

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for the rule or rule change. *(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.)*

The proposed rule change is necessary to be in compliance with federal regulations and serves two purposes:

A. The first purpose is to revise five Food Assistance Program rules at 10 CCR 2506-1 to outline the Federal Fiscal Year (FFY) 2017 income eligibility standards and deductions that are adjusted annually and made effective each October 1st. The adjustments are based on a cost of living adjustment (COLA) as determined by the United States Department of Agriculture, Food and Nutrition Service (USDA, FNS). Colorado received the FFY17 COLA adjustments on August 10, 2016. The following eligibility standards and deductions will be updated:

- Gross income standard for one hundred thirty percent (130%), one hundred sixty five percent (165%) and two hundred percent (200%) of the Federal Poverty Level (FPL)
- Net income standard for one hundred percent (100%) of the FPL
- Standard deduction
- Maximum shelter deduction
- Maximum and minimum allotments

The Food Assistance Program proposes revising the following five (5) rules:

1. Revise section 4.207.3, "Benefit Allotment," to outline the FFY17 maximum and minimum benefit allotments and to remove prior year's standards.
2. Revise section 4.401.1(C), "Gross Income Eligibility Determination," to incorporate the FFY17 gross monthly income eligibility standard for 130%, 165%, and 200% of the Federal Poverty Level (FPL) and to remove prior year's standards.
3. Revise section 4.401.2(D), "Net Income Eligibility Determination," to incorporate the FFY17 net monthly income eligibility standard for 100% of the FPL and to remove prior year's standards.
4. Revise section 4.407.1, "Standard Deduction," to incorporate the FFY17 standard deduction and to remove prior year's standards.
5. Revise section 4.407.3(B), "Excess Shelter Deduction," to incorporate the FFY17 shelter deduction cap and to remove prior year's standards.

B. The second purpose is to revise Food Assistance Program rule 4.407.31(A-D), "Four-Tiered Mandatory Standard Utility Allowance," to incorporate the FFY 2017 standard utility allowances (SUA). Federal regulation 7 CFR 273.9(d)(6)(iii)(B) requires states to annually review its standard utility allowance and to make adjustments based on changes in the current cost of living.

The Colorado Food Assistance Program utilizes a four-tiered mandatory Standard Utility Allowance when determining a household's shelter deduction and food assistance allotment. Households with income and who are responsible for paying utility costs are eligible to receive a utility deduction based on one of the four tiers.

Colorado received federal approval to continue to utilize the Consumer Price Index for All Urban Consumers (CPI-U) to determine the FFY 2017 SUA amounts.

The FFY17 SUA amounts are as follow:

SUA Tier	Rule	FFY17
Heating and Cooling Utility Allowance (HCUA)	Section 4.407.31(A)(4)	\$359
Basic Utility Allowance (BUA)	Section 4.407.31(B)(3)	\$292
One Utility Allowance (OUA)	Section 4.407.31(C)(3)	\$55
Telephone Allowance	Section 4.407.31(D)(2)	\$74

Title of Proposed Rule: Food Assistance Federal Fiscal Year (FFY17) Standard Utility Allowance Update and Cost of Living Adjustments
 Rule-making#: 16-4-25-2
 Office/Division or Program: OES / Food and Energy Assistance
 Rule Author: Amanda Dyer
 Phone: (303) 866-2538
 E-Mail: Amanda.Dyer@state.co.us

Emergency rule adopted September 9, 2017. November Board for public comment and permanent adoption.

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

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

Explain: An emergency rule-making is necessary in order to maintain compliance with federal regulations regarding the federally mandated FFY 2017 SUA and COLA increases. These changes must be promulgated into rule by the mandatory implementation date of October 1, 2016.

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2015) - State Board to promulgate rules; 26-1-109, C.R.S. (2015) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2015) - state department to promulgate rules for public assistance and welfare activities.

