



PROPOSED RULE MAKING

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

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FILED

DATE: October 18, 2021

TIME: 1:32 PM

WSR 21-21-078

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 21-11-067 ; 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 proposing to amend WAC 388-424-0001, Citizenship and alien status – Definitions; WAC 388-424-0009, Citizenship and alien status – Social Security number (SSN) requirements; WAC 388-424-0010, Citizenship and alien status – Eligibility for TANF; WAC 388-424-0015, Immigrant eligibility restrictions for the state family assistance, ABD cash and PWA programs; WAC 388-424-0030, How does my alien status impact my eligibility for state-funded benefits under the food assistance program?; and WAC 388-400-0010, Who is eligible for state family assistance?

The department also proposes to adopt the following new section to Chapter 388-424 WAC, Citizenship and alien status: WAC 388-424-0035, Verifications - Survivors of certain crimes.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 23, 2021	10:00am	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504 Or virtual	Public parking at 11 th and Jefferson. A map is available at: https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2 Due to the impacts of the COVID pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of intended adoption: Not earlier than November 24, 2021 (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) 5:00 p.m. November 23, 2021

Assistance for persons with disabilities:

Contact Shelley Tencza, Rules Consultant

Phone: 360-664-6198

Fax: 360-664-6185

TTY: 711 Relay Service

Email: tencza@dshs.wa.gov

Other:

By (date) 5:00 p.m. November 9, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Proposed amendments support implementation of 3SSB 5164 (Chapter 136, Laws of 2020). Effective February 1, 2022, victims of human trafficking, and other certain crimes, and their qualifying family members are eligible for the Food Assistance Program for legal immigrants and State Family Assistance.

Reasons supporting proposal: See above.

Statutory authority for adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090

Statute being implemented: RCW 74.04.005, 74.04.820, 74.08A.120, 74.09.035

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

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:	Olga Walker	PO Box 45470, Olympia, WA 98504-5470	360-725-4641
Implementation:	Olga Walker	PO Box 45470, Olympia, WA 98504-5470	360-725-4641
Enforcement:	Olga Walker	PO Box 45470, Olympia, WA 98504-5470	360-725-4641

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 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:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input 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 34.05.328(5)(b)(vii).

Explanation of exemptions, if necessary: The proposed rules do not affect small businesses. They only affect DSHS clients.

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:

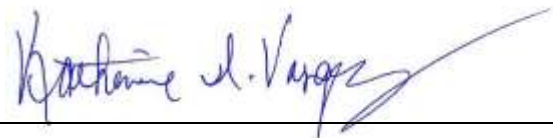
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: October 18, 2021

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 16-02-028, filed 12/29/15, effective 2/1/16)

WAC 388-400-0010 Who is eligible for state family assistance?

(1) To be eligible for state family assistance (SFA), ~~((aliens))~~ ap-
plicants must meet Washington state residency requirements as listed in WAC 388-468-0005 and immigrant eligibility requirements as listed in WAC 388-424-0015.

(2) You are eligible for SFA if you are not eligible for temporary assistance for needy families (TANF) for the following reasons:

(a) You are a qualified alien and have been in the United States for less than five years as described in WAC 388-424-0006;

(b) You are a nonqualified alien as defined in WAC 388-424-0001, who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(c) You are a ~~((nineteen))~~ 19 or ~~((twenty-year-old))~~ 20 year old student that meets the education requirements of WAC 388-404-0005;

(d) You are a caretaker relative of a ~~((nineteen))~~ 19 or ~~((twenty-year-old))~~ 20 year old student that meets the education requirements of WAC 388-404-0005; ~~((or))~~

(e) You are a pregnant woman who has been convicted of misrepresenting their residence in order to receive benefits from two or more states at the same time; or

(f) You do not meet citizenship or immigration status requirements in WAC 388-424-0010 and you are a survivor of certain crimes as defined in WAC 388-424-0001(4).

