

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.70.101, 37.70.102, ) PROPOSED AMENDMENT  
37.70.107, 37.70.110, 37.70.115, )  
37.70.305, 37.70.311, 37.70.312, )  
37.70.401, 37.70.402, 37.70.406, )  
37.70.407, 37.70.408, 37.70.602, and )  
37.70.901 pertaining to the Low )  
Income Home Energy Assistance )  
Program (LIHEAP) )

TO: All Concerned Persons

1. On April 13, 2023, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/84932025039?pwd=ZUU1UDhJa01aNEIRS0J4Z2I3YTdXZz09>, meeting ID: 849 3202 5039; and password 883724 or

(b) Dial by telephone +1 646 558 8656, meeting ID: 849 3202 5039, and password 883724. Find your local number: <https://mt-gov.zoom.us/j/84932025039>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on March 30, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-3026; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.70.101 SAFEGUARDING/SHARING INFORMATION (1) ~~Disclosure of~~ Disclosing information ~~concerning~~ about applicants for or recipients of low income home energy assistance is restricted to purposes directly connected with the administration of such aid. Such purposes include establishing eligibility, determining amount of assistance, and providing benefits to or on behalf of applicants and recipients.

(a) Proper requests for information from a government authority, a court, or a law enforcement agency will be honored and the information released along with a

notification of the confidentiality of the information and the penalty for misuse of such information.

(b) Whenever possible, the department will attempt to obtain prior consent from the applicant or recipient to release information about the applicant or recipient, except in. Notification will be provided after release of information in the following situations: emergency situations; ~~where notification will be given after the release of information and~~ in cases where the information is released for legal and investigative actions concerning fraud; collection of support, and third party medical recovery.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.102 ROLE OF THE LOCAL CONTRACTOR (1) The department will contract with appropriate community-based organizations in the state to provide outreach and to receive and process applications for the low income home energy assistance and weatherization programs.

(a) In providing outreach, the local contractor performs specified activities designed to inform all potentially eligible households in the contract area of the existence of and the benefits available under the low income home energy assistance program. ~~Such application may also constitute an application for weatherization.~~

(b) In receiving and processing applications, the local contractor determines household eligibility and benefit award under the rules contained in this chapter. An application for low income home energy assistance may also constitute an application for weatherization.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.107 REFERRALS TO THE QUALITY ASSURANCE DIVISION  
OFFICE OF INSPECTOR GENERAL, PROGRAM COMPLIANCE BUREAU

(1) ~~The Quality Assurance Division Office of Inspector General,~~ Program Compliance Bureau (PCB), has the power and duty to:

(a) investigate matters relating to ~~LIHEAP~~ LIHEAP including, ~~but not limited to,~~ applications, awards of benefits, and information received relating to an application;

(b) remains the same.

(c) determine whether the overpayment was due to:

(i) and (ii) remain the same.

(2) Local contractors must make reports of possible overpayments or fraud to the ~~department's~~ Department of Public Health and Human Services, Human and Community Services Division (HCSD), P.O. Box 202956, Helena, MT 59620-2956. HCSD will review cases ~~prior to~~ determine whether to make a referral to the PCB. The PCB may refer the matter to the Montana Department of Justice or the county attorney of the county in which the person resides for further action.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.110 FRAUD/TRANSFER OF RESOURCES (1) A person who knowingly obtains LIHEAP benefits to which he or she is not entitled by means of a willfully purposely or knowingly false statement, representation, or impersonation, or other fraudulent device, ~~LIHEAP benefits to which he or she is not entitled~~ is guilty of theft as provided in 45-6-301, MCA, and is ineligible for assistance for the entire current heating season.

~~(2) If a person appears to have received assistance fraudulently, the local contractor must report all facts of the matter to the department's Human and Community Services Division (HCSD) to determine if the case should be referred to the department's Quality Assurance Division, Program Compliance Bureau (PCB). The PCB may refer the matter to the Department of Justice or the county attorney of the county in which the person resides for further action.~~

(3) and (4) remain the same, but are renumbered (2) and (3).

~~(5)~~(4) Fuel assistance will not be granted to a person who has deprived himself or herself, directly or indirectly, of any resources for the purpose of qualifying for assistance. A person who has transferred resources or interest in resources within one year of the date of application without receiving adequate consideration in money or money's worth will be presumed to have made such transfer for the purpose of qualifying for assistance.

(a) A person may submit evidence that he or she did not make the transfer of resources to qualify for ~~LIHEAP~~ LIHEAP benefits.

