

## INTERIM RULEMAKING NOTICE FORM

Proposed Interim Rule Number **2015-11** Rule Number **He-W 742.02(m)**

<p>1. Agency Name &amp; Address:</p> <p><b>Dept. of Health and Human Services Division of Family Assistance 129 Pleasant St., Brown Bldg. Concord, NH 03301</b></p> <p>5. Filing Date: <b>October 1, 2015</b></p>	<p>2. RSA Authority: <b>RSA 161:4-a,IV, RSA 167:3-c,I</b></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment <b>X</b> _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment _____</p>
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6. Short Title: **Elimination of the Prohibition of Decreasing the Standard Utility Allowance (SUA) in the Food Stamp Program if the CPI-U Is Negative**

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

Name:	<b>Catherine Bernhard</b>	Title:	<b>Rules Coordinator</b>
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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Summary explaining the effect of the rule:

**The Department of Health and Human Services (Department) is proposing an interim rule to amend He-W 742.02(m) pursuant to RSA 541-A:19, I (c) to comply with 7 CFR 273.9(d)(6)(iii)(B) per requirement of the US Department of Agriculture (USDA) Food and Nutrition Service (FNS) letter of August 13, 2015.**

**The current rule allows the Department to maintain an unchanged standard utility allowance (SUA) in the Food Stamp Program even if there is a decrease in the Consumer Price Index of Urban (CPI-U) percentage. The SUA is an income deduction, applied if the Food Stamp (FS) household incurs certain types of shelter costs, such as heat, electricity, or phone costs.**

**To align with USDA FNS interpretation of 7 CFR 273.9(d)(6)(iii)(B), the Department is proposing to amend He-W 742.02(m) to allow a change in the SUA amounts if the CPI-U average percentage change is a negative percentage, so that a decrease in the CPI-U would result in a corresponding decrease in the SUAs. FNS has indicated that since the CPI-U was -4.7% for June 2015, the Department's SUAs must be decreased accordingly using that percentage. The Department estimates that the proposed rule change will affect 69% of participating FS households who may see a reduction of up to \$9 in their monthly benefit beginning October 1, 2015.**

9. Listing of people, enterprises, and government agencies affected by the rule: **FS applicants and recipients with income and certain utility costs will be affected by this rule change.**

10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

<u>Rule</u>	<u>State Statute and Federal Regulation Implemented by the Rule</u>
He-W 742.02(m)	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)

11. Summary of the effect upon the state if the rule were not adopted:

**Failure to implement the proposed rule change could have the following effect:**

- **FNS could refuse to approve the Department’s methodology for calculating the SUA for FY 2016. Any benefits provided to NH FS households using the unapproved method would be counted as an error in determining FS benefits by FNS. The dollar amount of each inaccurately determined FS benefit allotment is totaled at the end of each month and used by FNS to determine financial penalties imposed upon the state.**
- **State penalties and errors could also be assessed against the Department. Implementation of the decreased SUAs before a rule authorizing the change is adopted potentially opens up the Department to litigation appealing the change in benefit. The number of FS households likely to appeal is indeterminable, but any cases that were overturned by the Administrative Appeals Unit (AAU) would likely be found by FNS to be an error in determining FS benefits and a financial penalty could be assessed against the state.**

12. Proposed date of review by the Joint Legislative Committee on Administrative Rules: **10/15/2015**

13. The fiscal impact statement prepared by the Legislative Budget Assistant, if applicable.

FIS # **15:170** \_\_\_\_\_, dated **09/21/15**

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 the monthly benefit for an estimated 69% of citizens enrolled in the Food Stamp Program by up to \$9, and may increase costs to political subdivisions by an indeterminable amount.**

2. Cite the Federal mandate. Identify the impact on state funds:

**7 CFR 273.9(d)(6)(iii)(B) mandates that a percentage decrease in the Consumer Price Index for all Urban Consumers (CPI-U) be reflected by an equal percentage decrease in the Standard Utility Allowance.**

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

- A. To State general or State special funds:

**None.**

- B. To State citizens and political subdivisions:

**The Standard Utility Allowance (SUA) is applied as an income deduction in determining the monthly food stamp benefit amount. Under the current rule, a decrease in the CPI-U does not require a change to the SUA. Under the proposed rule, a decrease in the CPI-U would require a corresponding decrease in the SUA. Based on a 4.7% reduction in the CPI-U in June 2015, the SUA will be reduced by 4.7%. The Department estimates 69% of the citizens participating in the Food Stamp Program will see a reduction of up to \$9 in their monthly benefit. Political subdivisions may experience additional costs associated with an increase in requests for local assistance. The number of such requests for local welfare assistance cannot be estimated.**

- C. To independently owned businesses:

**None.**

**Amend He-W 742.02(m), effective 11-5-14 (Document #10713), so that He-W 742.02(m) reads as follows:**

He-W 742.02 Utility Expenses Incurred Separately.

(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><u>Rule</u></b>	<b><u>State Statute and Federal Regulation Implemented by the Rule</u></b>
He-W 742.02(m)	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)