

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 25-2023

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary Rulemaking to Expand SNAP Benefit Replacement

EFFECTIVE DATE: 07/15/2023 THROUGH 11/17/2023

AGENCY APPROVED DATE: 07/13/2023

CONTACT: Meorah Solar
503-602-7545
meorah.a.solar@odhs.oregon.gov

2885 Chad Drive
Eugene, OR 97408

Filed By:
Meorah Solar
Rules Coordinator

NEED FOR THE RULE(S):

OAR 461-165-0230 about Replacing REF, SNAP, and TANF Program Benefits and EBT Cards, needs to be amended to align the rule with the Consolidated Appropriations Act (2023) and current Department policy. The Consolidated Appropriations Act 2023 allows for replacement of SNAP benefits lost due to card skimming, card cloning, or other similar electronic fraudulent methods. It also needs to be amended to allow for EBT benefit replacement when Department negligence or inaction caused further SNAP EBT benefits to be compromised. Currently, OAR 461-165-0230 does not allow for SNAP replacements for these reasons.

As some provisions in the rule are retroactive to May 22, 2023, the rule will expire 180 days from that date.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-165-0230 will result in serious prejudice to the public interest, the Department, and individuals who have had their SNAP benefits compromised and want to request a benefit replacement, or those who have requested a benefit replacement and want to understand why the request was approved or denied. The Department needs to proceed by temporary rule due to the necessity to expand situations that allow SNAP benefit replacement in Oregon Administrative Rule. Failure to act immediately will delay the alignment between rule and Department policy, causing confusion in administrative hearing, community partners, attorneys and advocates, SNAP benefit recipients, and the public. This temporary rule amendment will place these SNAP benefit replacement provisions into rule and align the rule with ODHS policy and transmittal, as well as federal register and the Consolidated Appropriations Act of 2023.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Replacement of SNAP Benefits in the Consolidated Appropriations Act of 2023,
Available here: <https://www.fns.usda.gov/snap/replacement-snap-benefits-consolidated-appropriations-act-2023#:~:text=When%20FNS%20approves%20a%20state,and%20other%20similar%20fraudulent%20methods>.
Also available here: <https://fns-prod.azureedge.us/sites/default/files/resource-files/state-plan-guidance-stolen->

Consolidated Appropriations Act of 2023, available here: <https://www.congress.gov/bill/117th-congress/house-bill/2617/text>

AMEND: 461-165-0230

RULE SUMMARY: OAR 461-165-0230 is being amended to put into rule the Department's ability to replace SNAP benefits for new reasons, including electronic benefit theft and when an EBT card has been reported stolen to the Department, but the Department fails to cancel the EBT card.

CHANGES TO RULE:

461-165-0230

Replacing REF, SNAP, and TANF Program Benefits and EBT Cards ¶

- (1) The Department does not replace REF, SNAP, or TANF program benefits after they are delivered to the EBT account unless one of the provisions in this rule apply.¶
- (2) The Department shall replace REF, SNAP, or TANF benefits when the Department failed to cancel the EBT card of an individual leaving a REF, SNAP, or TANF program household and that individual continues to access the REF, SNAP, or TANF program benefits in subsequent months.¶
- (3) In the SNAP program,¶
- (a) Household Misfortune or Disaster. The Department will replace the value of food purchased with SNAP program benefits if all of the following are true:¶
- ~~(A) The food was destroyed by a verified~~when paragraphs (A) through (D) of this subsection are true. The replacement is limited and issued under paragraph (E) of this subsection.¶
- (A) The food was destroyed by a household misfortune or disaster.¶
- (B) The household misfortune or disaster is verified.¶
- ~~(C) The filing group (see OAR 461-110-0370) reports the loss of food:¶~~
- (i) Within ten days of occurrence, or¶
- (ii) By the deadline permitted through Food and Nutrition Service waiver.¶
- ~~(D) The filing group submits a signed statement or affidavit attesting to the loss within ten days of reporting the loss.¶~~
- ~~(b) The replacement must meet the following:¶~~
- ~~(A) The amount may not exceed one month's allotment, unless the issuance includes restored benefits which will be replaced up to the full value of the restored benefits~~both of the following within ten days of reporting the loss:¶
- (i) An itemized list of the food lost and the estimated cost of the food.¶
- (ii) A signed statement or affidavit attesting to the loss.¶
- (E) The replacement of destroyed food is governed as follows:¶
- (i) The amount may not exceed one month's allotment of the benefit group (see OAR 461-110-0750), unless the issuance includes restored benefits which will be replaced up to the full value of the restored benefits.¶
- (ii) The Department will issue a timely replacement of the value of the loss by the later of these two timeframes:¶
- (I) Within ten days after the filing group reported the loss; or¶
- (II) Within two working days of receiving the signed statement or affidavit, the itemized list of destroyed food and cost, and verification of the household misfortune or disaster.¶
- (b) EBT Card-Caused Loss. The Department shall replace the amount of SNAP program benefits stolen or compromised (see paragraph (A) of this subsection) by means other than electronic benefit theft (see subsection (3)(c) of this section) when paragraph (B) of this subsection occurs. The replacement is limited and issued under paragraph (C) of this subsection.¶
- (A) For the purposes of this subsection, compromised means the EBT card or the EBT card number has been used by an unauthorized individual to withdraw or spend the SNAP benefits of the filing group.¶
- (B) The loss of SNAP benefits must be caused by one of the following reasons:¶
- (i) The Department issued the EBT card to an unauthorized individual who was not in the filing group.¶
- (ii) The Department failed to cancel the EBT card after the filing group reported to the Department it had been lost, stolen, or compromised.¶
- (C) The replacement of lost SNAP benefits is governed as follows:¶
- (i) When the loss is caused under subparagraph (B) (i) of this subsection, the Department will replace all SNAP benefits compromised.¶

