

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 37.76.201, 37.76.202, ) PROPOSED AMENDMENT AND  
37.76.203, 37.76.204, and 37.76.205 ) REPEAL  
and the repeal of ARM 37.76.206 )  
pertaining to the Food Distribution )  
Program on Indian Reservations )

TO: All Concerned Persons

1. On April 13, 2023, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment and repeal 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/89775289166?pwd=NXRnRXF0UUFLY3NWMk9MbHRwTXQwUT09>, meeting ID: 897 7528 9166, and password: 617484; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 897 7528 9166, and password: 617484. Find your local number: <https://mt-gov.zoom.us/j/89775289166?pwd=NXRnRXF0UUFLY3NWMk9MbHRwTXQwUT09>.

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:

37.76.201 PLAN OF OPERATION (1) The ~~food distribution program~~ Food Distribution Program on Indian Reservations (FDPIR) will operate on the following Indian reservations at their option:

- (a) Blackfeet;
- (b) ~~Salish-Kootenai~~ Flathead;
- (c) Northern Cheyenne;
- (d) Crow;
- (e) Rocky Boy; ~~and~~
- (f) Fort Belknap; ~~and~~
- (g) Fort Peck.

~~(2) There is issuance of both food stamps and commodities to the above-named Indian reservations except the Fort Peck Indian reservation.~~

AUTH: 53-2-201, MCA;

IMP: ~~53-2-306~~ 50-49-102, 53-2-201, MCA

37.76.202 FOOD DISTRIBUTION HOUSEHOLD GENERAL ELIGIBILITY REQUIREMENTS (1) ~~Households applying for commodities are classified as follows: that meet program eligibility requirements may be certified to participate in FDPIR for up to 12 months. Households in which all adult members are elderly or disabled may be certified to participate in FDPIR for up to 24 months. Households cannot participate in FDPIR and the USDA Supplemental Nutrition Assistance Program (SNAP) in the same month.~~

~~(a) Assistance households shall be eligible to receive donated foods upon application for certification without further investigation except that it is necessary to determine the number in the household and that all members have been considered in granting such aid that consist solely of members who are eligible for and receiving Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI) shall be eligible to receive donated foods upon application for certification without further investigation other than to determine the number of household members and that all members have been considered in granting such aid.~~

~~(b) Non-assistance households are eligible for food assistance upon application, providing that the total income and resource of the household are less than the amount shown in the income and resource standards and provided they have cooking facilities and are in fact preparing their own meals means any household in which one or more members do not participate in a public assistance program. Eligibility of non-assistance households to participate in FDPIR is determined using 7 CFR § 253.6, 7 CFR § 253.7, as amended through November 25, 2022, and the Food and Nutrition Service (FNS) Handbook 501, updated June 2, 2022. Copies of 7 CFR § 253.6, 7 CFR § 253.7, and FNS Handbook 501 may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Carter Drive, P.O. Box 202956, Helena, MT 59620-2956.~~

~~(2) The assistance grant will not be reduced because of receipt of commodities.~~

AUTH: 53-2-201, MCA

IMP: ~~53-2-306~~ 50-49-102, 53-2-201, MCA

37.76.203 CERTIFICATION AND REVIEW (1) ~~Public assistance households shall be reviewed at intervals that are coincident with redeterminations of eligibility to receive public assistance grants or benefits. Applicant household eligibility and certification is determined according to 7 CFR § 253.6, 7 CFR § 253.7, as amended through November 25, 2022, and the FNS Handbook 501, updated June 2, 2022. Copies of 7 CFR § 253.6, 7 CFR § 253.7, and the FNS Handbook 501 may be obtained from the Department of Public Health and Human Services,~~

Human and Community Services Division, 1400 Carter Drive, P.O. Box 202956, Helena, MT 59620-2956.

~~(a) Eligibility shall be redetermined whenever there is a change in the composition of the household.~~

~~(2) Non-public assistance households are to be reviewed at least every 3 months, except that the reviews may be made at longer periods, not to exceed 12 months, provided that such longer periods are based upon a determination by the certifying agency that the income and resources available to the households will probably remain essentially unchanged during the period.~~

~~(3)~~(2) Households not recertified at the end of the time period shall be terminated until reapplication and redetermination of eligibility is made.

~~(4) Indian referral cases shall be limited to a certification period not to exceed 3 months.~~

AUTH: 53-2-201, MCA

IMP: ~~53-2-306~~ 50-49-102, 53-2-201, MCA

37.76.204 FORMS USED FOR FOOD DISTRIBUTION (1) Forms are ~~may~~ obtainable at the local county ~~welfare~~ FDPIR offices and from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Carter Drive, P.O. Box 202956, Helena, MT 59620-2956.

AUTH: 53-2-201, MCA

IMP: ~~53-2-306~~ 50-49-102, 53-2-201, MCA

37.76.205 INCOME LIMITATION ELIGIBILITY STANDARDS (1) Income limitations eligibility standards for participation in the food distribution program FDPIR are: determined according to FNS Handbook 501, Exhibit M for the contiguous United States. The department adopts and incorporates by reference FNS Handbook 501, Exhibit M FDPIR Net Monthly Income Standards based on household size revised May of 2022. Copies of the FNS Handbook 501, Exhibit M may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Carter Drive, P.O. Box 202956, Helena, MT 59620-2956.

