

**RULEMAKING NOTICE FORM**

Notice Number 2015-192

Rule Number He-W 742.02

1. Agency Name & Address:  
**Dept. of Health & Human Services  
Division of Family Assistance  
129 Pleasant Street, Brown Building  
Concord, NH 03301**

2. RSA Authority: RSA 161:4-a, IV; RSA 167:3-c, I

3. Federal Authority: \_\_\_\_\_

4. Type of Action:

Adoption \_\_\_\_\_

Amendment \_\_\_\_\_

Repeal \_\_\_\_\_

Readoption \_\_\_\_\_

Readoption w/amendment  X

5. Short Title: **Elimination of the Prohibition of Decreasing the Standard Utility Allowance (SUA) in the Food Stamp Program if the CPI-U is Negative**

6. (a) Summary of what the rule says and of any proposed amendments:

**The Department of Health and Human Services (Department) is proposing to readopt with amendment He-W 742.02 to comply with 7 CFR 273.9(d)(6)(iii)(B) per the requirements of the US Department of Agriculture (USDA), Food and Nutrition Services (FNS), outlined in its letter to the Department dated August 13, 2015.**

**He-W 742.02 in its entirety describes the methodology the Department uses to determine Standard Utility Allowances (SUA) in the Food Stamp Program (FS). The SUA is an income deduction allowed if the Food Stamp household incurs certain utility costs such as phone, electricity, or heating costs. The SUA is determined annually according to a methodology approved by USDA FNS, which makes adjustments in the amount of the allowances based on changes in the Consumer Price Index for Urban Consumers (CPI-U).**

**In August of 2015, USDA wrote the Department that 7 CFR 273.9(d)(6)(iii)(B) mandates the Department to review the SUA annually and make adjustments to the SUA based on actual changes in utility costs using the USDA approved methodology. Pursuant to the federal law, the Department may not maintain an unchanged SUA unless the percent change in the CPI-U is zero, meaning there has been no change in actual costs.**

**The proposed amendment to the rule ensures the Department’s methodology for determining SUAs aligns with federal mandates, accurately reflects changes to the CPI-U, and does not artificially maintain SUAs at a higher level when there has been an actual reduction in costs. The Department complied with the federal mandate by implementing the change in SUA effective October 1, 2015. The rule is reflective of this implementation.**

6. (b) Brief description of the groups affected:

**This proposed rule affects up to approximately 69% of FS household recipients who receive the SUA. Because the rule requires an adjustment to the SUA when the CPI-U is decreased, up to 69% of FS household’s might experience up to a \$9 reduction in monthly benefits in fiscal year 2016.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<u>RULE</u>	<u>STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS</u>
He-W 742.02	RSA 161:2, XIII; RSA 161:4-a IV; RSA 167:3-c, I; RSAA 167:4, I(a); 7 CFR 273.9(d)(6)(iii); 7 USC 2014(e)(6)(C)-(D)

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Catherine Bernhard** Title: **Administrative Rules Coordinator**  
Address: **Dept. of Health and Human Services** Phone: **271-9234**  
**Administrative Rules Unit** Fax: **271-5590**  
**129 Pleasant Street** E-mail: [catherine.bernhard@dhhs.state.nh.us](mailto:catherine.bernhard@dhhs.state.nh.us)  
**Concord, NH 03301**

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

**The proposed rules may be viewed and downloaded at:**  
<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Wednesday, December 23, 2015**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Wednesday, December 16, 2015 at 1:30 p.m.**

Place: **DHHS Brown Bldg., Room 232, 129 Pleasant St., Concord, NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 15:203, dated 11/17/15

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

When compared to the existing rule, the proposed rule will decrease benefits for state citizens to the extent that they receive benefits under the federal Supplemental Nutrition Assistance Program (SNAP) and claim a Standard Utility Allowance (SUA) under the program, and may increase costs for political subdivisions to the extent that affected SNAP recipients seek assistance from local welfare offices.

**2. Cite the Federal mandate. Identify the impact of state funds:**

7 CFR 273.9(d)(6)(iii)(B) mandates that the Department review the SUA used in the calculation of shelter expenses for SNAP benefits. The Department determines the SUA annually according to a methodology approved by the US Department of Agriculture (USDA), which makes adjustments in the amount of the allowances based on changes in the Consumer Price Index for Urban Consumers (CPI-U). The Department is prohibited from maintaining an unchanged SUA unless the percent change in the CPI-U is zero, meaning there has been no change in actual costs. Although the SNAP program is 100 percent federally funded, failing to change the SUA would result in the State being subject to an overpayment claim from the USDA of approximately \$307,719 per month.

