

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

In the matter of the adoption of New)
Rules I through VII, the amendment)
of ARM 32.24.101 organization of)
board, 32.24.401 penalties,)
32.24.502 initial determination and/or)
loss of quota records, 32.24.503 new)
producers - percentage of milk sales)
assigned to quota milk, 32.24.504)
transfer of quota, 32.24.505)
reassignment of quota from the)
unassigned quota pool and)
readjustment of quota into the)
statewide quota system, 32.24.506)
producer committee, 32.24.507)
request for review, hardship, and)
appeals, 32.24.512 reports and)
records, 32.24.513 computation of)
price for quota milk and excess,)
32.24.514 procedures for pooling of)
returns from pool milk, 32.24.515)
payments to pool dairymen and)
adjustment of accounts, 32.24.523)
marketing of surplus milk to nonpool)
handlers, 32.24.524 required)
utilization of surplus milk, 32.24.525)
procedures, purchase price, and)
terms, and the repeal of ARM)
32.23.101 definitions, 32.23.102)
transactions involving the purchase)
and resale of milk within the state,)
32.23.201 regulation of unfair trade)
practices, 32.23.301 licensee)
assessments, 32.23.302 additional)
producer assessment, 32.23.401)
penalties, 32.24.201 procedural rules,)
32.24.301 pricing rules, 32.24.501)
quota definitions, 32.24.511 pooling)
plan definitions, 32.24.516 proceeds)
and losses for surplus milk in quota)
and excess milk over quota, and)
32.24.520 definitions)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION,
AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On July 7, 2017, at 9:00 a.m., the Department of Livestock will hold a public hearing in the conference room of the Department of Justice, Agency Legal Services, which is located at 1712 9th Avenue at Helena, Montana, to consider the proposed adoption, amendment, and repeal of 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 June 16, 2017 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 rules as proposed to be adopted provide as follows:

NEW RULE I SAVING CLAUSE (1) It is the intention of the board that if any provision of this chapter, or the application of such provision to any person or circumstance is held to be invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, is not affected.

AUTH: 81-23-103, MCA
IMP: 81-23-103, MCA

REASON: The board proposes New Rule I to coordinate with the proposed repeal of ARM Title 32, chapter 23 (Chapter 23) and reorganization of ARM Title 32, chapter 24 (Chapter 24). The "saving clause" type language in New Rule I would replace ARM 32.23.102(16), ARM 32.23.201(2), and ARM 32.24.301(3), which the board proposes to repeal.

NEW RULE II DEFINITIONS As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Act" or "Milk Control Act" means the milk control laws contained in Title 81, chapter 23, MCA.

(2) "Board" means the Board of Milk Control.

(3) "Bureau" means the Milk Control Bureau of the department.

(4) "Classes of utilization." All milk subject to the Act will be classified by utilization as defined here, regardless of the location of such utilization. For purposes of classification, the ultimate utilization of milk, if unknown, may be presumed to be the reasonably expected utilization of that milk.

(a) "Class I milk" means all skim milk and butterfat:

(i) disposed of in the form of fluid milk products, except as otherwise provided in this section;

(ii) in packaged fluid milk products in inventory at the end of the month; and

(iii) in shrinkage in excess of 2% of current producer receipts and plant overages.

(b) "Class II milk" means all skim milk and butterfat:

(i) in fluid milk products in containers larger than 1 gallon and fluid cream products disposed of or diverted to a commercial food processing establishment, because of the authority provided to the department in 81-23-401, MCA; or

(ii) used to produce:

(A) cottage cheese, low fat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(B) milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in half-gallon containers or larger and intended to be used in soft or semi-solid form;

(C) aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items; yogurt, including yogurt containing beverages with 20 percent or more yogurt by weight and kefir, and any other semi-solid product resembling a Class II product;

(D) custards, puddings, pancake mixes, coatings, batter, and similar products;

(E) buttermilk biscuit mixes and other buttermilk for baking that contain food starch in excess of 2% of the total solids, provided that the product is labeled to indicate the food starch content;

(F) products especially prepared for infant feeding or dietary use (meal replacements) that are packaged in hermetically sealed containers and products that meet the compositional standards of fluid milk product but contain no fluid milk products included in the definition of fluid milk product;

(G) candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products;

(H) a fluid cream product or any product containing artificial fat or fat substitutes that resembles a fluid cream product, except as otherwise provided in (c) of this section; and

(I) any product not otherwise specified in this section.

(c) "Class III milk" means all skim milk and butterfat:

(i) used to produce:

(A) cream cheese and other spreadable cheeses, and hard cheese of types that may be shredded, grated, or crumbled;

(B) plastic cream, anhydrous milkfat, and butteroil;

(C) butter;

(D) Evaporated or sweetened condensed milk in a consumer-type package; and

(E) any milk product in dried form;

(ii) in shrinkage of 2% or less of current producer receipts;

(iii) in inventory at the end of the month of fluid milk products and fluid cream products in bulk form;

(iv) in the skim milk equivalent of nonfat milk solids used to modify a fluid milk product that has not been accounted for in Class I; or

(v) used for other uses, including skim milk and butterfat used in any product described in this section that is dumped, used for animal feed, destroyed, or lost by a handler in a vehicular accident, flood, fire, or similar occurrence beyond the handler's control. Such uses of skim milk and butterfat are assigned to Class III instead of being assigned to shrink for the month to the extent that the quantities destroyed or lost can be verified from records satisfactory to the bureau.

(5) "Dairy animal" means a lactating cow.

(6) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(7) "Department" means the Montana Department of Livestock.

(8) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term does not include a person purchasing milk from a dealer licensed under this chapter for resale over the counter at retail or for consumption on the premises.

(9) "Dumped milk" or "dumped" means or refers to milk that is dumped or otherwise destroyed without further processing or usage and includes skim milk that is dumped after separation.

