



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: August 18, 2023

TIME: 5:06 PM

WSR 23-17-123

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

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) August 23, 2023

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 emergency amendments to WAC 388-412-0040, *Can I get my benefits replaced?* These amendments authorize replacement of Supplemental Nutrition Assistance Program (SNAP) and Food Assistance Program (FAP) benefits due to EBT card skimming, cloning, or other similar fraudulent methods. In addition, the amendments update WAC language to better align with federal rules, as needed. These amendments are necessary to comply with Title IV, Section 501 of the Consolidated Appropriation Act 2023.

Citation of rules affected by this order:

New: None
 Repealed: None
 Amended: WAC 388-412-0040
 Suspended: None

Statutory authority for adoption: RCW 74.04.500, 74.04.510, 74.08A.120

Other authority: Title IV, Section 501 of the Consolidated Appropriation Act 2023; H.R. 8337; H.R. 133; H.R. 1319

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 is necessary to authorize implementation for replacing SNAP and FAP benefits stolen due to EBT card skimming, cloning, and similar fraudulent activity. This protects the health, safety, and general welfare 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	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	1	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:

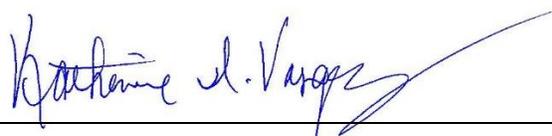
New ____ Amended ____ Repealed ____

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	____	Amended	<u>1</u>	Repealed	____

Date Adopted: August 16, 2023	Signature: 
Name: Katherine I. Vasquez	
Title: DSHS Rules Coordinator	

WAC 388-412-0040 Can I get my benefits replaced? Under certain conditions, we may replace your benefits.

(1) You may get either your EBT cash ~~((and/))~~ or food assistance, ~~((benefits))~~ or both replaced if:

(a) We make a mistake that causes you to lose benefits;

(b) The EBT card mailed to you is stolen from the mail ~~((+))~~ , you never had the ability to use the benefits ~~((+))~~ , and you lost benefits;

(c) You left a drug or alcohol treatment facility on or before the ~~((fifteenth))~~ 15th of the month and the facility does not have enough food assistance benefits in their EBT account for one-half of the allotment that they owe you;

(d) Your EBT benefits that were recently deposited into an inactive EBT account were canceled by mistake; or

(e) The food that your household purchased with food assistance benefits was destroyed in a household disaster or misfortune.

(i) For us to replace your benefits, you must report the loss to the department within ~~((ten))~~ 10 days from the date of the loss.

(ii) We replace the amount of your loss ~~((+))~~ up to a one-month benefit amount.

(iii) There is no limit to the number of replacements for food destroyed in a household misfortune.

(f) Your food benefits were stolen, despite your EBT card being in your possession, via card skimming, cloning, or other similar fraudulent method between October 1, 2022, and September 30, 2024; and

(i) The head of household of your assistance unit submitted a completed and signed claim within 30 days of discovering the loss; and

(ii) You have not already received two replacements in the current federal fiscal year.

(iii) We replace the amount of your loss or the amount of twice your food assistance allotment that was issued immediately prior to the date of the theft, whichever is less.

(iv) Retroactive claims for food assistance stolen between October 1, 2022, and August 22, 2023, must be reported no later than October 22, 2023.

(v) Replacement of benefits stolen via card skimming, cloning, or other similar method is contingent upon federal approval.

~~(2) We will not replace your benefits ((if your loss is for a reason other than those listed in subsection (1) above)) if:~~

~~(a) We decided that your request is fraudulent or skimming is not validated;~~

~~(b) Your ((food assistance benefits were)) EBT card was lost, stolen, or misplaced except for (1)(b) of this section ((after you received them));~~

~~(c) ((You already received two replacements for food destroyed in household disaster or misfortune within the last five months)) You are pending an administrative hearing decision regarding a denial of replacement benefits. You have the right to an administrative hearing if your request for replacement benefits is denied; or~~

~~(d) You received disaster supplemental nutrition assistance program (D-SNAP) benefits for the same month you requested a replacement for food assistance.~~

(3) ~~((EBT cards.))~~ It is your responsibility to keep track of your household's EBT card.

(a) If you have multiple EBT cards replaced, we may suspect you to be trafficking benefits as described under WAC 388-412-0046 (2)(d).

(b) If we suspect trafficking, we will refer your case for investigation by the office of fraud and accountability. Persons trafficking in food assistance benefits may be subject to fines, disqualification from food assistance, and legal action including criminal prosecution.