



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 15, 2022

TIME: 10:16 AM

WSR 22-05-078

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 21-19-152 ; 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 amendments to the following WAC sections: 388-412-0015, General information about your food assistance allotments; 388-450-0185, What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?; 388-450-0190, How does the department figure my shelter cost income deduction for basic food?; 388-450-0195, Does the department use my utility costs when calculating my basic food or WASHCAP benefits?; 388-470-0005, How do resources affect my eligibility for cash assistance and basic food?; 388-478-0060, What are the income limits and maximum benefit amounts for basic food? These amendments are currently in place via emergency adoption filed under WSR 22-04-004.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 22, 2022	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504 Or Virtually	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 COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most up to date information.

Date of intended adoption: Not earlier than March 23, 2022 (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. on March 22, 2022

Assistance for persons with disabilities:

Contact Shelley Tencza, DSHS Rules Consultant

Phone: 360-664-6036

Fax: 360-664-6185

TTY: 711 Relay Service

Email: Tencza@dshs.wa.gov

Other:

By (date) 5:00 p.m. on March 8, 2022

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Proposed amendments provide annual updates to Basic Food standards relating to income, deductions, and benefits.

Reasons supporting proposal: Income limits and minimum and maximum benefit amounts, deductions, and resource limits are updated annually by the US Department of Agriculture, Food and Nutrition Services, effective October 1.

Statutory authority for adoption: RCW 74.04.005, RCW 74.04.050, RCW 74.04.055, RCW 74.04.057, RCW 74.04.500, RCW 74.04.510, RCW 74.08.090, 74.08A.010, RCW 74.08A.120, 74.08A.250

Statute being implemented:

Is rule necessary because of a:

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

If yes, CITATION: Agriculture Improvement Act of 2018 (2018 Farm Bill), Sec 4002

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

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:	Carolyn Horlor	PO Box 45470, Olympia, WA 98504-5470	(360) 364-0676
Implementation:	Carolyn Horlor	PO Box 45470, Olympia, WA 98504-5470	(360) 364-0676
Enforcement:	Carolyn Horlor	PO Box 45470, Olympia, WA 98504-5470	(360) 364-0676

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: February 14, 2022

Name: Katherine I. Vasquez

Title: Rules Coordinator

Signature:



WAC 388-412-0015 General information about your food assistance allotments. (1) Your monthly allotment under the Washington basic food program, food assistance program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) program is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

(2) **How we determine monthly allotments:**

(a) We calculate your monthly allotment for federally funded basic food as described under WAC 388-450-0162.

(b) We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

(3) **Maximum allotment:**

(a) The maximum allotment for the number of people in your AU eligible for federally funded basic food benefits is described under WAC 388-478-0060.

(b) The maximum allotment for the number of people in your AU eligible for state-funded FAP benefits is set by the legislature in the biennial operating budget as described in WAC 388-400-0050.

(4) **Prorated benefits in the first month.** If we determine you are eligible for food assistance, your first month's benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a thirty-day month:

(a) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

(5) **Combined allotment for first and second month's benefits.** If you apply for benefits on or after the sixteenth of the month and we determine you are eligible for food assistance for both the first and second month, we will issue both months' benefits in one allotment.

(6) **Minimum allotment.** Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

(a) (~~Sixteen~~) Twenty dollars if your AU has one or two members and at least one person is eligible for federally funded basic food; or

(b) (~~Sixteen~~) Twenty dollars if your AU has one or two members and all members of your AU are eligible for state-funded FAP.

(7) **Use of food assistance benefits.** Your food assistance benefits may only be used to buy eligible food items as described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

AMENDATORY SECTION (Amending WSR 21-13-122, filed 6/21/21, effective 7/22/21)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? (1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
3 or ((less)) fewer	(\$167) \$177
4	(\$181) \$184
5	(\$212) \$215
6 or more	(\$243) \$246

(b) Twenty percent of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 21-13-122, filed 6/21/21, effective 7/22/21)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

(a) Monthly rent, lease, and mortgage payments;

(b) Property taxes;

(c) Homeowner's association or condo fees;

(d) Homeowner's insurance for the building only;

(e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

(i) AU intends to return to the home;

(ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and

(iii) AU's home is not being leased or rented during your AU's absence.

(h) A homeless AU with shelter costs is eligible for a homeless shelter expense deduction of one hundred (~~(fifty-seven)~~) fifty-nine dollars. If the homeless AU has shelter costs in excess of (~~one hundred fifty-seven dollars~~) this amount, the AU has the option to claim either:

(i) The homeless shelter deduction; or

(ii) Actual shelter costs.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2)(a) through (2)(d) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of five hundred (~~(eighty-six)~~) ninety-seven dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over five hundred (~~(eighty-six)~~) ninety-seven dollars.

AMENDATORY SECTION (Amending WSR 21-13-122, filed 6/21/21, effective 7/22/21)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits? (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or

(b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the following amounts if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than twenty dollars in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of four hundred (~~(forty-nine)~~) fifty-nine dollars.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of four hundred (~~(forty-nine)~~) fifty-nine dollars.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of three hundred (~~(fifty-two)~~) sixty-one dollars.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of fifty-nine dollars.