(10) "Eligible producer" is a producer who is eligible to own quota by the fact that the producer:

(a) is licensed to produce milk in Montana;

(b) has a contractual agreement with a pool plant; and

(c) has either produced milk in Montana and sold milk to a Montana pool plant within 90 days or been accepted by a pool plant as a producer and produces milk delivered to a pool plant not later than the last day of the month.

(11) "Excess milk" means all the milk received from a pool producer during the month which is in excess of the pool producer's quota milk.

(12) "Excess price" means the weighted average price for all excess milk testing 3.5% butterfat as computed for the month by the bureau as provided for in ARM 32.24.513.

(13) "Farm pickup charges" means the actual freight charges to the producer for transporting milk to a pool plant.

(14) "Fluid cream product" means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9% or more butterfat, with or without the addition of other ingredients.

(15) "Fluid milk product"

(a) Except as provided in (b), fluid milk product means any milk products in fluid or frozen form that are intended to be used as beverages containing less than 9% butterfat and 6.5% or more nonfat solids or 2.25% or more true milk protein. Sources of such nonfat solids/protein include but are not limited to: Casein, whey protein concentrate, milk protein concentrate, dry whey, caseinates, lactose, and any similar dairy derived ingredient. Such products include, but are not limited to: Milk, fat-free milk, low fat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added or reduced nonfat solids, sterilized, concentrated, or reconstituted. As used in this part, the term concentrated milk means milk that contains not less than 25.5%, and not more than 50%, total milk solids.

(b) The term fluid milk product does not include:

(i) Any product that contains less than 6.5% nonfat milk solids and contains less than 2.25% true milk protein; whey; plain or sweetened evaporated milk/skim milk; sweetened condensed milk/skim milk; yogurt containing beverages with 20 or more percent yogurt by weight and kefir; products especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers; and products that meet the compositional standards specified in (a) but contain no fluid milk products included in (a).

(ii) The quantity of skim milk equivalent in any modified product specified in (a) that is greater than an equal volume of an unmodified product of the same nature and butterfat content.

(16) "Hardship" means a casualty, act of nature, or detrimental health of an eligible producer that prevents milk production.

(a) Terminal illness, progressive degenerative illness, or permanent disability may be a hardship.

(b) Loss of milk production due to inability to obtain adequate labor to maintain milk production is not a hardship.

(17) "Hundredweight" or "cwt" means one hundred pounds. A hundredweight is a common measure of weight for milk, particularly raw milk.

(18) "Import jobber" means a distributor who purchases milk already processed and packaged for resale to wholesale and retail customers from a source or sources whose headquarters are geographically located outside the boundaries of Montana.

(19) "Jobber" means any independent business person other than a store, wholesale grocery purchasing organization, or wholesale grocery broker, who has no financial connection with any distributor other than acquiring the distributor's packaged product and distributing and selling the same, and whose business practices and policies are within the jobber's exclusive province to establish, and not subject to any influence or control from the distributor.

(20) "Milk" means the lacteal secretion of a dairy animal, including those secretions when raw, cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed.

(21) "New eligible producer" is a producer who is eligible for an assignment of quota as provided for in ARM 32.24.503 because the producer:

(a) is licensed to produce milk in Montana;

(b) produces milk within Montana;

(c) has a contractual agreement with a pool plant; and

(d) has not ceased production of milk in Montana or disposed of any Montana quota during the three-year period prior to re-entry into the market.

(22) "Nonpool milk" means any milk received or marketed by a pool handler, other than pool milk.

(23) "Nonpool plant" means any milk processing, packaging, or receiving plant which is not a pool plant.

(24) "Other source milk" means all milk as defined in the Act that is received in a plant from any source other than a producer licensed under the Act.

(25) "Overage" means that amount by which milk accounted for exceeds plant receipts.

(26) "Plant" means the processing plant of a distributor.

(27) "Plant receipts" means all milk received from producers, other plants, and other sources, inventory, and all additives used in fluid products.

(28) "Pool area" includes all territory within the borders of the state of Montana.

(29) "Pool handler" means any person who operates one or more pool plants, or an association of milk producers which is incorporated as a cooperative association and which has been approved by the bureau for the marketing of milk produced by pool producers.

(30) "Pool milk" means all of the milk produced by pool producers, under licenses issued by the bureau, which is received at pool plants or marketed to a nonpool plant by a pool handler.

(31) "Pool plant" means any milk plant located within the pool area which receives milk from a producer located in Montana and which is licensed by the department and operated by a distributor or a producer-distributor licensed by the bureau. A milk plant operated by a producer-distributor is a pool plant if it receives dairy products in fluid form from another person in excess of 2,500 pounds of milk or 5% of the producer-distributor's Class I milk dispositions in a month, whichever is less.

(32) "Pool producer" means any producer who produces milk within the pool area which is marketed to or through a pool handler.

(33) "Pool settlement fund" means a reserve fund of money belonging to pool producers that the bureau retains on a revolving basis for the purpose of receiving monies from or paying monies to pool handlers, as provided for in 81-23-302(15), MCA.

(34) "Producer" means a person who produces milk for consumption in this state and sells it to a distributor.

(35) "Producer committee" means the committee provided for in ARM 32.24.506.

(36) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(37) "Quota" is a daily figure expressed in pounds of milk that entitles an eligible producer or new eligible producer to receive the quota price for quota milk sold to a pool plant.

(38) "Quota milk" means that share of producer milk received during the month from a pool producer which falls within the limits of a figure computed by multiplying such pool producer's daily quota by the number of days in the month.

(39) "Quota price" means the weighted average price for all quota milk testing 3.5% butterfat as computed for the month by the bureau as provided for in ARM 32.24.513.

