



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: March 15, 2023

TIME: 9:54 AM

WSR 23-07-082

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 22-13-019 ; 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 WAC 388-446-0015, What is an intentional program violation (IPV) and administrative disqualification hearing (ADH) for basic food? No amendments are being proposed to WAC 388-410-0020 and WAC 388-410-0030 at this time as originally contemplated in the CR-101.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 25, 2023	10:00 am	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/drivingdirections-office-bldg-2 Due to the COVID pandemic, hearings are being held virtually. Please see the DSHS website for the most up to date information.

Date of intended adoption: No earlier than April 26, 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) April 25, 2023, 5:00 pm

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) April 11, 2023, 5:00 pm

Purpose of the proposal and its anticipated effects, including any changes in existing rules: These amendments align with federal regulations in 7CFR 273.16(e)(3) regarding administrative disqualification hearing notices and actions related to trafficked benefits.

Reasons supporting proposal: 7 CFR 273.16(e)(3)

Statutory authority for adoption: RCW 43.20A.550, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090,

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:

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:	Alexis Miller	PO Box 45470, Olympia, WA 98504-5470	253-579-3144
Implementation:	Alexis Miller	PO Box 45470, Olympia, WA 98504-5470	253-579-3144
Enforcement:	Alexis Miller	PO Box 45470, Olympia, WA 98504-5470	253-579-3144

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: These rules 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"

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: 7 CFR 273.16(e)(3)

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 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: The proposed amendments do not impact small businesses. They only impact DSHS clients.

(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:

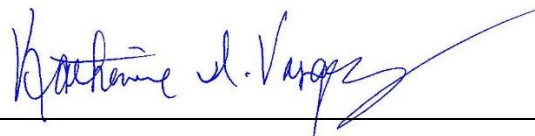
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: March 10, 2023

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearing (ADH) for basic food? (1)

An intentional program violation (IPV) is an act in which someone intentionally:

(a) Misrepresents, conceals, or withholds facts in order to be found eligible for benefits or to receive more benefits than their actual circumstances would allow including making a false statement regarding household circumstances;

(b) Acts in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations, any state statute, or WAC relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits including; or

(c) Attempts to buy, sell, steal, or trade food assistance benefits issued and accessed via electronic benefit transfer (EBT) cards, EBT card numbers or personal identification numbers (PINs), for cash or anything other than eligible food, alone or acting with others.

(2) If we suspect someone has committed an IPV we refer their case for an administrative disqualification hearing (ADH), unless:

(a) The case is currently referred for prosecution; or

(b) A court or prosecutor already took action against the person for the same or related facts.

(3) An administrative disqualification hearing (ADH) is a formal hearing to determine if a person committed an IPV. ADHs are governed by the rules found in chapter 388-02 WAC. However, rules in this section are the overriding authority if there is a conflict.

(4) A person suspected of an IPV may choose to waive their right to an ADH by signing a waiver of administrative disqualification hearing or a disqualification consent agreement that waives their right to the hearing and accept the IPV penalty under WAC 388-446-0020.

(5) If someone commits one or more IPV's and is suspected of committing another, we refer them for an ADH when the act of suspected violation occurred:

(a) After we mailed the disqualification notice to the client for the most recent IPV; or

(b) After criminal proceedings for the most recent IPV are concluded.

(6) When we refer a case for an administrative disqualification hearing (ADH), the office of administrative hearings (OAH) sends the person notice of the ADH at least (~~(thirty)~~) 30 days in advance of the hearing date. OAH sends the notice by certified mail, or personal service. The notice will contain the following information:

(a) The date, time, and place of the hearing;

(b) The charges against the person;

(c) A summary of the evidence, and how and where they may examine the evidence;

(d) A warning that a decision will be based entirely on the evidence the department provides if they fail to appear at the hearing;

(e) A statement that the person has (~~(ten)~~) 10 days from the date of the scheduled hearing to show good cause for failing to attend the hearing and to ask for a new hearing date;

(f) A warning that a determination of IPV will result in a disqualification period; and

(g) A statement that if we schedule a telephone hearing, they may request an in-person hearing by filing a request with the administrative law judge one week or more prior to the date of the hearing.

(h) If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

(7) The department may combine an ADH and a regular hearing when the reason for both hearings is related.

(8) The person or a representative has the right to one continuance of up to (~~(thirty)~~) 30 days if a request is filed (~~(ten)~~) 10 days or more prior to the hearing date.

(9) The administrative law judge (ALJ) will conduct the ADH and render a decision even if the person or representative fails to appear, unless within (~~(ten)~~) 10 days from the date of the scheduled hearing:

(a) The person can show good cause for failing to appear; and

(b) The person or representative requests the hearing be reinstated.

(10) We may change a scheduled telephone hearing to an in-person hearing if (~~(this is requested by)~~) the person or department representative requests this at least one week in advance. The person requesting a change less than one week in advance must show good cause for the requested change.

(11) The ALJ issues a final decision as specified in WAC 388-02-0215 through 388-02-0525. The decision determines whether the department had established with clear and convincing evidence that the person committed and intended to commit an IPV.

(12) The department and the client each have the right to request a reconsideration of the decision as specified in WAC 388-02-0610 through 388-02-0635. The final order or the reconsideration decision is the final agency decision.

(13) We will not implement a disqualification and continue benefits at the current amount if:

(a) The client can show good cause for not attending the hearing within (~~(thirty)~~) 30 days from the date the disqualification notice was mailed; and

(b) An administrative law judge determines the client had good cause; or

(c) The client requests reconsideration or files a petition for judicial review to appeal the disqualification as specified in WAC 388-02-0530 (1) or (4).