(3) "Utility costs" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water;
- (d) Sewer;
- (e) Well installation/maintenance;
- (f) Septic tank installation/maintenance;
- (g) Garbage/trash collection; and
- (h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

AMENDATORY SECTION (Amending WSR 19-01-105, filed 12/18/18, effective 2/1/19)

WAC 388-470-0005 How do resources affect my eligibility for cash assistance and basic food? (1) The following definitions apply to this chapter:

(a) **"We"** means the department of social and health services.

(b) **"You"** means a person applying for or getting benefits from the department.

(c) **"Fair market value"** or **"FMV"** means the price at which you could reasonably sell the resource.

(d) **"Equity value"** means the FMV minus any amount you owe on the resource.

(e) **"Community property"** means a resource in the name of the husband, wife, or both.

(f) **"Separate property"** means a resource of a married person that one of the spouses:

(i) Had possession of and paid for before they were married;

(ii) Acquired and paid for entirely out of income from separate property; or

(iii) Received as a gift or inheritance.

(2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or basic food when:

(a) It is a resource we must count under WAC 388-470-0045 for cash assistance or WAC 388-470-0055 for basic food;

(b) You own the resource and we consider you to own a resource if:

(i) Your name is on the title to the property; or

(ii) You have property that does not have a title;

(c) You have control over the resource, which means the resource is actually available to you; and

(d) You could legally sell the resource or convert it into cash within twenty days.

(3) For cash assistance, you must try to make your resources available even if it will take you more than twenty days to do so, unless:

(a) There is a legal barrier; or

(b) You must petition the court to release part or all of a resource.

(4) When you apply for assistance, we count your resources as of:

(a) The date of your interview, if you are required to have an interview; or

(b) The date of your application, if you are not required to have an interview.

(5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.

(6) For cash assistance, there is an equity value resource limit of six thousand dollars.

(7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for basic food.

(8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for basic food:

(a) Three thousand (~~(five)~~) seven hundred fifty dollars if your AU has either an elderly or disabled individual; or

(b) Two thousand (~~(two)~~) five hundred (~~(fifty)~~) dollars for all other AUs.

(9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:

(a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.

(b) For basic food, we count the entire amount unless you can prove that the entire amount is not available to you.

(10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

(11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

(12) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household;

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

(13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of a resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property you or another person owns.

AMENDATORY SECTION (Amending WSR 21-13-122, filed 6/21/21, effective 7/22/21)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all

other eligibility requirements for basic food, your AU must have income at or below the limits in columns B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section.

~~((a))~~ The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

~~((b) From January 1, 2021 through June 30, 2021, the maximum monthly food assistance benefit your AU could receive is listed in column E of this subsection.)~~

EFFECTIVE ~~((10/1/2020))~~ 10/1/2021

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net (Countable) Monthly Income	Column D Maximum Allotment	((Column E 15% Max Allotment))	Column ((F)) <u>E</u> 165% of Poverty Level
1	((1,383)) <u>\$1,396</u>	((1,064)) <u>\$1,074</u>	((204)) <u>\$250</u>	((234))	((1,755)) <u>\$1,777</u>
2	((1,868)) <u>1,888</u>	((1,437)) <u>1,452</u>	((374)) <u>459</u>	((430))	((2,371)) <u>2,396</u>
3	((2,353)) <u>2,379</u>	((1,810)) <u>1,830</u>	((535)) <u>658</u>	((616))	((2,987)) <u>3,020</u>
4	((2,839)) <u>2,871</u>	((2,184)) <u>2,209</u>	((680)) <u>835</u>	((782))	((3,603)) <u>3,644</u>
5	((3,324)) <u>3,363</u>	((2,557)) <u>2,587</u>	((807)) <u>992</u>	((929))	((4,219)) <u>4,268</u>
6	((3,809)) <u>3,855</u>	((2,930)) <u>2,965</u>	((969)) <u>1,190</u>	((1,114))	((4,835)) <u>4,893</u>
7	((4,295)) <u>4,347</u>	((3,304)) <u>3,344</u>	((1,071)) <u>1,316</u>	((1,232))	((5,451)) <u>5,517</u>
8	((4,780)) <u>4,839</u>	((3,677)) <u>3,722</u>	((1,224)) <u>1,504</u>	((1,408))	((6,067)) <u>6,141</u>
9	((5,266)) <u>5,331</u>	((4,051)) <u>4,101</u>	((1,377)) <u>1,692</u>	((1,584))	((6,683)) <u>6,766</u>
10	((5,752)) <u>5,823</u>	((4,425)) <u>4,480</u>	((1,530)) <u>1,880</u>	((1,760))	((7,299)) <u>7,391</u>
Each Additional Member	((+486)) <u>+492</u>	((+374)) <u>+379</u>	+153	((+176))	((+616)) <u>+625</u>

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is sixty years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.