(40) "Quota transfer" means a transfer of ownership of all or a minimum portion of an eligible producer's quota.

(41) "Shrinkage" or "shrink" means that amount by which milk receipts exceed milk otherwise accounted for.

(42) "Surplus":

(a) means all pool milk received by a pool handler originating from pool producers that exceeds the sum of the following:

- (i) the pool handler's sales of milk sold for consumption in Montana;
 - (ii) sales or transfers of bulk unprocessed milk to other pool handlers; and
 - (iii) sales of bulk unprocessed milk to nonpool plants located in Montana.
- (b) does not include shrink, dumped milk, inventory, and fluid cream products, including fluid cream products sold in bulk.

(43) "Utilization value" means a sum of money computed for each pool handler with respect to the butterfat and skim milk contained in pool milk received from pool producers and disposed of or utilized during the month. The sum is computed, using the class prices and assignment of classes of utilization to the pool milk received, subject to any interplant hauling, reclassification, or other adjustments that are established under rules of the bureau.

AUTH: 81-23-103, 81-23-104, 81-23-302, 81-23-402, MCA

IMP: 81-23-101, 81-23-103, 81-23-302, 81-23-402, MCA

REASON: The board proposes the definitions in New Rule II to coordinate with the proposed repeal of Chapter 23 and reorganization of Chapter 24. New Rule II would consolidate and reorganize definitions to be in one administrative rule to improve regulatory clarity. The following discusses new proposed definitions and definitions that would be changed relative to definitions in current rules that the board proposes to repeal (ARM 32.23.101, ARM 32.24.501, ARM 32.24.511, and ARM 32.24.520).

"Classes of utilization." "Classes of utilization" is a new term proposed to implement 81-23-101(1)(b), MCA. The proposed definition uses the language of 7 CFR 1000.40 with necessary adjustments for references and omission of references not applicable to the board. Per 81-23-101(1)(b)(ii), MCA, the board may combine any of the classes of milk provided for in the federal definitions into a single class.

"Class III milk" would include all skim milk and butterfat that is defined by 7 CFR 1000.40 as being Class III, Class IV milk, and all skim milk and butterfat defined by 7 CFR 1000.40 as being "Other uses." Elements of ARM 32.23.102(6) and (12) pertaining to dumped milk, shrink, overage, and bulk inventory would be incorporated into the definition.

"Dairy animal" is a proposed new term that would specify a dairy animal as being lactating cow. The proposed definition of dairy animal would establish that Chapter 24 applies to milk from a cow. Most milk market regulatory jurisdictions that regulate producer prices limit the definition of milk to cow's milk.

"Dealer" is a new proposed term and is consistent with the definition in 81-23-101(1)(d), MCA. The definition is proposed because the term is used in the definition of "distributor," also a new proposed term.

"Distributor" is a new proposed term that is consistent with the definition in 81-23-101(1)(e), MCA. The term is proposed because it is used throughout Chapter 24.

"Dumped milk" or "dumped" is a new proposed term that would replace "skim milk dumped" in the current ARM 32.23.101(1)(e). The proposed definition differs from

the definition of "skim milk dumped" in that it would not restrict dumped milk to being milk that has been skimmed first.

"Eligible producer." The proposed definition would describe a producer that is eligible to own quota, would remove historic language, and would improve clarity relative to the definition in the current ARM 32.24.501(2).

"Excess milk." The proposed definition would replace the definitions in ARM 32.23.101(1)(d) and ARM 32.24.501(3), which the board proposes to repeal. The proposed definition would use language in the current ARM 32.24.501(3).

"Excess price" is a new proposed term. Pool producers who produce excess milk are paid the excess price for that production. The term is also used in ARM 32.24.513.

"Farm pickup charges" is a new proposed term that would allow the proposed ARM 32.24.523 to be more direct and concise.

"Fluid cream product" is a new term proposed to provide clarity and use the same terminology used in 7 CFR 1000.40 in the proposed definition of "classes of utilization." The proposed definition of "fluid cream product" would use the language from the 7 CFR 1000.16 definition of fluid cream product.

"Fluid milk product" is a new term proposed to provide clarity and use the same terminology used in 7 CFR 1000.40 in the proposed definition of "classes of utilization." The proposed definition of "fluid milk product" would use the language from the 7 CFR 1000.15 definition of fluid milk product, with necessary adjustments for references.

"Hardship" is not a defined term in the rules that the board proposes to repeal; instead it is currently defined in ARM 32.24.507. The board proposes to define "hardship" in New Rule II to consolidate all definitions.

"Hundredweight" or "cwt" is a new proposed term. A hundredweight is one hundred pounds and is a common weight measure for milk, particularly for raw milk. The board proposes defining "hundredweight" because people are often unfamiliar with its meaning.

"Milk" is a new proposed definition and is consistent with the definition in 81-23-101(1)(h), MCA, except that the proposed definition would not include some of the descriptive language in the statute that may cause confusion.

"New eligible producer." The proposed definition would describe a producer that is eligible for an assignment of quota, would reference the rule to which the definition primarily pertains, and would improve clarity relative to the definition in the current ARM 32.24.501(6).

"Pool plant" as proposed would modify the definition in the current ARM 32.24.511(8) to describe the circumstances when a plant operated by a producer-distributor is a pool plant.

"Pool producer" is a new proposed term that would replace "pool dairyman," currently defined in ARM 32.24.511(5). The board proposes this change to maintain consistency with the Milk Control Act, which defines "producer" and uses "pool producer" in 81-23-302(15)(b)(iii), MCA, but does not define or use the term "dairyman."

"Pool settlement fund" is a new proposed term that would replace "pool settlement reserve" defined in the current ARM 32.24.511(9) to maintain consistency with 81-23-302(15)(b)(ii), MCA. The proposed definition corrects the statutory reference that is included in the definition.

