiver request.

(6) If DEL denies your request for a waiver, you do not have appeal rights to an administrative hearing under chapter 34.05 RCW or 170-03 WAC.

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