

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

CHAPTER 76

FOOD AND NUTRITION SERVICES

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Subchapter 1

Food Stamp Program

37. 76. 101 FOOD STAMP PROGRAM (1) The department of public health and human services hereby adopts and incorporates by reference 7 CFR 271 through 275, as amended through December 31, 2001, which are the food stamp program regulations as adopted by the food and nutrition services, United States department of agriculture. These federal regulations set forth the food stamp program and include general information and definitions, requirements for participating state agencies, certification of eligible households, issuance and use of food coupons, performance reporting system and state agency liabilities and federal sanctions. A copy of 7 CFR 271 through 275, as amended through December 31, 2001, may be obtained from the Department of Public Health and Human Services, 111 N. Sanders, P. O. Box 4210, Helena, MT 59604-4210. (History: Sec. 53-2-201 and 53-4-212, MCA; IMP, Sec. 53-2-201 and 53-2-306, MCA; NEW, 1979 MAR p. 805, Eff. 7/27/79; AMD, 1980 MAR p. 2592, Eff. 9/12/80; AMD, 1981 MAR p. 1974, Eff. 1/1/82; AMD, 1981 MAR p. 1731, Eff. 1/28/82; AMD, 1982 MAR p. 98, Eff. 4/1/82; AMD, 1982 MAR p. 1196, Eff. 6/18/82; AMD, 1982 MAR p. 1259, Eff. 7/1/82; AMD, 1982 MAR p. 1261, Eff. 7/1/82; AMD, 1982 MAR p. 1844, Eff. 10/15/82; AMD, 1983 MAR p. 125, Eff. 2/10/83; AMD, 1983 MAR p. 300, Eff. 4/15/83; AMD, 1983 MAR p. 634, Eff. 8/1/83; AMD, 1983 MAR p. 1244, Eff. 10/1/83; AMD, 1983 MAR p. 1713, Eff. 11/25/83; AMD, 1984 MAR p. 294, Eff. 3/19/84; AMD, 1984 MAR p. 1085, Eff. 7/26/84; AMD, 1984 MAR p. 1750, Eff. 11/29/84; AMD, 1984 MAR p. 1748, Eff. 1/2/85; AMD, 1987 MAR p. 152, Eff. 3/16/87; AMD, 1988 MAR p. 1706, Eff. 7/29/88; AMD, 1991 MAR p. 1020, Eff. 6/28/91; TRANS, from SRS, 2000 MAR p. 3555; AMD, 2002 MAR p. 952, Eff. 3/29/02.)

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37.76.102 FOOD STAMPS, DEFINITIONS (1) "Beginning month" means the first month for which the household is certified to receive food stamps. A beginning month cannot be any month which immediately follows a month in which the household was certified.

(2) "Budget month" means the calendar month from which the department uses income, household composition, and other financial information concerning the household to calculate the household's food stamp allotment for the corresponding benefit month.

(3) "Benefit month" means the calendar month for which the department issues a food stamp allotment.

(4) "Prospective budgeting" means the determination of a household's composition, income, and deductible expenses on the best estimate of income and circumstances which will exist in the benefit month. (History: Sec. 53-2-201, MCA; IMP, Sec. 53-2-201 and 53-2-306, MCA; NEW, 1982 MAR p. 2155, Eff. 12/17/82; AMD, 1983 MAR p. 1107, Eff. 8/12/83; AMD, 1995 MAR p. 2500, Eff. 11/23/95; TRANS, from SRS, 2000 MAR p. 3555.)

Rules 03 and 04 reserved

37.76.105 FEDERALLY-DONATED FOODS (1) Distribution of federally-donated foods shall be as follows:

(a) during temporary emergency situations when the secretary of the U.S. department of agriculture determines that commercial channels of food distribution have been disrupted;

(b) for such period of time as the secretary determines necessary to effect an orderly transition in an area in which the distribution of federally-donated foods to households is being replaced by a food stamp program; or,

(c) on request of the department.

