

Title of Proposed Rule: Revisions to the Low Income Energy Assistance Program (LEAP)

CDHS Tracking Number: 23-04-13-01

Office, Division & Program: OES, FEAD, LEAP

Rule Author: Theresa Kullen Phone: 720-788-8050 Email Address:
Theresa.kullen.state@co.us

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CDHS Tracking #

	Office, Division,		
	Author:	Phone Number:	Rule
	Address:		Email
Kullen	720-788-8050	OES, FEAD, LEAP Theresa.kullen@state.co.us	Theresa

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

- a. Board Executive Director
- b. Regular Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

- AG Initial Review Initial Board Reading AG 2nd Review Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

- Number
- 6 Amended Rules
- New Rules
- Repealed Rules
- Reviewed Rules

What month is being requested for this rule to first go before the State Board? August, 2023

What date is being requested for this rule to be effective? 10-1-23

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Is this date legislatively required?	No
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I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ **Date:** _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated 1st Board 2nd Board Effective Date
Dates: _____ _____ _____

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STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. 1500 Char max

To move rule language from definition to a more appropriate place in the manual under determining eligibility.
To amend a rule regarding countable unearned income as the current rule, as written causes the eligibility technicians and QA techs too much confusion.
To add the new citation for the new Income Guidelines for the new program year.
To add clarifying language to the wood and propane bulk fuel purchases to address that the rule applies to any bulk purchase.
To change the processing timelines for emergency applications, based on the seasonality of the program and the high volume at the beginning of the heating season more time is needed to address emergency applications. Processing timelines have been extended by 3 days.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- to comply with state/federal law and/or
- to preserve public health, safety and welfare

Justification for emergency:

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2022)	State department to administer or supervise all forms of public assistance and welfare activities that are vested in the state department pursuant to law. The LEAP program administration is vested in the state department under 40-8.5-101

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
§ 40-8.5-101, C.R.S. (2022)	LEAP, established in the department of human services to determine the need for assistance to indigent, elderly, and persons with disabilities
§ 40-8.7-109, C.R.S. (2022)	LEAP eligibility for individuals must be certified by the state department and priority for eligibility is given to persons receiving certain public assistance benefits from other state department public assistance programs.

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Does the rule incorporate material by reference? Yes No
Does this rule repeat language found in statute? Yes No

If yes, please explain.

State median income level means the income level for a household as set forth in 45 C.F.R. § 96.85 (2023) and the Low Income Home Energy Assistance Program Information Memorandum-2023-02 (2023). The regulation and memorandum do not contain any later amendments or editions. The federal regulation is available for no cost at <https://www.ecfr.gov/>. The memorandum is available for no cost at <https://www.acf.hhs.gov/ocs/policy-guidance/liheap-im-2023-02-state-median-income-estimates-optional-use-ffy-2023-and>. The federal regulation and memorandum are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Food and Energy Assistance Division, 1575 Sherman Street, Denver, Colorado, 80203.

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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

This rule will benefit applicants easing restrictions on verification of cash purchase bulk fuel verifications to reduce unnecessary restrictions on the verification. This rule will benefit the eligibility technicians by adding clarifying language to the rule. This rule contains a technical clean up moving a rule to a more appropriate place in the rules. This rule contains the updated federal citation to the Federal State Median Income limits.

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

It is difficult to predict how many applicants this will impact. The easing of restrictions of unnecessary verification elements being required for bulk fuel applicants will reduce client barriers. Adding clarifying language for the eligibility technicians will ease application processing questions.

3. Fiscal Impact

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just “no impact” answer should include “no impact because....”***

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

No fiscal impact to the State as the program is funded through the U.S. Department of Health and Human Services and the program is administered within the allotted allocation.

County Fiscal Impact

No fiscal impact to counties/contractor as the State allocates the funds necessary to administer the program.

Federal Fiscal Impact

No fiscal impact as LEAP is funded through a federal block grant administered by the U.S. Department of Health and Human Services.

