

BEFORE THE BOARD OF MILK CONTROL
AND THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED AMENDMENT
ARM 32.24.506 and 32.24.511)
pertaining to producer committee and) NO PUBLIC HEARING
pooling plan definitions) CONTEMPLATED

To: All Concerned Persons

1. On March 4, 2016, the Board of Milk Control (board) and the Department of Livestock propose to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on January 13, 2016, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. The board proposes to amend the following rules as follows, new matter underlined, deleted matter interlined:

32.24.506 PRODUCER COMMITTEE (1) The producer committee has authority to approve all transfers of quota and to review all requests for hardship or equitable relief and has authority to control and direct the marketing of surplus milk as specified in ARM 32.24.523.

(2) The producer committee shall consist of at least five members, each of whom is a pool dairyman who produced pool milk during the month prior to the meeting. The producer committee must have an odd number of members one eligible producer for each 10% of the total August pool raw milk represented by each pool plant with a minimum of at least one committee representative per pool plant. Calculation is done by using the total of each pool plant's pool milk receipts, divided by the total August pool milk, rounded to the nearest 10%, and divided by .01.

(3) The Board of Milk Control appoints the members of the producer committee.

(a) Pool dairymen interested in serving on the producer committee must apply to the Board of Milk Control.

(b) The Board of Milk Control selects the producer committee members as follows:

(i) A committee member must be appointed from the pool dairymen delivering milk to each pool plant for each 20%, rounded, of the total pool-wide receipts of raw pool milk received by the pool plant from its reported group of pool dairymen in the prior month of June. The calculation is done by using the total of

each pool plant's prior June raw pool milk received from its group of pool dairymen, divided by the pool-wide total raw milk receipts in the prior month of June, rounded to the nearest 20% and divided by 20%.

(ii) A minimum of at least one committee representative will be appointed from the pool dairymen delivering to each pool plant.

(iii) If the number of pool dairymen applying to represent the pool dairymen delivering to a pool plant is less than the calculated allotment of producer committee members representing pool dairymen delivering to that pool plant, or if no pool dairyman delivering to the pool plant applies to serve on the producer committee, the Board of Milk Control may appoint an applicant who delivers to a different pool plant.

(iv) If the calculated number of committee members is less than five or is an even number, the Board of Milk Control may select an appointee from the group of applicants without regard to the pool plant so that the committee has at least five members and has an odd number of members.

(c) When a vacancy occurs, the Board of Milk Control will appoint a committee member to complete the term of the departing committee member.

(d) The producer committee members will serve terms of two calendar years beginning January 1, 2016, and every two years thereafter.

~~(3) (4) A representative of the Milk Control Bureau~~ The administrator or his designated representative will attend, participate, and maintain a record of each producer committee meeting. The representative of the Milk Control Bureau administrator or his designated representative will not have a vote in any decision of the producer committee.

~~(4) (5) The Milk Control Bureau producer committee will~~ notify the manager of invite each pool plant manager or his a designated representative to attend its of scheduled meetings. No pool plant manager or designated representative will have a vote in any decision of the producer committee.

~~(5) (6) Producer committee meetings will not be held without at least ten days after reasonable written notice has been given to each committee member, the Milk Control Bureau administrator, and each plant manager of a pool plant or their the designated representatives representative.~~

~~(6) The producer committee members will serve terms of two years each, and have the option of serving additional two year terms. Vacancies on the committee will be filled in the same manner as the original appointment. Each committee member will be selected by all eligible pool producer representatives of each pooled plant.~~

~~(7) A majority Seven voting members of the producer committee shall constitute constitutes a quorum for the transaction of business. A majority vote of committee members present shall be is sufficient to make an official decision.~~

(8) Committee members will be compensated by the Milk Control Bureau in accordance with 2-15-124(7), MCA.