**3. Cost and benefits of the proposed rule(s):**

**A. To State general or State special funds:**

None.

**Readopt with amendment He-W 742.02, effective 11-5-14 (Document # 10713), cited and to read as follows:**

CHAPTER He-W 700 FOOD STAMPS

PART He-W 742 ALLOWABLE INCOME DEDUCTIONS

He-W 742.02 Utility Expenses Incurred Separately.

(a) In accordance with 7 CFR 273.9(d)(6)(iii), standard utility allowances (SUA) shall be used to represent how much a household pays for one of the following monthly shelter costs separate and apart from the household’s monthly rent or mortgage payments:

- (1) Heat;
- (2) Utilities only;
- (3) Electric only; or
- (4) Telephone only.

(b) The minimum monthly SUA amounts shall be as listed in Table 700-1, SUA, below;

**Table 700-1, SUA**

SUA	Monthly Dollar Allowance
Heat SUA	<del>\$578</del> <u>\$551</u>
Utilities only SUA	<del>\$261</del> <u>\$249</u>
Electric only SUA	<del>\$152</del> <u>\$145</u>
Telephone only SUA	<del>\$28</del> <u>\$27</u>

(c) The heat SUA amount in (a)(1) above shall be a monthly allowance used to calculate shelter costs for households that incur a monthly heating cost separate and apart from the household’s rent or mortgage payments, pursuant to 7 CFR 273.9(d)(6)(iii).

(d) The utilities only SUA described in (a)(2) above shall:

- (1) Be a monthly utility allowance used to calculate shelter costs for households that incur a minimum of 2 utility costs a month and do not incur monthly heating expenses separate and apart from the household’s rent or mortgage payments; and
- (2) Represent monthly household expenses incurred for cooking fuel, water, sewage, trash removal, electricity not used to heat or cool the household, and the basic service fee for one telephone or cell phone.

(e) The electric only SUA described in (a)(3) above shall be used to calculate shelter costs for any food stamp household in which the only costs incurred by the household separate and apart from rent or mortgage payments are for electric costs not used to heat the household, and the household is not eligible for the heat or the utilities only SUA.

(f) When the household is not eligible for the heat SUA, the utilities only SUA, or the electric only SUA, the telephone only SUA described in (a)(4) above shall be used to calculate shelter costs for any food stamp household in which:

(1) The only costs incurred by a household separate and apart from rent or mortgage payments are for regular household telephone or cellular (cell) phone services, even if actual household telephone or cell phone expenses are higher or lower than the standard; or

(2) The household does not have regular household telephone or cell phone service but incurs costs separate and apart from rent or mortgage payments for phone expenses, even if actual household phone expenses are higher or lower than the telephone only SUA amount.

(g) The telephone only SUA amount described in (f) above shall not include the costs incurred by a household to purchase a cellular phone.

(h) Households which share utility costs and are entitled to a utility standard amount shall be granted the appropriate standard utility amount, as described in (a) above, regardless of whether all households participate in the food stamp program.

(i) For households in which all members are homeless but not receiving free shelter throughout the month:

(1) A \$143 homeless shelter deduction shall be granted unless the household verifies actual costs are higher; and

(2) No minimum shelter expense shall be required to qualify a homeless individual for the \$143 amount.

(j) For the purposes of meeting the 2 utility criteria in (d) above, ownership and use of a well or septic system by the household shall be considered a verified monthly utility expense for the household and shall count as a utility cost.

(k) When the "Consumer Price Index" (CPI) for updating the SUAs is referred to, the New England Consumer Price Index Card for all urban consumers (CPI-U) for the Northeast region, not seasonally adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics shall be used.

(l) The SUAs shall be equal to the minimum amount in Table 700-1, SUA, and updated for October 1 of each year by:

(1) Multiplying the current SUA amount by the average CPI percent of change in the cost of fuel and utilities from the previous year to the current year, using the most recent 12-month period available, in accordance with (k) above;

(2) Adding the product derived in (l)(1) above to the current SUA amount; and

(3) Rounding the SUA amount derived in (l)(2) above to the nearest whole dollar, if necessary.

(m) If the most recent CPI average percent change described in (l)(1) is ~~negative or~~ zero, there shall be no change to the SUA amounts.

**APPENDIX**

<b>RULE</b>	<b>STATUTE</b>
He-W 742.02	RSA 161:2, XIII; RSA 161:4-a, IV; RSA 167:3-c, I; RSA 167:4, I(a); 7 CFR 273.9(d)(6)(iii); 7 USC 2014(e)(6)(C)-(D)