



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: January 17, 2023

TIME: 10:23 AM

WSR 23-03-096

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 21-23-108 ; 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 of pandemic EBT benefits for children under age six; and 388-439-0025, Eligibility of pandemic EBT benefits during the 2022 summer period.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 21, 2023	10:00 am	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504 Or virtually	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 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: Not earlier than February 22, 2023 (Note: This is **NOT** the **effective** date)

<p>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) February 21, 2023, at 5:00 p.m.</p>	<p>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) February 7, 2023, at 5:00pm</p>
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Purpose of the proposal and its anticipated effects, including any changes in existing rules: Proposed adoption of these rules supports implementation and extension of the Pandemic EBT program for eligible children who do not have access to regular free or reduced-price school meals or childcare meals due to limited onsite learning or attendance as a result of the COVID-19 pandemic (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).

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 and 74.08A.120

Statute being implemented: N/A

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:	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"/> 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: **These amendments do not impact small businesses. They only impact DSHS customers.**

(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: January 13, 2023	Signature: 
Name: Katherine I. Vasquez	
Title: 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 through the families first coronavirus act that 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 regulations governing the supplemental nutrition assistance program.

(2) The following definitions apply to this program:

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

(b) "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 the supplemental nutrition assistance program (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);

(c) "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 public health emergency 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;

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

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

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

(g) "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;

(h) "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;

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

(j) "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;

(k) "Summer period" means the months between the end of the school year and the start of the next school year during which there was a public health emergency.

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 debit card called a P-EBT card. A P-EBT card will be issued to each eligible student or child under age six. Each P-EBT card will be:

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

(b) Mailed to either:

(i) The address on file with the school for the eligible student;

or

(ii) The address on file with the department for the basic food case for the child under age six.

(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 last purchase or deposit activity on the eligible child's account;

(e) P-EBT benefits not used within 274 days will be removed; and information about the removal of benefits is included in the notice of approval.

(f) P-EBT benefits cannot be replaced once redeemed, removed, lost, or stolen.

(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 public health emergency.

(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.

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 October 1, 2021, and June 30, 2022;

(b) Under the age of six.

(2) Children who do not qualify for federally funded P-EBT benefits because they are on 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 October 1, 2021, and June 30, 2022.

(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 seven dollars and ten cents for breakfast, lunch, and snack;

(b) Multiplied by the statewide average operating days of 18 days per month;

(c) 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 public health emergency compared to the current school year, a 34 percent reduction, as follows:

Daily Reimbursement Rate	Average Operating Days	Reduction in CACFP Claims	Average Monthly Benefits
\$7.10	18	34%	\$43

(d) 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) An initial one-time P-EBT allotment is issued for the months of September 2021, to June 2022;

(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) Issuance of P-EBT benefits beyond September 30, 2022, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.

NEW SECTION

WAC 388-439-0025 Eligibility for pandemic EBT benefits during the 2022 summer period. (1) During the summer period of July and August 2022, 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 2021-2022 school year, prior to August 31, 2022, a child must be:

(a) An eligible student as defined under WAC 388-439-0005(c) in June 2022; or

(b) A child under age six, as defined under WAC 388-439-0020(1), between June 1, 2022, and August 31, 2022.

(3) A child determined eligible in subsection (2) of this section will receive a one-time, lump sum payment of \$391 for the 2022 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) Issuance of summer period benefits beyond September 30, 2022, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.