(b) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.115 OVERPAYMENTS AND UNDERPAYMENTS AND OVERPAYMENTS (1) When it is discovered that an administrative error resulted in an underpayment of ~~LIHEAP~~ LIHEAP benefits, it may be corrected by increasing the benefit award to cover the underpayment.

(a) remains the same.

(2) Except as provided in (3), current and future program year payments of ~~LIHEAP~~ LIHEAP benefits will be reduced the full amount of prior overpayments, unless the administrative cost of recouping the overpayment would exceed the amount of such overpayment.

~~(a) Additionally, cases in which a person willfully made false statements or withheld information causing overpayment must be referred to the department's Human and Community Services Division (HCSD) to determine if the case should be forwarded to the department's Quality Assurance Division, Program Compliance Bureau (PCB) for determination of fraud as provided in ARM 37.70.110.~~

(3) When it is discovered that the local contractor caused an overpayment of ~~LIHEAP~~ LIHEAP benefits, at the sole discretion of the department, the local contractor may be required to repay the entire overpayment to the department, rather than the overpayment being withheld from the household's future payments.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.305 APPLICATION (1) Except as provided in (4), a new application for ~~LIEAP~~ LIHEAP benefits must be made for each new heating season and when a household moves to a different residence during the heating season. ~~Any adult member of the household may file a signed written application on the form prescribed by the department at the office of the local contractor in the area where the household resides. If necessary, the local contractor will provide assistance in completing the application form.~~

(2) The application form may be submitted ~~by mail or by other means~~ to the local contractor's office. ~~The department or its local contractor may accept applications at locations other than the local contractor's office as designated by the department or its local contractor.~~

(3) An application for ~~LIEAP~~ LIHEAP benefits must be filed during the heating season for which assistance is being sought, that is, between October 1 and April 30, except as provided in (4). If April 30 falls on a weekend or holiday observed by Montana state government, the local contractor must accept applications on the next business day after the weekend or ~~Montana state government observed~~ holiday. However, at the option of the department, a household's application for certain types of deliverable heating fuel which are sold at lower prices during the summer months or for emergency services may be filed prior to October 1 of the heating season for which a household is seeking assistance. In the case of households who use other types of fuel and who are not seeking emergency services, the department may in its discretion accept applications prior to October 1.

(4) Publicly subsidized housing households whose energy costs are included as a fixed portion of their rent, or households ~~who~~ that reside in publicly subsidized housing and have an obligation to pay a base-load electric bill, are not eligible for a regular ~~LIEAP~~ LIHEAP benefit computed using the benefit matrices and multipliers in the ~~LIEAP~~ LIHEAP Benefit Award Matrix and Table of Multipliers for the ~~2021-2022~~ current heating season. However, these households are eligible for weatherization assistance as provided in ARM Title 37, chapter 71 and a modified ~~LIEAP~~ LIHEAP benefit. The modified ~~LIEAP~~ LIHEAP benefit is equal to five percent of the amount of a regular ~~LIEAP~~ LIHEAP benefit computed using the benefit matrices and multipliers in ARM 37.70.601 or a minimum payment of \$25, whichever is greater, paid to the household annually. Households determined eligible for the modified ~~LIEAP~~ LIHEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

(5) Households residing in ~~P~~publicly subsidized housing that ~~households who~~ move into nonsubsidized housing during the five-year eligibility period may reapply for a prorated benefit for the current heating season based on the household's new circumstances as provided in ARM 37.70.602. The household may file a new application for each subsequent heating season as long as the household lives in nonsubsidized housing, as provided in (1).

(6) Households residing in ~~P~~publicly subsidized housing that ~~households who~~ move to another publicly subsidized housing unit during the five-year eligibility period may file a new application for a modified ~~LIEAP~~ LIHEAP benefit for another five-year period, which will run from the date of the new application, if the household's energy

costs are included as a portion of its rent or if it has an obligation to pay a base-load electric bill.

(7) No household or any of its members will ~~be excluded from participation in LIHEAP or be discriminated against in regard to the amount of benefits or in any other regard~~ on the basis of race, color, religion, sex, culture, age, creed, marital status, physical or mental disability, political beliefs, or national origin. This includes discrimination which affects participation in LIHEAP and benefit amount.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.311 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS AND VERIFIABLE ELIGIBILITY REQUIREMENTS (1) The procedures for

determining eligibility for ~~LIHEAP~~ LIHEAP benefits are as follows:

(a) through (d) remain the same.

(2) Eligibility requirements that must be verified include a social security number (SSN) for each household member and proof of U.S. citizenship, or proof of status as a qualified alien as defined in 8 U.S.C. § 1641(b). Other eligibility requirements that may be verified include:

(a) photo identification for each household member 18 years ~~of age~~ or older may be required if the SSN has not been verified;

(b) through (d) remain the same.