Other Fiscal Impact *(such as providers, local governments, etc.)*

No fiscal impact as energy providers are paid on behalf of eligible clients with allocated federal funds.

4. Data Description

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List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

The rule updates the citation to the federal State Median Income Guidelines.

5. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”

No alternatives were considered because rulemaking is the only method available to update income guidelines and/or revise language for the upcoming program year.

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OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	<i>Incorrect Statutory Reference</i>	<i>Section 26.5.103 C.R.S.</i>	<i>Section 26.5-101(3) C.R.S.</i>		
3.751.1	3.751.1 Definitions Strike Old Language	<p>“Emergency Applicant”: This is a household which has had heat service discontinued or is threatened with discontinuance, or is out of fuel or will run out of fuel within fourteen calendar days or the client is responsible for heating costs that are included in rent and has received an eviction notice to vacate the premises within thirty (30) calendar days.</p> <p>Emergency applications for households approved in these situations shall be processed expeditiously and eligibility determined within fourteen calendar days of notification of the emergency by the applicant to the county department. Emergency applications being denied for failure to provide the requested verifications shall be processed and eligibility determined within fifteen calendar days. If the fourteenth or fifteenth day falls on a weekend or holiday the eligibility determination shall be processed by the close of business the next business day.</p>	<p>“Emergency Applicant”: This is a household which has had heat service discontinued or is threatened with discontinuance, or is out of fuel or will run out of fuel within fourteen calendar days or the client is responsible for heating costs that are included in rent and has received an eviction notice to vacate the premises within thirty (30) calendar days.</p> <p>Emergency applications for households approved in these situations shall be processed expeditiously and eligibility determined within fourteen calendar days of notification of the emergency by the applicant to the county department. Emergency applications being denied for failure to provide the requested verifications shall be processed and eligibility determined within fifteen calendar days. If the fourteenth or fifteenth day falls on a weekend or holiday the eligibility determination shall be processed by the close of business the next business day.</p>	The second paragraph of this definition is better suited under reference 3.756.14 as it pertains to the time frame in which emergency applications need to be addressed rather than defining what an emergency application is.	No
3.752.21 B	Strike Old Language	B. Dividends and interest paid out or withdrawn on savings bonds, leases, bank accounts, 401Ks, IRAs, savings bonds, etc.;	B. Dividends and interest paid out or withdrawn on savings bonds, leases, bank accounts, 401ks, IRAs, savings bonds, etc.;	The language causes too much confusion for QA and eligibility technicians.	No

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3.752.22 D	Strike Old Language and Add New Language.	<p>All applicant households whose countable income for the eligibility period is up to and including 60 percent (60%) of the state median income level released by the U.S. Department of Health and Human Services for federal fiscal year 2023 shall meet the income requirements for the Heating Fuel Assistance Program. The State Department shall adjust the income limits annually based on funds available and the state median income guidelines.</p> <p>State median income level means the income level for a household as set forth in the federal register 86 FR 7732, 7732-7734, as of February 1, 2022. This rule does not contain any later amendments or editions. These guidelines are available for no cost at https://www.federalregister.gov/. These guidelines are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Food and Energy Assistance Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library during regular business hours.</p>	<p>All applicant households whose countable income for the eligibility period is up to and including 60 percent (60%) of the state median income level released by the U.S. Department of Health and Human Services for federal fiscal year 2023 shall meet the income requirements for the heating fuel assistance program. The state department shall adjust the income limits annually based on funds available and the state median income guidelines.</p> <p>The state median income level means the income level for a household as set forth in 45 C.F.R. § 96.85 (2023) AND THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM INFORMATION MEMORANDUM-2023-02 (2023), HEREIN INCORPORATED BY REFERENCE. This rule does not contain any later amendments or editions. THE REGULATION AND MEMORANDUM ARE FROM THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. THE FEDERAL REGULATION IS available for no cost at HTTPS://WWW.ECFR.GOV/. THE MEMORADNUM IS AVAILABLE FOR NO COST AT HTTPS://WWW.ACF.HHS.GOV/OCS/POLICY-GUIDANCE/LIHEAP-IM-2023-02-STATE-MEDIAN-INCOME-ESTIMATES-OPTIONAL-USE-FFY-2023-AND. The federal regulation and memorandum are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Food and Energy Assistance Division, 1575 Sherman Street, Denver, Colorado, 80203</p>		
3.755.44	3.755.44 Add new Language	3.755.44 Wood Purchase [Eff. 12/1/14]	3.755.44 Wood Purchase/Other Bulk Fuels [Eff. 12/1/14]	To add language that other bulk fuels besides wood purchases are also covered in this situation.	No
3.755.45	Add New Language	Applicants who use propane or other bulk fuels, referred to in definitions in these	Applicants who use propane or other bulk fuels, referred to	To add language that other bulk fuels besides propane	No