(2) No household shall participate in both the food stamp program and distribution of federally-donated foods under this rule. (History: Sec. 53-2-201, MCA; IMP, Sec. 53-2-306, MCA; NEW, Eff. 11/4/74; TRANS, from SRS, 2000 MAR p. 3555.)

Rules 06 through 09 reserved

37. 76. 110 FOOD STAMPS, DETERMINING ELIGIBILITY FOR THE FOOD STAMP PROGRAM (1) Eligibility shall be determined on a prospective basis.

(2) Households anticipating changes in their circumstances which will make them ineligible shall be given written notice of denial or written notice of the closure of their certification. (History: Sec. 53-2-201, MCA; IMP, Sec. 53-2-201 and 53-2-306, MCA; NEW, 1982 MAR p. 2155, Eff. 12/17/82; AMD, 1983 MAR p. 1107, Eff. 8/12/83; AMD, 1984 MAR p. 993, Eff. 6/29/84; TRANS, from SRS, 2000 MAR p. 3555.)

37. 76. 111 FOOD STAMPS, DETERMINING ELIGIBILITY AND BENEFITS (1) All households shall have their eligibility and the amount of food stamps they are entitled to receive determined using prospective budgeting.

(2) Prospective budgeting means using the best estimate of income and other circumstances which will occur in a particular month to determine eligibility for that month and/or the amount of benefits for that month.

(3) Lease, royalty, and rental income which is received periodically but not on a monthly basis and which is expected to continue shall be determined based on the 12 month period immediately prior to the month of application. The projected income shall be prorated over the current 12 month period. Once a cycle of income proration is established, it shall remain in effect for one year. However, if any portion of the prior period's income is expected to stop in the current period, then this portion shall not be considered as income in the current period. (History: Sec. 53-2-201, MCA; IMP, Sec. 53-2-201 and 53-2-306, MCA; NEW, 1982 MAR p. 2155, Eff. 12/17/82; AMD, 1983 MAR p. 352, Eff. 4/29/83; AMD, 1983 MAR p. 1107, Eff. 8/12/83; AMD, 1984 MAR p. 993, Eff. 6/29/84; AMD, 1994 MAR p. 2543, Eff. 9/9/94; AMD, 1995 MAR p. 2500, Eff. 11/23/95; TRANS, from SRS, 2000 MAR p. 3555.)

37.76.112 FOOD STAMPS, DETERMINING WHEN ELIGIBILITY BEGINS

(1) Eligibility starts with the date a household applies for benefits. However, when a new member joins a participating household the eligibility of the new member will begin the month after the presence of the new member is reported. If the presence of the new member will result in increased benefits to the household, increased benefits cannot be issued for the month in which the new member is reported. However, increased benefits shall be issued:

(a) effective with the month after the new member is reported; and

(b) if the new member is reported after the 20th of the month and it is too late to include the new member in the next month's issuance then a supplemental benefit for the new member will be issued by the 10th day of the next month. (History: Sec. 53-2-201, MCA; IMP, Sec. 53-2-201 and 53-2-306, MCA; NEW, 1984 MAR p. 1755, Eff. 11/30/84; TRANS, from SRS, 2000 MAR p. 3555.)

Rules 13 through 19 reserved

37. 76. 120 FOOD STAMPS, CERTIFICATION PERIODS

(1) Households who are eligible for benefits shall be given certification periods of from 6 to 12 months except:

(a) self-employed households may be certified for less than 6 months in order to conform with the time when information about self-employment is available; and

(b) households who do not have a fixed residence in the county may be certified for from 1 to 6 months. (History: Sec. 53-2-201 MCA; IMP, Sec. 53-2-201 and 53-2-306 MCA; NEW, 1984 MAR p. 993, Eff. 6/29/84; TRANS, from SRS, 2000 MAR p. 3555.)

