

WSR 22-23-138
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed November 21, 2022, 12:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-025.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-424-0001 Citizenship and immigration status—Definitions, 388-424-0020 How does my alien status impact my eligibility for federally funded basic food benefits?, and 388-466-0005 Immigration status requirements for refugee cash assistance.

Hearing Location(s): On December 27, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. 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 December 28, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by December 27, 2022, at 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 Tencza@dshs.wa.gov, by December 13, 2022, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments are necessary to align department policies with federal legislation and authorization from the Office of Refugee Resettlement, which expands eligibility for federally funded benefits to humanitarian parolee arrivals displaced from Ukraine.

Emergency amendments to implement this change took effect June 24, 2022, under WSR 22-14-020, and extended under WSR 22-21-092 filed on October 17, 2022.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.120.

Statute Being Implemented: See federal law below.

Rule is necessary because of federal law, Additional Ukraine Supplemental Appropriations Act, 2022 (Public Law 117-128).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Max Gibbs-Ruby, P.O. Box 45470, Olympia, WA 98504-5470, Max.Gibbs-Ruby@dshs.wa.gov.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are 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 medi-

cal or financial eligibility and rules concerning liability for care of dependents.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because 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. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Additional Ukraine Supplemental Appropriations Act, 2022 (Public Law 117-128).

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

November 18, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4943.5

AMENDATORY SECTION (Amending WSR 22-12-038, filed 5/25/22, effective 6/25/22)

WAC 388-424-0001 Citizenship and immigration status—Definitions. For the purposes of determining an individual's citizenship and 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 permission from the U.S. Citizenship and 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 as victims of trafficking by the federal U.S. Department of Health and Human Services (HHS), Office 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 21 years old.

(iii) Afghan nationals and their spouses and children, paroled into the U.S. between July 31, 2021, and September 30, 2022, after

evacuation from Afghanistan to the U.S., or to a location overseas (-): or

(A) an individual who was paroled into the U.S. after September 30, 2022, and is the spouse or child of an Afghan national as defined in subsection (iii) of this section;

(B) an individual who is the parent or legal guardian of an individual defined in subsection (iii) of this section who is determined to be an unaccompanied child;

(iv) Special immigrants from Iraq and Afghanistan are individuals granted:

(A) Special immigrant status under INA §101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Paroled under section 602 (B) (1) AAPA/Sec 1059(a) NDAA 2006.

(v) Individuals from Ukraine and their family members admitted as humanitarian parolees between February 24, 2022, and September 30, 2023, and whose parole has not been terminated by the Secretary of the Department of Homeland Security (DHS), who are:

(A) Citizens or nationals of Ukraine;

(B) Non-Ukrainian individuals who were habitually residing in Ukraine, and have documentation confirming last habitual residence in Ukraine;

(C) Individuals who were first granted humanitarian parole, and then obtained temporary protected status (TPS). They are eligible for federally funded assistance until the end of their parole term due to underlying receipt of humanitarian parole;

(D) A spouse or child of an individual described in subsections (A)-(C) of this section who is paroled into the United States after September 30, 2023;

(E) A parent, legal guardian, or primary caregiver of an unaccompanied refugee minor or an unaccompanied child described in subsections (A)-(C) of this section who is paroled into the United States after September 30, 2023.

(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 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 21 years old. Children of abused persons who meet the conditions (~~above~~) in this section retain their "qualified alien" status even after they turn 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, coercion of involuntary servitude, and others under chapter 9A.40 RCW;

(B) Sexual exploitation of children and others 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) of this section, against the survivor of certain crimes.

(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).

(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 50 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 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 18 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 18 before February 27, 2001, would have automatically become a citizen if, while still under 18, they became a lawful permanent resident and both 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.

