



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

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

- Preproposal Statement of Inquiry was filed as WSR:17-05-102; 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).

- Original Notice
 Supplemental Notice to WSR:
 Continuance of WSR:

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

The department is proposing to amend WAC 388-410-0030, "How does the department calculate and set up my Basic Food, FAP, or WASHCAP overpayment?", and WAC 388-410-0033, "How and when does the department collect a Basic Food, FAP, or WASHCAP overpayment?".

Hearing location(s):

Office Building 2
DSHS Headquarters
1115 Washington
Olympia, WA 98504

Public parking at 11th and Jefferson. A map is available at:
<https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>

Date: **May 23, 2017** Time: **10:00 a.m.**

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850
Olympia, WA 98504
e-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
fax: (360) 664-6185

by: 5:00 p.m. May 23, 2017

Assistance for persons with disabilities: Contact:

Jeff Kildahl, DSHS Rules Consultant by May 9, 2017
Phone: (360) 664-6092 or TTY: (360) 664-6178
Email: KildaJA@dshs.wa.gov

Date of intended adoption: Not earlier than May 24, 2017
(Note: This is **NOT** the **effective** date)

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

The department is proposing to amend WAC 388-410-0030 and WAC 388-410-0033 in order to comply with federal regulations regarding the department's cost effectiveness plan for pursuing overpayment claims as approved by the United States Department of Agriculture (USDA).

Reasons supporting proposal:

USDA Food and Nutrition Services (FNS) regulations allow Washington State to determine the amount at which pursuing an overpayment for Supplemental Nutrition Assistance Program (SNAP) benefits becomes cost effective. Once the state and FNS agree on an amount, it becomes part of the state plan for administering SNAP and the state must abide by the plan. Lack of compliance with FNS rules can result in loss of funding for or penalization to the SNAP in Washington. Additionally, the current rule applies unnecessary overpayments that can result in a hardship for clients.

Statutory authority for adoption: RCW 43.20A.550, RCW 43.20b.630, RCW 74.04.050, RCW 74.04.055, RCW 74.04.057, RCW 74.04.510, RCW 74.08.090, RCW 74.08A.120

Statute being implemented: 7 CFR 273.18

Is rule necessary because of a:

- Federal Law? Yes No
 Federal Court Decision? Yes No
 State Court Decision? Yes No
 If yes, CITATION:

DATE
April 12, 2017

NAME (type or print)
Katherine Vasquez

SIGNATURE

TITLE
DSHS Rules Coordinator

CODE REVISER USE ONLY

**OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED**

DATE: April 13, 2017

TIME: 9:50 AM

WSR 17-09-036

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

None

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

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Ezra Paskus	712 Pear Street SE, Olympia, WA 98501	(360) 725-4611
Implementation:	Ezra Paskus	712 Pear Street SE, Olympia, WA 98501	(360) 725-4611
Enforcement:	Ezra Paskus	712 Pear Street SE, Olympia, WA 98501	(360) 725-4611

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal 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.

The proposed rules do not have an economic impact on small businesses or non-profits. They only impact DSHS clients.

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:

These amendments are exempt as allowed under RCW 34.05.328(5)(b)(vii) which states in part, "this 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."

WAC 388-410-0030 How does the department calculate and set up my basic food, FAP, or WASHCAP overpayment? (1) We calculate the amount of your basic food, ~~((or WASHCAP))~~ Washington combined application project (WASHCAP), or food assistance program for legal immigrants (FAP) overpayment by counting the difference between:

- (a) The benefits your assistance unit (AU) received; and
- (b) The benefits your AU should have received.

(2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

- (a) Had correct and complete information; and
- (b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0005 and 388-418-0007, you do not receive the earned income deduction under WAC 388-450-0185 when we calculate your overpayment amount.

(4) We ~~((must))~~ must set up an inadvertent household error or administrative error overpayment if:

- (a) We discovered the overpayment through the federal quality control process;
- (b) The overpayment is over eighty-five dollars and you currently receive basic food, FAP, or WASHCAP benefits; or
- (c) The overpayment is over one hundred twenty-five dollars and you do not currently receive basic food, FAP, or WASHCAP benefits.

(5) We ~~((do not))~~ do not set up an inadvertent household error or administrative error overpayment if all of the following are true:

- (a) We did not discover the overpayment through the federal quality control process;
- (b) You do not currently receive basic food, FAP, or WASHCAP benefits; and
- (c) The total amount your household was overpaid was one hundred twenty-five dollars or less.