<u>Household Size</u>	<u>Monthly Net Income</u>
1	\$125
2	190
3	225
4	255
5	290
6	320
7	355
8	390
9	415
10	440

Each Additional

+30

~~(2) Net income is gross income less any mandatory payroll deductions.~~

~~(3) In determining eligibility of non-assistance households for the program, deductions from monthly income may be made for the following hardships if they materially affect the household's ability to purchase food:~~

~~(a) the average monthly cost of continuing unusual medical care given under the direction of a medical practitioner;~~

~~(b) the monthly cost of attendant and housekeeping services when such care is deemed essential to the well-being of the household;~~

~~(c) the monthly cost of child care expenditures for such care are necessary to permit gainful employment or when necessary for the well-being of the household;~~

~~(d) if the non-assistance household has a verified commitment of income to meet monthly housing costs which exceeds the county maximum housing allowance of the payment over the appropriate AFDC program, the excess of the payment over the appropriate AFDC allowances may be deducted in determining monthly income for eligibility; excess housing costs will be determined at any time there is a change of address; if the housing payment includes utilities, the appropriate county AFDC housing allowance before the housing hardship is calculated;~~

~~(e) if utilities are paid separate and the average monthly cost is in excess of that included in the AFDC cost schedule, the difference may be deducted in determining net income;~~

~~(f) unusual transportation costs necessary to seek and hold employment are deductible when the transportation costs exceed \$15.00 per month, the household is determined to have an unusual transportation expense which is considered a hardship for the purpose of the program. A deduction may be made for transportation costs which exceed \$15.00 per month. Transportation will be allowed at the rate of 8 cents a mile for a car and 3 cents a mile for other modes of transportation.~~

~~(i) If an employed person receives a transportation allowance to cover going to and from work, no deduction is allowed.~~

~~(ii) Car payments are not considered in calculating transportation hardship deductions.~~

~~(g) special temporary hardships may also be recognized such as those arising out of catastrophes, including fire, flood, and other natural disasters;~~

~~(h) court ordered payments for alimony and child support; and~~

~~(i) payments for health insurance made by members of the household solely for the benefit of members of such household.~~

AUTH: 53-2-201, MCA

IMP: 53-2-306 50-49-102, 53-2-201, MCA

4. The department proposes to repeal the following rule:

37.76.206 RESOURCE LIMITATION

AUTH: 53-2-201, MCA

IMP: 53-2-306, MCA

## 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.76.201, 37.76.202, 37.76.203, 37.76.204, and 37.76.205 and to repeal ARM 37.76.206.

### ARM 37.76.201, 37.76.202, 37.76.203, 37.76.204, 37.76.205

Rule changes will allow the Food Distribution Program on Indian Reservations (FDPIR) rules to reflect Federal Fiscal Year 2023 regulations, policies, and practices. These proposed changes are in alignment with the Governor's red tape relief initiative.

The department proposes removing and replacing invalid implementing statute 53-2-306, which has been repealed. The implementing statutes 50-49-102 and 53-2-201, MCA would replace the repealed statute as the implementing statutes.

### ARM 37.76.201

The department proposes changing the title of the program from the Food Distribution Program to the Food Distribution Program on Indian Reservations to reflect the correct name of the program.

This rule would be updated to reflect the current plan of operation to reference the most current policies and processes. This change is necessary to provide participants with notice of the current program guidelines.

### ARM 37.76.202

The department proposes amending this rule to include eligibility certification for up to 12 months and up to 24 months if all adult members are elderly or disabled. USDA sets the certification rules in the FNS Handbook 501, Section 5110, and in 7 CFR § 253.7(b)(2). A household would be assigned a certification period for as long a period as the household's circumstances are expected to remain sufficiently stable such that the household is expected to continue to meet the program's eligibility standards. This reduces the administrative costs of re-certifying recipients.

### ARM 37.76.203

The department proposes amending this rule by adding reference to the federal regulation used for certification and review.

### ARM 37.76.204

The department proposes amending this rule to add that the FDPIR forms may be obtained from the local county FDPIR offices and from DPHHS. The reference to local county welfare offices would be removed.

### ARM 37.76.205

The department proposes amending this rule to incorporate by reference the USDA poverty guidelines used to establish income standards for the FDPIR. Income standards outlined in Food and Nutrition Service (FNS) Handbook 501 Exhibit M would be used when determining eligibility for the FDPIR. The income eligibility standards are outdated and need to be updated to reflect current income eligibility standards.

ARM 37.76.206

The department proposes repealing this rule. The FDPIR no longer requires a resource limit for participation in the FDPIR.

Fiscal Impact

The Food Distribution Program on Indian Reservations (FDPIR) is 100% federally funded. Based upon the information available at this time, the department estimates Montana will receive funding comparable to last year. The department does not anticipate any significant fiscal impact from these proposed amendments to the current rules.

6. The department intends these rule amendments and rule repeal to be effective on the day after the date of publication of the adoption notice.

7. 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.

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

9. 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 7.

10. 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>.

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

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal 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.