(3) You and the other TANF eligible members of your assistance unit may receive, at the department's discretion, SFA rather than TANF if:

(a) You are otherwise eligible for TANF as a parent; and

(b) Another parent in your assistance unit is eligible for TANF or SFA; and

(c) One of the following conditions exists:

(i) You or the other parent in your assistance unit is pregnant; or

(ii) Your assistance unit includes a child under ~~((twelve))~~ 12 months of age.

(4) If you apply for SFA, have not received SFA within the past ~~((thirty))~~ 30 days, and will be a mandatory WorkFirst participant as described in WAC 388-310-0200 once approved, you must complete a Work-First orientation before we approve your application.

AMENDATORY SECTION (Amending WSR 20-09-044, filed 4/8/20, effective 5/9/20)

**WAC 388-424-0001 Citizenship and ~~((alien))~~ immigration status—
Definitions.** For the purposes of determining an individual's citizenship and ~~((alien))~~ immigration status for public assistance, the following definitions apply:

(1) "**Lawfully present**" are immigrants or noncitizens who have been inspected and admitted into the United States and have not overstayed the period for which they were admitted, or have current per-

mission from the U.S. Citizenship and (~~Immigrant~~) Immigration Services (CIS) to stay or live in the U.S.

(2) **"Qualified aliens"** are lawfully present immigrants defined in federal law as one of the following:

(a) Individuals lawfully admitted for permanent residence (LPRs).

(b) Individuals who are admitted to the U.S. as refugees under INA §207. The following individuals are treated the same as refugees in their eligibility for public assistance:

(i) Hmong or Highland Lao are members of a Hmong or Highland Lao-tian tribe which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964 to May 7, 1975), and are "lawfully present" in the U.S. This category also includes the spouse (including unremarried widow or widower) or unmarried dependent child of such tribal members.

(ii) Victims of trafficking according to federal law are:

(A) Individuals who have been certified (~~or approved~~) as victims of trafficking by the federal U.S. Department of Health and Human Services (HHS), Office (~~of refugee resettlement~~) on Trafficking in Person (OTIP), or have been granted a T visa.

(B) Immediate family members of trafficking victims. Immediate family members are the spouse or child of a victim of any age and the parent or unmarried minor sibling if the victim is under (~~twenty-one~~) 21 years old.

(iii) Special immigrants from Iraq and Afghanistan are individuals granted special immigrant status under INA §101 (a) (27).

(c) Individuals who have been granted asylum under INA §208.

(d) Cuban/Haitian entrants. These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.

(e) Abused spouses or children, parents of abused children, or children of abused spouses:

(i) When the alien no longer resides with the person who committed the abuse, and has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse or unmarried child under age (~~twenty-one~~) 21 of a lawful permanent resident (LPR);

(B) A notice of "prima facie" approval of a pending self-petition under the violence against women act (VAWA); or

(C) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA.

(ii) Children of an abused spouse do not need their own separate pending or approved petition, but are included in their parent's petition if it was filed before they turned (~~twenty-one~~) 21 years old. Children of abused persons who meet the conditions above retain their "qualified alien" status even after they turn (~~twenty-one~~) 21 years old.

(f) Individuals who have been granted parole into the U.S. for at least a period of one year (or indefinitely) under INA §212 (d) (5), including "public interest" parolees.

(g) Individuals granted withholding of deportation or removal under INA §243(h) or §241 (b) (3).

(h) Individuals who were admitted to the U.S. as conditional entrants under INA §203 (a) (7) prior to April 1, 1980.

(i) Amerasians who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam War.

(3) **"Nonqualified aliens"** are noncitizens who are lawfully present in the U.S. and who are not included in the definition of

qualified aliens in subsection (1) of this section. Nonqualified aliens include but are not limited to:

- (a) Citizens of Marshall Islands, Micronesia or Palau;
- (b) Immigrants paroled into the U.S. for less than one year;
- (c) Immigrants granted temporary protected status; or
- (d) Nonimmigrants who are allowed entry into the U.S. for a specific purpose usually for a limited time are also nonqualified. Examples include:

- (i) Business visitors;
- (ii) Students; and
- (iii) Tourists.

