

Title of Proposed Rule: Energy Electronic Benefit Transfer (E-EBT)

CDHS Tracking #: 23-12-18-01

Office, Division, & Program: Rule Author: Jordan Smith  
Office of Economic Security,  
Food and Energy Assistance  
Division, E-EBT

Phone: 720-660-8404  
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**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 2<sup>nd</sup> Review
- Second Board Reading / Adoption

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

- Number \_\_\_\_\_ Amended Rules
- \_\_\_\_\_ 11 New Rules
- \_\_\_\_\_ Repealed Rules
- \_\_\_\_\_ Reviewed Rules

What month is being requested for this rule to first go before the State Board? June 2024

What date is being requested for this rule to be effective? July 2024

Is this date legislatively required? Yes

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 Dates: | 1st Board | <u>6/7/24</u> | 2nd Board | <u>7/12/24</u> | Effective Date | <u>7/1/24 (EMER)</u><br><u>8/30/24 (PERM)</u> |
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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***

The Department of Human Services is required to implement a program to distribute fuel assistance payments on and after July 1, 2024 to households that receive supplemental nutrition assistance program (SNAP) benefits but that do not receive assistance through the low income energy assistance program (LEAP) in order to qualify those households for the standard utility allowance to maximize their SNAP benefits. This fuel assistance program is titled Energy Electronic Benefits Transfer (E-EBT). The program only benefits SNAP participants, however the assistance is a cash benefit that is separate from SNAP. A new section of rule is necessary to outline the new program's definitions, program eligibility requirements, normal processing standards, expungement timelines, and overpayment collection actions.

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:

Per 26-2-307, C.R.S. (2024), the state department must implement this program on and after July 1, 2024.

**State Board Authority for Rule:**

| Code                    | Description   |
|-------------------------|---|
| 26-1-107, C.R.S. (2024) | State Board to promulgate rules   |
| 26-1-109, C.R.S. (2024) | State department rules to coordinate with federal programs                        |
| 26-1-111, C.R.S. (2024) | State department to promulgate rules for public assistance and welfare activities |

**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  |
|--------------------------------|--|
| 26-2-307, C.R.S. (2024)        | On and after July 1, 2024, the state department shall implement a program to make fuel assistance payments by crediting the fuel assistance payments to recipients' electronic benefits transfer service accounts. |
| 7 U.S.C.A. § 2014(e)(6)(C)(iv) | Federal authority for the standard utility allowance to be made available to SNAP households that received a payment of at least \$20 from either LEAP or a similar energy assistance program.                     |
| 26-1-107(5)(b), C.R.S. (2024)  | The state board shall have authority to adopt "board rules" for programs administered and services provided by the state department.   |
| 26-2-104(2)(b), C.R.S. (2024)  | The state board is authorized to promulgate rules necessary to implement and administer the electronic benefits transfer service.  |

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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.

26-2-307(1)(b)(I), C.R.S

### 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?*

The E-EBT program and rules will benefit SNAP clients, county SNAP administrators, and county SNAP eligibility technicians. The State Department of Human Services holds the burden of administering the program.

#### **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?*

The E-EBT benefit will qualify thousands of additional SNAP households for the standard utility allowance thus will result in significant increases to SNAP benefits for those households. It is estimated that at least 305,299 SNAP households will receive this benefit in the first year of the program.

#### **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)

The cost of the new benefit itself, the required system changes to the Colorado Benefits Management System (CBMS), and the required staff within the Department of Human Services to implement the program are all continuously appropriated from the Supplemental Utility Assistance Fund, funded by the Energy Assistance System Benefit Charge.

County Fiscal Impact

The workload of county SNAP eligibility technicians will be reduced as they will no longer have to determine eligibility for the various SNAP utility allowances. The shelter expenses page in CBMS will be simplified and automated, which will increase efficiency for eligibility technicians.

