



PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: September 08, 2023

TIME: 12:00 PM

WSR 23-19-015

Agency: Department of Social and Health Services, Economic Services Administration

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 23-10-057 ; 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) The Department is amending WAC 388-408-0035, "Who is in my assistance unit for basic food?", 388-450-0140, "How does the income of an ineligible assistance unit member affect my eligibility and benefits for basic food?", 388-489-0005, "Who is eligible for transitional food assistance?", and 388-489-0010, "How is my transitional food assistance benefit calculated?"

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
October 24, 2023	10:00 am	Virtually via Teams or call in	Hearings are being held virtually. Please see the DSHS website for the most up to date information.

Date of intended adoption: Not earlier than October 25, 2023 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator
 Address: PO Box 45850, Olympia WA 98504
 Email: DSHSRPAURulesCoordinator@dshs.wa.gov
 Fax: 360-664-6185
 Other:
 By (date) October 24, 2023, 5:00 p.m.

Assistance for persons with disabilities:

Contact Shelley Tencza, DSHS Rules Consultant
 Phone: 360-664-6036
 Fax: 360-664-6185
 TTY: 711 Relay Service
 Email: shelley.tencza@dshs.wa.gov
 Other:
 By (date) October 10, 2023, 5:00 p.m.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: These amendments are necessary to implement SSB 5785 (Chapter 98, Laws of 2022), effective January 1, 2024, allowing DSHS to provide Transitional Food Assistance (TFA) for a period of five months to households that stop receiving Temporary Assistance for Needy Families and are not in full-family sanction status. If a household member has been in WorkFirst sanction, but the household is still receiving benefits, the remaining eligible household members may receive TFA.

Reasons supporting proposal: See above

Statutory authority for adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.680, 74.08.090 & 74.08A.010.

Statute being implemented: RCW 74.08A.010

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Department of Social and Health Services

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Joyce Hensen	PO Box 45470, Olympia WA, 98504-5470	425-999-5162
Implementation:	Joyce Hensen	PO Box 45470, Olympia WA, 98504-5470	425-999-5162
Enforcement:	Joyce Hensen	PO Box 45470, Olympia WA, 98504-5470	425-999-5162

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: This amendment is exempt as allowed under RCW 34.05.328(5)(b)(vii) which states in part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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:

- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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 19.85.025](#)(4) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW 34.05.328(5)(b)(vii).

Explanation of how the above exemption(s) applies to the proposed rule: These amendments implement provisions in chapter 98, laws of 2022 and do not impact small businesses. They only impact DSHS customers.

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

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

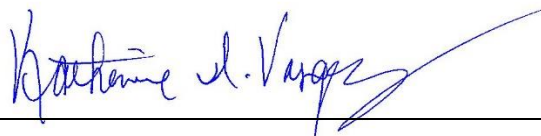
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: September 6, 2023

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-408-0035 Who is in my assistance unit for basic food?

(1) A person must be in your assistance unit if they live in the same home as you and regularly buy food or prepare meals with you.

(2) If the following people live with you, they must be in your assistance unit even if you do not usually buy or prepare food together:

- (a) Your spouse;
- (b) Your parents if you are under age 22;
- (c) Your children under age 22;
- (d) The parent of a child who must be in your assistance unit;
- (e) A child under age 18 who does not live with their parent unless the child:
 - (i) Is a foster child;
 - (ii) Is emancipated; or
 - (iii) Is not financially dependent on an adult in the assistance unit.

(3) If any of the people in subsections (1) or (2) of this section already receive transitional food assistance (TFA) under chapter 388-489 WAC, they can only receive benefits if they choose to reapply for basic food as described in WAC 388-489-0022.

(4) If you live in an institution where you may be eligible for basic food under WAC 388-408-0040, we decide who is in your assistance unit as follows:

- (a) If the facility is acting as your authorized representative under WAC 388-460-0015, we include you and anyone who must be in your assistance unit under subsection (2) of this (~~rule~~) section; or
- (b) If you apply for benefits on your own, we include you, anyone who must be in your assistance unit under subsection (2) of this section, and other residents you choose to apply with.