(ii) When the loss is caused under subparagraph (B) (ii) of this subsection, the Department will only replace the additional SNAP benefits compromised after the filing group reported to the Department the EBT card had been lost, stolen, or compromised.

(iii) The Department will issue a timely replacement of the value of the loss within ten days after the filing group reported the loss.

(c) Electronic Benefit Theft. Retroactively effective May 22, 2023, the Department shall replace the value of SNAP program benefits lost due to electronic benefit theft when paragraph (B) occurs. The replacement is limited and issued under paragraph (C) of this subsection.

(A) For the purposes of this subsection, electronic benefit theft includes the following defined terms:

(i) "Card skimming" is defined as EBT card information stolen utilizing a store's card-swiping machine.

(ii) "Card cloning" is defined as the use of information obtained by "card skimming" to create a fake EBT card for fraudulent use.

(iii) "Another similar fraudulent method" is defined as EBT card information compromised through electronic means. This may include but is not limited to scams such as text, email and telephone. It does not include the theft or unauthorized use of an individual's physical EBT card.

(B) All of the following must occur:

(i) The filing group reports to the Department that SNAP benefits have been lost due to electronic benefit theft due to card skimming, card cloning, or another similar fraudulent method.

(ii) The theft is reported to the Department:

(I) Within thirty days of the date the electronic benefit theft is discovered, or

(II) By June 21, 2023 for electronic benefit theft that occurred from October 1, 2022 through May 22, 2023.

(iii) The filing group submits a signed statement or affidavit attesting to the electronic benefit theft within ten days of reporting the theft to the Department. The signed statement or affidavit must include all of the following:

(I) The date they discovered the electronic benefit theft.

(II) The total amount of benefits lost due to the electronic benefit theft.

(III) Which EBT card transactions were electronic benefit theft.

(IV) If their physical EBT card was in their possession on the date of each electronic benefit theft transaction.

(Biv) The Department will issue a timely replacement of the value of the loss as validated the filing group's electronic benefit claim through the EBT card transaction history.

(C) The replacement of SNAP benefits lost due to electronic benefit theft is limited and governed as follows:

(i) Replacement issuances are limited to the lesser of the following:

(I) The amount of SNAP benefits reported and qualifying as stolen under paragraph (B) of this subsection.

(II) Two times the monthly allotment of the benefit group immediately prior to the date of the first electronic benefit theft transaction.

(ii) A filing group shall only receive replacements for two instances of electronic benefit theft in each federal fiscal year (FFY), even if an occurrence of electronic theft crosses two FFYs. Each FFY begins October 1 and ends September 30. When electronic benefit theft occurs over the course of several transactions and several days, this is considered one incident.

(iii) The Department will issue a timely replacement of SNAP benefits by the later of these two timeframes:

(i) Within ten days after the filing group reported the loss; or

(ii) Within two working days of receiving the signed statement or affidavit that includes all required information.

(4) In the REF and TANF programs, when a household is a victim of skimming or a scam that causes a loss in benefits, or when the Department issues an EBT card in error to an individual that is not associated with the case that causes a loss in benefits --

(a) A benefit replacement request must meet all of the following for lost benefits to be replaced:

(A) The household must report to the Department they are the victim of skimming or a scam, or that the Department issued an EBT card in error, within 30 days of occurrence.

(B) The household must submit a signed statement or affidavit attesting to the loss of benefits within ten days of reporting the loss.

(b) When the provisions in subsection (a) of this section are met,

(A) The Department will replace up to the amount of benefits lost.

(B) The Department will issue a timely replacement of the value of the loss by the later of these two timeframes:

(i) Within ten days after the group reported the loss; or

(ii) Within two working days of receiving the signed statement or affidavit.

(C) Benefits may be replaced only once in a calendar month.

(5) The Department will replace an EBT card reported lost, stolen, or not received only after the current card has been deactivated. An EBT card that is damaged or not functioning properly is replaced only after the card's status is changed to "card damaged" and the card is destroyed.

Statutory/Other Authority: ORS 409.050, ORS 409.010, 411.060, 411.816, Public Law 117-328
Statutes/Other Implemented: ORS 409.010, 411.060, 411.816, 7 CFR 280.1, Public Law 117-328