(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.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 22-12-038, § 388-424-0001, filed 5/25/22, effective 6/25/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.820, 74.08.090, 74.08A.120, 74.09.035. WSR 22-02-014, § 388-424-0001, filed 12/27/21, effective 2/1/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 20-09-044, § 388-424-0001, filed 4/8/20, effective 5/9/20. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090. WSR 11-16-056, § 388-424-0001, filed 7/29/11, effective 8/29/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.020, and Sec. 8120 of Pub. L 111-118 (DOD appropriations law); USDA Food and Nutrition Service federal guidance from January 29, 2010; U.S. DHHS Administration for Children and Families, Office of Family Assistance federal guidance letter No. TANF-ACF-PI-2010-05 issued on June 16, 2010. WSR 10-15-045, § 388-424-0001, filed 7/13/10, effective 7/27/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-424-0001, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-004, § 388-424-0001, filed 7/7/04, effective 8/7/04.]

AMENDATORY SECTION (Amending WSR 22-12-038, filed 5/25/22, effective 6/25/22)

WAC 388-424-0020 How does my alien status impact my eligibility for federally funded Basic Food benefits? (1) If you are a U.S. citizen or U.S. national as defined in WAC 388-424-0001 and meet all other eligibility requirements, you may receive federal Basic Food benefits.

(2) If you are not a U.S. citizen or U.S. national, you must fall within (a) or (b) of this subsection, and meet all other eligibility requirements, in order to receive federal Basic Food benefits:

(a) You are a member of one of the following groups of lawful immigrants as defined in WAC 388-424-0001:

- (i) Amerasian;
- (ii) Asylee;
- (iii) Cuban or Haitian entrant;
- (iv) Deportation or removal withheld;
- (v) Refugee;

(vi) Afghan nationals paroled into the U.S. between July 31, 2021, and September 30, 2022, or their spouse or child paroled into the U.S. after September 30, 2022;

- (vii) Special immigrant from Iraq or Afghanistan;
- (viii) Victim of trafficking;
- (ix) Noncitizen American Indian; or
- (x) Hmong or Highland Lao tribal member.

(b) ~~((+i))~~ You are a member of one of the following groups of qualified aliens as defined in WAC 388-424-0001:

- ~~((+A))~~ (i) Conditional entrant;
- ~~((+B))~~ (ii) Lawful permanent resident (LPR);
- ~~((+C))~~ (iii) Paroled for one year or more; ~~((+E))~~

(iv) Individuals from Ukraine granted humanitarian parole between February 24, 2022, and September 30, 2023; or

(A) their spouses and children paroled into the U.S. after September 30, 2023; or

(B) a parent, legal guardian, or primary caregiver of an unaccompanied refugee minor or an unaccompanied child described who is paroled into the U.S. after September 30, 2023; or

~~((+D))~~ (v) Abused spouse or child or parent or child of an abused spouse or child.

~~((+ii))~~ (vi) And, one of the following also applies to you:

(A) You have worked or can get credit for ~~((forty))~~ 40 Social Security Administration (SSA) work quarters - as described in WAC 388-424-0008;

(B) You are an active duty personnel or honorably discharged veteran of the U.S. military or you are the spouse, unmarried surviving spouse, or unmarried dependent child of someone who meets this requirement, as described in WAC 388-424-0007;

(C) You receive cash or medical benefits based on supplemental security income (SSI) criteria for blindness or disability;

(D) You have lived in the U.S. as a "qualified alien" as described in WAC 388-424-0001 for at least five years;

(E) You are under age ~~((eighteen))~~ 18; or

(F) You were lawfully residing in the U.S. on August 22, 1996, and were born on or before August 22, 1931.

