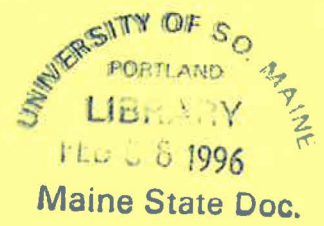


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STATE OF MAINE

MAINE STATE HOUSING AUTHORITY

1995 - 1996 HOME ENERGY ASSISTANCE PROGRAM (HEAP) RULE

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Director
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(PROPOSED AMENDMENTS TO HOME ENERGY ASSISTANCE PROGRAM RULE)

99 INDEPENDENT AGENCIES - NOT PART OF STATE GOVERNMENT

346 MAINE STATE HOUSING AUTHORITY

CHAPTER 24 Home Energy Assistance Program Rule

Summary: The Rule establishes the Home Energy Assistance Program (HEAP) for the State of Maine as administered by the Maine State Housing Authority. HEAP provides fuel assistance to low-income Households and assistance to those Households affected by energy-related crises through the Energy Crisis Intervention Program (ECIP). The Rule also incorporates standards for the Weatherization component of HEAP and the Central Heating Improvement Program (CHIP).

1. Definitions.

- A. "Act" means the Maine Housing Authorities Act, 30-A M.R.S.A. § 4701 et seq., as it may be amended from time to time.
- B. "AFDC" means Aid to Families with Dependent Children payments made under Title IV-A of the Social Security Act and includes Aid to the Dependent Children of Intact Families with Unemployed Parents (AFDC-U.)
- C. "Boarder" means a Roomer who is provided meals.
- D. "Camper" means a trailer, semitrailer, truck camper or motor home primarily designed and originally constructed to provide temporary living quarters for recreational, camping, travel or other use, but shall not include a mobile home.
- E. "Cash Price" means the amount a supplier charges for Home Energy if paid for at the time of delivery.
- F. "Date of Application" means the date on which an application for benefits is received by the Sub-Grantee.
- G. "Direct Energy Cost" means an Energy Cost which is directly paid by the Household.
- H. "ECIP" means the Energy Crisis Intervention Program.

- I. "Dwelling Unit" means Residence at time of application, for example, a house, a permanently affixed mobile home, an apartment, or single room or group of rooms occupied as separate living quarters.
- J. "Eligible Household" means a Household which satisfies all eligibility requirements of the HEAP Act, other than the income limitations, and requirements of Section 2 of this Rule. Applicable income limits shall be as set forth in Section 2 of the Rule.
- K. "Emergency" means weather-related and supply shortage emergencies and other life threatening, energy-related emergencies including natural disasters, such as fire or flood, which do or will pose a threat to the health or safety of one or more members of the Household.
- L. "Energy Crisis" shall have the same meaning as set forth in Pub. L. 98-558, Title VI, § 602, as may be amended from time to time.
- M. "Energy Cost" means an Eligible Household's legal obligation to pay the cost of energy used for heating a residential dwelling regardless of whether another person or another benefit program actually pays such cost on behalf of the Eligible Household.
- N. "HEAP" means the Home Energy Assistance Program.
- O. "HEAP Act" means the federal law and regulations that govern the HEAP program including, but not limited to, Pub. L. 97-35, Title XXVI; 45 C.F.R. § 96.1 through 96.68; and 45 C.F.R. § 96.80 et seq., all as may be amended from time to time.
- P. "HEAP Handbook" means the Home Energy Assistance Program (HEAP) Program and Fiscal Handbook in effect for the current program year that is used as a resource and guide for the administration of the HEAP.
- Q. "Home Energy" has the same meaning as set forth in Pub. L. 97-35, Title XXVI, § 2603(3), as may be amended from time to time.
- R. "Household" shall have the same meaning as set forth in Pub. L. 97-35, Title XXVI, § 2603(2), as may be amended from time to time.

- S. "Incidental Costs" means costs of services billed to a Household by a Home Energy supplier in connection with the use or delivery of Home Energy including but not limited to, surcharges, penalty charges, reconnection charges, clean and repair service charges, security deposits, extra delivery charges and insurance.
- T. "Indian Tribe" means a community of Native Americans that exercise powers of self-government.
- U. "Indirect Energy Cost" means a cost for home energy used by the eligible Household which is not directly paid for by the Household, for example, heat included as part of the rent on an apartment or room.
- V. "Invitation to Bid" or "Request for Proposals" means a bid proposal that satisfies the requirements of Section 12, Subsections I and J of this Rule.
- W. "MSHA" means the Maine State Housing Authority.
- X. "Native American" means a member or a descendant of a member of a Native American tribe, band, or other organized group of North American Indians. A person who is a member of an Indian Tribe.
- Y. "Notice of Termination of Sub-Grant" means a written statement notifying the Sub-Grantee of the cause and effective date of termination.
- Z. "Person with Special Needs" means any person who has a physical or mental impairment, has a record of such impairment or who is regarded as having an impairment, which limits one or more of major life activities, such as self-care, the performance of manual tasks, seeing, hearing, speaking, breathing and working on a temporary or permanent basis. Persons who receive vocational rehabilitation services; Social Security Disability Benefits or Supplemental Security Income Disability Benefits; Veterans Benefits under 38 U.S.C., c. 15 or 38 U.S.C., c. 11 are deemed Persons with Special Needs.
- AA. "Priority Applicants" means Households that apply for HEAP benefits which have a member who is (i) elderly, (ii) a Person with Special Needs or (iii) a person who is twenty-four months of age or under.
- BB. "Roomer" means a person who rents no more than two rooms and who may, depending upon the rental agreement, be granted privileges to use, but not reside in, other rooms located in the same structure as the Roomer's residence.

- CC. "Sub-Grantee" means a public or private nonprofit agency, or municipality, which has been selected by MSHA.
- DD. "Subsidized Housing" means any government-sponsored low-income rental subsidy program in which participating households receive assistance toward the payment of housing utility costs, including heat, in addition to rental assistance.
- EE. "Supplemental Benefits" means the additional HEAP or ECIP benefits that are funded with emergency-supplemental LIHEAP funds.
- FF. "Vendor Agreement" means a signed agreement between MSHA and an energy supplier which contains terms and conditions by which the supplier will provide Home Energy to HEAP clients.
- GG. "Weatherization Assistance Program" means that program enabled and funded by the federal Energy Conservation in Existing Buildings Act of 1976. Its purpose is to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential energy expenditures, and improve their health and safety.
- HH. "Weatherization Materials" shall have the same meaning as set forth in Part A of the Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C. §§6861, 6862(9).

2. Eligibility.

- A. A Household is eligible for HEAP assistance if it resides in the State of Maine and occupies the household for five (5) months of the heating season, has a Direct Energy Cost or determinable Energy Cost at the time of application, and meets one of the following income limits:
1. 150% of the poverty level for Maine as calculated under the federal government's official poverty income guidelines if the Household has elderly persons, Persons with Special Needs, or children under the age of 25 months;
 2. 150% of the poverty level for Maine as calculated under the federal government's official poverty income guidelines if the Household has a member vulnerable to the effects of hypothermia as documented by a statement from a physician; or

3. 125% of the poverty level for Maine as calculated under the federal government's official poverty income guidelines for all other Households.
- B. Household income is determined and verified in accordance with the following:
1. Information provided on the HEAP application.
 2. Income received during the three calendar months or twelve calendar months preceding the date of application. The applicant must select the appropriate income period, whichever allows eligibility, at the time of application. Self-employed applicants may use net income from an income tax form filed for the current year, or for the preceding year, accompanied by a signed statement as to current income level. The Sub-Grantee may, at its discretion, on a case by case basis, require any applicant to provide a written statement of income received for a twelve month period, evidenced by an income tax form filed for the current year, or for the preceding year. Where such is provided, that statement may be used as the basis of eligibility.
 3. Current Social Security Retirement benefits, or for those applicants unable to obtain supporting documentation, the previous year's benefit rate will be used with the appropriate cost of living adjustment. Subgrantees may use one months documentation for maximum SSI and SS.
 4. When verification of Household income cannot be made, the Sub-Grantee may forego documentation on a case by case basis. All reasonable good faith efforts to verify income must be made and those efforts documented.
 5. Interest income under \$600.00 earned annually, while included as income, need not be documented.
- C. For any Household found ineligible, the Sub-Grantee will deduct paid and documented medical expenses unreimbursed for the income period from the gross income. Medical expenses may include medical and dental insurance premiums and transportation.
- D. A Household is eligible for only one HEAP benefit per program year.
- E. A Household is eligible for Supplemental Benefits which may become available in addition to other HEAP assistance as provided in the Rule. Receipt of a Supplemental Benefit shall not be deemed more than one HEAP benefit per program year.