"Producer" is a new proposed term and is consistent with the definition in 81-23-101(1)(j), MCA. The term is proposed because it is used throughout Chapter 24.

"Producer-distributor." The proposed definition of "producer-distributor" would replace "producer handler" from the current ARM 32.24.511(10) with the definition provided by 81-23-101(1)(l), MCA. "Producer-distributor" is the term used to describe this type of business in 81-23-101(1)(l), MCA; 81-23-201, MCA; 81-23-202, MCA; and related administrative rules.

"Quota." The proposed definition would replace the definition of the current ARM 32.24.501(7) and would provide improved context.

"Quota transfer" is not a defined term in the rules that the board proposes to repeal; instead it is currently defined in ARM 32.24.504. The board proposes to define "quota transfer" in New Rule II to consolidate all definitions.

"Surplus." The proposed definition of surplus is substantively different from the current ARM 32.23.101(1)(h) and ARM 32.24.520(8). The proposed definition of surplus would clarify what milk is eligible to be surplus milk and what milk is excluded from the definition.

- The proposed definition would not limit the definition of surplus to being milk "that is over and above the pool handler's Class I and II market needs" as in the existing rule. The proposed language is structured so that milk sold to supply the Montana market would not be surplus; however, pool milk received to supply markets outside of Montana would be surplus. As proposed, pool milk utilized as Class I milk for packaged fluid milk product sales by pool plants to out-of-state markets would be surplus milk. As proposed, bulk milk sales of pool milk to out-of-state fluid milk bottling plants or cheese plants (thereby utilized as Class I milk or Class III milk) would be surplus milk sales.
- As proposed, cream derived from pool milk utilized as Class III milk for bulk sales to out-of-state butter plants would not be surplus milk because cream is excluded from the proposed definition of surplus.

"Utilization value." The proposed changes to the definition of "utilization value" would coordinate with the proposed new term "classes of utilization."

NEW RULE III MILK CONTROL ASSESSMENTS (1) Pursuant to 81-23-202, MCA, the following assessments are levied upon the Act licensees of this department for the purpose of securing funds to administer and enforce the Act.

(a) A fee of \$0.05 per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of all milk subject to the Act produced and sold by a producer-distributor.

(b) A fee of \$0.025 per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of all milk subject to the Act sold by a producer.

(c) A fee of \$0.025 per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of milk subject to the Act sold by a distributor, excepting that which is sold to another distributor. If the distributor is foreign, the assessment must be paid either by the foreign distributor or by the import jobber.

(2) The fee assessed in (1) must be paid before the 25th day of each month for milk sold in the preceding month.

(3) As an aid to the efficient collection of license fees and assessments, each pool handler must deduct from payments due such producers (ARM 32.24.515) any license fees and administrative assessments due the department from such producers under 81-23-105, MCA, and 81-23-202, MCA. The pool handler must remit such fees and assessments to the department together with a statement of individual producer assessment payments. Assessments under 81-23-202(2), MCA, must be reported and paid monthly, as provided by 81-23-202(5), MCA. Assessments under 81-23-105, MCA, and [New Rule IV] must be separately reported and paid monthly.

(4) Each distributor who comes under the jurisdiction of the Act, and of this rule by virtue of distributing milk within the state, either in bulk or packaged form, must file with the bureau on forms supplied by the bureau, on or before the 25th day of each month, a report of sales of such milk during the preceding month.

(a) A jobber is not required to file sales reports with the bureau to the extent that milk or dairy products sold by the jobber were reported by the distributor that supplied the jobber and to the extent that the distributor that supplied the jobber filed sales reports and paid the distributor milk control assessment described in (1)(c).

(5) Each producer-distributor must file with the bureau on forms supplied by the bureau, on or before the 25th day of each month, a report of the receipt and sales of milk during the preceding month. The report of sales must show sales by classes of utilization. The producer-distributor must maintain records of operations as required by the bureau and present them for audit by the bureau when requested.

AUTH: 81-23-102, 81-23-104, 81-23-202, MCA

IMP: 81-1-102, 81-23-103, 81-23-202, MCA

REASON: The board proposes New Rule III to coordinate with the proposed: repeal of Chapter 23, repeal of ARM 32.24.301, and reorganization of Chapter 24. New Rule III would implement 81-23-202, MCA; replace the current ARM 32.23.301;

and consolidate rules pertaining to reporting and payments associated with milk control assessments.

- (3) would provide for pool handlers' collection and payment of producers' license and assessments, which is currently provided in ARM 32.23.301(3) and, by reference, ARM 32.23.102(1).
- (4) would require distributors to report sales, which is currently provided for in ARM 32.23.102(10). The reporting due date would match the due date for assessment payment, a change from ARM 32.23.102(10).
- (5) would require producer-distributors to report sales, which is currently provided for in ARM 32.24.512(2) and ARM 32.23.102(10)(b). The reporting due date would match the due date for assessment payment, a change from ARM 32.23.102(10)(b).

NEW RULE IV PRODUCER MILK TESTING ASSESSMENT (1) An assessment is hereby levied on licensed producers in the amount of no cents (\$0.00) per hundredweight on the total volume of all milk subject to the Act sold by a producer for the purpose of securing the necessary funds to conduct a program of testing raw milk, as required by 81-23-105, MCA.

AUTH: 81-23-105, MCA
IMP: 81-1-102, 81-23-103, 81-23-105, MCA

REASON: The board proposes New Rule IV to coordinate with the proposed repeal of Chapter 23 and reorganization of Chapter 24. New Rule IV would implement 81-23-105, MCA and would not substantively differ from the current ARM 32.23.302.