(4) "Survivors of certain crimes" are noncitizens, and any of their qualifying family members, as defined in subsection (5) of this section, who have:

(a) Filed or are preparing to file an application for a T visa (trafficking victim);

(b) Filed or are preparing to file an application for a U visa (crime victim); or

(c) Been harmed by one of the specific crimes described below;
and

(i) Was granted continued presence by U.S. Homeland Security; or

(ii) Has filed or is preparing to file an application for asylum status.

Specific crimes include:

(A) Those related to human trafficking, kidnapping, unlawful imprisonment, custodial interference, luring, trafficking, and coercion of involuntary servitude under chapter 9A.40 RCW;

(B) Sexual exploitation of children under chapter 9.68A RCW; or

(C) Substantially similar crimes under federal law or the laws of another state.

(5) "Qualifying family members" are the spouse and child(ren) of survivors of certain crimes, and the parents or unmarried minor siblings if the survivor is under 21 years old. Qualifying family members do not include a person charged with or convicted of attempt, conspiracy, solicitation, or commission of a crime, listed under subsection (4)(c)(i-iii) of this section, against the survivor of certain crimes.

~~((4))~~ (6) **"Undocumented aliens"** are noncitizens without a lawful immigration status as defined in subsections (2) or (3) of this section, and who:

(a) Entered the U.S. illegally; or

(b) Were lawfully admitted but whose status expired or was revoked per United States Citizenship and Immigration Services (USCIS).

~~((5))~~ (7) **"U.S. citizens"** are one of the following:

(a) Individuals born in the United States or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens).

(b) American Indians born outside the U.S. without regard to immigration status or date of entry if:

(i) They were born in Canada and are fifty percent American Indian blood (but need not belong to a federally recognized tribe); or

(ii) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

(c) Individuals who have become naturalized U.S. citizens.

(d) Individuals born abroad to at least one U.S. citizen parent depending on conditions at the time of their birth, per title 8, subchapter III, section 1401 of the United States Code.

(e) Individuals who turn (~~(eighteen)~~) 18 years of age on or after February 27, 2001, automatically become U.S. citizens if the following conditions are met while the individual is under age eighteen per INA 320.

(i) The individual is granted lawful permanent resident (LPR) status;

(ii) At least one of the individual's parents is a U.S. citizen by birth or naturalization; and

(iii) The individual:

(A) Resides in the U.S. in the legal and physical custody of the citizen parent; or

(B) Was adopted according to the requirements of INA 101 and resides in the U.S. in the legal and physical custody of the citizen parent.

(f) Individuals, who turned (~~(eighteen)~~) 18 before February 27, 2001, would have automatically (~~(become)~~) became a citizen if, while (~~(the individual was)~~) still under (~~(eighteen)~~) 18, (~~(he or she)~~) they became a lawful permanent resident and both (~~(his or her)~~) of their parents were naturalized. Such individuals also may have derived citizenship when only one parent naturalized, if the other parent was dead or a U.S. citizen by birth, or the individual's parents were separated and the naturalized parent had custody.

(~~(+6)~~) (8) "**U.S. nationals**" are persons who owe permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(a) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(b) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

WAC 388-424-0009 Citizenship and (~~(alien)~~) immigration status—Social Security number (SSN) requirements. (1) Any person who has applied for a Social Security number (SSN) as part of their application for benefits cannot have benefits delayed, denied, or terminated pending the issuance of the SSN by the Social Security Administration (SSA).

(2) The following (~~(immigrants)~~) benefit applicants are not required to apply for an SSN:

(a) An alien, regardless of their immigration status, who is applying for a program listed in WAC 388-476-0005(6);

(b) A nonqualified alien; (~~(and)~~)

(c) Members of a household who are not applying for benefits for themselves; and

(d) Individuals who meet the definition of "survivor of certain crimes" as defined in WAC 388-424-0001(4).