- F. If otherwise eligible, Roomers and Boarders are eligible for HEAP to the extent such applicants prove that the rental arrangement giving rise to their Roomer or Boarder status was in existence for at least 60 days prior to the application for HEAP benefits. At a minimum, such proof shall include verification that a reasonable, and not nominal, amount of rent was paid by the Roomer or Boarder pursuant to the terms and conditions of the rental agreement for the entire 60 day period.
- G. Subsidized Housing tenants with heat included in their rent are not eligible for HEAP.
- H. Except as may be expressly provided for elsewhere in this Rule, eligibility shall be determined on the basis of information submitted by the HEAP applicant current as of the date of the HEAP application.
- I. A Household shall not be considered to be a Maine residence if the residence is a Camper.
- J. House sitters are eligible for HEAP if such applicants can document that payment of home heating costs are part of the terms and conditions of the house-sitting agreement and that the agreement has been in effect at least 60 days prior to the date of application.
- K. Motel residents are eligible for HEAP if such applicants can document that the motel has been their permanent residence for at least 60 days prior to the date of application.

3. Sub-Grantees.

- A. General. To the extent practicable, MSHA will contract with Sub-Grantees for the purpose of providing benefits, including Supplemental Benefits if such benefits become available during the program year, to Eligible Households. If the circumstances require MSHA may, in its discretion, provide direct benefits to Households or may contract with other entities, such as municipalities to administer benefits.
- B. Service Areas. MSHA will select only one Sub-Grantee to service a particular geographic area.

- C. Selection of Sub-Grantees. Sub-Grantees will be selected annually based on the following criteria:
1. Experience with providing fuel assistance to low-income persons;
 2. Current capacity to administer a timely and effective fuel assistance program for the intended service area;
 3. Demonstrated capacity to adequately serve low-income persons residing in their service areas;
 4. The availability of other qualified entities to service a particular area;
 5. The geographic area customarily serviced by the potential Sub-Grantee;
 6. Cost efficiency in administering a fuel assistance program; and
 7. The ability to enhance client accessibility to other low-income programs administered by the Sub-Grantee.

Sub-Grantees shall make annual, written applications to MSHA that address each of the criteria in Subsection C. Applications must be received no later than July 1 of each year.

- D. Allocation to Each Sub-Grantee. MSHA will determine the annual allocation of HEAP funds to each Sub-Grantee. MSHA will base the allocation determination on the following factors as applicable to the area to be serviced by the Sub-Grantee:
1. The number of applications certified in the previous program year.
 2. The percentage of total HEAP funds expended for the previous program year.
 3. Any anticipated increases or decreases in average benefit payments or the number of Eligible Households.

- E. Sub-Grantee Administrative Expenses. Sub-Grantees shall be permitted administrative and program expenses necessary to carry out its responsibilities under this Rule and the program. Such expenses will be allocated in a manner consistent with the provisions of the HEAP Act. If reasonable in amount, administrative expenses may include the following:
1. Direct costs allocated to the HEAP program for salaries paid to individuals who participate in administering the program. Sub-Grantees will also be allowed related salary expenses such as those required for FICA, unemployment compensation taxes, retirement and related insurance premium costs.
 2. Required contract and consulting fees.
 3. Travel costs incurred by Sub-Grantee personnel necessary to administer the program.
 4. The actual expense of leasing, renting or purchasing necessary equipment and office supplies.
 5. Expenses incurred for leasing office space, telephone, electricity, other utilities, and postage and advertising necessary to administer the HEAP program.
 6. Any other administrative expense if authorized by MSHA prior to its incurrence.

- F. Reasonable expenses incurred to provide the following services to HEAP applicants:

Budget Counseling
Energy Education
Payment Arrangement Assistance
Program Referrals
Travel costs incurred in connection with home visits

Other similar services, not of an administrative nature, may also be included.

- G. Sub-Grantee Responsibilities. To the extent MSHA does not elect to directly administer HEAP, in whole or in part, Sub-Grantees shall be responsible for administering HEAP in their respective service areas. Sub-Grantees shall be responsible for the following:

1. The conduct of client outreach in a manner consistent with the HEAP Act.
 2. Accept and verify applications for HEAP from potential clients on such forms as MSHA may require from time to time and in such manner as prescribed in Section 4 of this Rule.
 3. Determine applicant eligibility in a manner consistent with provisions of the HEAP Act and Section 2 of this Rule.
 4. Pay benefits to clients in such manner as prescribed in Section 5 of this Rule.
 5. Carry out responsibilities in the area of fair hearings.
 6. Administer and operate HEAP weatherization.
 7. Pay Supplemental Benefits if such benefits become available during the program year.
- H. Funds for administrative expenses for original program year and supplemental funding received, if any, may be spent only between October 1 and the following September 30 of the applicable program year.

4. Application.

- A. The application for HEAP benefits will be processed in accordance with the requirements of this section.
1. Sub-Grantee may begin taking applications no earlier than July 1 of each year and shall commence taking applications no later than either November 1st of each year or the date of receipt of funds from the federal grant agency, whichever occurs first. The Sub-Grantee will continue taking applications until such time as the Sub-Grantee expends all funds allocated to it or March 31st of the following year, whichever occurs first. The Sub-Grantee's obligation to commence taking applications as provided herein is contingent upon the authorization and appropriation of program funds by the federal government.
 2. The Sub-Grantee is only authorized to use program forms provided or approved by MSHA.

3. The Sub-Grantee will make a reasonable and good-faith effort to set aside the first two weeks of the HEAP program year to interview, process and serve only Priority Applicants that would be deemed to have a Direct Energy Cost if found eligible for HEAP.
 4. The Sub-Grantee must make special arrangements for applicants who are unable to travel to an intake site.
 5. Application must be made with the Sub-Grantee serving the area in which the applicant lives.
 6. An authorized representative of the Sub-Grantee is required to complete and review an application with the applicant. Application data may be obtained by telephone or mail only in cases where a personal interview would cause an unreasonable hardship for the client. In any case, the client must sign the application in the presence of the Sub-Grantee's personnel or a Notary Public.
 7. Applicant is responsible for providing all information necessary to establish that it is an Eligible Household. When the applicant's eligibility is based on the receipt of income from AFDC, unemployment compensation, SSI and Social Security, the Sub-Grantee must make an effort to obtain proof of income. Conflicting information will be handled in accordance with this Section.
- B. The Sub-Grantee will certify or deny an application, within 30 business days from the Date of Application and notify the applicant within 10 business days of the decision. A voucher confirming eligibility is not required until funding is available. However, a denial must be issued within the ten day period whether funding is available or not. A denial for missing information will be rescinded if the requested information is submitted within 15 business days from the date of denial and the information substantiates eligibility. The "date of denial" is the postmarked date appearing on the envelope containing such denial.
- C. The information on an application for HEAP benefits may be considered conflicting if it is inconsistent with statements made by the applicant, with other information on the application, with previous applications, or with information received by the Sub-Grantee from a third party. Only an application filed on or before July 1st may be considered a "previous application". In the case where an applicant's eligibility is in question because of conflicting information received from a third party, the Sub-Grantee shall allow the Household an opportunity to

amend the application or reaffirm the information on it. If the applicant elects not to amend the application, eligibility shall be based on information contained in the application and documentation provided by the applicant, or documentation provided by a government agency, or verified information from other sources. No information received from a third party, other than a government agency, will be used to determine eligibility, unless it is verified by an independent, unbiased source. Verified conflicting information, when required, will be cause for denial.

5. Payment of Benefits.

A. The amount of HEAP benefit to be received by the Household will be determined pursuant to the HEAP Act so as to ensure that Eligible Households with the lowest income and the highest Energy Cost in relation to income will receive the greatest amount of HEAP benefit, taking into account family size.

1. The amount of benefit will be calculated pursuant to the following formula:

Fuel Consumption	Points
\$0 - \$200	0
\$201 - \$400	10
\$401 - \$600	15
\$601 - \$800	20
\$801 - \$1000	25
\$1001 - \$1200	30
\$1201 and over	35

Fuel consumption amounts falling between brackets will be rounded to the next higher or lower dollar amount, as appropriate. (e.g., \$200.01-\$200.49 will be rounded to \$200; \$200.50-\$200.99 will be rounded to \$201).

Poverty Level as Calculated under Official Poverty Income Guidelines	Percentage of Points
0% - 75%	100%
76% - 125%	90%
126% - 150%	80%

Sub-Grantees must assign the percentage of points to an Eligible Household that correlates to their energy consumption as calculated under Section 5(A)(2). That percentage of points will be adjusted on the basis of the Eligible Household's poverty level. The adjusted percentage will then be multiplied by a dollar value based on the amount of the federal HEAP grant received and the number of Eligible Households served in the previous year, the average Energy Cost for an Eligible Household in the previous year, any anticipated increase or decrease in the federal HEAP grant to be received in the current year, and any anticipated increase or decrease in average benefit payments or the number of Eligible Households. The actual dollar amount will be announced by MSHA no later than the fifteen days following receipt of the federal grant award.

2. The amount of energy consumption will be determined based on actual home heating costs, to the extent possible, as follows:

Records or receipts for the cost of heating the client's current residence for twelve consecutive months including the most previous heating season. These records are to be provided by the client, with their vendor's assistance. Records may include any and all types of home heating fuel costs and if two or more sources are used for heating, the records for all should be used.

If the client cannot provide these records or receipts, then records provided by the client's Vendor of Record, of the client's purchases of home heating fuel during a twelve month period as described above will be used. These records may include any and all types of home heating fuel costs and if two or more sources are used for heating, the records for all should be used.