(3) If you are a legal immigrant not eligible for federal benefits under Basic Food only because of your alien status, you may be eligible for state-funded food assistance program (FAP) benefits under WAC 388-400-0050.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 22-12-038, § 388-424-0020, filed 5/25/22, effective 6/25/22. Statutory Authority: RCW 74.04.005, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 12-18-024, § 388-424-0020, filed 8/27/12, effective 9/27/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120. WSR 11-02-035, § 388-424-0020, filed 12/29/10, effective 2/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.020, and Sec. 8120 of Pub. L 111-118 (DOD appropriations law); USDA Food and Nutrition Service federal guidance from January 29, 2010; U.S. DHHS Administration for Children and Families, Office of Family Assistance federal guidance letter No. TANF-ACF-PI-2010-05 issued on June 16, 2010. WSR 10-15-045, § 388-424-0020, filed 7/13/10, effective 7/27/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.320, Pub. L. No. 110-181, National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 111-08, the Omnibus Appropriations Act of 2009, Division F, Title VI, Section 602; Office of Refugee Resettlement State Letter 09-17 from April 9, 2009; and federal guidance issued on May 15, 2009, by the Food and Nutrition Service, United States Department of Agriculture. WSR 09-21-046, § 388-424-0020, filed 10/14/09, effective 11/4/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-424-0020, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-004, § 388-424-0020, filed 7/7/04, effective 8/7/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. WSR 03-05-029, § 388-424-0020, filed 2/10/03, effective 4/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and H.R. 2646 Farm Security and Rural Investment Act of 2002. WSR 02-22-046, § 388-424-0020, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.510, S. 1150, the Agricultural Research, Extension, and Education Reform Act of 1998. WSR 99-01-058, § 388-424-0020, filed 12/11/98, effective 1/11/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-424-0020, filed 7/31/98, effective 9/1/98. Formerly WAC 388-518-1805.]

AMENDATORY SECTION (Amending WSR 22-12-038, filed 5/25/22, effective 6/25/22)

WAC 388-466-0005 Immigration status requirements for refugee cash assistance. (1) You may be eligible for refugee cash assistance (RCA) if you can provide documentation issued by the U.S. Citizenship and Immigration Services (USCIS), that you are:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the U.S. as a refugee or asylee under section 212 (d) (5) of the INA;

(c) Granted conditional entry under section 203 (a) (7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian Immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 Continuing Resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;

(g) Certified as a victim of human trafficking by the federal office of refugee resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 Visa;

(i) Afghan nationals paroled into the U.S. between July 31, 2021, and September 30, 2022; or

(i) an individual who was paroled into the U.S. after September 30, 2022, and is the spouse or child of an Afghan national as defined in subsection (i) of this section;

(ii) an individual who is the parent or legal guardian of an individual defined in subsection (i) of this section who is determined to be an unaccompanied child;

(j) Admitted as Special Immigrant from Iraq or Afghanistan under section 101 (a) (27) of the INA, or special immigrant conditional permanent resident, or paroled under section 602 (B) (1) AAPA/Sec 1059(a) NDAA 2006((-));

(k) Individuals from Ukraine admitted as humanitarian parolees between February 24, 2022, and September 30, 2023, and whose parole has not been terminated by the Secretary of the Department of Homeland Security (DHS), who:

(i) are citizens or nationals of Ukraine;

(ii) are non-Ukrainian individuals, who were habitually residing in Ukraine, and have documentation confirming last habitual residence in Ukraine;

(iii) are individuals who were first granted humanitarian parole, and then obtained temporary protected status (TPS). They are eligible for refugee cash assistance until the end of their parole term due to underlying receipt of humanitarian parole;

(iv) are children or spouses of someone paroled into the U.S. under subsection (k) of this section and who are paroled into the U.S. after September 30, 2023; or

(v) is the parent, legal guardian, or primary caregiver of an individual described in subsection (k) of this section who is determined to be an unaccompanied child.

(2) A permanent resident alien meets the immigration status requirements for RCA if the individual was previously in one of the statuses described in subsections (1) (a) through ~~((g))~~ (k) of this section.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 22-12-038, § 388-466-0005, filed 5/25/22, effective 6/25/22. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250, and 2011 1st sp.s. c 15. WSR 12-19-037, § 388-466-0005, filed 9/12/12, effective 10/13/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-466-0005, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-466-0005, filed 7/31/98, effective 9/1/98.]