NEW RULE V REGULATION OF UNFAIR TRADE PRACTICES (1) Under authority delegated by the provisions in 81-23-104, MCA, the following transactions of business among licensees under the Act and among licensees and the general public are declared to be unfair trade practices subject to enforcement sanctions provided by statute:

- (a) The payment of a lesser price than the applicable producer price established by the board pursuant to the Act by any distributor to any producer for milk which is distributed to any person, including agencies of the federal, state or local government.
- (b) The payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise.
- (c) The giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer.
- (d) The extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions.

(2) This rule and the rescission herein of any previously existing rule does not affect any act or thing done or begun, liability incurred, or any right accrued or established or any penalty incurred or any such prosecution or proceeding, civil or criminal, pending or instituted under or on account of any such previous rule herein

rescinded in whole or in part, to enforce any right or penalty or to punish any offense under the authority of any such previously existing rule, at the time this rule takes effect, but as to all such acts, things, liabilities, rights, penalties, prosecutions or proceedings and any such previously existing rule remain in full force and effect.

AUTH: 81-23-104, 81-23-303, MCA

IMP: 81-23-103, 81-23-303, MCA

REASON: The board proposes New Rule V to coordinate with the proposed repeal of Chapter 23 and reorganization of Chapter 24. New Rule V would replace the current ARM 32.23.201. To implement 81-23-303, MCA, New Rule V would include three unfair trade practices that are not in the current ARM 32.23.201.

NEW RULE VI PRODUCER PRICING RULES (1) Nothing contained in these rules prohibits the payment of higher prices to producers.

(2) The minimum Class I price per hundredweight at 3.5% butterfat which must be paid to producers by distributors in the state of Montana, is the monthly federal order price according to 7 CFR 1000.50(a) through (c) plus a Montana Class I location differential of \$2.55.

(a) When milk does not test 3.5% butterfat, the price per cwt will be adjusted for each 0.1% the butterfat test moves up or down.

(b) The bureau will use the federal order fat and skim prices to calculate the producer prices. Federal order fat and skim prices are announced on the Friday previous to the 23rd of each month unless the 23rd falls on a Friday. Montana will follow the same schedule.

(3) Prices paid producers for Class II milk will be the last spray process nonfat dry milk solids price per pound quote prior to the 20th of the month, Central States area, as most recently reported by the United States Department of Agriculture, plus a factor of \$0.0125 per pound for freight, multiplied by 8.2 (which is the amount of solids not fat in skim milk), plus the last Chicago area grade AA butter price quote prior to the 20th of the month as most recently reported by the United States Department of Agriculture, less an adjustment factor of \$0.0895, multiplied by 4.2 (which is the amount of butter in pounds, which can be produced from 100 pounds of milk with 3.5% butterfat content), less a make allowance of 8.5%. In the case of milk containing more or less than 3.5% butterfat, the differential to be employed in computing prices will be the above-mentioned Chicago area butter price, less an adjustment factor of \$0.0895, multiplied by 0.111, rounded to nearest half cent (\$0.005).

(4) Prices paid to producers for Class III milk will be the last Chicago area grade AA butter price quote prior to the 20th of the month as most recently reported by the United States Department of Agriculture, less an adjustment factor of \$0.0895, less 10% and, in addition, when skim milk is utilized in this classification by any distributor, the last spray process nonfat milk solids price per pound quote prior to the 20th of the month, the Central States area, as most recently reported by the United States Department of Agriculture, plus a factor of \$0.0125 per pound for freight, multiplied by 8.2, less 17%.

(5) Minimum quota prices and minimum excess prices paid to pool producers are determined by the calculations provided for in ARM 32.24.513. The calculations in ARM 32.24.513 include adjustments to the pool-wide utilization value for surplus sales and for transportation charges for shipments of unprocessed pool milk between pool plants.

(6) No price established by any formula set forth in this rule may be charged if contrary to any supervening federal or state law, rule, or regulation. Should any minimum prices published by this board under this rule exceed the limitations imposed by such laws, rules, or regulations, such prices must be reduced to the extent of such excess, even though such reduction may impair a uniform or complete application of the price fixing formula, or any of the same, set out in this rule. The prices, as so modified, must be respected and enforced as the minimum prices established under this rule.

(7) On or before the 23rd day of each month, the bureau will compute prices for Class I, II, and III milk to be paid to producers by pool handlers for milk received from producers during the next calendar month, in accordance with this pricing rule. By the 26th day of each month, the bureau will publish a notice of the Class I, II, and III prices to be paid to producers by pool handlers for milk received from producers during the next calendar month and distribute the notice to each pool producer and pool handler licensed under the Act. The notice must contain the mathematical computations used to calculate the prices. The minimum producer price will be uniform and identical throughout the state of Montana.

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

REASON: The board proposes New Rule VI to replace the current ARM 32.24.301 as part of the proposed reorganization of Chapter 24. New Rule VI would eliminate: extraneous provisions; a provision covered by New Rule I; and a provision that pertains to prior rules related to valuing excess milk that became obsolete when the \$1.50/cwt quota price differential was established in ARM 32.24.513. The provision in (5) would more clearly spell out the authority for adjustments to the pool utilization value for surplus sales and transportation costs of bulk milk sales between pool plants than the language in the current ARM 32.24.301(9). The language of (7) would include some of the language in the current ARM 32.23.102(5). Unlike the current ARM 32.23.102(5), (7) would not require the bureau to distribute price announcements to producer-distributors. Producer-distributors do not purchase milk from producers and therefore do not have a direct interest in the announced minimum producer prices. If a producer-distributor sells milk to a pool handler, it does so as a pool producer. Additionally, minimum producer price information is available to producer-distributors on the bureau's webpage.

NEW RULE VII REJECTION OF MILK AND TERMINATION OF PRODUCER SALES AGREEMENTS (1) A distributor may reject milk provided by a producer because of inferior quality or noncompliance with the lawful rules of duly constituted health or sanitation agencies. In all cases the rejection of the milk must be supported by a statement to the producer setting forth the reason(s) for which the

milk was rejected. A distributor must provide a copy of the statement to the department.