(e) proof of lack of tax dependency status for household members enrolled at least half time in an institution of higher education;

(f) remains the same.

(g) receipts to support paid eligible energy costs when a household seeks direct reimbursement for paid eligible energy costs as provided in ARM 37.70.607. Failure to provide receipts to the local contractor by June 20 or the end of the heating season, whichever is later, will result in forfeiture of any remaining benefits for that heating season.

(3) If the local contractor reasonably doubts the accuracy of ~~the~~ information provided by the household, then the type of dwelling, ~~the~~ number of bedrooms, ~~the~~ primary heating fuel, and ~~the~~ primary fuel vendor must also be verified.

(4) The local contractor may ~~at its option~~ conduct an interview with household members in person or by telephone, if necessary, to determine eligibility. In cases where the local contractor considers an interview to be necessary and neither the local contractor's office nor a telephone is reasonably accessible to the household, the local contractor will conduct the interview at some place which is reasonably convenient for the household and the local contractor.

(5) remains the same.

(6) A household's eligibility and benefit amount will be determined based on the household's circumstances ~~in regard to~~ regarding the following on the date the application is filed:

(a) through (g) remain the same.

(7) Eligibility ~~in regard to~~ regarding income is based on the household's income ~~in the three months~~ for one month immediately preceding the month of

application, which will be annualized by multiplying that figure by ~~four~~ 12 to arrive at the household's annual income.

(8) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.312 NOTIFICATION OF ELIGIBILITY (1) An individual who ~~makes application~~ applies for low income home energy assistance will be notified in writing whether the application has been approved or denied and, if the application is approved, of the benefit amount. If the application is denied, the notice shall state the reason for ~~the~~ denial. A notice approving or denying an application shall advise the applicant of the right to a fair hearing as provided in ARM 37.5.307.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.401 DEFINITIONS (1) "Annual gross income" means all nonexcluded income including, ~~but not limited to,~~ wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, workers' compensation, unemployment compensation, social security retirement and disability payments, supplemental security income payments, veterans administration payments, cash public assistance benefits such as temporary assistance for needy families or tribal, state, or county general relief, and capital gains received by the members of the household ~~in the three months~~ for one month immediately preceding the month of application, which will be annualized by multiplying that figure by ~~four~~ 12.

(a) For households with self-employment income, annual gross income means gross receipts for ~~the three months~~ one month immediately preceding the month of application minus self-employment deductions for the ~~three months~~ same time period preceding the month of application, which will be annualized by multiplying that figure by ~~four~~ 12. ~~For households with self-employment income, annual gross income means annual gross receipts minus self-employment deductions.~~

(2) "Applicant" means a person of ~~legal age~~ (18 years or older) or an emancipated minor, applying for ~~LIEAP~~ LIHEAP benefits for all eligible household members in the household at the time of application. The applicant does not need to be an eligible member of the household.

(3) remains the same.

(4) "Child" means a person who is under age 18 and not emancipated.

(5) "Deliverable heating fuel" means heating fuel that can be delivered to the customer and stored for later use, for example, propane, fuel oil, kerosene, wood, or coal.

(6) "Disabled individual household" means a household in which ~~resides~~ at least one person who has been determined disabled based on the criteria for disability provided in Title II or Title XVI of the Social Security Act resides.

(7) "Elderly" means a person who is 60 years of ~~age~~ or older.

(8) "Eligible energy costs" means costs of the various types of energy supplied by the household's fuel vendors. Energy delivered by the household's fuel vendors prior to October 1 is ineligible for payment in the current heating season, except in the sole discretion of the department; Deliverable heating fuel charges incurred from July 1 through ~~September~~ April 30 for certain types of deliverable fuels (e.g., wood, coal, fuel oil, and propane) to heat a residence are eligible for payment in the current heating season. ~~Provided, however, that eligible energy costs may include energy delivered prior to October 1 for applications filed after September 30, when the type of fuel and the vendor's normal billing procedures make the above definition impracticable.~~ Eligible energy costs include tank rental and replacing valves on portable propane tanks, but not deposits or fuel tank set ups costs.

(9) "Eligible household member" is any person who is a U.S. citizen or qualified alien and is a member of a household that meets the ~~LIHEAP~~ LIHEAP eligibility requirements.

(10) "Emancipated minor" is any person under the age of 18 ~~that~~ who has been released from parental care or custody, and granted full legal rights and responsibilities as provided in 41-1-401, ~~MCA~~ or 41-1-503, MCA, or by order of a court having jurisdiction.