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		<p>rules, as their primary heating fuel must provide a receipt or statement from their vendor. Receipts must include the vendor's name, date, and the name and service address of the buyer.</p> <p>Applicants, who utilize propane bottles, as described in definitions in these rules or purchase propane as a cash account, are required to provide a copy of a receipt of purchase only from a retail store or other propane provider.</p>	<p>in definitions in these rules, as their primary heating fuel must provide a receipt or statement from their vendor. Receipts must include the vendor's name, date, and the name and service address of the buyer.</p> <p>Applicants, who utilize propane bottles/other bulk fuels, as described in definitions in these rules or purchase propane as a cash account, are required to provide a copy of a receipt of purchase only from a retail store or other propane provider.</p>	<p>purchases are also covered in this situation.</p>	
3.756.12 D	Add New Language and Strike Old Language	<p>D. The applicant household shall be provided two (2) calendar weeks from the date the notice is postmarked to provide the requested information and/or verification. Clients who fail to submit the required verification shall have their application denied within processing timelines for emergency and regular applications. However, the county department may extend the period for submission by the applicant of the information requested by the county department/Contractor to complete the application upon a showing of good cause for the applicant's failure to provide the necessary information or verification within the two (2) week period. The extended period shall not exceed two weeks. The term "good cause" as used above is defined as conditions outside the control of the individual such as sudden illness, hospitalization, fire, theft, acts of God, and natural disasters.</p> <p>If the requested verification is provided after the application is denied, the county</p>	<p>D. The applicant household shall be provided two (2) calendar weeks from the date the notice is postmarked to provide the requested information and/or verification. Clients who fail to submit the required verification shall have their application denied within processing timelines for emergency and regular applications. However, the county department may extend the period for submission by the applicant of the information requested by the county department/contractor to complete the application upon a showing of good cause for the applicant's failure to provide the necessary information or verification within the two (2) week period. The extended period shall not exceed two weeks. The term "good cause" as used above is defined as conditions outside the control of the individual such as sudden illness, hospitalization, fire, theft, acts of God, and natural disasters.</p> <p>If the requested verification is provided after the application is denied, the county or contractor shall reopen and complete processing of the application within 15 calendar days of receipt. The requested verification must be received by June 15th of the current program year.</p>	<p>To shorten the time frame when reopens need to occur. The number one complaint that the state received this program year was how long it takes counties/contractor to reopen applications when the verification was submitted untimely.</p>	No