Whenever consumption is derived from electric bills or electricity vendor reports, the Sub-Grantee must deduct \$600 from the total annual cost before using the amount to determine Fuel Assistance benefits. This deduction is intended to remove the non-heating costs included in total use.

This adjustment is not necessary if the Design Heat Load Calculation is used.

If neither of these are available, then the amount of energy consumption will be determined pursuant to a Design Heat Load Calculation ("DHLC"). Under the DHLC, the number of rooms in a HEAP applicant's home shall be multiplied by the number of British Thermal Units ("BTU's") needed to heat an average sized room in a residential structure. That product will then be multiplied by the number of square feet of an average sized room in a residential dwelling. Next, that second product will be multiplied by the number of degree days of the region in which the HEAP applicant resides. That third product is then divided by one million BTU's. The quotient is then multiplied by the cost of the applicant's primary Home Energy type per one million BTU's. That fourth product is then in turn, divided by the efficiency rate of the primary Home Energy type to arrive at the applicant's amount of energy consumption. The cost per one million BTU's and efficiency rate of the applicant's Home Energy type will be periodically established by MSHA. Examples of the use of the DHLC will be set forth in the HEAP Handbook.

3. The amount of Supplemental Benefits for Eligible Households shall be determined by multiplying the point value assigned by the Sub-Grantee under Section 5.A. by a dollar value based on the amount of Supplemental Funds available, if any.
- B. Renters who have a Direct Energy Cost are eligible for LIHEAP benefits. Renters who receive any other federal subsidy for home heating costs will receive a fuel assistance benefit based on their actual burden for home heating costs, net of the other federal home heating assistance received. Sample calculations will be provided in the HEAP Handbook illustrating how the net burden will be calculated for renters who receive other federal subsidies for home heating costs. Renters with heat included in their rent, i.e., renters having an Indirect Energy Cost, will receive a fuel assistance benefit using the Design Heat Load Calculation, if they do not reside in subsidized housing.
 - C. HEAP funds will not be used to pay Incidental Costs.
 - D. Sub-Grantee will make payment to the energy supplier, the provider of services authorized pursuant to Section 7 of this Rule, or the Household within ten working days of the date of HEAP certification, and will notify the Household that payment has been made. When HEAP funds are unavailable, payment must be made within 10 working days of receipt of additional funds. For the purposes of the ECIP program only, if a client is eligible, the Sub-Grantee may in an Emergency, issue purchase orders to initiate services from a vendor in the manner prescribed in the HEAP Act.

- E. Payment will be made directly to the energy supplier if the Household pays its Direct Energy Costs to an energy supplier which has signed a Vendor Agreement. Payment will be made to the Household if the energy supplier designated by the Household has not entered into a Vendor Agreement, and the Sub-Grantee has documented at least two, unsuccessful attempts to have an energy supplier execute a signed Vendor Agreement to serve the Household or the Household has the cost of energy included in rent, if any.
- F. Payments will be made in accordance with the standards and requirements set forth in this Subsection.
1. In the case of wood dealers, the provider will receive reimbursement for wood deliveries authorized by the Sub-Grantee. To receive payment, a completed purchase order must be returned to the Sub-Grantee within 30 calendar days of the date of issuance or the purchase order is automatically void. Extensions may be granted by the Sub-Grantee on a case-by-case basis, based on evidence of an inability to deliver wood due to special circumstances. Payment to wood dealers will be made by means of check issued by the Sub-Grantee within ten working days of the date of return of the purchase order.
 2. Payments will be made to other energy suppliers by means of checks issued by the Sub-Grantee.
 3. Payments to oil suppliers will be made by check for fuel calculated at the vendor's Cash Price.
- G. A transfer of benefits will be made with written authorization from the Sub-Grantee in the following circumstances:
1. If a Household changes energy suppliers or source of heating, any credit balance will be returned to the Sub-Grantee within 30 days of written notification.
 2. If a recipient moves out of State, any credit balance will be forwarded to the recipient by the Sub-Grantee, provided a written request is made by the recipient within 60 days of leaving the State. After this date, the energy supplier will return the balance to the Sub-Grantee or if a recipient has no activities within the account for a 90 day period during the heating season, any credit balances will be returned to the Sub-Grantee.

3. In other cases deemed appropriate by the Sub-Grantee; provided that if a recipient dies, or is institutionalized, or is no longer a member of a Household and there are no remaining Household members, the energy supplier will return any credit balance to the Sub-Grantee.
 4. In the event the client requests a change of vendor, the Sub-Grantee will be responsible for contacting the original energy supplier to review and verify any outstanding deliveries made after the Credit Effective Date.
- H. The HEAP benefit may not be sold, released or otherwise conveyed, with or without consideration, by the recipient, or the energy supplier, without written authorization from MSHA. MSHA will only authorize such conveyances when circumstances arise which prevent the recipient from using the benefit and MSHA determines such conveyance is in the best interest of the recipient and is consistent with the intent of the program.
- I. Households will be required to refund any overpayment of HEAP benefits. A request for refund will be made by the Sub-Grantee or MSHA. If the required refund is not made, the Household will be declared ineligible to receive benefits for the next program year. Any decision under this Subsection is subject to the Household's right to request a fair hearing pursuant to Section 13 of this Rule.
- J. If a Household has received a HEAP benefit for the current program year from another state and qualifies for assistance in Maine, the amount of the out-of-state benefit will be deducted from the benefit to be received.
- K. The amount of benefits received by Roomers and Boarders will be calculated on the basis of the room or rooms in which the Roomer or Boarder exclusively resides. No other room will be considered for the purpose of calculating a Roomer's or Boarder's benefit amount.
- L. Except as may be expressly provided for elsewhere in this Rule, the amount of HEAP benefits payable to an Eligible Household will be based upon information submitted by the Household current as of the date of application for HEAP benefits.
- M. Clients are entitled to a refund of any overpayment they have made to fuel vendors, but only to the extent that such overpayment can be documented and demonstrated to be the client's funds and not HEAP funds. All such requests must be first submitted to Sub-Grantees and approved by MSHA in writing before the refund is made, as further described in the HEAP Handbook.

6. Energy Crisis Intervention Program

- A. ECIP-Component A - A Household is eligible for ECIP Component A if its members lives are threatened by an Emergency or Energy Crisis situation and the Household is income eligible for one of the following time periods, or are eligible for HEAP, whichever allows eligibility:
1. The twelve calendar months immediately preceding the Date of Application;
 2. The three calendar months immediately preceding the Date of Application;
 3. The calendar month immediately preceding the Date of Application; or
 4. The thirty days immediately preceding the Date of Application.
- B. In determining what constitutes an emergency with respect to utility terminations, ECIP Component A shall grant assistance when an eligible Household has received a disconnection notice and has exhausted its ability to negotiate and pay the terms of a reasonable payment arrangement.
- C. The maximum annual ECIP Component A benefit per Household is \$200.
- D. Allowable uses of ECIP Component A benefits are as follows:
1. Up to \$200 for fuel delivered in an Emergency, utility emergencies or heating system repair occasioned by an Emergency.
 2. No more than 50 gallons of heating oil, kerosene, or propane, or one-half cord of wood shall be delivered during non-business hours of the Sub-Grantee. Emergency heating system repairs, performed during non-business hours of the Sub-Grantee, are allowable if the repair work is performed by a licensed oil burner repair person and the client signs a release indemnifying the Sub-Grantee from responsibility for the quality of the work performed and eligibility of the client. The Sub-Grantee will obtain the client's signature on the Release after receipt of a bill or notification that the expense was incurred during its non-business hours.

3. Allowable expenditures under this Section include Emergency fuel deliveries, utility costs with final disconnect notice, surcharges, charges for reconnection, service, or penalties, emergency heating system repair or replacement. Utility costs may be for the use of water, if the water is directly related to the operation of the heating system.
- E. ECIP- Component B (Homeowners only) - A Household otherwise eligible for ECIP Component A benefits is eligible for ECIP Component B benefits under the following criteria:
1. Allowable Uses- ECIP Component B may be used to repair or replace dangerous, malfunctioning, or inoperable heating appliances or systems which pose a threat to the health and safety of the members of the household for activities as provided in Section 7.C.1.
- F. ECIP will be administered pursuant to the requirements of the HEAP Act.
1. The Sub-Grantee will provide the applicant written notice of denial within three business days of a decision.
 2. The Sub-Grantee will process an ECIP application for any individual who it reasonably believes qualifies for assistance.
 3. Payment to energy suppliers will be in accordance with Section 5 of this Rule.
7. HEAP Weatherization and Central Heating Improvement Program (CHIP).
- A. Purpose. The purpose of HEAP Weatherization/CHIP is to supplement the Weatherization Assistance Program by providing those services identified in Subsection C.
- B. Program and Allowable Costs. Sub-Grantees shall administer and operate HEAP Weatherization/CHIP in their service areas. The following programs and costs are covered by HEAP Weatherization/CHIP to the extent of available funding:
1. Those programs allowed pursuant to the Weatherization Rule promulgated by MSHA;
 2. Those programs authorized pursuant to the Central Heating Improvement Program rules in Section 7.C. of this Rule; or

