



# RULE-MAKING ORDER EMERGENCY RULE ONLY

## CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON  
FILED

DATE: March 26, 2021

TIME: 8:46 AM

WSR 21-08-010

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

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify) \_\_\_\_\_

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes
- No
- If Yes, explain: \_\_\_\_\_

**Purpose:** The department is adopting WAC 388-439-0005, What is the pandemic EBT program?; WAC 388-439-0010, Eligibility of pandemic EBT benefits for the 2020-2021 school year; and WAC 388-439-0015, General information about pandemic EBT benefits. Emergency adoption of these rules supports implementation of the Pandemic EBT (P-EBT) program for eligible children who do not have access to free or reduced-price school meals due to school closure or lack of in-person instruction as a result of the COVID-19 pandemic, as allowed under Section 1101 of H.R. 6201, Families First Coronavirus Response Act (as amended by Section 4601 of H.R. 8337, Continuing Appropriations Act, 2021 and Other Extensions Act of 2020).

**Citation of rules affected by this order:**

- New: WAC 388-439-0005; WAC 388-439-0010; WAC 388-439-0015
- Repealed: None
- Amended: None
- Suspended: None

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

**Other authority:** H.R. 6201, H.R. 8337

**EMERGENCY RULE**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

**Reasons for this finding:** Emergency adoption of these rules are necessary to support implementation of the P-EBT program which protects the health, safety, and general welfare of Washington residents by supporting access to public assistance.

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	<u>3</u>	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

**The number of sections adopted at the request of a nongovernmental entity:**

New \_\_\_\_ Amended \_\_\_\_ Repealed \_\_\_\_

**The number of sections adopted on the agency's own initiative:**


New \_\_\_\_ Amended \_\_\_\_ Repealed \_\_\_\_

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New \_\_\_\_ Amended \_\_\_\_ Repealed \_\_\_\_

**The number of sections adopted using:**

Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	<u>3</u>	Amended	____	Repealed	____

<b>Date Adopted:</b> March 24, 2021	<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 administered by the department of social and health services (department) and provides food benefits to eligible children who do not have access to free or reduced-price school meals due to school closures or lack of in-person instruction caused by the COVID-19 public health emergency.

(2) The following definitions apply to this program:

(a) "Benefit level" means the P-EBT benefit amount provided to an eligible child based on the school's reported meal service to the majority of students enrolled in the school for the majority of the month;

(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 early childhood education and assistance program (ECEAP);

(c) "Eligible child" 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) "Full in-person learning" means meal service is available five days per week to the majority of students enrolled in the school for the majority of the month;

(f) "Majority" means more than fifty percent;

(g) "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. Schools define

the meal service provided to the majority of students enrolled in the school for the majority of the month as follows:

(i) "Full remote learning" means no meal service to students on school campus;

(ii) "Hybrid-learning" means partial in-person learning and meal service on school campus. Due to various hybrid-learning models across the state, the following levels have been defined as:

(A) "Level 1" is one-day meal service per week to students on school campus;

(B) "Level 2" is two-day meal service per week to students on school campus;

(C) "Level 3" is three-day meal service per week to students on school campus; or

(D) "Level 4" is four-day meal service per week to school on school campus;

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

(i) "P-EBT card" means the unique electronic benefit transfer (EBT) card that accesses P-EBT food benefits issued to eligible children;

(j) "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;

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

(l) "School closure" means that the school was closed for in-person or remote learning for the majority of the month, with no meal service available to students enrolled in the school.

#### NEW SECTION

**WAC 388-439-0010 Eligibility of pandemic EBT benefits for the 2020-2021 school year.** (1) To be eligible for the pandemic electronic benefits transfer (P-EBT) benefit for the 2020-2021 school year, a student must be:

(a) An eligible child as defined in WAC 388-439-0005(2)(b) between September 01, 2020, to June 30, 2021; and

(b) Enrolled in a school that had a school closure, full remote learning, or hybrid-learning meal service during the public health emergency as reported by the school.

(2) An eligible child's P-EBT benefit level is calculated for the 2020-2021 school year by:

(a) Using the full daily meal reimbursement rate of six dollars and eighty-two cents for breakfast, lunch, and snack;

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

(c) Multiplied using the percentage of benefit reimbursement based on the school's reported meal service under WAC 388-439-0005, reducing in twenty percent intervals as the student attends more days in-person with meal service; and

(d) Rounding the total benefit amount up to the nearest dollar.

Meal service reported	Dollar amount for the month
Full remote learning or school closure—Full benefit	\$123
Hybrid learning—Level 1—80% benefit	\$99
Hybrid learning—Level 2—60% benefit	\$74
Hybrid learning—Level 3—40% benefit	\$50
Hybrid learning—Level 4—20% benefit	\$25

(3) A child is not eligible for P-EBT benefits if the school reports full in-person learning for the majority of students enrolled in the school for the majority of the month.

(4) P-EBT benefits are issued for a retroactive period of time to allow schools to report the applicable meal service during the applicable eligibility period.

(a) An initial one-time P-EBT allotment is issued for the months of September 2020 to January 2021; and

(b) Subsequent one-time P-EBT allotments may be issued in two month intervals, using the school's reported meal service for the preceding two months through the end of the school year, June 30, 2021.

(5) An eligible child's benefits will be placed on a P-EBT card under WAC 388-439-0015.

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 child. Each P-EBT card will be:

(a) Linked to an EBT account for each eligible child for P-EBT benefits; and

(b) Mailed to the address on file with the school for the eligible child.

(2) To use a P-EBT account:

(a) The P-EBT card can be used by the eligible child or responsible household member, such as a parent or caregiver, on behalf of the eligible child to access the eligible child's 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 an eligible child's P-EBT card. P-EBT benefits cannot be transferred to a bank account or issued as a check;

(d) P-EBT benefits that are not used within two hundred seventy-four days from the last purchase or deposit activity on the eligible child's account will be removed; and

(e) P-EBT benefits cannot be replaced once redeemed or removed. Families are responsible for keeping an eligible child's P-EBT card and PIN 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 due to 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 a person intentionally misuses 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 in P-EBT benefits.