(11) "Federal fiscal year (FFY)" means the period from October 1 of one calendar year through September 30 of the next calendar year. For example, federal fiscal year ~~2016~~ 2023 means the period from October 1, ~~2015~~ 2022, through September 30, ~~2016~~ 2023.

(12) "Gross receipts" applies to households with income from self-employment and means all income before any deductions, including any nonexcluded income not from self-employment, which was received by members of the household ~~in the three months~~ one full month immediately preceding the month of application.

(13) "Heating season" means the period from October 1 to April 30. For example, the ~~2015~~ 2022 through ~~2016~~ 2023 heating season is the period from October 1, ~~2015~~ 2022, through April 30, ~~2016~~ 2023. The department may, ~~however,~~ in its sole discretion, extend the heating season beyond April 30. If the heating season is extended beyond April 30, ~~LIHEAP~~ LIHEAP benefits may be applied against energy costs incurred in the additional months of the heating season, but no applications for benefits may be filed after April 30 except as provided in ARM 37.70.305. If the department extends the end of the heating season beyond April 30, requests for reimbursement must be received by the local contractor no later than June 20 ~~of the same year~~ or the end of the heating season, whichever is later.

(14) and (15) remain the same.

(16) "Ineligible household member" is a person who is not a U.S. citizen or qualified alien ~~that~~ who is a member of a household that meets the ~~LIHEAP~~ LIHEAP eligibility requirements. An ineligible household member of legal age may apply for ~~LIHEAP~~ LIHEAP benefits on behalf of eligible household members.

(17) and (18) remain the same.

(19) "Licensed group-living situation" means a facility that is licensed by the department and in which housing is provided in a home-like setting on a long term or permanent basis to individuals or households, including community homes for persons with developmental disabilities licensed under 53-20-305, MCA. It does not

include community homes for persons with severe physical disabilities licensed under 52-4-203, MCA, or youth care facilities licensed under 52-2-622, MCA, shelters for homeless or abused individuals, halfway houses, nursing homes or convalescent centers, or other residential treatment facilities which provide shelter in an institutional setting.

(20) "Life-threatening" means any of the conditions of emergency specified in ARM 37.70.901 that may cause death or severe permanent damage to the health of one or more household members.

(21) "Local contractor" means a community-based organization with which the department has contracted to provide outreach and to receive and process applications for ~~LIEAP~~ LIHEAP and the weatherization assistance program.

(22) remains the same.

(23) "Member receiving supplemental security income (SSI), or temporary assistance for needy families (TANF)-funded cash assistance" means any member of a household whose needs are included in the SSI, TANF-funded cash assistance, or any person whose income and resources are considered in determining eligibility for those programs.

(24) "Mobile home" means a singlewide or doublewide trailer, mobile home, or manufactured home, camper, or recreational vehicle.

(25) "Modified ~~LIEAP~~ LIHEAP benefit" means the amount paid to eligible households who reside in publicly subsidized housing and whose energy costs are included as a fixed portion of their rent or who have an obligation to pay a base-load electric bill. The modified ~~LIEAP~~ LIHEAP benefit is equal to ~~5~~ five percent of the amount of a regular ~~LIEAP~~ LIHEAP benefit computed using the benefit matrices and multipliers in the ~~LIEAP~~ LIHEAP Benefit Award Matrix and Table of Multipliers for the ~~2021-2022~~ current heating season or a minimum payment of \$25, whichever is greater, paid to the household annually. Households determined eligible for the publicly subsidized housing modified ~~LIEAP~~ LIHEAP benefit, whose economic and housing situation does not change, are income eligible for a period of five years.

(26) "Monthly gross income" means all nonexcluded income, including ~~but not limited to~~ wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, workers' compensation, unemployment compensation, social security retirement and disability payments, supplemental security income payments, veterans administration payments, cash public assistance benefits such as ~~temporary assistance for needy families~~ TANF or tribal, state, or county general relief, and capital gains, received by the members of the household in a calendar month.

(a) through (29) remain the same.

(30) "Nontraditional dwelling unit" means dwelling units that include mobile shelters and other structures not designed for year-round human habitation. Mobile shelters include, ~~but are not limited to,~~ RV's and campers.

(31) "Paid eligible energy costs" means ~~out-of-pocket expenditures~~ heating costs paid; by an eligible household

(a) in the form of rent; ~~payments or direct payments~~

(b) to a fuel ~~vendor~~ account not in a household member's name; or ~~person responsible for the fuel account for energy costs incurred~~



(c) to another party during the heating season, for the dwelling in which the household resides at the time of application.

(32) remains the same.