(5) Anyone who must be in your assistance unit under subsection (1) or (2) of this section is an ineligible assistance unit member if they:

- (a) Are disqualified for an intentional program violation under WAC 388-446-0015;
- (b) Do not meet work requirements under WAC 388-444-0030 or WAC 388-444-0055;
- (c) Do not provide a social security number under WAC 388-476-0005;
- (d) Do not meet the citizenship or alien status requirements under chapter 388-424 WAC;
- (e) Are fleeing a felony charge or violating a condition of parole or probation under WAC 388-442-0010.

(6) If your assistance unit has an ineligible member:

- (a) We count the ineligible member's income as part of your assistance unit's income under WAC 388-450-0140;
- (b) We count all the ineligible members resources to your assistance unit; and
- (c) We do not use the ineligible member to determine your assistance unit's size for the maximum income amount or allotment under WAC 388-478-0060.

(7) If the following people live in the same home as you, you can choose if we include them in your assistance unit:

(a) A permanently disabled person who is age 60 or over and cannot make their own meals if the total income of everyone else in the home, not counting the elderly and disabled person's spouse is not more than the 165% standard under WAC 388-478-0060;

(b) A boarder. If you do not include a boarder in your assistance unit, the boarder cannot get basic food benefits in a separate assistance unit;

(c) A person placed in your home for foster care. If you do not include this person in your assistance unit, they cannot get basic food benefits in a separate assistance unit;

(d) Roomers; or

(e) Live-in attendants even if they buy or prepare food with you.

(8) If someone in your assistance unit moves out of your home for at least a full issuance month, they are not eligible for benefits as a part of your assistance unit, unless you receive (~~transitional food assistance~~) TFA.

(9) Your (~~transitional food assistance unit~~) TFA household includes the people who were in your basic food assistance unit the month you received transitional cash assistance (TCA); or, for the last month you received:

(a) Temporary assistance for needy families;

(b) State family assistance; or

(c) Tribal TANF benefits.

(10) When the assistance described in subsection (9) of this section was reduced because a family member is not meeting WorkFirst program requirements (WAC 388-310-1600), the individual(s) in sanction will be excluded from TFA.

(11) If someone in your assistance unit received basic food or (~~transitional food assistance~~) TFA in another assistance unit or another state, they cannot receive benefits in your assistance unit for the same period of time unless they left the assistance unit to live in a shelter for battered women and children under WAC 388-408-0045.

(~~(11)~~) (12) A student who is ineligible for basic food under WAC 388-482-0005 is not a member of your assistance unit.

AMENDATORY SECTION (Amending WSR 18-03-021, filed 1/8/18, effective 2/8/18)

WAC 388-450-0140 How does the income of an ineligible assistance unit member affect my eligibility and benefits for basic food? The department decides who must be in your assistance unit (AU) under WAC 388-408-0035. If an AU member is ineligible for basic food under WAC 388-408-0035, this affects your AU's eligibility and benefits as follows:

(1) We do not count the ineligible member(s) to determine your AU size for the gross monthly income limit, net monthly income limit, or maximum allotment under WAC 388-478-0060.

(2) If an AU member is ineligible because they are disqualified for an intentional program violation (IPV), failed to meet work requirements under chapter 388-444 WAC, (~~or~~) is an ineligible fleeing felon under WAC 388-442-0010, or is disqualified from transitional food assistance (TFA) due to a WorkFirst sanction:

(a) We count all of the ineligible member's gross income as a part of your AU's income; and

(b) We count all of the ineligible member's allowable expenses as part of your AU's expenses.

(3) If an AU member is an ineligible able-bodied adult without dependents (ABAWD) under WAC 388-444-0030, is ineligible due to their alien status, failed to sign the application to state their citizenship or alien status, or refused to get or provide us a Social Security number:

(a) We prorate the income of the ineligible member among all the AU members by excluding the ineligible member's share and counting the remainder to the eligible members;

(b) We allow the (~~twenty percent~~) 20% earned income disregard for the ineligible member's earned income;

(c) We divide the ineligible member's allowable expenses evenly among all members of the AU when the ineligible member has income;

(d) We allow the full amount of the utility allowance the AU is eligible for under WAC 388-450-0195.