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		or contractor shall reopen and complete processing of the application within 30 days of receipt. The requested verification must be received by June 15th of the current program year.			
3.756.14	Add New Language	A county department/contractor shall have up to thirty (30) calendar days from the date of application as defined in section 3.751.1 of these rules to determine eligibility. The date of application is considered day zero. If the thirtieth day falls on a weekend or a holiday, the county/contractor shall have until close of business on the following business day to determine eligibility.	<p>A county department/contractor shall have up to thirty (30) calendar days from the date of application as defined in section 3.751.1 of these rules to determine eligibility. The date of application is considered day zero. If the thirtieth day falls on a weekend or a holiday, the county/contractor shall have until close of business on the following business day to determine eligibility.</p> <p>Emergency applications for households shall be processed expeditiously and eligibility determined within eighteen (18) calendar days of notification of the emergency by the applicant to the county department/contractor. To allow for the full two (2) weeks for households to return requested verification, cases pending verification must not be denied prior to the fifteenth (15th) day in which the request has been mailed out. If the eighteenth (18) day falls on a weekend or holiday the eligibility determination shall be processed by the close of business the next business day.</p> <p>Emergency applications for households shall be processed as expeditiously as possible not to exceed 18 calendar days.</p>	THIS IS THE PARAGRAPH BEING MOVED FROM DEFINITIONS AND IT LENGTHENS THE TIME FRAME FOR EMERGENCY APPLICATIONS TO BE DETERMINED TO 18 DAYS FROM 14 DAYS AS THE VOLUME OF APPLICATIONS AT THE BEGINNING OF THE HEATING SEASON IS TOO HIGH TO HANDLE THIS IN 14 CALENDAR DAYS.	

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STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

A subcommittee comprised of LEAP county stakeholders/contractor met in March and April 2023 to review existing rule and recommend updates. The changes will be presented to the larger LEAP county stakeholder group in May 2023 to ensure there are no more suggested changes. All counties/contractors were invited to be on the Rule Revision Committee.

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

Colorado Legal Services, Economic Security Sub-PAC, Economic Security PAC, Energy Outreach Colorado (EOC), Colorado Energy Office (CEO), County LEAP managers, and the County Human Services Directors Association have been or will be informed.

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes No

If yes, who was contacted and what was their input?

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

Yes No

Name of Sub-PAC	Economic Security Sub-PAC		
Date presented	Will be presented June 8, 2023 for vote		
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	14	N/A	N/A
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

Yes No

Date presented	It will be presented for vote at the July 2023 PAC Meeting		
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	All	N/A	N/A
If not presented, explain why.	It is in the future		

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Other Comments

Comments were received from stakeholders on the proposed rules:

Yes No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

DEPARTMENT OF HUMAN SERVICES
Income Maintenance (Volume 3)
LOW-INCOME ENERGY ASSISTANCE PROGRAMS (LEAP)
9 CCR 2503-7

3.751 GENERAL PROVISIONS
3.751.1 DEFINITIONS [Rev. eff. 12/1/14]

“Emergency Applicant”: This is a household which has had heat service discontinued or is threatened with discontinuance, or is out of fuel or will run out of fuel within fourteen calendar days or the client is responsible for heating costs that are included in rent and has received an eviction notice to vacate the premises within thirty (30) calendar days. ~~Emergency applications for households approved in these situations shall be processed expeditiously and eligibility determined within fourteen calendar days of notification of the emergency by the applicant to the county department. Emergency applications being denied for failure to provide the requested verifications shall be processed and eligibility determined within fifteen calendar days. If the fourteenth or fifteenth day falls on a weekend or holiday the eligibility determination shall be processed by the close of business the next business day.~~

3.752.21 Countable Unearned Income [Rev. eff. 12/1/14]

B. Dividends and interest paid out or withdrawn on savings bonds, leases, bank accounts, 401Ks, IRAs, savings bonds, etc;

3.752.22 Income and Household Size Criteria [Rev. eff. 11/1/15]

D. All applicant households whose countable income for the eligibility period is up to and including 60 percent (60%) of the state median income level released by the U.S. Department of Health and Human Services for federal fiscal year 2023 shall meet the income requirements for the Heating Fuel Assistance Program. The State Department shall adjust the income limits annually based on funds available and the state median income guidelines.