(2) Except for persistent repetition of the cases set forth in (1), no producer's contract or purchasing agreement, whether express or implied, may be terminated by a distributor except for cause after notice and hearing by the board in accordance with the rules and procedures prescribed by the Montana Administrative Procedure Act.

(3) No producer may terminate a contract or selling agreement with any distributor except by giving at least 30 days written notice to the distributor and to the board of the producer's intention to terminate. However, nothing in this rule prevents a distributor and a producer from providing by written contract or agreement for a different period of notice. Termination does not preempt a distributor's obligation to pay the producer in full by the 15th day of the month following the month of such termination.

AUTH: 81-23-104, MCA
IMP: 81-23-103, 81-23-402, MCA

REASON: The board proposes New Rule VII to coordinate with the proposed repeal of Chapter 23 and reorganization of Chapter 24. New Rule VII would be substantively the same as the current ARM 32.23.102(13), (14), and (15).

The proposed new rules to Chapter 24 affect approximately 133 businesses licensed by the Milk Control Bureau.

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

32.24.101 ORGANIZATION OF BOARD AND PROCEDURAL RULES

(1) The organization of the Board of Milk Control is set out in chapter 1 and the procedural rules of the Board of Milk Control are set out in chapter 2.

AUTH: 81-23-103, 81-23-302, MCA
IMP: 2-4-201, MCA

REASON: This rule is amended to transfer language from ARM 32.24.201 to ARM 32.24.101 because the former is redundant and not needed.

32.24.401 PENALTIES (1) Bureau staff must take reasonable administrative actions to assist a person's compliance with applicable law, rules, and orders before the board may impose any of the penalties in (2). If bureau staff cannot secure a person's compliance through administrative action, they must recommend to the board chair that a hearing be scheduled to consider assessment of a penalty.

(2) The board may refuse to grant a license, may suspend a license already granted, may revoke a license already granted, or may assess a civil penalty for any of the following:

- (a) violation of any provision of Title 81, chapter 23, MCA;
 - (b) violation of any provision of ARM Title 32, chapters ~~23~~ and 24;
 - (c) violation of any board order;
 - (d) failure or refusal to make required statements or reports; or
 - (e) failure to pay license or assessment fees.
- (3) Before imposing any of the penalties in (2), the board must provide due notice, a hearing, and due cause for the penalty. The contested case procedure in the Montana Administrative Procedure Act applies to these hearings.
- (4) Following a determination of due cause for a penalty, the board may order that a penalty be imposed. In place of suspension or revocation of the license, the board may assess a civil penalty, not to exceed \$500 per day for each daily failure to comply or each daily violation, with a deadline for when the payment is due. A person assessed a civil penalty who fails to pay that penalty immediately when due may be subject to further compliance proceedings for failure to comply with the board's order and will be subject to civil proceedings to collect the civil penalty.
- (5) A license revoked for failure to pay an assessment under [New Rule III] ARM 32.23.304 when due may be reinstated.
- (a) A license revoked for failure to pay an assessment under [New Rule III] ARM 32.23.304 when due must be reinstated upon payment of:
 - (i) all accrued assessments through the date the license was revoked; and
 - (ii) a delinquency fee not to exceed 200% of the amount of all accrued assessments.
 - (b) An assessment becomes delinquent the day after it was due.

AUTH: 81-23-104, 81-23-202, MCA
IMP: 81-23-103, 81-23-202, 81-23-204, MCA

REASON: The board proposes these amendments to coordinate with New Rule III and the proposed repeal of Chapter 23.

32.24.502 INITIAL DETERMINATION AND/OR LOSS OF QUOTA

RECORDS ~~(1) Meadow Gold and Black Hills producers shall retain their quota existing at the time of the adoption of these regulations. All other initial quota for eligible producers will be determined as set forth in (2) and (4) below.~~

~~(2) Each eligible producer's initial quota, except for Meadow Gold and Black Hills producers, will be based upon his highest total production for the one-year period immediately preceding the effective date of this plan, divided by 365. The quota for eligible producers who are participating in the quota plan for Meadow Gold and Black Hills producers contained in ARM 32.24.501 through 32.24.506 on the effective date of this plan shall be the quota computed for those producers as of that date.~~

~~(3) On or before the 20th day after the effective date of this plan, the administrator shall compute a quota assignable to each eligible producer. The figure computed shall be rounded to the nearest whole number and assigned to each eligible producer as quota.~~

~~(4) Each producer's quota for each pool plant, except Meadow Gold and Black Hills producers, shall be based on his total production history for the one-year period immediately preceding the effective date of this plan, except that the amount of class III built into each producer's quota will be limited to a maximum percentage of class III that exists in the Meadow Gold plants for the one year period immediately preceding the effective date of this plan. All pool plants with a lower class III percentage than Meadow Gold's will receive quota for all their production pounds. All pool plants with a higher percentage of class III pounds than Meadow Gold shall allow their producers to receive quota for their production up to the same percentage class III as Meadow Gold.~~

~~(5) The administrator will promptly notify each eligible producer in writing of his computed quota, enter such information on the official records of the milk control bureau and thereafter continue to maintain a current and up-to-date record of each eligible producer's quota pounds whether the quota was received pursuant to (1) and (2) hereof or any other paragraph hereof or through transfer. The pool plant will be notified of the production history and quota assignment for each eligible producer. Upon request of such notice, each pool plant shall promptly post in a conspicuous place in its facility a list showing each eligible producer's quota.~~

~~(6) In computing initial quota, an eligible producer who has acquired a previous producer's production history through bona fide sale or transfer will receive such production history as credit.~~