(6) If you have an inadvertent household error that we referred for prosecution or an administrative disqualification hearing, we will not set up ~~((and))~~ or start collecting the overpayment if doing so could negatively impact this process.

(7) We must set up an intentional program violation overpayment based on the results of an administrative disqualification hearing ~~((chapter 388-02 WAC))~~ under chapter 388-02 WAC, unless:

- (a) Your AU has repaid the overpayment; or
- (b) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.
- (c) We must calculate the overpayment amount:

- (a) For an administrative error overpayment - up to twelve months prior to when we became aware of the overpayment;
- (b) For an inadvertent household error overpayment - for no more than twenty-four months before we became aware of the overpayment; and
- (c) For intentional program violation (IPV) overpayments - from the month the ~~((at of))~~ IPV first occurred as determined under WAC 388-446-0015, but no more than six years before we became aware of the overpayment.

(9) If we paid you too few basic food, FAP, or WASHCAP benefits for a period of time, we will use the amount we underpaid your AU to reduce your overpayment if:

(a) We have ~~((not))~~ not already issued you benefits to replace what you were underpaid; and

(b) We have ~~((not))~~ not used this amount to reduce another overpayment.

(10) We will send you an overpayment notice under RCW 43.20B.630 and 7 C.F.R. Sec. 273.18. We send notices as required under chapter 388-458 WAC. If all adult AU members live at the same address, we serve an overpayment notice on the head of household.

(11) The overpayment becomes an established (set-up) debt in one of the following ways:

(a) By operation of law if you do not respond within ninety days of service of the overpayment notice;

(b) By administrative order if you timely request a hearing; or

(c) By written agreement.

(12) You may request a hearing to contest an overpayment of your basic food, FAP, or WASHCAP benefits.

(a) The hearing ~~((can))~~ may include issues such as whether you were overpaid, whether we calculated the amount of the overpayment correctly, and the type of the overpayment.

(b) The administrative law judge (ALJ) does not have the authority to compromise, terminate, write-off, defer, or otherwise waive the overpayment claim or recovery of the claim.

(13) If the overpayment has been referred for prosecution ~~((+))~~ in accordance with WAC 388-446-0001(4)~~((+))~~, you may request that the administrative hearing related to the overpayment be postponed.

AMENDATORY SECTION (Amending WSR 15-22-051, filed 10/29/15, effective 11/29/15)

WAC 388-410-0033 How and when does the department collect a basic food, FAP, or WASHCAP overpayment?

(1) After we set up a basic food, ~~((FAP, —WASHCAP))~~ Washington combined application project (WASHCAP), or food assistance program for legal immigrants (FAP) overpayment under WAC 388-410-0030, we collect the amount you were overpaid even when the total is less than ~~((\$125 as discussed))~~ those in WAC 388-410-0030(4) ~~(b) or (c)~~. This includes when we:

(a) Modify an established overpayment to an amount we would not have to set up under WAC 388-410-0030(5); or

(b) ~~((Set up))~~ Establish an overpayment that we do not have to ~~((set up))~~ establish under WAC 388-410-0030(4).

(2) You ~~((can))~~ may repay your overpayment by:

(a) Paying the entire amount at once;

(b) Having us take the amount of your overpayment out of your ~~((EBT))~~ electronic benefit transfer (EBT) account;

(c) Making regular payments under a scheduled repayment agreement as described in subsection (4) of this section; or

(d) Having your current basic food, FAP, or WASHCAP benefits reduced.

(3) If you have an inactive EBT account and we cancelled basic food, FAP, or WASHCAP benefits in the account under WAC 388-412-0025,

we use the cancelled benefits to reduce the amount of your overpayment.

(4) If you are responsible for repaying an administrative or inadvertent household error overpayment, we reduce your monthly benefits unless you:

(a) Pay the overpayment all at once;

(b) Set up a repayment agreement with us; ~~((or))~~

(c) Arrange with us to ~~((compromise--(reduce)))~~ reduce all or part of your overpayment under ~~((section))~~ subsection (13) ~~((below))~~ of this section; or

(d) Request a hearing and continued benefits under WAC 388-458-0040.

(5) If you are responsible for an intentional program violation (IPV) overpayment, you must tell us how you want to repay this overpayment within ten days of the date we sent your collection action notice. If you do not do this, we reduce your current monthly benefits.