3. Any other cost authorized by MSHA incurred to reduce the client's home heating costs, to repair or replace dangerous, inefficient, defective or inoperable heating systems, to protect or enhance the effectiveness of installed Weatherization Materials, or to perform emergency repairs necessary to address conditions that pose an immediate threat to the health or safety of one or more members of an Eligible Household.
- C. Central Heating Improvement Program (CHIP) - Households otherwise eligible for HEAP benefits are eligible for CHIP benefits, to the extent of available funding, to repair or replace dangerous, malfunctioning or inoperable heating systems in the most cost-effective manner.
1. Allowable uses - CHIP funds may be used only for repair or replacement of dangerous, malfunctioning or inoperable heating appliances or systems which pose a threat to the health and safety of members of the Eligible Household, including:
 - a. Cleaning, tuning and evaluating oil or gas systems ;
 - b. Cleaning and servicing solid fuel systems;
 - c. Replacing oil or gas burners;
 - d. Replacing cracked heat exchangers;
 - e. Replacing or converting oil, gas, electric or solid fuel heating systems;
 - f. Sealing and insulating heating system pipes or ducts in unconditioned spaces;
 - g. Installing electrical or mechanical furnace ignition systems;
 - h. Replacing or relocating thermostats and anticipator adjustment;
 - i. Baffling of the combustion chamber;
 - j. Optimizing the firing rate;

- k. Cleaning the chimney, installing smoke alarms or fire extinguishers, or making other repairs necessary to bring the heating system into compliance with applicable codes.
2. Rental Units - Heating appliances or systems in buildings owned by ineligible owners are restricted to minor repairs not to exceed \$300, and cleaning, tuning and evaluation of the heating system or appliance. In multi-unit buildings with central heating systems, at least 66% of the tenants in the building (or 50% for 2-4 unit buildings) must be eligible in order to qualify for CHIP benefits. The Sub-Grantee must obtain the written permission of a building owner prior to performing any work on the heating system unless the tenant has exercised his or her right under 14 M.R.S.A. Section 6026 to make certain repairs.
3. Proof of Ownership - The Sub-Grantee shall make reasonable efforts to verify ownership of all dwelling units prior to performing any work regardless of whether the unit is owner-occupied or a rental unit. Acceptable proof of ownership may include a copy of the deed, mortgage, real estate tax bill, statement from the local tax assessor, town clerk or similar municipal official, or a bond for a deed.
4. Reopenings - A dwelling unit previously serviced by CHIP may be reopened for services only if one of the following criteria exists or MSHA has given its prior approval for such work:
 - a. The reopening takes place within six months of completion of the original service;
 - b. The reopening is required because the previous services are the proximate cause of an immediate threat to the health and/or safety of the dwelling unit or house; or
 - c. A lack of required quality of work is detected or materials billed were not installed.
5. Dwelling unit eligibility restrictions - A dwelling unit will not be eligible for CHIP if it has been designated for acquisition or clearance by a federal, state, or local program or order; or if the dwelling unit is in such poor structural condition that the service provided by CHIP would not be effective; or if the dwelling unit has been damaged by fire, flood or an act of God and repair of the damage is covered by insurance.

6. Inspection of heating systems and work performed - MSHA or its agents may inspect a percentage of the repairs and replacements completed with CHIP to ensure program compliance. In addition, the Sub-Grantee shall perform a final inspection on all completed dwelling units, which inspections will include an evaluation to determine:
 - a. Compliance with applicable codes;
 - b. That all work performed was authorized by the Sub-Grantee;
 - c. The combustion efficiency level of the appliance or system where technically feasible.
- D. Eligibility. A Household shall be eligible for HEAP Weatherization/CHIP if it satisfies the requirements of Section 2 of this Rule.
- E. Delivery of Services. Sub-Grantees shall be responsible for delivering HEAP Weatherization/CHIP services and Weatherization Material to Households that are eligible pursuant to Subsection C and for ensuring that all services provided pursuant to this Section are delivered and completed in a good and workmanlike manner. All eligible dwelling units currently being weatherized will receive priority for CHIP services. If Sub-Grantees contract for services, contractors must be duly authorized and licensed to provide such services, if required by law. To the maximum extent practicable, Sub-Grantees will engage volunteers, training participants, and public service employment workers pursuant to the Job Training Partnership Act, 29 U.S.C. §§ 1501 et seq. for the purpose of providing the services allowed pursuant to this Section.

8. Indian Tribes.

- A. Direct Allocation. Any direct allocation of HEAP benefits from the Secretary of the United States Department of Health and Human Services to Indian Tribes shall be made in a manner consistent with the provisions of the HEAP Act.
- B. Agreements with Tribes. MSHA may enter into agreements with various Indian Tribes. The agreements may, in addition to other matters, include terms prohibiting the duplication of HEAP benefits to clients, regarding the coordination of services necessary for the administration of HEAP, and regarding the referral of Indians to the appropriate entity administering HEAP at the local level. The agreement will also establish the amount of HEAP funds set aside for the Indian Tribe. The amount will be determined according to the number of applications for HEAP benefits that are certified eligible in the previous year of HEAP.

9. Administration of HEAP.

- A. Sub-Grantees should refer to the HEAP Handbook to determine how to perform and execute a particular responsibility or function. The HEAP Handbook is a resource and guide for the administration of HEAP. It also serves as a manual designed to assist Sub-Grantees understand the procedures for operating HEAP. This Rule shall control in the event of any inconsistency between the HEAP Handbook and the Rule.
- B. Subject to applicable confidentiality laws, the HEAP staff of a Sub-Grantee shall provide to its Weatherization Assistance Program staff an applicant's HEAP application file within 30 days of the determination of HEAP eligibility.
- C. All HEAP records must be retained by the Sub-Grantee for a minimum of three years. In cases of litigation, other claims, audits, or other disputes the Sub-Grantee will retain all relevant records for at least one year after the final disposition thereof.
- D. MSHA will prepare and submit to the Secretary of the United States Department of Health and Human Services an annual State Plan for HEAP in conformity with the provisions of the HEAP Act. MSHA will notice a public hearing for the purpose of taking comments on the State Plan and will also prepare a transcript of such comments.

10. Monitoring.

MSHA will conduct program and fiscal monitoring of Sub-Grantees for compliance with Federal and State rules and regulations in a manner consistent with applicable state law, as may be amended from time to time, and the HEAP Act.

11. Noncompliance.

- A. A notice will be sent to the Sub-Grantee in the event it fails to comply with any provision of this Rule and the provisions of other applicable law. The notice will set forth the specific violation and allow a reasonable time period for response by the Sub-Grantee. Upon review and consideration of any responses, MSHA will notify the Sub-Grantee in writing of any action to be taken and will establish a reasonable time period within which the action must be taken.

- B. Upon written request from the Sub-Grantee, MSHA will provide the Sub-Grantee with technical assistance aimed at curing and preventing a recurrence of the circumstances that gave rise to the violation.
- C. Failure to remedy its failure to comply will result in a Notice of Termination of Sub-Grant, stating the cause and effective date of the termination.

12. Procurement.

General procurement procedures are as follow:

- A. The Sub-Grantee must ensure that all procurement of materials, property or equipment with HEAP funds is conducted in a manner to provide open and free competition among providers and to avoid any appearance of impropriety.
- B. The Sub-Grantee must implement written standards to govern the performance of its officers, employees or agents engaged in the award of contracts and the administration of HEAP funds. The standards shall, at a minimum, include the following prohibitions and requirements:
 - 1. No employee, officer or agent of the Sub-Grantee shall participate in the selection, award or administration of a contract where to his or her knowledge any of the following persons or entities may possibly benefit from the selection, award or administration of such contract:
 - a. The employee, officer or agent of the Sub-Grantee.
 - b. A member of the immediate family of the employee, officer or agent.
 - c. A partner of the employee, officer or agent.
 - d. An organization in which any person described in subparagraphs (a) through (c) has a financial interest or with whom said person is negotiating or has any arrangement concerning prospective employment.
 - 2. No employee, officer or agent of the Sub-Grantee shall solicit or accept gratuities, favors or anything of monetary value from a contractor or potential contractor.

