



# 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 18, 2024

TIME: 11:53 AM

WSR 24-07-076

**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 24-01-094 ; 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 amend the following WAC sections: WAC 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:
April 23, 2024	10:00 a.m.	Virtually via Teams or call in	Hearings are held virtually, see the DSHS website <a href="https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings">https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings</a> for the most current information

**Date of intended adoption:** Not earlier than April 24, 2024 (Note: This is **NOT** the **effective** date)

<p><b>Submit written comments to:</b></p> <p>Name: DSHS Rules Coordinator Address: PO Box 45850, Olympia WA 98504 Email: <a href="mailto:DSHSRPAURulesCoordinator@dshs.wa.gov">DSHSRPAURulesCoordinator@dshs.wa.gov</a> Fax: 360-664-6185 Other: By (date) April 23, 2024 at 5:00 p.m.</p>	<p><b>Assistance for persons with disabilities:</b></p> <p>Contact Shelley Tencza, DSHS Rules Consultant Phone: 360-664-6036 Fax: 360-664-6185 TTY: 711 Relay Service Email: <a href="mailto:Tencza@dshs.wa.gov">Tencza@dshs.wa.gov</a> Other: By (date) April 9, 2024, at 5:00 p.m.</p>
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**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** Proposed amendments are necessary to more accurately align Pandemic EBT (P-EBT) program rules with federal regulations. Related emergency rules are currently in place under WSR 24-01-090.

**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 checked="" 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 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:

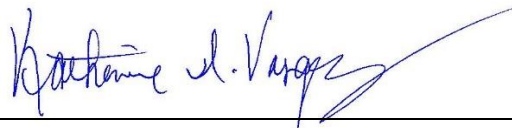
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** March 14, 2024

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



**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 lump sum one-time payment covering eligible months from September 2022, through May 2023.

~~((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.

AMENDATORY SECTION (Amending WSR 23-20-014, filed 9/22/23, effective 10/23/23)

**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 ~~((+))~~ an eligible student as defined under WAC 388-439-0005(2)(d) in June 2023.

~~((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) Children under the age of six as defined in WAC 388-439-0020 are not eligible for Summer P-EBT benefits following the expiration of the federal public health emergency declaration.

(4) 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))~~ (5) 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))~~ (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.