(33) "Qualified alien" means an alien who, at the time of submitting a LIEAP LIHEAP application, is a qualified alien as defined by 8 U.S. Code C. § 1641(b).

(34) "Self-employment deductions" means all costs, excluding depreciation costs, necessary for the creation of any income from self-employment. As an alternative, the local contractor may, at the request of the household, deduct 40 percent from the annual gross receipts for self-employment deductions.

(35) "Shelters" mean a dwelling unit or units whose principal purpose is to house on a temporary basis, individuals who may or may not be related to one another, including ~~transients~~ homeless people, ~~students~~ people living in student housing, or other individuals seeking short-term or nonpermanent living situations.

(36) "Single elderly household" means a household consisting of one person only, who is 60 years of ~~age~~ or older.

(37) "Single family unit" means a building which contains a single ~~shelter~~ residence or rental unit for living purposes.

(38) "State fiscal year" means the period from July 1 of one calendar year through June 30 of the next calendar year. For example, state fiscal year ~~2016~~ 2023 means the period from July 1, ~~2015~~ 2022, through June 30, ~~2016~~ 2023.

(39) "Traditional dwelling unit" means a residential housing structure, including, ~~without limitation,~~ a mobile home ~~and~~ or a modular home when permanently connected to the required utilities (including plumbing, heating, and electrical systems contained therein) and designed to be used as a permanent residence.

(40) "U.S. Department of Health and Human Services Poverty Guidelines" means the poverty guidelines computed annually and published each year in the Federal Register by the U.S. Department of Health and Human Services.

(41) and (42) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

#### 37.70.402 GENERAL ELIGIBILITY REQUIREMENTS, ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS, AND HOUSEHOLDS

(1) Households that are obligated to pay for fuel to heat their homes are eligible for LIEAP LIHEAP benefits.

(2) Except as provided elsewhere in this rule, households which consist solely of members who are eligible for and receiving ~~supplemental nutritional assistance payments (SNAP), supplemental security income (SSI), or TANF-funded cash assistance~~ are automatically financially eligible for LIEAP LIHEAP benefits.

(3) Households which consist of members receiving SNAP, SSI, or TANF-funded cash assistance, and other individuals whose income and resources were not considered in determining eligibility for SNAP, SSI, or TANF-funded cash assistance, are not automatically eligible for LIEAP LIHEAP benefits but must meet the financial requirements set forth in this rule.

(4) Individuals living in shelters, including ~~but not limited to~~, recipients of SNAP, SSI, or TANF-funded cash assistance, are not eligible for ~~LIEAP~~ LIHEAP benefits. Individuals living in licensed group-living situations as defined in ARM 37.70.401 may be eligible if they meet all other requirements for eligibility. Individuals living in licensed group-living situations which are not group-living situations as defined in ARM 37.70.401 are not eligible for ~~LIEAP~~ LIHEAP benefits.

(5) Households which contain a member who is enrolled at least half time in an institution of higher education and who was claimed for the previous tax year as a dependent for federal income tax purposes by a taxpayer who is not a member of a household ~~which is eligible in the current heating season, or which would be eligible in the current heating season if the household applied~~, are ineligible for ~~LIEAP~~ LIHEAP benefits.

(6) Households that are eligible for or that have received ~~LIEAP~~ LIHEAP benefits through a tribal program funded by the U.S. Department of Health and Human Services may not receive ~~LIEAP~~ LIHEAP benefits from the department for the same heating season, unless the household changes residence during the heating season and the household is no longer eligible for tribal ~~LIEAP~~ LIHEAP benefits; in that case, the household may apply for a prorated ~~LIEAP~~ LIHEAP benefit based on the household's new circumstances as provided in ARM 37.70.602. ~~Additionally, any individual who was a member of a household that received LIEAP benefits through tribal program funded by the U.S. Department of Health and Human Services may not receive LIEAP benefits from the department for the same heating season unless the individual leaves the household that received tribal LIEAP benefits during the heating season and is no longer eligible for tribal LIEAP benefits; in that case the individual may apply for a prorated LIEAP benefit from the department for the same heating season based on the circumstances of the individual's new household as provided in ARM 37.70.602.~~

(7) Residents of publicly subsidized housing whose energy costs are included as a fixed portion of their rent or who reside in publicly subsidized housing and have an obligation to pay a base-load electric bill are not eligible for a regular ~~LIEAP~~ LIHEAP benefit computed using the benefit matrices and multipliers in the ~~LIEAP~~ LIHEAP Benefit Award Matrix and Table of Multipliers for the ~~2021-2022~~ current heating season. However, these households are eligible for weatherization assistance as provided for in ARM Title 37, chapter 71 and a modified ~~LIEAP~~ LIHEAP benefit. The modified ~~LIEAP~~ LIHEAP benefit is equal to five percent of the amount of a regular ~~LIEAP~~ LIHEAP benefit, or a minimum payment of \$25, whichever is greater, paid to the household annually. Households determined eligible for the modified ~~LIEAP~~ LIHEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

(8) In households consisting of eligible and ineligible household members, the income of all will be counted for benefit calculation purposes. Only the eligible household members will be counted ~~toward the total "number in the household"~~ when counting the number of household members for benefit calculation purposes.