3. The Sub-Grantee agrees not to employ any person while he or she, or a member of his or her immediate family, is an officer or agent of the Sub-Grantee or exercises supervisory authority over that person.
 4. Disciplinary actions to be applied for violations of the written standards.
- C. Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical and practical procurement.
 - D. Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured.
 - E. The Sub-Grantee shall make positive efforts to utilize small and minority-owned businesses as a source of supplies and services. Such efforts shall allow these sources the maximum feasible opportunity to compete for contracts which utilize HEAP funds.
 - F. Any information concerning contract requirements which personnel share with one prospective contractor must be shared with all prospective contractors to whom the Sub-Grantee has sent bid materials.
 - G. Some form of price or cost analysis shall be made in connection with every procurement action.
 - H. Awards shall be made to the bidder whose bid is responsive to the requirements set forth in the Invitation to Bid or Request for Proposals and is most advantageous to the recipient, price and other factors considered. Bid awards shall be in writing. The identity of the successful bidder shall be disclosed to all bidders.
 - I. The Invitation to Bid or Request for Proposals must:
 1. Identify all requirements which prospective bidders must fulfill.
 2. Identify all factors which the Sub-Grantee will consider in evaluating bids;
 3. Establish relative weights of all factors, including cost, by means of which the Sub-Grantee will rank bids; and

4. Establish the maximum amount of the contract, its duration, and its geographical scope and states that failure to execute the contract will result in bid disqualification.
- J. The Invitation to Bid or Request for Proposals shall include the following provisions:
1. The contract award may be subject to prior approval by the MSHA;
 2. Any and all bids may be rejected when it is in the interests of the Sub-Grantee to do so;
 3. All bids constitute firm offers which may not be withdrawn for a specified period of time from the bid opening;
 4. The submission of a bid constitutes acceptance of the terms and conditions of the Invitation to Bid or Request for Proposals; and
 5. All bids must be sealed and received by the specified Sub-Grantee contact person prior to a specified time for a bid opening at a specified time and location.
- K. Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.
- L. The following provisions must appear in all contracts where procurement is, in whole or in part, HEAP funded:
1. Contracts other than small purchases shall contain provisions or conditions which provide for administrative, contractual, or legal remedies for violation of its terms, and provide for such sanctions and penalties as may be appropriate.
 2. All contracts in excess of \$10,000 shall contain provisions for their termination by the Sub-Grantee. In addition, such contracts shall describe conditions under which the contract may be terminated for the frustration of the contract's purpose.

3. All contracts awarded in excess of \$10,000 by Sub-Grantees and their contractors shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).
4. All contracts and sub-grants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3).
5. Where applicable, all contracts awarded by Sub-Grantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers for work financed in whole or in part by HEAP funds shall include a provision requiring compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5). These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
6. All contracts (except those awarded by the small purchases procedures) awarded by Sub-Grantees shall include a provision to the effect that:
 - a. MSHA, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract.
 - b. The contractor must place the same provision as stated in Subparagraph (a) in any subcontract required by this Rule to contain such provision were it awarded directly by the Sub-Grantee.
7. Sub-Grantees shall require contractors to maintain all required records for three years after final payments have been made and all other pending matters are closed. If an audit, litigation or other action involving records is commenced before the end of the three year period, the records must be retained until all issues arising out of the action are resolved or until the end of the three year period whichever is later.

8. Contracts and subcontracts of amounts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and the United States Environmental Protection Agency (EPA) Regulations (40 CFR Part 15). The provision shall require a reporting of violations to the grantor agency and to the EPA's Assistant Administrator for Enforcement (ENM-329).
- M. The Sub-Grantee shall request and obtain written approval from MSHA for any agency procurement contract, agreement or bid proposal prior to its award when:
1. The procurement is for furnishing any of the work or services provided for in a sub-grant agreement with a Sub-Grantee;
 2. The procurement, at least a portion of which is HEAP funded, is expected to exceed \$10,000; or
 3. The proposed procurement is either a sole source procurement or a procurement resulting from a single bid or proposal, in which the aggregated expenditure is expected to exceed \$5,000, at least a portion of which is HEAP funded.
- N. A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract and to ensure adequate and timely follow-up of all purchases.
- O. Procurement records and files for purchases in excess of \$500 shall include:
1. the basis for contractor selection.
 2. a justification for lack of competition when competitive bids or offers are not obtained.
 3. the basis for award cost or price.
 4. an executed contract if one is required.
- P. In the case of individual purchases between \$500 and \$2,500, the Sub-Grantee shall:
1. Perform a price survey for the required items or services;

2. Receive and document price quotations or bids from at least three reputable vendors; and
 3. Purchase the items or services from the vendor whose bid or proposal will be the most advantageous to the Sub-Grantee, price and other relevant factors considered.
- Q. In the case of individual purchases of \$500 or less, at least a portion of which is HEAP funded, the Sub-Grantee may purchase items or services from the most convenient supplier provided the price is reasonable.
- R. Except as provided in Subsection Q, a competitive and sealed Invitation to Bid or Request for Proposals along with advertisement thereof and executed contracts are required for all other procurements.
1. The Sub-Grantee must publish a newspaper advertisement in, at a minimum, the newspaper with the greatest circulation in the Sub-Grantee's service area, with enough time prior to the bid opening to permit prospective bidders to obtain, prepare and submit bids. The newspaper advertisement shall, at a minimum, provide for the following:
 - a. A concise description of the materials, supplies or services to be procured;
 - b. The Sub-Grantee's contact person from whom prospective bidders may obtain bid materials;
 - c. The deadline for delivery of sealed bids, including time of day and the time and place for the bid opening; and
 - d. A statement that the advertisement is subject in all respects to the terms and conditions of the Invitation to Bid or Request for Proposals.
 2. The Invitation to Bid or Request for Proposals must be mailed or delivered to no less than three prospective contractors who the Sub-Grantee reasonably expects to submit a bid.
- S. Notwithstanding other provisions of this Rule, procurement of goods and services from a sole source is allowed when:

1. Procurement pursuant to the other requirements of this Section 11 is infeasible; or
2. Public exigency or emergency will not permit a delay necessary for competitive solicitation, or a specific item or service is available from only one source.

A written statement justifying the use of sole source procurement shall be included in the Sub-Grantee procurement file.

- T. MSHA will not reimburse the Sub-Grantee for procurements which are not made and documented in accordance with this Rule, including:
1. Documentation of the basis of contractor selection, including the method by which multiple price quotations from varying contractors were compared and evaluated.
 2. Documentation of the basis for the contract award amount, including the estimate for materials or services which the Sub-Grantee expects to procure by means of the subcontractor.
- U. MSHA may permit procurement by methods other than as provided in this Rule upon the written request from a Sub-Grantee that sets forth the justification for any deviation.
- V. MSHA may require that all bid materials be submitted to MSHA for its prior written approval.
- W. Any decision to reject all bids shall be adequately supported and set forth in writing.
- X. Neither MSHA nor the State of Maine assumes any liability in the event of protests, disputes, or breaches of contract.
- Y. Property Management requirements are as follow:
1. Each Sub-Grantee shall maintain and update an accurate listing of all property, tools and equipment retained in its inventory which have a unit cost of more than \$300 and are purchased in whole or in part with HEAP funds.

2. Each Sub-Grantee shall obtain prior approval from MSHA for the purchase of any motor vehicle, equipment, single inventory item or tool with an acquisition cost of \$10,000 or more at least a portion of which is HEAP funded.
3. The Sub-Grantee shall request and receive approval from MSHA for the disposition of any equipment, single inventory item or tool with a unit acquisition cost of \$1000 or more, or any motor vehicle, regardless of acquisition cost, purchased in whole or in part with HEAP funds. MSHA reserves the right to require reprogramming the entire resale amount.
4. Prior to the sale of any vehicle approved for disposition, purchased in whole or in part with HEAP funds, the Sub-Grantee shall:
 - a. Prepare a bid announcement which identifies each vehicle, describes its condition and states that the highest bid on each vehicle will be accepted.
 - b. Advertise the bid announcement in a newspaper of general circulation within the Sub-Grantee's service area for three days prior to a public sale. The terms of the advertisement shall specify that the Sub-Grantee will only accept sealed bids submitted by a certain date and time. The advertisement shall also notify potential bidders that the bid announcement will be mailed to them in advance upon request.
 - c. Prepare a notice of bid award to be mailed to all bidders.
 - d. Prepare title transfer documents.
 - e. Agree to reprogram the proceeds from the vehicle sale into the current HEAP budget.
5. The Sub-Grantee must retain documentation relative to all bid solicitations, awards and transfers of title for no less than three years from the date of sale.
6. The Sub-Grantee shall follow identical procedures as in Subsection (Y)(4)(b) above in the case of the sale of any other property purchased in whole or in part with HEAP funds, with the qualification that like equipment or materials may be sold and listed in the bid announcements in lots, with quantities identified.

13. Fair Hearings.

- A. Households are entitled to request a hearing in accordance with the Maine Administrative Procedures Act, Title 5, Chapter 375, whenever:
1. an application for HEAP benefits is denied for reasons other than a failure to provide complete documentation or that an arithmetical or computational error was made in determining the amount of HEAP benefits;
 2. its application is neither denied nor approved within the time period prescribed in Section (4)(B) for reasons other than the Household's lack of cooperation in providing necessary and reasonable documentation;
 3. it disputes the amount of its HEAP benefit; or
 4. a refund for overpayment is requested from the Household.

The Household must submit to MSHA a written request for a hearing no later than 30 calendar days from the postmarked date of notification from the Sub-Grantee denying, limiting or otherwise refusing to pay HEAP benefits. If the reason for a refusal to pay benefits is as set forth in Subsection (A)(2), then the written request for a hearing must be submitted to MSHA within 30 days of the end of the prescribed period.