~~(7) No such assignment shall be made to any eligible producer who elects within twenty-one days after receiving notice pursuant to (5) hereof to refuse quota assignment.~~

~~(8) An eligible producer who discontinues the delivery of milk must forfeit his entire quota effective at the end of the 90th day after his last delivery unless such quota is transferred prior to that time.~~

~~(9) A Montana producer (licensed or unlicensed by the Montana Milk Control Bureau) who was actively producing and selling grade A milk to a plant located outside Montana on June 1, 1990, but who has begun or will begin selling all his milk to a Montana pool plant, may become an eligible producer and be assigned quota under this plan. To be assigned quota, such producer shall apply to the milk control bureau within 90 days after the effective date of this paragraph, and be a licensed producer in Montana at the time he makes such application. The quota to be assigned such producer shall be computed and governed by the preceding paragraphs of this rule, except that each producer's quota shall be limited to the lowest percentage previously assigned to eligible producers under (4) after this plan initially became effective. If the Montana State Prison applies for and is assigned quota pursuant to this paragraph, thereafter the class I and II utilization of the prison shall be included in the computation of pool utilization under ARM 32.24.511 through ARM 32.24.515.~~

(1) The bureau maintains records of:

(a) quota owned by each eligible producer; and

(b) quota assigned to each new eligible producer under ARM 32.24.503.

(2) The amount of quota owned by an eligible producer is adjusted when quota transfers are approved by the producer committee; reassignments are made pursuant to ARM 32.24.505; readjustments are made pursuant to ARM 32.24.505;

forfeitures of quota occur; and adjustments provided for in ARM 32.24.507 are made to quota balance.

(3) Except as provided for in ARM 32.24.507, an eligible producer forfeits all quota following the 90th consecutive day after the eligible producer's last delivery to a pool plant unless such quota is transferred prior to that time.

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

REASON: The board proposes the amendments to eliminate provisions that are no longer relevant since the initial determination of quota was completed several decades ago. The proposed amendments would preserve the bureau's maintenance of quota ownership records; the bureau's maintenance of records of quota assigned to new eligible producers; and the forfeiture of quota 90 days after the last delivery to a pool plant. With regard to the last sentence in the existing ARM 32.24.502(9), in the initial quota determination, the Montana State Prison received quota. Since then, the utilization value of milk processed at the prison plant has been included in the pool utilization value and the plant has been treated as a pool plant for pooling purposes. Proposed amendments in the following would provide for continuation of this practice, even though the prison plant is not a pool plant: ARM 32.24.512(6); ARM 32.24.513(1); ARM 32.24.514(5).

32.24.503 NEW ELIGIBLE PRODUCERS PERCENTAGE OF MILK SALES ASSIGNED TO QUOTA MILK - QUOTA ASSIGNMENT (1) A new eligible producer is entitled to receive the quota price for his milk sales to a pool plant for each month in accordance with the following schedule:

MONTHS	PERCENTAGE OF MILK SALES ASSIGNED TO QUOTA
April through August	20%
All other months	35%

- (a) To be eligible for this assignment, the ~~The~~ new eligible producer cannot own any quota in the first month of production ~~to be eligible for this assignment.~~
 - (b) This assignment is not an assignment of actual quota to such new eligible producer.
 - (c) This assignment of quota milk becomes a part of the total quota milk calculated under this chapter ~~these rules.~~
- (2) When the new eligible producer acquires quota by purchase or otherwise, or acquires quota pursuant to ARM 32.24.505, the percentage of milk sales assigned to quota price under this rule must ~~shall~~ be decreased accordingly so that the total quota equals the applicable percentage in (1).

(a) A producer who acquires quota by purchase or otherwise which exceeds the applicable percentage in (1) is not eligible to receive an assignment of quota pursuant to this rule.

(3) The percentage of milk sales assigned to quota price under this rule to any one new eligible producer may not exceed 35% of the current producer monthly average production (total quota production for the month, divided by the number of producers in production, times 35%).

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

REASON: The board proposes the amendments to update the terminology of the rule and clarify in (1)(a) that a new eligible producer does not lose eligibility for this assignment when quota is acquired subsequent to the first month of production, as described and limited in (2) and (3).

32.24.504 TRANSFER OF QUOTA (1) Quota is the property of each eligible producer. It may be transferred pursuant to the following terms and conditions:

(a) ~~A quota transfer is defined as a transfer of the ownership of all or a portion of an eligible producer's quota; leasing of quota is prohibited.~~ Quota transfers must be a minimum of 100 pounds a day. If the eligible producer is going out-of-business and has a his daily quota balance amount that is less than 100 pounds, then that amount may be transferred.

(b) The ~~bureau Milk Control Bureau~~ must be notified in writing by the proposed quota transferor at least seven days prior to the first day of the month during which the transfer is contemplated. Such notice must include the name of the prospective transferee, the effective date of the proposed transfer, and the amount of quota to be transferred. The producer must also notify the producer's his pool plant of the his transfer. The bureau will notify the producer committee of any proposed transfers.

(c) All quota transfers ~~are shall be~~ effective only upon approval by the producer committee. The proposed quota transfer must be bona fide and not for the purpose of evading any provisions of ~~this plan or~~ applicable law.

(d) A quota transfer may be made only to an eligible producer, ~~or one who has been accepted by a pool plant as a producer, not later than the last day of the month during which the transfer is contemplated.~~

(e) Leasing of quota is prohibited.

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

REASON: The board proposes the amendments to update the terminology of the rule and coordinate with the proposed definition of "eligible producer" in New Rule II.

32.24.505 REASSIGNMENT OF QUOTA FROM THE UNASSIGNED QUOTA POOL AND READJUSTMENT OF QUOTA INTO THE STATEWIDE

QUOTA SYSTEM (1) The quota accumulated in the unassigned quota pool will be re-assigned pro-rata to all eligible producers and new eligible producers when the unassigned quota pool is equal to or greater than 500 pounds.