(9) Current and future benefits will be denied to any persons and households who refuse to submit social security numbers or proof of U.S. citizenship or proof of status as a qualified alien as defined in 8 U.S.C. § 1641(b), or whose social security numbers, proof of residency, or citizenship cannot be verified.

AUTH: 53-2-201, MCA  
IMP: 53-2-201, MCA

37.70.406 INCOME STANDARDS (1) Households with ~~one through up to~~ eight members with annual gross income at or below 60 percent of the estimated state median are eligible for ~~LIHEAP~~ LIHEAP benefits on the basis of income. Households with nine or more members are eligible for ~~LIHEAP~~ LIHEAP benefits on the basis of income only if the household's annual gross income is at or below 150 percent of the ~~2021~~ 2022 U.S. Department of Health and Human Services' poverty guidelines for a household of that size. Households with annual gross income above the applicable income standard are ineligible for ~~LIHEAP~~ LIHEAP benefits, unless the household is automatically financially eligible for ~~LIHEAP~~ LIHEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SNAP, SSI, or TANF-funded cash assistance.

(2) The department adopts and incorporates by reference the department's Low Income Home Energy Assistance Program (~~LIHEAP~~) (LIHEAP) Table of Income Standards, ~~2021-2022~~ 2022-2023 heating season. The ~~LIHEAP~~ LIHEAP table of income standards, ~~2021-2022 heating season~~, is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> <https://dphhs.mt.gov/hcsd/energyassistance/> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, P.O. Box 202956, Helena, MT 59620-2956.

(3) Households eligible for ~~LIHEAP~~ LIHEAP are also eligible for ~~LIHEAP~~ LIHEAP client education and outreach activities.

AUTH: 53-2-201, MCA  
IMP: 53-2-201, MCA

37.70.407 EXCLUDED INCOME (1) The following types of unearned income are excluded or deducted when calculating income for LIHEAP eligibility:

(a) complementary assistance from other agencies and organizations which consists of goods and services not included in or duplicated by the low income home energy assistance benefit award;

(b) and (c) remain the same.

(d) extension of Old-Age, Survivors, and Disability Insurance (OASDI) benefits for 18 to 22 year olds who are full-time students;

(e) the value of the ~~supplemental nutrition assistance program~~ SNAP allotment;

(f) through (l) remain the same.

(m) all earnings, work incentive allowances, reimbursement of training related expenses, and other allowances and payments made to a participant in any program under the Workforce Investment Act of 1998, ~~20 USC 9201 et seq.~~;

(n) through (s) remain the same.

(t) foster care payments received for a foster child or adult if the ~~LIHEAP~~ LIHEAP applicant has chosen to exclude the foster child or adult from the household; such payments are not excluded if the applicant has chosen to include

the foster adult or child as a member of the household. Additionally, any foster care payments received ~~during the three months~~ one full month immediately preceding the month of application for a foster child or adult who is no longer living in the household at the time of application shall be excluded;

(u) through (w) remain the same.

(x) nonrecurring lump sum payments, such as, ~~but not limited to,~~ federal and state income tax refunds, ~~one-time~~ one-time insurance payments or worker's compensation payments, and retroactive SSI or SSDI payments, but only to the extent that the payment does not constitute income or benefits for ~~any of the three months~~ one full month immediately preceding the month of application. The funds received from a nonrecurring lump sum payment are considered as a resource until the funds are spent, ~~however~~;

(y) through (ab) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.408 RESOURCES (1) through (3) remain the same.

(4) The department adopts and incorporates by reference the department's ~~LIHEAP~~ LIHEAP Table of Resource Standards, for the ~~2021-2022~~ 2022-2023 heating season. The ~~LIHEAP~~ LIHEAP table of resource standards is located at ~~the department's website at~~ <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> ~~https://dphhs.mt.gov/hcsd/energyassistance/~~ or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, P.O. Box 202956, Helena, MT 59620-2956.

(5) and (5)(a) remain the same.

(b) ~~3~~ five percent.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.602 BENEFIT AWARDS: MISCELLANEOUS (1) through (3) remain the same.