37. 76. 121 FOOD STAMP EMPLOYMENT AND TRAINING PROGRAM

(1) Participants in the food stamp employment and training program shall be reimbursed for costs of transportation or other costs that are reasonably necessary and directly related to participation in the program. The following reimbursement shall be provided to participants:

(a) Project work program:

(i) rates and types of reimbursement as found at ARM 46. 25. 731(6).

(b) Job search project:

(i) transportation utilizing the least expensive means and not to exceed \$10.00 per day at the rate of \$.185 per mile when using a private automobile;

(ii) work clothing;

(iii) other costs not exceeding \$15.00 per month may be spent to obtain necessary employment and training items such as school transcripts, birth certificates, driver's license and application fees;

(iv) reimbursements provided shall not exceed \$25.00 per month per participant. (History: Sec. 53-2-201, MCA; IMP, Sec. 53-2-306, MCA; NEW, 1987 MAR p. 330, Eff. 3/27/87; AMD, 1988 MAR p. 1706, Eff. 7/29/88; AMD, 1989 MAR p. 123, Eff. 1/13/89; TRANS, from SRS, 2000 MAR p. 3555.)

37.76.122 FOOD STAMPS, TRANSFER OF RESOURCES

(1) Households which have knowingly transferred resources for less than fair market value for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from receiving food stamps for a period of time determined in accordance with (4).

(a) This disqualification period shall apply only to transfers made in the 3-month period immediately preceding application or after the household is determined eligible for food stamps.

(b) There shall be no disqualification period if a transfer was made for a reason other than to qualify for food stamps, even if qualifying for food stamps was also one reason or the primary reason for the transfer.

(c) This transfer rule shall apply to transfers by any household member or by any ineligible alien or disqualified person whose resources are considered available to the household.

(2) Households applying for food stamps must provide to the department information regarding any resource which any household member or ineligible alien or disqualified person whose resources are considered available to the household has transferred within the 3-month period immediately preceding application. A household which has already been certified to receive food stamps must provide to the department information regarding any such transfer which occurs during their certification period.

(3) Eligibility for food stamps shall not be affected by the following transfers:

(a) transfers where fair market value or value near fair market value is received for the property;

(i) value within 5% of the fair market value shall be considered to be near fair market value;

(b) transfers which would not affect eligibility, including:

(i) transfers of excluded resources;

(ii) transfers of non-excluded resources that, when added to other non-excluded resources of the household, had a value at the time of transfer of less than the allowable resource limit; and

(iii) transfers between members of the household, including ineligible aliens or disqualified persons whose resources are considered available to the household.

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(4) The length of the disqualification period shall be based on the amount by which the transferred resource, when added to the other non-excluded resources of the household, exceeds the allowable resource limit, in accordance with the following table:

<u>Amount in Excess of Resource Limit</u>	<u>Period of Disqualification (months)</u>
\$0 to 249.99	1
\$250 to 999.99	3
\$1,000 to 2,999.99	6
\$3,000 to 4,999.99	9
\$5,000 or more	12

(5) Any transfer for less than fair market value or a value near fair market value which is not exempted by (3)(b)(i) through (iii) and which is made within the 3-month period immediately preceding application or after a determination of eligibility has been made shall raise a rebuttable presumption that the transfer was made for the purpose of qualifying for food stamps; provided, however, that this presumption shall not apply if the food stamp applicant or recipient states a reason for the transfer other than to qualify or continue to qualify for food stamps and supports the statement with clear and convincing evidence.

(a) Whenever the department determines that such a transfer has occurred, it shall send a written notice to the applicant or recipient prior to making a determination of eligibility or ineligibility explaining the household's right to rebut the presumption.

(b) The household shall have 10 days from the date of mailing of the written notice required by (5)(a) to provide the department with clear and convincing evidence that the transfer was for a reason other than to qualify or attempt to qualify for food stamps.