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

REASON: The board proposes to amend the above-stated rule:

- to provide for appointment of the producer committee by the Board of Milk Control and establish the process by which dairymen are appointed to the committee;
- to improve the process of attaining quorum;
- to improve the process of identifying and selecting committee members willing to participate on the producer committee;
- to achieve cost savings through the reduction of the size of the producer committee;
- to specify the length of committee member terms and beginning of terms;
- to provide for reasonable notices of meetings;
- to set the compensation for members of the producer committee by rule; and
- to include all authorities of the producer committee in the rule establishing the committee.

Based on June 2015 production, there are three pool plants. The proposed amendments could result in a producer committee with a membership of seven with the following appointments: three committee members who are Darigold – Bozeman dairymen; one committee member who is a Meadow Gold – Billings dairyman; two committee members who are Meadow Gold – Great Falls dairymen; and one committee member appointed by the Board of Milk Control to maintain an odd number of members. If there are insufficient applications from pool plant dairymen, at-large appointments may be made by the board.

The proposed amendments are estimated to save approximately \$800 per in-person meeting and approximately \$12 per conference call meeting.

32.24.511 POOLING PLAN DEFINITIONS The following definitions apply in subchapter 5 unless the context otherwise requires:

(1) through (4) remain the same.

(5) "Pool dairyman" means any dairy farmer, ~~except a producer handler who produces milk,~~ within the state of Montana, which is marketed to or through a pool handler.

(6) and (7) remain the same.

(8) "Pool plant" means any milk plant located within the pool area, excluding a milk plant operated by a producer handler, which receives milk from a pool dairyman during the month and which is approved licensed by the Montana Department of Livestock and operated by a distributor licensed by the Milk Control Bureau ~~for the receipt and disposition of grade 'A' milk at which grade 'A' milk is received and/or processed during the month.~~

(9) remains the same.

(10) "Producer handler" means any person who operates a dairy farm, and produces milk on such farm, which milk is received and processed ~~and/or packaged~~ in a milk plant operated by such person, and disposed of to retail or wholesale outlets in the pool area during the month, provided that the producer handler receives no dairy products in fluid form during the month from another person,

except for milk ~~and/or fluid milk products~~ of 2500 pounds, or 5% of the producer handler's class I milk dispositions, whichever is less.

(11) through (13) remain the same.

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

REASON: The board proposes to amend the above-stated rule:

- to eliminate the exclusion of a producer handler from the definition of pool dairyman since a producer handler operates a dairy farm that may market a portion of milk production to a pool handler.
- to exclude a milk plant operated by producer handler from the definition of pool plant, since a producer handler cannot receive (purchase) more than the volume of milk in (10). Milk produced and utilized by a producer handler is not "received from another person." A person who receives (purchases) more milk than allowed in (10) is a pool plant.
- to clarify the definitions of pool dairyman and pool plant for rules established for the producer committee in ARM Title 32, chapter 24, subchapter 5.

The financial impact of the proposed amendments on pool dairymen, pool handlers, pool plants, and the Milk Control Bureau will be insignificant. The change in definition of pool plant will result in the Montana Correctional Enterprises milk plant not being included in pooling calculations as a pool handler. In the period from November 2014 through October 2015, the Montana Correctional Enterprises milk plant paid an average of \$1,341 per month more into the pool settlement reserve than it received from the pool settlement reserve. Removing Montana Correctional Enterprises from being classified as a pool plant will reduce workload for the Milk Control Bureau in its pooling and audit procedures, but the workload will not be reduced enough to allow operational cost savings to be realized for the bureau through reductions in personnel costs.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., January 21, 2016.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as in 4 above. The written request for hearing must be received no later than 5:00 p.m., January 21, 2016.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or

from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 7, based upon there being 61 active pool dairymen licensed by the Milk Control Bureau.

7. The board and Department of Livestock maintain lists 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 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

10. 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/ Scott Mitchell
Scott Mitchell
Chair
Board of Milk Control

/s/ Martin Zaluski
Martin Zaluski
Executive Officer
Department of Livestock

/s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State December 14, 2015.