Program Authority: (give federal and/or state citations and a summary of the language authorizing the rule-making)

- 26-2-301 (2016), C.R.S. - designates the Colorado Department of Human Services as the responsible agency to administer the Food Assistance Program in the state of Colorado
- 26-2-302 (2016), C.R.S. - prohibits any interference that would prevent the Colorado Department of Human Services from complying with federal mandates prescribed under the federal "Food Stamp Act" as amended
- Federal program authority is found in the Agricultural Act of 2014 (Public Law 113-79)
- 7 CFR 273.9(a) – outlines the income eligibility thresholds
- 7 CFR 273.9(d)(1)(i) – outlines the standard deduction
- 7 CFR [273.9] (d)(6)(iii) – outlines the standard utility allowances
- 7 CFR 273.10(e)(4)(i) – outlines the maximum food assistance allotment levels
- 7 CFR 273.10(e)(2)(ii)(c) - outlines the minimum Food Assistance allotment levels for eligible one and two person households
- 7 CFR 273.12(e) – outlines mass changes
- 7 CFR 273.9(D)(6)(ii) – outlines the maximum shelter deduction

Does the rule incorporate material by reference?

<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

Does this rule repeat language found in statute?

If yes, please explain.

The program has sent this proposed rule-making package to which stakeholders?

- Office of Economic Security Sub-Pac
- Food Assistance Performance Improvement Plan monthly meeting which consists of representatives from the ten largest counties

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REGULATORY ANALYSIS

1. List of groups impacted by this rule:

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

Food Assistance Program participants and applicants will benefit from this rule change.

2. Describe the qualitative and quantitative impact:

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

Applicants and participants in the Food Assistance Program will not be adversely affected by changes to the federally required eligibility standards, as all of the standards are increasing or remaining unchanged.

Adjustments to the standard utility allowance (SUA) will have little to no adverse impact on households. It generally takes a minimum of a four dollar (\$4) reduction in a deduction to reduce a household's benefits by one dollar (\$1). Since the Heating and Cooling Utility Allowance (HCUA) is only being reduced by one dollar, the reduction in the utility allowance will likely cause no change in the household's benefit allotment, particularly when coupled with the increase in the income limits.

3. Fiscal Impact:

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources.

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

Costs associated with the Colorado Benefits Management System to incorporate these changes have already been allocated in the system maintenance budget.

County Fiscal Impact

There are no county fiscal impacts associated with this rule change.

Federal Fiscal Impact

There are no federal fiscal impacts associated with this rule change.

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

There are no other fiscal impacts associated with this rule change. All food assistance benefits are 100% federally funded.

4. Data Description:

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

Federal memorandums from the Food and Nutrition Service as well as data from the Consumer Price Index for all Urban Consumers were used in the development of this rule.

5. Alternatives to this Rule-making:

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative.

No available alternatives exist to incorporate these program changes state-wide since this is a federal mandate.

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OVERVIEW OF PROPOSED RULE

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

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment			
			—	Yes	X	No
4.207.3, E	The maximum monthly Food Assistance benefit allotments and the minimum allotment for households are represented in table form	Update the effective date to 2016. The amounts remain unchanged.	—	Yes	X	No
4.401.1, C	The gross income limits for households subject to income thresholds for 130%, 165%, and 200% of the federal poverty level are represented in table form	Update the effective date to 2016. Remove the FFY 2016 income standards and add the FFY 2017 income standards.	—	Yes	X	No
4.401.2, D	The net income limits reflecting 100% of the federal poverty level are represented in table form as applicable to each household size	Update the effective date to 2016. Remove the FFY 2016 income standards and add the FFY 2017 income standards.	—	Yes	X	No
4.407.1	The standard deduction that applies to all households is represented in table form	Remove the FFY 2016 amounts and add the FFY 2017 amounts.	—	Yes	X	No
4.407.3	A table format outlines the highest possible shelter expense deduction for households whose monthly shelter expenses exceed 50% of the total countable income after income deductions are applied. This is referred to as the shelter deduction cap.	Remove the FFY 2016 amounts and add the FFY 2017 amounts.	—	Yes	X	No
4.407.31, A,4	The standard utility allowance is based on a four tiered model per utility type. For households incurring heating and cooling costs, the HCUA deduction is granted.	Remove the FFY 2016 amounts and add the FFY 2017 amounts..	—	Yes	X	No
4.407.31, B,3	For households incurring more than one utility expense which does not include heating and cooling, the BUA deduction is granted.	Remove the FFY 2016 amounts and add the FFY 2017 amounts.	—	Yes	X	No
4.407.31, C,3	For households incurring just one non heating or cooling or telephone expense, the OUA deduction is granted.	Update the effective date. The amount remains unchanged.	—	Yes	X	No
4.407.31, D,2	For households incurring only a telephone expense, the telephone allowance is granted.	Update the effective date. The amount remains unchanged.	—	Yes	X	No

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STAKEHOLDER COMMENT SUMMARY

DEVELOPMENT

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

Additional program areas were not solicited for input in the development of these proposed rules, as the cost of living adjustments are determined by USDA, FNS, and the SUA amounts are based on federal approval. Past guidance from the Office of Legislative Legal Services and the Food and Nutrition Service has supported the practice of incorporating SUA and COLA changes into state rule.

