



# RULE-MAKING ORDER EMERGENCY RULE ONLY

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: December 27, 2023

TIME: 12:00 PM

WSR 24-02-040

**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 emergency amendments to the following WAC sections: WAC 388-416-0005 “How long can I get Basic Food?” and 388-418-0011 “What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?” These amendments are necessary to comply with the approved federal waiver for the Elderly Simplified Application Project (ESAP), extending the Basic Food certification period from 12 months to 36 months for households where all members are age 60 or older and/or disabled adults with no earned income.

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

New: None  
 Repealed: None  
 Amended: WAC 388-416-0005 and 388-418-0011  
 Suspended: None

**Statutory authority for adoption:** RCW 74.04.050, 74.04.500, 74.04.510, 74.08A.120

**Other authority:** USDA, Food and Nutrition Services (waiver approval)

**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:** This rule is necessary to implement final provisions of the federal ESAP waiver, to coincide with automation updates supporting this change. Approval of these rules positively impacts households where all members are age 60 or older and/or disabled adults with no earned income. The Department is concurrently proceeding with the permanent rule-making process.

**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	2	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:**

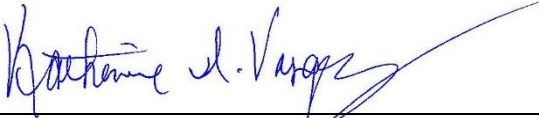
New \_\_\_\_ Amended \_\_\_\_ Repealed \_\_\_\_

**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>2</u>	Repealed	____

<b>Date Adopted:</b> December 27, 2023	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

AMENDATORY SECTION (Amending WSR 11-16-030 and 11-18-012, filed 7/27/11 and 8/26/11, effective 10/16/11)

**WAC 388-416-0005 How long can I get Basic Food?** (1) The length of time the department determines your assistance unit (AU) is eligible to get Basic Food is called a certification period. The department may certify your AU for up to ~~((twelve))~~ 12 months, unless:

(a) You receive food assistance under the Washington state combined application project (WASHCAP). ~~((τ))~~ We set your WASHCAP certification period as described under WAC 388-492-0090.

~~((b))~~ (b) You receive food assistance under the elderly simplified application project (ESAP). ESAP households are certified for 36 months.

~~((b))~~ (c) You receive transitional food assistance ~~((τ))~~ (TFA). We set your TFA certification period as described under WAC 388-489-0015.

(2) We terminate your Basic Food benefits before the end of your certification period in subsection (1) of this section if:

(a) You fail to complete a mid-certification review as described under WAC 388-418-0011;

(b) We get proof of a change that makes your AU ineligible; or

(c) We get information that your AU is ineligible and you do not provide needed information to verify your AU's circumstances.

AMENDATORY SECTION (Amending WSR 22-17-080, filed 8/17/22, effective 9/17/22)

**WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?** (1) A **mid-certification review** (MCR) is a form we send you to ask about your current circumstances. We use the answers you give us to decide if you are still eligible for benefits and to calculate your monthly benefits.

(2) If you receive cash assistance or basic food benefits, you must complete a mid-certification review unless you meet one of the exceptions below:

(a) You **do not** have to complete a mid-certification review for cash assistance if you:

(i) Receive refugee cash assistance as described under WAC 388-400-0030;

(ii) Receive aged, blind, or disabled (ABD) program assistance as described under WAC 388-400-0060;

(iii) Receive a referral to the housing and essential needs (HEN) program as described under WAC 388-400-0070; or

(iv) Have a review period of six months or less.

(b) You **do not** have to complete a mid-certification review for basic food if:

(i) Your assistance unit has a certification period of six months or less; or

(ii) ~~((All adults in your))~~ Your assistance unit ((are)) consists only of elderly or disabled adults, or qualifies for the elderly simplified application project (ESAP), and does not have ((no)) earned income.

(3) **When we send the review form:**

If you must complete a MCR ...	We send your review form ...
(a) For one program such as basic food.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
<u>(b) If you are no longer eligible for ESAP but remain eligible for basic food for the remainder of a 36-month certification period converted from an ESAP certification.</u>	<u>In the 11th and 23rd months of your certification period when your certification period has more than 13 months remaining of the 36-month certification period. You must complete your review by the 10th day of the 12th month or the 24th month or both of the certification period.</u>
(((b))) (c) For two or more programs, and all programs have a 12-month certification or review period.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(((e))) (d) For basic food and another program when either program has a certification or review period between six and 12 months.	In the fifth month of your basic food certification period when you receive basic food and another program. You must complete your review by the 10th day of month six of your basic food certification.

(4) If you must complete a mid-certification review, we send you the review form with questions about your current circumstances. You can choose to complete the review form online, or in one of the following ways:

(a) **Complete the form and return it to us.** For us to count your mid-certification review as complete, you must take all of the steps below:

- (i) Complete the review form, telling us about changes in your circumstances we ask about;
- (ii) Sign and date the form;
- (iii) Give us proof of any changes you report. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;
- (iv) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and
- (v) Mail or turn in the completed form and any required proof to us by the due date on the review.

(b) **Complete the mid-certification review over the phone.** For us to count your mid-certification review as complete, you must take all of the steps below:

- (i) Contact us at the phone number on the review form, telling us about changes in your circumstances we ask about;
- (ii) Give us proof of any changes you report. We may be able to verify some information over the phone. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;
- (iii) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and

(iv) Mail or turn in any required proof to us by the due date on the review.

(c) **Complete the application process for another program.** If we approve an application for another program in the month you must complete your mid-certification review, we use the application to complete your review when the same person is head of household for the application and the mid-certification review.

(5) If your benefits change because of what we learned in your mid-certification review, the change takes effect the next month even if this does not give you 10 days notice before we change your benefits.

(6) If you do not complete your required mid-certification review, we stop your benefits at the end of the month the review was due.

(7) **Late reviews.** If you complete the mid-certification review after the last day of the month the review was due, we process the review as described below based on when we receive the review:

(a) **Mid-certification reviews you complete by the last day of the month after the month the review was due:** We determine your eligibility for ongoing benefits. If you are eligible, we reinstate your benefits based on the information in the review.

(b) **Mid-certification reviews you complete after the last day of the month after the month the review was due:** We treat this review as a request to send you an application. For us to determine if you are eligible for benefits, you must complete the application process as described in chapter 388-406 WAC.