The state median income level means the income level for a household as set forth in 45 C.F.R. § 96.85 (2023) AND THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM INFORMATION MEMORANDUM-2023-02 (2023), **HEREIN INCORPORATED BY REFERENCE.** This rule does not contain any later amendments or editions. **THE REGULATION AND MEMORANDUM ARE FROM THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES.** THE FEDERAL REGULATION IS available for no cost at [HTTPS://WWW.ECFR.GOV/](https://www.ecfr.gov/). THE MEMORADNUM IS AVAILABLE FOR NO COST AT [HTTPS://WWW.ACF.HHS.GOV/OCS/POLICY-GUIDANCE/LIHEAP-IM-2023-02-STATE-MEDIAN-INCOME-ESTIMATES-OPTIONAL-USE-FFY-2023-AND](https://www.acf.hhs.gov/ocs/policy-guidance/liheap-im-2023-02-state-median-income-estimates-optional-use-ffy-2023-and). THE FEDERAL REGULATION AND MEMORANDUM ARE ALSO AVAILABLE for public inspection and copying at the Colorado Department of Human Services, Director of the Food and Energy Assistance Division, 1575 Sherman Street, Denver, Colorado, 80203

3.755.44 Wood Purchase/OTHER BULK FUELS [Eff. 12/1/14]

3.755.45 Propane Purchase/Other Bulk Fuels [Eff. 11/1/15]

Applicants who use propane or other bulk fuels, referred to in definitions in these rules, as their primary heating fuel must provide a receipt or statement from their vendor. Receipts must include the vendor's name, date, and the name and service address of the buyer.

Applicants, who utilize propane bottles/OTHER BULK FUELS, as described in definitions in these rules or purchase propane as a cash account, are required to provide a copy of a receipt of purchase only from a retail store or other propane provider.

3.756.12 Application Processing [Rev. eff. 11/1/13]

D. The applicant household shall be provided two (2) calendar weeks from the date the notice is postmarked to provide the requested information and/or verification. Clients who fail to submit the required verification shall have their application denied within processing timelines for emergency and regular applications. However, the county department may extend the period for submission by the applicant of the information requested by the county department/Contractor to complete the application upon a showing of good cause for the applicant's failure to provide the necessary information or verification within the two (2) week period. The extended period shall not exceed two weeks. The term "good cause" as used above is defined as conditions outside the control of the individual such as sudden illness, hospitalization, fire, theft, acts of God, and natural disasters.

If the requested verification is provided after the application is denied, the county or contractor shall reopen and complete processing of the application within ~~(30)~~ FIFTEEN (15) CALENDAR days of receipt. The requested verification must be received by June 15th of the current program year.

3.756.14 Determination of Eligibility [Rev. eff. 11/1/93]

A county department/contractor shall have up to thirty (30) calendar days from the date of application as defined in section 3.751.1 of these rules to determine eligibility. The date of application is considered day zero (0). If the thirtieth (30) day falls on a weekend or a holiday, the county/contractor shall have until close of business on the following business day to determine eligibility.

EMERGENCY APPLICATIONS FOR HOUSEHOLDS SHALL BE PROCESSED EXPEDITIOUSLY AND ELIGIBILITY DETERMINED WITHIN EIGHTEEN (18) CALENDAR DAYS OF NOTIFICATION OF THE EMERGENCY BY THE APPLICANT TO THE COUNTY DEPARTMENT/CONTRACTOR. TO ALLOW FOR THE FULL TWO (2) WEEKS FOR HOUSEHOLDS TO RETURN REQUESTED VERIFICATION, CASES PENDING VERIFICATION MUST NOT BE DENIED PRIOR TO THE FIFTEENTH (15TH) DAY IN WHICH THE REQUEST HAS BEEN MAILED OUT. IF THE EIGHTEENTH (18) DAY FALLS ON A WEEKEND OR HOLIDAY THE ELIGIBILITY DETERMINATION SHALL BE PROCESSED BY THE CLOSE OF BUSINESS THE NEXT BUSINESS DAY.

EMERGENCY APPLICATIONS FOR HOUSEHOLDS SHALL BE PROCESSED AS EXPEDITIOUSLY AS POSSIBLE NOT TO EXCEED EIGHTEEN (18) CALENDAR DAYS.

