



# 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: July 17, 2023

TIME: 4:43 PM

WSR 23-15-080

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

Original Notice

Supplemental Notice to WSR 23-03-096

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 21-23-108 ; 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 adopt WAC 388-439-0005, What is the pandemic EBT program?, 388-439-0015, General information about pandemic EBT benefits., 388-439-0020, Eligibility for pandemic EBT benefits for children under age six., and 388-439-0025, Eligibility for pandemic EBT benefits during the 2023 summer period.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
August 22, 2023	10:00 am	Virtually via Teams or call in	Hearings are being held virtually. Please see the DSHS website for the most up to date information

**Date of intended adoption:** Not earlier than August 23, 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](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
Fax: 360-664-6185  
Other:  
By (date) August 22, 2023 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](mailto:Tencza@dshs.wa.gov)  
Other:  
By (date) August 8, 2023 at 5:00 p.m.

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** These rules support implementation and extension of the final year of the Pandemic EBT program (as allowed under Section 1101 of H.R. 6201, Families First Coronavirus Response Act and amended by Section 1108 of H.R. 1319, American Rescue Plan Act of 2021). This supplemental filing reflects USDA Food and Nutrition Service's (FNS) recent approval of Washington's P-EBT state plan for children in child care for School Year 2022-2023 and Washington's P-EBT state plan for summer 2023. These rules are currently in effect (since July 1, 2023) via emergency filing WSR 23-14-093 filed on June 30, 2023.

**Reasons supporting proposal:** See above

**Statutory authority for adoption:** RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, & 74.08A.120

**Statute being implemented:** N/A

**Is rule necessary because of a:**

- |                         |                              |                                        |
|-------------------------|------------------------------|----------------------------------------|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> 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:	Troy Burgess	PO Box 45470, Olympia, WA 98504-5470	360-584-5162
Implementation:	Troy Burgess	PO Box 45470, Olympia, WA 98504-5470	360-584-5162
Enforcement:	Troy Burgess	PO Box 45470, Olympia, WA 98504-5470	360-584-5162

**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, "[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 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:

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"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)                                                                                            |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)                                                                                             |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(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: These amendments relate only to DSHS client medical or financial eligibility and rules concerning liability for care of dependents.

**(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:

<b>Date:</b> July 17, 2023	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

**Chapter 388-439 WAC  
PANDEMIC EBT (P-EBT) PROGRAM**

NEW SECTION

**WAC 388-439-0005 What is the pandemic EBT program?** (1) The pandemic electronic benefits transfer (P-EBT) program is a temporary federally funded nutrition program authorized specifically through the families first coronavirus act. P-EBT provides food benefits to eligible children who do not have access to meals at a covered childcare center or free or reduced-price school meals due to the COVID-19 public health emergency. P-EBT is administered by the department of social and health services (department) and is not bound by the same state or federal rules, regulations, and procedures governing the supplemental nutrition assistance program (SNAP). P-EBT is governed by its own specific rules as found in this chapter. The 2022-2023 school year will be the final year for all P-EBT programs due to the May 2023 expiration of the federal public health emergency (PHE).

(2) The following definitions apply to this program:

(a) "Benefit level" means the P-EBT benefit amount provided to an eligible child;

(b) "Child and adult care food program (CACFP)" means a federal program that provides reimbursements for nutritious meals and snacks to eligible children and adults who are enrolled for care at participating childcare centers, day care homes, and adult day care centers;

(c) "Direct certification" means a determination that a child is eligible for free or reduced-priced school meals without further application to the national school lunch program due to:

(i) Receiving a benefit from a federal means tested assistance program, including SNAP, temporary assistance for needy families (TANF), food distribution program on Indian reservations (FDPIR), some medicaid programs; or

(ii) Other source eligible categories, including children in foster care, children experiencing homelessness, students enrolled in the migrant education program, and children enrolled in head start or the early childhood education and assistance program (ECEAP);

(d) "Eligible student" means a child or student, regardless of age, who would have access to free or reduced-price school meals through the national school lunch program (NSLP) and school breakfast program (SBP) during the school year, who is:

(i) Enrolled in a school or registered in a program in Washington state that normally participates in the NSLP;

(ii) Attending a school that has been closed or has reduced attendance or hours for five or more consecutive days during the school year due to the COVID-19 PHE designation; and

(iii) Determined by the school to be eligible for free or reduced-priced school meals or attends a school that operates the community eligibility provision or the provision 2 lunch and breakfast program. Students are identified as eligible for free or reduced-price school meals using direct certification or free or reduced-price school meals application;

(e) "Free or reduced-price school meals" means meals provided to students qualified as eligible by the Richard B. Russell National School Lunch Act;

(f) "Meal service" means the typical meals (SBP and NSLP) served when school is in session and consumed on-site as part of the school day. Meal service includes both breakfast and lunch.

(g) "Operating days" are days a school regularly operates, excluding weekends, breaks, and holidays;

(h) "P-EBT card" means the unique electronic benefit transfer (EBT) card that accesses P-EBT food benefits issued to eligible students or children under age six;

(i) "Public health emergency" means a federal declaration of a public health emergency due to the COVID-19 pandemic as issued by the secretary of health and human services;

(j) "School" means any public or nonprofit private schools, charter schools, and tribal compact schools within the state of Washington;

(k) "School closure" means that the school was closed for in-person or remote learning with no meal service available to students enrolled in the school;

(l) "Summer period" means the months of July and August between the end of the school year and the start of the next school year.