(3) "Qualified and nonqualified aliens," as defined in WAC 388-424-0001, who are applying for federal benefits but who are not authorized to work in the U.S., must still apply for a nonwork SSN. The department must assist them in this application without delay.

(4) Any person who is otherwise eligible for benefits may choose not to provide the department with an SSN without jeopardizing the eligibility of others in the household. See WAC 388-450-0140 for how the income of such individuals is treated.

AMENDATORY SECTION (Amending WSR 15-02-006, filed 12/26/14, effective 1/26/15)

WAC 388-424-0010 Citizenship and ((alien)) immigration status—Eligibility for TANF.

(1) To receive temporary assistance for needy families (TANF), an individual must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

- (a) A United States (U.S.) citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien" (~~(~~
- ~~(e) A victim of trafficking; or~~
- ~~(f) A Hmong or Highland Lao)) as defined in WAC 388-424-0001(2).~~

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF.

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF for five years after obtaining status as a qualified alien unless the criteria in WAC 388-424-0006(4) are met.

(4) An alien who is ineligible for TANF because of the five-year bar or because of their immigration status may be eligible for:

- (a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program); or
- (b) State-funded cash as described in WAC 388-424-0015 (state family assistance (SFA)), and aged, blind, or disabled (ABD) cash.

AMENDATORY SECTION (Amending WSR 15-02-006, filed 12/26/14, effective 1/26/15)

WAC 388-424-0015 Immigrant eligibility restrictions for the state family assistance, ABD cash, and PWA programs. (1) To receive state family assistance (SFA) benefits, you must be:

(a) A "qualified alien" as defined in WAC 388-424-0001 who is ineligible for TANF due to the five-year bar as described in WAC 388-424-0006(3); (~~(~~

(b) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005, including a noncitizen American Indian who does not meet the criteria in WAC 388-424-0001; or

(c) A "survivor of certain crimes" as defined in WAC 388-424-0001(4).

(2) To receive aged, blind, or disabled (ABD) cash or pregnant women assistance (PWA) benefits, you must be:

- (a) A U.S. citizen;
- (b) A U.S. national;

- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien" or similarly defined lawful immigrant such as victim of trafficking as defined in WAC 388-424-0001; or
- (e) A nonqualified alien described in WAC 388-424-0001 who:
 - (i) Has verified their intent to stay in the United States indefinitely; and
 - (ii) The United States Immigration and Customs Enforcement is not taking steps to enforce their departure.

AMENDATORY SECTION (Amending WSR 20-09-044, filed 4/8/20, effective 5/9/20)

WAC 388-424-0030 How does my ((alien)) immigration status impact my eligibility for state-funded benefits under the food assistance program?

(1) If you are not a U.S. citizen and are not eligible for federally funded basic food benefits, you may be eligible for state-funded benefits under the food assistance program (FAP) if you are ((a legal immigrant. This means you must be one of the following)):

(a) A "qualified alien" as defined in WAC 388-424-0001, who does not meet the eligibility requirements under WAC 388-424-0020 to receive federally funded basic food benefits; ((or))

(b) A "nonqualified alien" as described in WAC 388-424-0001 who:

(i) Is not a nonimmigrant as described in WAC 388-424-0001 (3) (d);

(ii) Intends to stay in the United States indefinitely; and

(iii) The United States Immigration and Customs Enforcement is not taking steps to enforce your departure; or

(c) A "survivor of certain crimes" as defined in WAC 388-424-0001(4).

(2) If you are eligible for state-funded FAP, we calculate your benefits as described under WAC 388-400-0050.

NEW SECTION

WAC 388-424-0035 Verifications—Survivors of certain crimes.

(1) Applicants may provide a signed self-attestation to verify that they meet the requirements of WAC 388-424-0001(4). Alternative proof, such as supporting documents, may also be provided.

(2) Absence of the following documents shall not affect eligibility for benefits for applicants defined under WAC 388-424-0001(4):

(a) Passport;

(b) Valid regular or nonwork SSN;

(c) Alien Registration number; or

(d) Documentation from a federal agency used to verify immigration status.