AMENDATORY SECTION (Amending WSR 22-12-017, filed 5/20/22, effective 7/1/22)

WAC 388-489-0005 Who is eligible for transitional food assistance? You are eligible for transitional food assistance (TFA) for up to five months if you meet the following eligibility criteria:

(1) Your family stops receiving cash assistance to include temporary assistance for needy families (TANF), tribal TANF, or state family assistance (SFA), or:

(2) Your family receives (~~transitional cash assistance~~) (TCA);

(3) Your family was receiving basic food at the time we determined you were no longer eligible for cash assistance described in subsection (1) of this section, or when you received (~~transitional cash assistance~~) TCA;

(4) After your family stops receiving cash assistance described in subsection (1) of this section, or receives (~~transitional cash assistance~~) TCA, no other member of your basic food assistance unit receives (~~temporary assistance for needy families~~) TANF, tribal TANF, or (~~state family assistance~~) SFA;

(5) Your family did not move out of the state of Washington as described in WAC 388-468-0005;

(6) At the time your family's cash assistance ended, your family was not in sanction status. Sanction status means:

(a) We reduced (~~or stopped your family's temporary assistance for needy families grant payment because a family member is not:~~

~~(i) Meeting WorkFirst program requirements (WAC 388-310-1600); or~~

~~(ii) Cooperating)) your family's TANF grant payment because a family member is not cooperating with the division of child support (WAC ((388-422-0100)) 388-422-0010); or~~

(b) We decided that a member of your family was not eligible for (~~temporary assistance for needy families~~) TANF because the member:

(i) Failed to meet teen parent living arrangement (WAC 388-486-0005) or teen parent school attendance requirements (WAC 388-410-0010); or

(ii) Was convicted of unlawful practices (WAC 388-446-0005) or for receiving (~~temporary assistance for needy families~~) TANF in two or more states at the same time (WAC 388-446-0010); or

(c) ~~((If you are receiving temporary assistance for needy families benefits from a tribal program, your family's grant is reduced or stopped for a reason that is the same as one of the reasons listed in (6)(a) or (6)(b) of this section.))~~ We stopped your family's TANF grant payment, including tribal TANF, because of a grant reduction sanction penalty (WAC 388-310-1600).

(7) At the time your family's ~~((temporary assistance for needy families))~~ TANF grant ended, your basic food assistance unit did not become ineligible because:

(a) You were applying for recertification of your basic food benefits and refused to cooperate with the application process; or

(b) All members of your assistance unit are ineligible for basic food for the reasons stated in WAC 388-489-0025(3).

(8) There is no limit to the number of times your family can receive ~~((transitional food assistance))~~ TFA.

AMENDATORY SECTION (Amending WSR 22-12-017, filed 5/20/22, effective 7/1/22)

WAC 388-489-0010 How is my transitional food assistance benefit calculated?

(1) We base your transitional food assistance (TFA) benefit amount on the regular monthly benefit allotment issued to your basic food assistance unit for the last month your household received temporary assistance for needy families (TANF) or the month you qualified for transitional cash assistance (TCA). We will not count your last ~~((temporary assistance for needy families))~~ TANF grant payment when we calculate your ~~((transitional food assistance))~~ TFA benefit amount. For example:

(a) If your basic food assistance unit's only income was ~~((temporary assistance for needy families))~~ TANF, the ~~((transitional food assistance))~~ TFA benefit will be the amount your household would have received if you had no income.

(b) If your basic food benefit was calculated using ~~((temporary assistance for needy families))~~ TANF plus income from another source, we will count only the income from the other source when calculating the ~~((transitional food assistance))~~ TFA amount.

(c) If a member of your assistance unit is in WorkFirst sanction when TANF closes for a reason other than WorkFirst sanction, the TFA household size will be reduced by the number of individuals in sanction when TANF closed.

(2) We will adjust your ~~((transitional food assistance))~~ TFA benefits if:

(a) Someone who gets ~~((transitional food assistance))~~ TFA with you leaves your assistance unit and is found eligible to receive basic food in another assistance unit. We will adjust your benefits by:

(i) Reducing your assistance unit size by the number of persons who left your assistance unit; and

(ii) Removing the income and expenses clearly belonging to the persons who left your assistance unit.

(b) A change to the maximum allotment for basic food under WAC 388-478-0060 results in an increase in benefits for basic food assistance units.

(c) You ~~((got an overpayment of))~~ were overpaid basic food benefits and we need to adjust the amount we deduct from your monthly ben-

efits to repay the overpayment as required in WAC 388-410-0033. This includes:

- (i) Starting a new monthly deduction;
- (ii) Changing the amount of the monthly deduction; and
- (iii) Ending the monthly deduction when the amount you owe has been paid off.