#### NEW SECTION

**WAC 388-439-0015 General information about pandemic EBT benefits.** (1) Pandemic electronic benefit transfer (P-EBT) benefits will be deposited into an account accessible with a designated P-EBT card. A P-EBT card and eligibility notice will be issued to each eligible student or child under age six. Each P-EBT card will be:

(a) Linked to a P-EBT account for each eligible student or child under age six for P-EBT benefits; and

(b) Mailed to either:

(i) The last known address on file with the school as reported by the parent or caregiver for the eligible student; or

(ii) The last known address on file with the department as reported by the parent or caregiver for the basic food case for the child under age six.

(c) It is the parent's or caregiver's responsibility to accurately and timely report any address changes to the department for children under six and to the school for school age children. The department or school is not responsible for the expungement of benefits due to unreceived P-EBT notices or cards sent through the mail.

(2) To use a P-EBT account:

(a) The P-EBT card can be used by the eligible student or child under age six or responsible household member, such as a parent or caregiver, on behalf of the eligible student or child under age six, to access the benefits in their EBT account;

(b) A personal identification number (PIN) has to be created that must be used with the P-EBT card to purchase food items;

(c) P-EBT benefits must be accessed from the P-EBT card of an eligible student or child under age six. P-EBT benefits cannot be transferred to a bank account or issued as a check;

- (d) P-EBT benefits must be used within 274 days from the initial deposit or last purchase activity on the eligible child's account;
  - (e) P-EBT benefits not used within 274 days of either activity will be removed; and information about the removal of benefits is included in the initial notice of approval.
  - (f) P-EBT benefits cannot be replaced once redeemed, removed, lost, or stolen due to fraudulent use.
  - (g) Families are responsible for keeping the P-EBT card and PIN of an eligible student or child under age six in a safe and secure place.
- (3) The purpose of P-EBT benefits is to help low-income families or individuals have a more nutritious diet by providing food benefits to eligible children during the COVID-19 PHE.
- (a) P-EBT benefits are used to buy food items for an eligible child (or youth) from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. department of agriculture food and nutrition service (FNS).
  - (b) Use P-EBT benefits the same as other food benefits under WAC 388-412-0046(2) (c).
  - (c) It is not legal to use P-EBT benefits as described under WAC 388-412-0046(2) (d).
  - (d) If people intentionally misuse P-EBT benefits, they may be:
    - (i) Subject to fines; or
    - (ii) Subject to legal action, including criminal prosecution. Department of social and health services (DSHS) will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking P-EBT benefits.
- (4) The household must request a hearing within 90 days of the mailing date in the notice when disagreeing with a decision explained in the notice.

NEW SECTION

- WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six.** (1) To be eligible for federally funded pandemic electronic benefits transfer (P-EBT) benefits for children under age six, a child must be:
- (a) A member of a household that received supplemental nutrition assistance program (SNAP) between September 1, 2022, and May 11, 2023;
  - (b) Under age of six during the specified time period.
- (2) Children who do not qualify for federally funded P-EBT benefits because they receive state-funded food assistance program (FAP) may be eligible for state-funded P-EBT.
- (a) State-funded P-EBT follows the same eligibility rules as subsection (1) of this section, except that the child must be a member of a household that received FAP, instead of SNAP, between September 1, 2022, and May 11, 2023.
  - (b) State-funded P-EBT benefits are contingent on the availability of state funds.
- (3) We calculate a standard benefit level for each month of P-EBT eligibility by:
- (a) Using the full daily meal reimbursement rate of \$8.18 for breakfast, lunch, and snack;

(b) For September 2022, through April 2023, multiplied by the statewide average operating days of 18 days per month;

(c) For the partial prorated month of May 2023, multiplied by the nine operating days prior to the May 11 expiration of the PHE;

(d) Multiplied using a percentage of benefit reimbursement based on statewide child and adult care food program (CACFP) reported meal service prior to the COVID-19 PHE compared to the current school year, a 29.8 percent reduction, as follows:

Child Care Months	Daily Reimbursement Rate	Average Operating Days	Reduction in CACFP Claims	Average Monthly Benefits
September 2022-April 2023	\$8.18	18	29.8%	\$43.88
May 1,-May 11, 2023	\$8.18	9	29.8%	\$28.94

(e) P-EBT benefits are issued for each month that the household receives a SNAP or FAP benefit more than zero dollars.

(4) P-EBT benefits are issued for a child under age six for a retroactive period of time as follows:

(a) A lump sum one-time P-EBT allotment is issued for eligible months from September 2022, through May 2023;

(b) P-EBT during the summer period benefits are disbursed under WAC 388-439-0025.

(5) Benefits for a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(6) USDA requires all issuances of P-EBT benefits to be complete by December 31, 2023, as federal funding will be exhausted. Any and all P-EBT benefits issued beyond this date will be subject to additional USDA approval and funding.

#### NEW SECTION

**WAC 388-439-0025 Eligibility for pandemic EBT benefits during the 2023 summer period.** (1) During the summer period of July and August 2023, schools and covered childcare centers will be deemed as closed.

(2) To be eligible for the pandemic electronic benefits transfer (P-EBT) benefit during the summer period after the 2022-2023 school year, prior to August 31, 2023, a child must be:

(a) An eligible student as defined under WAC 388-439-0005(2)(d) in June 2023; or

(b) A child under age six, as defined under WAC 388-439-0020(1), between July 1, 2023, and August 31, 2023.

(3) A child determined eligible in subsection (2) of this section will receive a one-time, lump sum payment of \$120 for the 2023 summer period.

(4) Summer P-EBT benefits for an eligible student or a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(5) USDA requires all issuances of P-EBT benefits to be complete by December 31, 2023, as federal funding will be exhausted. Any and all P-EBT benefits issued beyond this date will be subject to additional USDA approval and funding.