- B. Hearings held pursuant to this Section shall be conducted by the Director of MSHA (or his/her designee), the Administrative Hearings Unit of the Maine Department of Labor, or such other contractor selected by MSHA. MSHA or any party may receive a transcript of the hearing upon payment of the reasonable cost for the production thereof.
- C. The Appellant in any hearing will be allowed up to 40 days after the close of the hearing to submit a brief. A responsive brief, if any, must be filed within 30 days of the Appellant's brief. No party may submit a brief unless a notice of intent to do so is filed with, as the case may be, the Hearing Officer who presides over the hearing or the Director of MSHA within 5 days of the close of the hearing. No reply briefs will be allowed, unless specifically permitted by the Director of MSHA upon motion and a showing of good cause. Within 30 days of the hearing's conclusion or the expiration of the time period within which to submit briefs, the Hearing Officer, if someone other than the Director of MSHA, will prepare a recommended hearing decision. Copies of the recommended decision will be provided to all parties. The parties shall be allowed no more than 10 days

after the date of the recommended decision to submit responses or exceptions to the recommended decision. Responses or exceptions, to the extent filed, are hereby deemed part of the hearing record. All responses or exceptions which are timely filed will be forwarded to the Director of MSHA.

- D. A final decision and order will be made by the Director of MSHA in writing within 30 days of receipt of the Hearing Officer's recommendation or within 30 days of any responses or exceptions timely filed. In the event the Director of MSHA presides over a hearing, s/he shall render his/her decision and order within 30 days of the hearing's conclusion or 30 days of the expiration of the period within which to file responses or exceptions to the recommended decision. The Director's decision and order shall include findings of fact sufficient to apprise the parties of its basis. A copy of the decision and order will be provided promptly to each party to the proceeding or his representative of record. Written notice of the party's right to appeal the decision and other relevant information will be provided to the parties at the time of the decision and order. The decision and order will be implemented by the Sub-Grantee no later than seven working days after receipt unless stayed on appeal.

14. Additional Provisions.

- A. Any provision of applicable Federal or Maine law including, without limitation, the Act, and the HEAP Act shall take precedence over this Rule in the event of any inconsistency.
- B. This Rule does not preclude such additional or alternative requirements as may be necessary to comply with the Act and the HEAP Act.
- C. This Rule establishes a pool of eligible applicants but does not preclude additional reasonable criteria and does not confer any automatic right or entitlement on any person or entity eligible hereunder.
- D. The Director of MSHA, individually or by exercise of the delegation powers contained in the Act, shall make all decisions and take all action necessary to implement this Rule. Such action of the Director shall constitute final agency action.

BASIS STATEMENT: The Rule has been adopted to enable the Maine State Housing Authority to administer the Home Energy Assistance Program (HEAP). HEAP provides fuel assistance to low-income Households in the State of Maine and assistance to those Households affected by energy-related crises through the Energy Crisis Intervention Program (ECIP). The Rule repeals and replaces a previous Rule promulgated by the Maine Division of Community Services. The Rule establishes eligibility criteria and administrative procedures for HEAP and ECIP. The Authority has received numerous comments on the Rule. A summary of the comments and the Authority's responses to them follows.

One commentator suggested that "commercial rooming or boarding" as used in Section 2 of the Rule be more fully explained. Another commentator suggested that eligibility based upon residence in a commercial establishment is too restrictive and possibly impermissible under federal law. He argued that there are other, less onerous ways to establish bona fide rooming and boarding arrangements. Therefore, the argument goes, it is unreasonable for the Authority to restrict eligibility to roomers and boarders who reside in "commercial" facilities. This commentator also referred to a Consent Decree in the case of McAnany v. Maine Division of Community Services, et al., No. CV-83-21 (Me. Super. Ct., Cum. Cty.). He argued that, among other things, the Decree prohibits a determination of eligibility on the basis of roomers and boarders residing in a commercial establishment.

The Authority agrees with the commentator that it is unreasonable to limit eligibility to roomers and boarders who reside in commercial establishments. Such a restriction fails to acknowledge the variety of informal roomer and boarder living arrangements and is therefore deleted from the Rule.

A commentator observed that the Rule's contemplated consumption-based determination of eligibility is preferable over a system that would require Sub-Grantees to obtain verification from landlords that heat is included in rent. Another commentator expressed the concern that tenants who pay flat rent with heat and utilities included should not be excluded from HEAP eligibility. The commentator expressed a concern that the "determinable energy cost" standard set forth in section 2, paragraph A may be used to deny HEAP benefits to such tenants. He suggested that a more reasonable approach would be for the Authority to apply HUD's fair market rent standards as modified by an energy cost allowance.

The Authority agrees with the commentator that some modification to the Rule is necessary. Concisely expressed, the federal law governing HEAP qualifies eligibility on the basis of energy cost and Household income. The law goes on to require the Authority to treat home owners and renters equitably. The Rule demonstrates sensitivity to both federal requirements by focusing on a determinable (and therefore, actual) energy cost and by elsewhere, incorporating the federal income eligibility criteria. The formulaic determination advanced by the commentator presumes a standard energy charge but fails to consider actual cost--to either the detriment or unjust enrichment of the HEAP recipient.

The commentator's approach has apparent appeal and therefore, is not rejected out-of-hand. The suggested change may be taken up in future amendments to the Rule. The Authority believes however, that its novelty precludes a rushed application at this time. Before implementing the approach, we believe it more prudent to seek guidance from the federal grant agency, the United States Department of Health and Human Services. Simply put, the Authority is concerned that unique characteristics of various HUD programs may impede the reasonable application of the formula to HEAP, another federal program administered by another federal agency.

Another comment focused on the definition of "Household" set forth in Section 1, paragraph O of the proposal. An individual was concerned that the definition is inadequate in that it fails to specify the particular items included and excluded from the Household's income. The commentator appears to confuse the definition of "Household" with the definition of household income that appeared in the Rule implemented by the Maine Division of Community Services. It is the Authority's view that a definition of household income is no longer necessary given federal law and Section 2 relating to eligibility.

Assuming the commentator desires an amendment to the definition of Household and not the reinclusion of the definition of household income, the Authority recognizes its discretion to administer the federal LIHEAP grant. It is important to note however, that LIHEAP is a federal program that, to an extent, is governed by federal requirements. In an effort to remain faithful to these requirements, the Authority declines to vary the Rule's definition of Household from the definition set forth in the federal law.

One suggestion addressed a perceived error in section 4, paragraph A, subparagraph 7 of the Rule; specifically the following sentence: "(w)hen the applicant's eligibility is not based on the receipt of income from AFDC, unemployment compensation, SSI and Social Security, the Sub-Grantee must make an effort to obtain proof of income" (emphasis added). A commentator thought that the emphasized "not" should be deleted. Upon close examination, the Authority concludes that the word should remain and therefore, declines to make the suggested change.

A commentator suggested elaboration upon the definition of Person with Special Needs set forth in section 1, paragraph V of the Rule. She was concerned that the "temporary" characterization of the enumerated disabilities would necessarily include such conditions as a broken limb. The commentator suggested that the Rule would automatically treat HEAP applicants suffering from such conditions as Persons with Special Needs. This, it is argued, results in unfair priority treatment for a class of applicants over those who have a more compelling need for preferential treatment.

At this point the Authority declines to further specify the meaning of Persons with Special Needs. This definition, and its implementation, is carried over from the Division of Community Services Rule. No changes are made, and the Authority believes, it is preferable to make the relevant determinations on a case-by-case basis.

One comment addressed a deficiency in section 2 of the Rule. The commentator correctly notes that the section inappropriately narrows the pool of eligible HEAP applicants. The section therefore, has been amended to address this concern.

A commentator expressed concerns relative to section 4, paragraph B of the Rule. This provision requires Sub-Grantee's to notify an applicant within 10 days of determining eligibility. The commentator cautioned that adding such a notification requirement increases Sub-Grantee administrative costs. As a practical matter, the individual observed that an applicant is notified of his or her eligibility upon receiving a voucher for services. The commentator also noted that the notice requirement adds additional administrative burdens when HEAP recipients change fuel vendors. The Authority declines to eliminate the notification requirement. Although mindful of the cost of additional responsibility, the Authority believes that benefits to HEAP recipients far outweigh the administrative burdens imposed on Sub-Grantees.

One comment addressed a perceived error in section 5, paragraph C of the Rule. This section provides: "(w)hen HEAP funds are unavailable, payment must be made within 10 working days of receipt of additional funds" (emphasis added). The commentator felt that "unavailable" should be changed to "available". The Authority has closely reviewed the language and believes that no correction is necessary.

Two commentators generally endorsed the use of a fuel consumption-based formula to determine the level of HEAP benefit received by each Eligible Household. One of these commentators observed however, that the Rule does not specifically refer to such a formula. The Rule does address consumption in section 5, paragraph A of the Rule: "(t)he amount of HEAP benefit to be received by the Household will be based on a point system that takes into consideration the size of the Household, Household income and the Household's fuel consumption" (emphasis added). The provision is however, in need of greater specificity. It is anticipated that the consumption issue will be more particularly addressed in future amendments to the Rule.

A commentator also observed that the Rule fails to reduce HEAP benefits for tenants residing in subsidized housing. According to the commentator, these tenants already receive an indirect benefit when rent is reduced for purposes of a heat and utility allowance. The approach suggested by the commentator requires more analysis and may be taken up in future amendments to the Rule.