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Due to all households being eligible for the highest utility allowance (the HCUA) upon implementation, it is possible that additional applicants will be approved for SNAP and/or that additional households will be entitled to expedited service. Although the state SDD (staff development division) will update state training materials about shelter expenses, there may be a slight workload increase for county staff if they have any additional county-specific training materials to update. Although specific client questions about the new benefit can be escalated to state staff, there may be a slight workload increase for county staff to answer general client questions about the new benefit.

Since every SNAP household should receive the HCUA upon implementation of E-EBT, it is projected that average SNAP allotments will increase. This increase is not paid for by counties; it is covered through an increase in the amount of Federal SNAP dollars that the State of Colorado draws down. To aid counties in their FY 24-25 budgeting and anticipated spending authorities, projections were shared with counties to provide an estimated range of the monthly and annual increases in SNAP allotments.

Federal Fiscal Impact

This rule change will maximize the amount of Federal SNAP dollars that the State of Colorado draws down.

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

There are no other fiscal impacts associated with this rule change as there are no substantive regulatory changes that require secondary actions from other organizations or agencies.

**4. Data Description**

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

This rule change was developed without the use of any data as there was no need.

**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..."*

There is no alternative to rulemaking as the program creation is statutorily mandated.

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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> | Section 26.5.103 C.R.S. | Section 26.5-101(3) C.R.S. |                                  |                            |
|                     |                                      |                         |                            |                                  |                            |
|                     |                                      |                         |                            |                                  |                            |
|                     |                                      |                         |                            |                                  |                            |
|                     |                                      |                         |                            |                                  |                            |
|                     |                                      |                         |                            |                                  |                            |

*Intentionally left blank since this is an entirely new section of rule.*

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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):*

Office of Economic Security (OES) Sub-PAC, Finance Sub-PAC, SNAP Regulation Work Group, and a public stakeholder meeting of community advocates

**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:*

Office of Economic Security (OES) Sub-PAC and Finance Sub-PAC

**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                 | 5/2/24   |                |                   |
| What issues were raised?       | It was discussed that in the county fiscal impact section, it was originally listed that "there will likely be a reduction in the number of PER (payment error rate) and CAPER (case and procedural error rate) errors since utilities paid will no longer have to be determined, thus a reduction in time spent making case corrections for county SNAP administrators and eligibility technicians." Larimer county felt that this was an assumption and asked it to be removed. It has been removed. |                |                   |
| Vote Count                     | <i>For</i>   | <i>Against</i> | <i>Abstain</i>    |
|                                | 14   | 0              | 3 (3 were absent) |
| If not presented, explain why. | n/a  |                |                   |

|                                |                 |                |                   |
|--------------------------------|-----------------|----------------|-------------------|
| Name of Sub-PAC                | Finance Sub-PAC |                |                   |
| Date presented                 | 5/2/24          |                |                   |
| What issues were raised?       | n/a             |                |                   |
| Vote Count                     | <i>For</i>      | <i>Against</i> | <i>Abstain</i>    |
|                                | 18              | 0              | 3 (2 were absent) |
| If not presented, explain why. | n/a             |                |                   |

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**PAC**

Have these rules been approved by PAC?

Yes  No

Date presented

What issues were raised?

Vote Count

|            |                |                |
|------------|----------------|----------------|
|            |                |                |
| <i>For</i> | <i>Against</i> | <i>Abstain</i> |
|            |                |                |

If not presented, explain why.

Scheduled for PAC on June 6th

**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.*

A public stakeholder meeting was held on February 21st for community advocates to provide feedback on the draft rules. Additionally, the draft rules were shared with the SNAP Regulation Work Group for feedback. Overall, the draft rules were met with support and stakeholders had general questions about the implementation of the program rather than specific suggestions to the rules.

The first specific stakeholder question that led to changes in the draft rules was from a community advocate about how a successful appeal of an intentional program violation for SNAP would impact the claims process for Energy EBT. Given that the Energy EBT benefit is only \$21 and it would be a large administrative burden to track SNAP appeals processes, a clarification was added to 3.10.70 Erroneous Payments and Collection Actions that "E-EBT payments received during a time period in which the household was later determined to not be eligible for SNAP are not considered erroneous payments and will not be collected."