THIS RULE-MAKING PACKAGE

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

- Office of Economic Security Sub-PAC
- Food Assistance Performance Improvement Plan monthly meeting which consists of representatives from the ten largest counties

Are other State Agencies (such as Colorado Department of Health Care Policy and Financing) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes No

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

Yes No

Date presented September 8, 2016. Were there any issues raised? No

If not, why. The federally mandated COLA updates were received from USDA, FNS on August 10, 2016. The COLA updates will be presented at the September sub-PAC meeting. The annual COLA updates are federally mandated, and the state has no discretion in modifying the COLA.

Comments were received from stakeholders on the proposed rules:

Yes No

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

(10 CCR 2506-1)

4.207.3 Benefit Allotment [Rev. eff. 12/1/14]

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[C.] The Food Assistance maximum and minimum monthly benefit allotment tables will be adjusted as announced by the United States Department of Agriculture (USDA, Food and Nutrition Service (FNS)).

HOUSEHOLD SIZE	MAXIMUM MONTHLY ALLOTMENT EFFECTIVE OCTOBER 1, 2015 2016
1	\$194
2	\$357
3	\$511
4	\$649
5	\$771
6	\$925
7	\$1,022
8	\$1,169
EACH ADDITIONAL PERSON	+\$146

HOUSEHOLD SIZE	MINIMUM MONTHLY ALLOTMENT EFFECTIVE OCTOBER 1, 2015 2016
1-2	\$16

4.401.1 Gross Income Eligibility Determination [Rev. eff. 12/1/14]

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C. Gross Income Levels

Effective October 1, 2015-2016, the gross income level for one hundred thirty percent (130%), two hundred percent (200%), and one hundred sixty-five percent (165%) of the federal poverty level for the corresponding household size is as follows:

Household Size	130% Gross Income Level	200% Gross Income Level	165% Gross Income Level
1	\$ 4,276 1,287	\$ 4,962 1,980	\$ 4,619-1,634
2	\$ 4,726 1,736	\$ 2,656 2,670	\$ 2,191-2,203
3	\$ 2,177 2,184	\$ 3,350 3,360	\$ 2,763-2,772
4	\$ 2,628 2,633	\$ 4,042 4,050	\$ 3,335-3,342
5	\$ 3,078 3,081	\$ 4,736 4,740	\$ 3,907-3,911
6	\$ 3,529 3,530	\$ 5,430	\$ 4,479-4,480
7	\$3,980	\$ 6,122	\$ 5,051
8	\$4,430	\$ 6,816	\$ 5,623
Each additional person	+\$ 451	+\$ 694	+\$ 572

4.401.2 Net Income Eligibility Determination [Rev. eff. 12/1/14]

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D. Net Income Levels

Effective October 1, 2015-2016, the net income level of one hundred percent (100%) of the federal poverty level for the corresponding household size is as follows:

Household Size	100% Net Income Level
1	\$ 981 990
2	\$ 1,328 1,335
3	\$ 1,675 1,680
4	\$ 2,021 2,025
5	\$ 2,368 2,370

6	\$2,715
7	\$3,061
8	\$3,408
Each additional member	+ \$347

4.407.1 Standard Deduction [Rev. eff. 12/1/14]

A standard deduction of 8.31% of the federal poverty income guidelines for the household size will be used to calculate the amount that is allowed to all households. The established standard amount will be adjusted annually as announced by the Food and Nutrition Service, USDA. The calculation of 8.31% of the federal poverty income guidelines for eligible members will be used for all households up to the household size of six (6). All households with six (6) or more eligible members will use the six (6) person standard deduction.