Another commentator generally complained about a perceived disparate treatment of energy providers. He noted that oil dealers, unlike electric utilities are prohibited from offsetting an HEAP recipient's prior indebtedness from HEAP allocations received in years subsequent to the incurrence of the indebtedness. He also observed that oil dealers, unlike the utilities are prevented from charging more than the cash price for heating oil. Other providers are apparently permitted to charge a so-called "discounted" price plus interest and other assessments. The commentator also raised a concern regarding notification to the Authority upon the sale of an oil dealership.

The Authority notes that the issues raised by the commentator are not addressed in the Rule, but are covered in previous drafts of various vendor contracts executed by participating oil dealers. It is anticipated that any disproportionate impact on a particular segment of vendors will be addressed in future contracts.

Numerous other corrections to the Rule are made for typographical, grammatical and stylistic reasons.

STATUTORY AUTHORITY: 30-A M.R.S.A. §§ 4722(1)(W) and 4741(15); 30-A M.R.S.A. §§ 4991 et seq.; PL 1991, c. 622, § J-24.

EFFECTIVE DATE: November 2, 1992

BASIS STATEMENT: The Rule has been amended to address some of the comments received in response to the initial promulgation of the Rule by MSHA and to incorporate additional changes that improve the administration of HEAP in Maine. The new amendments specifically incorporate standards governing the administration and operation of the weatherization component of HEAP.

The amendments were originally noticed for comment on January 27, 1993. The comment period for these amendments expired on February 26, 1993. In reaction to public comment and in response to issues raised by various parties in hearings held pursuant to the Fair Hearings section of the Rule, the amendments were never adopted. The Authority believes that the current round of amendments address the Fair Hearing issues and the concerns of the various commentators.

The Authority has received several comments on the Amendment. A summary of the comments and the Authority's responses to them follows.

1. Christopher St. John, Esq., Staff Attorney for Pine Tree Legal Assistance, Inc. ("PTLAI") noted support for Section 1(L) because it addresses the "unfortunate result...that would make a bill paid for by general assistance uncountable in determining the household's energy cost."

PTLAI opposes the proposed Section 2(E) requirement that Roomer and Boarder eligibility shall be conditioned upon the Roomer or Boarder residing in establishments that are made available to the general public. PTLAI claims that this approach fails to take into account informal, but nonetheless, legitimate housing arrangements. The Authority agrees and therefore, makes the appropriate change to the Rule amendment.

PTLAI opposes implementation of the Design Heat Load Calculation set forth in Section 5(A)(2) of the amended Rule. PTLAI prefers that benefit amounts and eligibility be based on actual consumption data. DHLC should then be used as a "fallback" method to determine consumption. If actual consumption is untenable, then PTLAI proposes that energy consumption be based upon the following formula:

$$\frac{\text{HUD Fair Market Rent ("FMR") for units with heat} - \text{FMR for rent without heat}}{\text{FMR for units with heat}}$$

PTLAI then urges that this formula should be applied to all Eligible Households residing in rental units and whose total obligation for rent and utilities is less than 30% of total income and whose energy costs are included in rent.

Although PTLAI suggests that a large majority of HEAP applicants are in a position to produce proof of actual heating costs, the Authority's experience with the HEAP program demonstrates that this is not the case. The Authority would likely use an actual cost standard if such costs are verifiable through fuel vendors. We would then use the DHLC as a fallback, as PTLAI suggests. The Authority is currently gathering actual consumption data from vendors and will continue to do so for most of the 1993-1994 HEAP season. In the interim, the Authority firmly believes that to require the HEAP applicant alone to verify actual consumption places a significant burden on many, if not most applicants. Depending upon the results of the Authority's analysis of the availability of actual consumption data from the various fuel vendors, we will continue to apply the DHLC which assures a consistent basis for calculating benefits.

The Authority is also unwilling to adopt the Fair Market Rent formula approach to calculating benefits. As a preliminary matter, PTLAI correctly points out that the federal Housing Community Development Act of 1992 requires that HEAP benefits payable to subsidized tenants who receive utility allowances and who incur out-of-pocket energy costs may not be reduced or eliminated. This interpretation was confirmed to the Authority by its federal grant agency, the U.S. Department of Health and Human Services ("HHS") in LIHEAP Information Memorandum IM-93-9. HHS also warned that no decision has been made (either by Congress or HHS) with respect to subsidized tenants who have their energy costs included in rent. HHS pointed out that the federal courts are split on this matter and therefore, informed various state grantees that it will continue to monitor the situation until more definitive guidance is available.

If the Authority were to adopt the Fair Market Rent formula, we would then run the risk of having to change the Rule in the middle of the upcoming HEAP season to perhaps accommodate a different federal standard. The Authority believes that the appeal of the DHLCL lies in its uniformity and its apparent acceptability to HHS. Until we receive more definitive guidance from our federal grant agency, the Authority is not inclined to make the proposed change at this time.

PTLAI also notes a mistake in the proposed Design Heat Load Calculation. PTLI correctly points out that the total BTU's should be divided by the efficiency rate of the primary home energy type, not multiplied. The correction is therefore, made in the adopted amendment. The identical comment was made by Ms. Sandra Prescott, Executive Director of Washington-Hancock Community Agency and Ms. Lynda Haegle of the Maine Special Services Council.

2. Eugene A. Guilford, President of the Maine Oil Dealers Association ("MODA") supports the expansion of the HEAP Weatherization program to include the services set forth in Section 7(B)(3). MODA also suggested that, when required by law, the services provided pursuant to Section 7(D) should be provided by licensed technicians. The Authority agrees with this comment and therefore, makes the appropriate change.

3. Sandra A. Prescott, Executive Director of Washington-Hancock Community Agency ("W-HCA") recommended that the definition of Credit Effective Date set forth in Section 1(E) be changed to reflect the different program commencement dates for the 1993-1994 and 1994-1995 HEAP seasons, respectively. The Authority agrees with this suggestion and makes the appropriate change.

W-HCA also notes that the final date upon which HEAP applications must be taken by Sub-Grantees must be extended in light of the changed program commencement dates. Therefore, the Section 4(A)(1) reference to April 30 is changed to June 30.

Next, W-HCA correctly points out that different departments of Sub-Grantees are responsible for administering Weatherization and fuel assistance. The fuel assistance department (typically the "HEAP department") must confirm applicant eligibility to the Weatherization department so that Weatherization staff may process applications from individuals whose eligibility for HEAP has been determined. A plain reading of the proposed Section 9(B) requires Sub-Grantees to provide (and apparently complete) Weatherization services within 30 days of a HEAP eligibility determination solely because the Weatherization applicant is eligible for HEAP. This result is clearly unintended. The proposed amendment is accordingly modified to indicate that the HEAP department must only confirm its eligibility determination to the Weatherization department within the 30-day period.

Other minor changes have been made for grammatical or stylistic reasons.
STATUTORY AUTHORITY: 30-A M.R.S.A. §§4722(1)(W) and 4741(15); 30-A M.R.S.A. §4991 et seq.; PL 1991, c. 622, §J-24.

EFFECTIVE DATE: October 4, 1993

BASIS STATEMENT: The Rule is being amended to make a number of changes and modifications in the HEAP program to more effectively administer the HEAP program. The Authority received a number of comments on the proposed amendments at the hearing on the Rule and in writing. The following is a summary of the comments received and the Authority's response to the comments.

One commentator, Richard Davies of the Maine Community Action Association, requested that telephone applications, permitted under §4.A.6. of the Rule, be able to be signed in the presence of any employee of the Sub-Grantee in order to minimize the difficulty of HEAP clients for whom submitting an in-person application would pose an undue hardship and to aid in the administration of the HEAP. Another commentator, Pat Ende from Pine Tree Legal Assistance, suggested that in order to assist HEAP clients for whom submitting an in-person application would cause an unreasonable hardship and to protect privacy rights, the Rule be amended to permit telephone applications to be signed in the presence of a Notary Public. The Authority has amended the final sentence of §4.A.6. in response to the comments.

Mr. Ende also suggested that the definition of "Camper" in §1.GG. of the draft Rule, and in §1.C. of the final Rule, be changed to make clear that applicants who reside in mobile homes that are not "permanently affixed" to real property are eligible to receive HEAP benefits. Residents of stationary mobile homes and stationary Campers that show evidence of being the permanent residence of the applicant are eligible for HEAP benefits. No change in the administration of the program is being made, however, the qualification of the definition of mobile home in this subsection has been deleted.

This same commentator expressed a concern that the 90-day residence period for roomers and boarders, housesitters and motel residents would exclude otherwise eligible HEAP applicants who may have to move frequently for a variety of reasons. This commentator suggested that the residence period be changed to 30 days.

After careful consideration, the Authority is changing the residence period in §§2.F., I., and J. of the Rule to 60 days rather than the originally proposed 90 days in order to ameliorate the harsh effects of a longer residence period for HEAP applicants who may move frequently, while at the same time administering the HEAP in a manner to ensure that Maine residents with the highest heating costs and lowest incomes are adequately served.

This same commentator raised a question about whether the Authority's treatment of residents of subsidized housing was consistent with federal legislation. The Authority has reviewed this section and believes that its treatment of federal subsidies for utility costs including heat is in accord with federal law.