The second specific stakeholder question that led to changes in the draft rules was from a county representative about whether LEAP and E-EBT must have been received at a household's current address in the past 12 months to qualify the household for the Heating and Cooling Utility Allowance. After seeking guidance from FNS (Food and Nutrition Service), it was established that LEAP and E-EBT could be received at any address in the past 12 months for a household to qualify for the Heating and Cooling Utility Allowance. This question and guidance led to updates to section 3.10.20.3 Program Eligibility Requirements to clarify any address rather than current address. This change will ease program implementation since it removes the need to issue a subsequent E-EBT payment every time that a household moves.

## **DEPARTMENT OF HUMAN SERVICES**

### **Income Maintenance (Volume 3)**

#### **ENERGY-ELECTRONIC BENEFIT TRANSFER (E-EBT)**

##### **9 CCR 2503-10**

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### **3.10.00 ENERGY-ELECTRONIC BENEFIT TRANSFER (E-EBT)**

#### **3.10.10 E-EBT DEFINITIONS**

“Client” means a current or past recipient of SNAP.

“Colorado Electronic Benefit Transfer System (CO/EBTS)” means the electronic system that enables SNAP participants or their authorized representatives to redeem their SNAP and E-EBT benefits at point-of-sale terminals.

“EBT account” means the account linked to the EBT card where the state department deposits benefits.

“EBT card” means the card issued to persons authorized to receive benefits to which the household’s allotment is credited.

“Energy Electronic Benefit Transfer Benefit (E-EBT Benefit)” means the fuel assistance payment to eligible SNAP households of at least \$20.01 that qualifies those households for the heating and cooling standard utility allowance.

“Heating/Cooling Utility Allowance (HCUA)” means a fixed deduction applied to any household that incurs a heating or cooling expense.

“Household” means a group of individuals who live together and customarily purchase and prepare food together for home consumption.

“Low-Income Home Energy Assistance Program (LEAP)” means the Colorado program designed to help low-income clients pay a portion of their winter heating costs.

“Periodic Report Form (PRF)” means the report that must be submitted by the household during the twelfth (12th) month of a twenty-four (24) month certification period. The purpose of this form is to allow the household to report any changes that occurred during the first half of the twenty-four (24) month certification period and for the state department to determine the household’s continued eligibility for the remaining twelve (12) months of the household’s certification period.

“Person experiencing homelessness” means an individual who lacks a fixed and regular nighttime residence or whose primary residence is: a supervised shelter designed for temporary accommodations; a halfway house or similar facility that provides temporary residence; a place not designed for or ordinarily used as regular sleeping accommodations for human beings; or a temporary accommodation in the residence of another individual for ninety (90) days or less.

“Public assistance (PA)” means the same as section 26-2-103(7), C.R.S.

“SNAP” means Supplemental Nutrition Assistance Program, formerly known as the Food Assistance program, administered by the state department in Colorado.

“State department” means the office/division within the Colorado Department of Human Services that administers E-EBT. Currently, this is the Food and Energy Assistance Division within the Office of Economic Security.



### **3.10.20 OVERVIEW AND REQUIREMENTS**

#### **3.10.20.1 Purpose of E-EBT**

The state department shall make the fuel assistance payments to eligible households that receive SNAP benefits but that do not receive assistance under LEAP in order to qualify those households for the standard utility allowance to maximize their SNAP benefits.

The rules and regulations herein are promulgated in accordance with Program regulations of the United States Department of Agriculture (USDA), 7 U.S.C.A. § 2014(e)(6)(C)(iv):

Subject to subclause (II), a State agency elects to use a standard utility allowance that reflects heating and cooling costs, the standard utility allowance shall be made available to households that received a payment, or on behalf of which a payment was made, under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. § 8621 *et seq.*) or other similar energy assistance program, if in the current month or in the immediately preceding 12 months, the household either received such a payment, or such a payment was made on behalf of the household, that was greater than \$20 annually, as determined by the Secretary.