(4) Benefit awards will be prorated for households new to the state or not previously responsible for heating costs from the date of residency or responsibility for the remainder of the heating season. Benefits will also be prorated for households who live in an area served by tribal ~~LIHEAP~~ LIHEAP if the household moves from the service area during the heating season and applies for benefits through Montana ~~LIHEAP~~ LIHEAP. Such households are eligible for a prorated benefit for the remainder of the heating season from the date the household moved from the service area served by the tribal ~~LIHEAP~~ LIHEAP.

(5) When a household changes primary fuel vendors, any remaining ~~LIHEAP~~ LIHEAP attributable credit balance will be returned to the department by the original fuel vendor. The department may reissue the unused portion of the benefit award to the new fuel vendor or reimburse ~~to~~ the household as provided in ARM 37.70.607.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.901 EMERGENCY ASSISTANCE (1) Emergency assistance under ~~LIHEAP~~ LIHEAP may be provided to an eligible household in the following circumstances only when such circumstances present an imminent threat to the health and safety of the household:

(a) remains the same.

(b) weather or other forces outside the household's control ~~of the household~~ damages the household's dwelling and causes the dwelling to suffer a severe loss of heat;

(c) hazardous or potentially hazardous conditions exist in the household's primary home water heating system, space heating systems, or safety modifications to the system are required; ~~or~~

(d) remains the same.

(e) the household has a documented medical need for home ~~energy-related~~ energy-related safety modifications.

(2) Eligibility requirements:

(a) A household eligible for ~~LIHEAP~~ LIHEAP that has an emergency as defined above is eligible for emergency assistance.

(b) A household that would be eligible for ~~LIHEAP~~ LIHEAP had the household applied and which has an emergency as defined in (1) above is also eligible for emergency assistance.

(3) through (5)(a) remain the same.

(b) within 18 hours after the request is made, if the emergency is life-threatening. Life-threatening is defined as any of the conditions of emergency specified in (1) that may cause death or severe permanent damage to the health of one or more household members.

(6) The time limits contained in (5)(a) and (b) ~~for provision of emergency assistance~~ do not apply in a geographical area affected by a disaster or emergency as designated in (6)(a) and (b), as long as the designation is in effect, if the secretary of the U.S. Department of Health and Human Services determines that the disaster or emergency makes compliance with the time limits impracticable. This exception to the time limit applies when:

(a) through (7) remain the same.

(8) Emergency assistance funds may be used to replace a wood stove not approved by the non-Environmental Protection Agency (EPA)-approved wood stove, if the ~~non-EPA-approved~~ wood stove is the eligible household's primary source of heat and the household is eligible to receive a benefit award for wood during the heating season.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.70.101, 37.70.102, 37.70.107, 37.70.110, 37.70.115, 37.70.305,

37.70.311, 37.70.312, 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408, 37.70.602, and 37.70.901.

ARM 37.70.101, 37.70.102, 37.70.107, 37.70.110, 37.70.115, 37.70.305, 37.70.311, 37.70.312, 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408, 37.70.602, and 37.70.901

The department proposes changing all references to the Low Income Energy Assistance Program (LIEAP) to the Low Income Home Energy Assistance Program (LIHEAP). This change is necessary to reflect the change in program name. Duplicate language was removed to simplify the rules, and small grammatical and organizational changes were made throughout for clarification.

ARM 37.70.107, 37.70.115

The department proposes changing "Quality Assurance Division" to "Office of Inspector General" to reflect changes in the agency name. Duplicate language was removed to simplify the rule.

ARM 37.70.305, 37.70.401, and 37.70.402

The department proposes amending these rules to provide an updated LIHEAP Benefit Award Matrix for use during the 2022-2023 heating season. ARM 37.70.601 provides that, in most cases, an eligible household benefit is computed by multiplying the applicable base benefit amount by the applicable income/climatic adjustment multiplier. Both factors can be found in the LIHEAP Benefit Award Matrix. The amounts in the table of base benefits vary based on the type of heating fuel the household uses and the type and size of the household's dwelling. The benefit amounts also take into consideration available funding, fuel costs, and the number of households expected to receive benefits in a given heating season, all of which change from year to year. The amounts in the benefit tables in the LIHEAP Benefit Award Matrix for 2021-2022 have been revised based on estimates of the amount of funds available to pay LIHEAP benefits for the 2022-2023 heating season, the estimated number of households that will apply and be found eligible for LIHEAP for the 2022-2023 heating season, and fuel cost projections for the 2022-2023 heating season. If the amounts in the benefit tables are not updated for the 2022-2023 heating season, the benefits paid out for the heating season might exceed available funding or a large amount of funds that could help low income households heat their homes might go unspent. The 2021-2022 LIHEAP benefit award matrix will be used for the 2021-2022 heating season and the 2022-2023 benefit award matrix will be used for the 2022-2023 heating season.