Several other commentators had stylistic comments or noted typographic errors or inconsistencies between the Rule and the Handbook. The Authority has made several changes in response to these comments.

STATUTORY AUTHORITY: 30-A M.R.S.A. §§4722(1)(W) and 4741(15); 30-A M.R.S.A. §4991 et seq.; PL 1991, c. 622, §J-24.

EFFECTIVE DATE: August 31, 1994

BASIS STATEMENT: The HEAP Rule is being amended to better target HEAP assistance in anticipation of significant reductions in funding at the federal level, including providing assistance to eligible households that have an actual energy cost and the highest overall energy cost in relation to income. In addition, several changes to the Rule are being made to more effectively administer the HEAP Program, including funding a broader range of eligible activities under the ECIP component of HEAP.

Several comments were received by the Authority on the proposed amendments at a public hearing conducted on August 15, 1995. The Authority also received numerous written comments.

Jamie Py, Vice-President of the Maine Oil Dealers' Association, commented that he believed that the efficiency rating of oil heat set forth on pages 21-22 of the HEAP Program Handbook should be 85% instead of 60%. In addition, Mr. Py submitted written comments suggesting that HEAP clients be entitled to select their own oil company instead of having a company selected by the sub-grantee in some situations. While the Authority agrees that HEAP clients should determine their energy supplier in most cases, the ECIP component of HEAP will continue to be administered by subgrantees by contacting an energy supplier directly. The Authority is also retaining the 60% efficiency rating for oil heat because many HEAP recipients with oil heating systems do not have burners operating at top efficiency.

Richard Davies testified on behalf of the Maine Community Action Association ("MCAA"). MCAA endorsed the program goal of providing a reasonable level of HEAP assistance to eligible households with the greatest energy cost, a goal which Mr. Davies indicated was achievable, in light of significant reductions in federal funds, only by reducing the number of households participating in the HEAP program. In order to reach this goal, MCAA suggested that the Authority adjust the "point matrix" which it uses to determine HEAP benefits, setting a "floor" for heating costs of \$200 or \$300 per year in order for otherwise eligible households to

receive HEAP assistance. In the original amendments to the Rule, the Authority had proposed categorically eliminating certain households with relatively lower heating costs. In response to this comment, the Authority is adopting the approach proposed by MCAA in its final Rule amendments. The Authority has set the floor for heating costs at \$200 under the point matrix. Under the final Rule amendments, the only category of households that will be categorically ineligible for HEAP assistance will be residents of subsidized housing who have heat included in their rent, because it has been the Authority's experience in administering the HEAP Program that these households do not have an energy expense as that term is defined under the HEAP Act. This approach is also supported by recent federal court decisions. Residents of subsidized housing who pay for heat, *i.e.*, who have a direct heating expense, and residents of rental housing with heat included in their rent, including roomers and boarders, will still be eligible for HEAP assistance in accordance with the revised point matrix system in the final Rule. The Authority anticipates that this change will have an impact similar to the elimination of certain categories as proposed in the original Rule amendments.

MCAA also submitted written comments from Grant Lee, MCAA's President, urging that Authority not reduce the maximum percentage of funds available for providing additional counseling and other services to HEAP recipients from 5% to 2% of available funds. While the Authority believes that these services are beneficial to HEAP clients, the Authority has concluded that a higher percentage of available funding should be targeted to providing direct heating benefits. MCAA's written comments also supported the Authority's intention to seek a waiver after March 15, 1996 to use HEAP funds over the 15% set-aside to provide weatherization benefits to HEAP recipients. Finally, MCAA commented upon the possible impact of the proposed Rule changes on the level of benefits Food Stamps program participants may receive. The Authority agrees with MCAA's comment that an issue identified under the Food Stamp rules that would or might reduce Food Stamp benefits administered by the Maine Department of Human Services, is an issue that is not within the control of the Authority. The Authority believes that it has a responsibility to administer the HEAP Program in the fairest and most efficient manner possible, notwithstanding the possible impact that such administration might have on other federal programs, such as Food Stamps, under which the Authority has no control or responsibility.

Patrick Ende testified on behalf of the Maine Association of Interdependent Neighborhoods ("MAIN"). Mr. Ende opposed the categorical elimination of households with indirect heating costs (renters with heat included in their rent) because, he asserted, these households do incur heating expenses. As indicated above, the Authority will not be categorically eliminating such households, but does expect the number of such households receiving HEAP assistance to be reduced as a result of the adjustment of the point matrix. Mr. Ende, on behalf of MAIN, also urged the Authority to provide at least a nominal or token benefit to all eligible households in order for those households to qualify under the Food Stamp program to receive the so-called "standard utility allowance," apparently entitling the households to greater Food Stamps benefits. As indicated in the response to comments by MCAA, while the

Authority regrets any negative impact that the final Rule will have on Food Stamps program participants, the Authority has concluded that it must fulfill its responsibility of administering the HEAP Program in the fairest and most efficient manner possible without regard to the impact on other federal or state programs over which it has no control. Finally, Mr. Ende testified in support of gearing the CHIP program toward owners rather than renters, and, with respect to renters, enhancing protections for renters against eviction by owners after the owner has benefited from the CHIP program. The Authority does not believe that any changes are necessary to the CHIP Program provisions at this time.

MAIN submitted written comments reiterating the testimony above and, in addition, opposing the 5-month winter residency requirement as unconstitutional. The Authority believes that this requirement is constitutional and is an appropriate method to better target heating benefits to households that will have the greatest energy burden over the winter heating season.

Testimony and written comments were also received from Geoff Hermon of the Maine Municipal Association ("MMA") and the Maine Welfare Directors' Association ("MWDA"). MMA's and MWDA's comments supported the Authority's goal of reducing the number of households receiving HEAP assistance in order to minimize the impact of an expected 25% cut in federal funding on the average benefit provided. As indicated above, under the final Rule amendments, the Authority is not categorically eliminating any households otherwise eligible for HEAP except those living in subsidized housing with heat included in their rent. However, as explained in the Authority's response to earlier comments, the Authority does expect that the number of HEAP recipients will be reduced by providing a \$0 benefit for households whose net heating expense is not more than \$200 per year. The Authority believes that this approach will achieve a comparable result to the one endorsed by MMA and MWDA.

In addition to the testimony above and the accompanying written comments, the Authority received the following written comments.

The Maine Department of Human Services submitted a comment by its Commissioner, Kevin W. Concannon, encouraging the Authority to explore the feasibility of offering a "smaller, perhaps nominal" HEAP benefit to maintain a higher level of Food Stamp funding for DHS clients. The Authority's response to Commissioner Concannon's comment is the same as our response to Mr. Ende on this issue.

Two comments were received in support of the elimination of certain groups from participating in the HEAP Program. The City of Augusta indicated that it supported the Authority's elimination of all residents of subsidized housing and renters with heat included in their rent in order to better target reduced federal funding to those with the greatest need. In addition, Mr. John M. Fortier, who indicated that he was an owner of an apartment building with

a subsidized tenant, objected to providing HEAP assistance to residents of subsidized housing with heat included in their rent. As indicated above, the final Rule categorically eliminates only residents of subsidized housing with heat included in their rent, but establishes a minimum heating expense of \$200 to receive HEAP benefits.

The Maine Council of Senior Citizens submitted written comments by its President, John Marvin. Mr. Marvin indicated that neither the likely 25% or greater cut in federal funding for HEAP, nor the elimination of approximately 19,000 households from participation in the HEAP Program, would be a satisfactory resolution of the problem of providing heating assistance to Maine's low income elderly population. Mr. Marvin's group took no position on the Authority's proposed Rule amendments, but indicated that it would pursue political action to stop the elimination of the HEAP Program.

A written comment was received by Ms. Marjorie Andrews, who indicated that she was writing on behalf of elderly and disabled persons in subsidized housing. Ms. Andrews said that she and others similarly situated would face a great hardship in paying food bills if the Authority's proposed HEAP Rule amendments were adopted because the proposed changes would reduce or eliminate the Food Stamps she receives. While the Authority is sympathetic to the possible impact of its final Rule on Food Stamps recipients, the Authority believes that it must do everything it can to ensure that shrinking levels of federal funding are targeted to those most in need of heating assistance. The Authority does not have control over or responsibility for administering the Food Stamps program and so is unable to directly address the issue raised by Ms. Andrews.

Pam Allen, Director of Planning for the Western Area Agency on Aging, indicated that the Authority should revise the adjustment for other utility expenses in electrically-heated households receiving a utility allowance at page 12, section 5 of the Rule, from \$600 per year to \$400 per year. The Authority believes that a \$600 adjustment is a more accurate reflection of non-heat-related electric utilities.

Finally, Dianne Hanley, HEAP Director at Kennebec Valley CAP, made several technical comments on several sections of the proposed Rule which have been clarified in the final Rule.

In addition, the Authority has made several stylistic and typographical changes and corrections.

STATUTORY AUTHORITY: 30-A M.R.S.A. Sec. 4722(1)(W) and 4741(15); 30-A M.R.S.A. Sec. 4991 et seq; P.L. 1991, c. 622, Sec. J-24.

EFFECTIVE DATE: October 4, 1995

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