STANDARD DEDUCTION AMOUNT				
Household Size	1-3	4	5	6+
Effective October 1, 2015 2016	\$ 155 157	\$ 168	\$ 197	\$ 226

4.407.3 Excess Shelter Deduction [Rev. eff. 12/1/14]

- A. Households shall receive a deduction for the allowable monthly shelter costs that are in excess of fifty percent (50%) of the household's income after all other deductions. Shelter expenses are allowed as billed to a household member or as paid or billed to a disqualified individual. Shelter costs that are paid by or billed to a person disqualified for fraud shall be allowed as a deduction for eligible members in their entirety. Shelter costs, paid or billed to a person disqualified for being an ineligible non-citizen or for failure to provide a Social Security Number shall be divided evenly among all household members and the disqualified individual. All except the disqualified person's pro rata share is counted as a shelter cost of the household.
- B. A shelter deduction cap, as specified below, applies to households that do not contain person who is elderly and/or a person with a disability as defined in Section 4.304.41. Those households containing a person who is elderly and/or a person with a disability shall receive an excess shelter deduction for the monthly cost of shelter that exceeds fifty percent (50%) of the household's monthly income after all other applicable deductions.

SHELTER DEDUCTION CAP	
Effective October 1, 2015 2016	\$ 504 517

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4.407.31 Four-Tiered Mandatory Standard Utility Allowance [Rev. eff. 12/1/14]

Effective October 1, 2008, a four tiered mandatory standard utility allowance deduction was implemented in determining a household's excess shelter deduction. Households cannot claim actual utility expenses and are only entitled to one of the four utility allowances. The four utility allowances shall be reviewed annually and adjusted each year, based on Federal approval, to reflect Colorado's cost of utilities. No utility expenses can be allowed as an income exclusion for self-employed households when a mandatory utility allowance is given to the household.

When determining expedited eligibility, the appropriate utility allowance shall be applied when establishing the household's shelter costs.

The four (4) tiers are as follows:

A. Heating and Cooling Utility Allowance (HCUA)

1. "Cooling costs" are defined as utility costs relating to the operation of air conditioning systems, room air conditioners, swamp coolers, or evaporative coolers. Fans are not an allowable cooling cost. A heating and cooling utility allowance (HCUA) is available only to households who:
 - a. Incur or anticipate heating or cooling costs separate and apart from their rent or mortgage;
 - b. Received a Low-Income Energy Assistance Program (LEAP) payment within the previous twelve (12) month period, regardless of whether or not the individual is still residing at the address for which he/she received the LEAP payment;
 - c. Live in private rental housing and are billed by their landlords on the basis of individual usage or are charged a flat rate separately from their rent for heating and cooling;
 - d. Share a residence and who incur at least a portion of the heating or cooling cost; each household will be entitled to the full HCUA; or,
 - e. Live in public housing and are responsible for excess heating and/or cooling costs.
2. A Food Assistance household, which incurs or anticipates a heating or cooling costs on an irregular basis, may continue to receive the HCUA between billing periods.
3. Operation of a space heater, electric blanket, heat lamp, cooking stove and the like when used as a supplemental heating source are allowable costs when determining eligibility for the basic utility allowance (BUA), but do not qualify a household for the HCUA.

4. The HCUA standard is as follows:

Effective October 1, 2015 2016	\$ 460 459
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B. Basic Utility Allowance (BUA)

1. The Basic Utility Allowance (BUA) is mandated for any households that are not entitled to the HCUA and that incur at least two (2) non-heating or non-cooling utility costs, such as electricity, water, sewer, trash, cooking fuel, or telephone.
2. If more than one assistance group shares in paying non-heating or non-cooling utility costs of the dwelling, the full BUA will be allowed for each assistance group sharing in the utility costs.
3. The BUA standard is as follows:

Effective October 1, 2015 2016	\$ 290 292
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C. One Utility Allowance (OUA)

1. The OUA is mandated for any household that is not entitled to the HCUA or BUA but is responsible for only one (1) non-heating or one (1) non-cooling utility expense. The OUA is not allowed if the household's only utility expense is a telephone.
2. If more than one (1) assistance group shares in paying one (1) non-heating or one non-cooling utility costs of the dwelling, the full OUA will be allowed for each assistance group sharing in the utility costs.
3. The OUA standard is as follows:

Effective October 1, 2015 2016	\$55
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D. Telephone Allowance

1. The telephone allowance is available to households whose only utility cost is for a telephone. If more than one assistance group shares in paying the telephone costs and that is the only utility costs of the dwelling, the full phone standard will be allowed for each assistance group sharing in the telephone costs.
2. The telephone allowance is as follows:

Effective October 1, 2015 2016	\$74
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