ARM 37.70.311

The department proposes adding language to ARM 37.70.311(2)(g) to allow recipients additional time to submit paid receipts beyond June 20 when the heating season is extended.

ARM 37.70.311, 37.70.401; 37.70.407

The department proposes amending these rules to change LIHEAP eligibility related to household income from a three-month income assessment to a one-month

income assessment annualized. The U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, the federal agency that administers LIHEAP, issued guidance to encourage states to develop LIHEAP policies and procedures that do not discourage, delay, or deny LIHEAP benefits to eligible persons. Last year, 1,136 LIHEAP applications were denied due to missing information which included missing income verification. If a household fails to provide information or documentation necessary for a determination of eligibility within 45 days of the date of the most recent request for additional information, the application will be denied as per ARM 37.70.311(1)(c). Changing the household income verification from three months to one month annualized will decrease the number of denials and expedite the issuance of LIHEAP benefits to low-income households.

There has been a steady decline in received LIHEAP applications over the last five years. Determining LIHEAP eligibility based on one month annualized would reduce barriers for applicants, especially applicants who have recently lost their job or are seasonal workers.

The proposed one-month income calculation for LIHEAP would bring LIHEAP into alignment with the standard one-month prospective budgeting SNAP, TANF, and Medicaid use to calculate income.

#### ARM 37.70.401

The amendments to the dates used in the definitions of "federal fiscal year" and "heating season" are necessary to modernize the examples used in the rules. These amendments do not change the meaning of the terms.

#### ARM 37.70.406

The department proposes amending this rule to provide that it will use the U.S. Department of Health and Human Services' poverty guidelines for 2022-2023, rather than the federal poverty guidelines for 2021-2022, in the table of income standards used to determine eligibility for LIHEAP for the 2022-2023 heating season. This change is necessary to account for increases in the cost of living. The department uses the poverty guidelines for the current year because they are usually higher than the guidelines for the previous year, resulting in higher standards for the current heating season. If the department did not use the updated guidelines, some households might be ineligible for LIHEAP due to inflationary increases in the household's income that do not reflect an increase in buying power.

An updated URL has been provided. This change is necessary to ensure readers can locate and review the appropriate 2022-2023 income standards.

#### ARM 37.70.407

The department proposes amending this rule to delete the reference to 20 USC 9201 et seq. This federal law has been repealed.

#### ARM 37.70.408

The department proposes amending this rule to increase the minimum annual nonbusiness resources adjustment from three percent to five percent. This change is necessary because (5) provides that the dollar limits on non-business resources will be revised annually to adjust for inflation by multiplying the current dollar limits by either the percentage increase in the consumer price index (CPI) for the previous calendar year or three percent, whichever is less. The increase in the CPI for 2021 was seven percent; increasing the minimum limit to five percent will allow the program to adjust for inflation and more closely align with the 2021 CPI increase.

The department also proposes amending this rule by updating the LIHEAP Table of Non Business Resource Limits used to determine LIHEAP eligibility based on resources. This is necessary because (5) provides that the dollar limits on non-business resources will be revised annually to adjust for inflation. The increase in the CPI for 2021 was seven percent, so the dollar amounts in the LIHEAP Table of Nonbusiness Resource Limits for the 2022-2023 heating season will increase by five percent.

An updated URL has been provided in this rule. This change will ensure readers can locate and review the appropriate 2022-2023 resource standards.

#### Fiscal Impact

LIHEAP is 100% federally funded. Congress has not yet appropriated funds for the LIHEAP 2022-2023 heating season. However, based upon the information available at this time, the department estimates Montana will receive funding comparable to last heating season. Benefit levels for households using all types of heating fuel and for all dwelling types are expected to be comparable to the 2021-2022 heating season. It is estimated that 18,000 households will qualify for LIHEAP benefits this year, which is comparable to last year. As in past years, if LIHEAP funds for the 2022-2023 heating season are appropriated at a higher level, the additional funding will allow subsequent payments to be issued to each LIHEAP recipient. The department does not anticipate any significant fiscal impact.

5. The department intends to apply these proposed rule amendments retroactively to October 1, 2022. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., April 21, 2023.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.



8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/S/ HEIDI SANDERS  
Heidi Sanders  
Rule Reviewer

/s/ CHARLES T. BRERETON  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State March 14, 2023.