#### **3.10.20.2 E-EBT Benefit Amount**

The E-EBT benefit is a cash payment of at least \$20.01. All eligible SNAP households receive the standard benefit amount regardless of income, expenses, household size, or living arrangement. The E-EBT benefit amount may be adjusted annually on October 1st based on available funding.

#### **3.10.20.3 Program Eligibility Requirements**

There is no application for the E-EBT program.

- A. A household is automatically eligible to receive the E-EBT benefit if they meet all of the following criteria:
  - 1. The household is determined to be eligible for SNAP and is currently receiving SNAP benefits;
  - 2. The household has not received LEAP at any address in the previous 12 months; and
  - 3. The household has not received E-EBT at any address in the previous 12 months.
- B. Households containing persons experiencing homelessness are eligible for E-EBT if they meet the above three requirements.
- C. Verification of utility expenses is not required.

#### **3.10.30 BENEFIT ISSUANCE**

- A. Electronic benefit issuance shall be handled by the state department through the Colorado Electronic Benefit Transfer System (CO/EBTS).
- B. The E-EBT benefit shall be issued onto the household's existing EBT card through the EBT account where SNAP benefits are issued.
- C. If a SNAP household already receives cash assistance from another state public assistance program, then the E-EBT benefit shall be issued through the same payment mechanism as the other cash assistance.

### **3.10.30.1 Initial Benefit Issuance**

All eligible SNAP households shall be issued their initial E-EBT benefit upon implementation of the program. In the same month that a household is determined eligible for E-EBT, the household shall be eligible for the HCUA in their SNAP budget.

After the initial benefit issuance, the eligibility of households for E-EBT will be determined at the time of their SNAP application, recertification, or periodic report.

### **3.10.30.2 Ongoing Benefit Issuance**

At the time of SNAP application, recertification, or periodic report, it shall be confirmed if the household has received LEAP in the previous 12 months.

If the household has not received LEAP in the previous 12 months and also has not received E-EBT in the previous 12 months, they shall be determined eligible for the E-EBT benefit. In the same month that a household is determined eligible for E-EBT, the household shall be eligible for the HCUA in their SNAP budget.

### **3.10.40 NORMAL PROCESSING STANDARDS**

Determination of eligibility occurs at the time of SNAP application, recertification, or periodic report. Upon approval of benefits, E-EBT recipients shall be notified by the state department with the following information:

- A. The amount of the household's E-EBT benefit;
- B. The EBT card point of sale limitations as listed in section 26-2-104(2), C.R.S.; and
- C. The timelines for expungement as listed in 3.10.60.

### **3.10.50 USING E-EBT BENEFITS**

- A. The state department shall not:
  - 1. Impose any restriction, either direct or implied, on a client's use of their benefit payment including, but not limited to, requesting a client to provide receipts or proof of how the money has been spent;
  - 2. Require the client to account for the use of the benefit payment, except for the Electronic Benefit Transfer (EBT) card point of sale limitations listed in 26-2-104(2), C.R.S.; or
  - 3. Give assistance to creditors in the collection of the client's debts.
- B. Clients shall not be allowed to access the E-EBT benefit through the Electronic Benefit Transfer services from automated teller machines and point of sale (POS) devices as described in Section 26-2-104(2)(II)(A), (B), (C), (D), and (E), C.R.S.

### **3.10.60 EXPUNGEMENT**

Any E-EBT benefits issued to the EBT account that are unused after 274 days from the date of issuance will be expunged and removed from the account.

### **3.10.70 ERRONEOUS PAYMENTS**

E-EBT payments received during a time period in which the household was later determined to not be eligible for SNAP are not considered erroneous payments and will not be collected.