(6) If your AU currently receives basic food, FAP, or WASHCAP benefits, you ~~((can))~~ may choose to repay your overpayment by making monthly payments. The payments must be more than we would recover by reducing your benefits. Your AU or the department ~~((can))~~ may request a change to the agreement if necessary.

(7) If you receive ongoing basic food, FAP, or WASHCAP benefits, we reduce your monthly benefits to repay the overpayment. We do not reduce your first basic food, FAP, or WASHCAP allotment when we first approve your application for benefits.

(a) If you have an administrative or inadvertent household error overpayment, we reduce your benefits by the greater of:

(i) Ten percent of your monthly benefits; or

(ii) Ten dollars per month.

(b) If you have an IPV overpayment, we reduce your benefits by the greater of:

(i) Twenty percent of your monthly benefits; or

(ii) Twenty dollars per month.

(8) We send you a change letter under WAC 388-458-0025 before we reduce your basic food, FAP, or WASHCAP benefits.

(a) You may request a hearing on the change letter ~~((, for instance,))~~ if you do not ~~((feel))~~ believe the amount of the overpayment was calculated correctly, making the reduction incorrect.

(b) The administrative law judge (ALJ) does not have authority to compromise, terminate, write-off, defer or otherwise waive the overpayment claim or recovery ~~((thereunder))~~.

(9) If you do not meet the terms of a repayment agreement, we reduce your current benefits unless you:

(a) Pay all overdue payments to bring your repayment agreement current; or

(b) Ask us to consider a change to the repayment schedule.

(10) We may also collect overpaid food benefits with an order to withhold and deliver property under RCW 43.20B.635.

(11) If your overpayment claim is past due for one hundred twenty or more days, we refer your overpayment for federal collection. A federal collection includes reducing your income tax refund, Social Security benefits, or federal wages. We do not count your overpayment as past due if you:

(a) Repay the entire overpayment by the due date;

(b) Have your monthly benefits reduced to repay the overpayment;

~~((or))~~

(c) Arrange with us to (~~(compromise (reduce))~~) reduce all or part of your overpayment under (~~(section)~~) subsection (13) (~~(below)~~) of this section; or

(d) Meet the requirements of your scheduled repayment agreement.

(12) If you no longer receive basic food, FAP, or WASHCAP benefits, we (~~(can)~~) may garnish your wages, file a lien against your personal or real property, attach other benefits, or otherwise access your property to collect the overpayment amount.

(13) (~~(At anytime)~~) Based on your request or our own, we may (~~(compromise (reduce))~~) reduce all or part of your overpayment at any time.

(a) We may (~~(, at our discretion, compromise)~~) reduce a claim or any portion of a claim if we determine that your household's economic circumstances dictate that you will not be able to pay the claim in three years.

(b) If you disagree with our decision not to (~~(compromise)~~) reduce all or part of a food benefits overpayment, you may ask for a review of that decision.

(i) The review will be heard by someone other than the person who made the decision you disagree with.

(ii) You do not have a right to an administrative hearing to contest our decision not to (~~(compromise)~~) reduce all or part of a food benefits overpayment.

(c) If your claim becomes delinquent (~~(+)~~) because you have failed to follow a written repayment agreement entered with the office of financial recovery (OFR) (~~(+)~~) we may reinstate the (~~(compromised)~~) reduced portion of your claim.

(14) We write off unpaid overpayments and release any related liens when:

(a) The claim is invalid;

(b) All adult household members die;

(c) The claim balance is less than twenty-five dollars and (~~(has been)~~) is delinquent for ninety days or more;

(d) We determine it is not cost effective to pursue the claim further;

(e) We agreed to accept a partial payment that left an unpaid balance after this payment; or

(f) (~~(You have paid ten percent of your monthly benefits, or ten dollars, whichever is greater, on an administrative or inadvertent household error overpayment for at least thirty six months; or~~

~~(g)~~) The claim (~~(has been)~~) is delinquent for three years or more unless we plan to pursue the claim through the treasury offset program.

(15) If your AU has an overpayment from another state, we (~~(can)~~) may collect this overpayment if the state where you were overpaid does not plan to collect it and (~~(they give)~~) gives us the following:

(a) A copy of the overpayment calculation and overpayment notice made for the client; and

(b) Proof that you received the overpayment notice.