(c) The determination of whether a disqualifying transfer has occurred shall be based on all facts and circumstances known to the department, including:

(i) the reason stated by the applicant or recipient for the transfer;

(ii) the household's attempts, if any, to transfer the property at or near fair market value and/or the reason the household accepted less than fair market value;

(iii) evidence that the household did receive an amount of compensation equal to or near fair market value;

(d) The presence of one or more of the following factors, while not necessarily conclusive, may indicate that the property was transferred for some purpose other than to qualify or continue to qualify for food stamps:

(i) the occurrence or onset of an unexpected event or condition after the transfer which necessitates application for food stamps;

(ii) the transfer was ordered by a court of law based upon statute, regulation, a bona fide condition of settlement or other legal requirement;

(iii) the transfer occurred as a result of fraud, misrepresentation, or coercion perpetrated upon the person who transferred the property, provided that person has taken all reasonable steps, including legal action, to recover such property or obtain fair compensation for it.

(e) If the household fails to rebut the presumption as required in (5)(b), the household shall be disqualified for a period of time in accordance with (4).

(6) If the department determines that a disqualifying transfer has occurred, it shall send a written notice to the household as follows:

(a) A household already receiving food stamps at the time the transfer is discovered shall be sent a notice of adverse action explaining the reason for the disqualification and its length. The disqualification shall be effective with the first allotment to be issued after the notice of adverse action period has expired, unless the household has requested continuation of benefits pending a fair hearing.

(b) An applicant household shall be sent a denial of eligibility explaining the reason for the denial and the length of the disqualification. The disqualification shall begin in the month of application. (History: Sec. 53-2-201, MCA; IMP, Sec. 53-2-201, MCA; NEW, 1991 MAR p. 1020, Eff. 6/28/91; TRANS, from SRS, 2000 MAR p. 3555.)

Subchapter 2

Food Distribution Program

37. 76. 201 OPERATION (1) The food distribution program will operate on the following Indian reservations at their option:

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

(2) There is issuance of both food stamps and commodities to the above-named Indian reservations except the Fort Peck Indian reservation. (History: Sec. 53-2-201, MCA; IMP, Sec. 53-2-306, MCA; NEW, Eff. 11/4/74; TRANS, from SRS, 2000 MAR p. 3555.)

37. 76. 202 FOOD DISTRIBUTION HOUSEHOLD (1) Households applying for commodities are classified as follows:

(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.

(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.

(2) The assistance grant will not be reduced because of receipt of commodities. (History: Sec. 53-2-201, MCA; IMP, Sec. 53-2-306, MCA; NEW, Eff. 11/4/74; TRANS, from SRS, 2000 MAR p. 3555.)

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.

(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) 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. (History: Sec. 53-2-201, MCA; IMP, Sec. 53-2-306, MCA; NEW, Eff. 11/4/74; TRANS, from SRS, 2000 MAR p. 3555.)

37.76.204 FORMS USED FOR FOOD DISTRIBUTION (1) Forms are obtainable at the local county welfare offices. (History: Sec. 53-2-201, MCA; IMP, Sec. 53-2-306, MCA; Eff. 11/4/74; TRANS, from SRS, 2000 MAR p. 3555.)

37. 76. 205 INCOME LIMITATION (1) Income limitations for participation in the food distribution program are:

<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;

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(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.

(History: Sec. 53-2-201, MCA; IMP, Sec. 53-2-306, MCA; NEW, Eff. 11/4/74; TRANS, from SRS, 2000 MAR p. 3555.)

37.76.206 RESOURCE LIMITATION (1) Resource limitations for participation in the program are:

(a) \$1000.00 for single person households; and

(b) \$1500.00 for two or more person households.

(2) Cash reserves consist of cash on hand or on deposit, stocks, bonds, or other similar assets that can be liquidated without loss. (History: Sec. 53-2-201, MCA; IMP, Sec. 53-2-306, MCA; NEW, Eff. 11/4/74; TRANS, from SRS, 2000 MAR p. 3555.)