(a) For application of (1) the bureau administrator shall determine the total pounds of quota that has been forfeited and accumulated through March 31 of each year either by initial determination (meaning when the quota system began), or loss of quota.

(b) The resulting pounds in (1)(a) are shall be prorated to all eligible producers and new eligible producers on the basis of these producers' their average daily marketing of milk to all pool plants during the preceding months of September through December and assigned to them as quota effective on May 1st 1.

(2) Readjustment of quota into the statewide quota system will occur if the Montana market needs exceed the current established total quota.

(3) Market needs are not met when the following conditions exist:

(a) when greater than 83.5% of quota milk received is utilized in non-surplus Class I and II usage there is less than 16.5% in class III quota milk; and

(b) when production of utilization of quota milk for non-surplus Class I and Class II usage quota milk has increased from two years prior to the preceding year. ~~(w~~ When a negative figure results, there will be no readjustment).

(4) When the statewide quota system needs additional quota added to meet market needs, the bureau administrator must shall calculate on or before the first day of April each year the additional quota to be assigned to each eligible producer and new eligible producer in accordance with the following computations:

(a) For application of (3)(a), using the preceding calendar year (January 1 through December 31), the total non-surplus Class I and Class II usage class III quota milk is divided by the total quota pounds to determine the percentage of class III quota milk utilized in non-surplus Class I and II usage.

(b) For application of (3)(b), using the preceding calendar year (January 1 through December 31), compute the total pounds of non-surplus Class I and Class II usage quota milk from all pool plants and subtract the total pounds of non-surplus Class I and II usage in the calendar year prior to the preceding calendar year the results obtained from (4) (a).

(c) If the percentage in (4)(a) exceeds 83.5%, T take the positive figure resulting from the computation in (4)(b) and divide it by the total days in the year to determine how many pounds of quota will be issued into the statewide quota system.

(d) The resulting pounds in (4)(c) must shall be prorated to all eligible producers and new eligible producers on the basis of their average daily marketing of milk to all pool plants during the preceding months of September through December and assigned to them as quota effective on May 1st 1.

~~(5) Any affected party, not satisfied with the outcome of this rule, may petition the Board of Milk Control for a hearing.~~

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

REASON: The board proposes to amend the above-stated rule because implementation of the proposed definition for "classes of utilization" would result in milk used to supply out-of-state markets to be classified as a Class I utilization. If this rule is not amended, additional quota could be issued without an increase in Montana's market needs. The proposed amendments that include new eligible producers coordinate with the proposed ARM 32.24.503(2). The board proposes to eliminate (5) because the provision would be addressed in the proposed ARM 32.24.507.

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 consists of at least five members, each of whom is a pool producer ~~dairyman~~ who produced pool milk during the month prior to the meeting. The producer committee must have an odd number of members.

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

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

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

(i) A committee member must be appointed from the pool producers ~~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 producers ~~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 producers ~~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 producers ~~dairymen~~ delivering to each pool plant.

(iii) If the number of pool producers ~~dairymen~~ applying to represent the pool producers ~~dairymen~~ delivering to a pool plant is less than the calculated allotment of producer committee members representing pool producers ~~dairymen~~ delivering to that pool plant, or if no pool producer ~~dairyman~~ delivering to the pool plant applies to serve on the producer committee, the board ~~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 ~~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 ~~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.

(4) A representative of the bureau ~~Milk Control Bureau~~ will attend, participate, and maintain a record of each producer committee meeting. The representative of

the ~~bureau Milk Control Bureau~~ will not have a vote in any decision of the producer committee.

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

(6) Producer committee meetings will be held after reasonable notice has been given to each committee member, the ~~bureau Milk Control Bureau~~, and each manager of a pool plant or the designated representative.

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

(8) Committee members will be compensated by the ~~bureau 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 update the terminology of the rule.

32.24.507 REQUEST FOR REVIEW, ~~HARDSHIP, AND APPEALS~~
PERTAINING TO QUOTA ~~(1) After quotas are first issued under this plan and after quotas are issued under each succeeding quota readjustment, any eligible producer may request review from the producer committee on the following grounds:~~

- ~~(a) he was not issued a quota;~~
- ~~(b) his production history quota is not appropriate because of unusual conditions during the base earning period, such as loss of buildings, herds, or other facilities as the result of fire, floods, storms, official quarantine, disease, pesticide residue or condemnation of milk;~~
- ~~(c) he lost or might lose quota because justifiably or excusably off market for 90 or more consecutive days;~~
- ~~(d) he lost or might lose quota because of under delivery; or~~
- ~~(e) inability to transfer quota.~~

~~(2) Hardship is defined as an act of nature such as fire, flood, or detrimental health of an eligible producer.~~

- ~~(a) Terminally ill or progressive degenerative illness or permanent disability may be used as grounds for hardship consideration.~~
- ~~(b) Loss of milk production due to inability to obtain adequate labor to maintain milk production will not be considered a ground for hardship adjustment.~~

~~(3) A producer may make a request for review, which shall be filed with the Milk Control Bureau (who will then forward the request to the producer committee and the Board of Milk Control) not later than 45 days after notice of the quota issued, or not later than 45 days after the occurrence of the alleged hardship. The request shall set forth:~~

- ~~(a) the conditions that caused the alleged hardship or inequity;~~
- ~~(b) the extent of relief or adjustment requested;~~

~~(c) the basis upon which the amount of relief or adjustment requested should be computed; and~~

~~(d) the reasons why relief or adjustment should be granted.~~

(1) After quota is reassigned or readjusted as provided for in ARM 32.24.505, any eligible producer may request review from the producer committee on the grounds that the eligible producer's production history is not appropriate because of unusual conditions during the production measurement period used to prorate reassigned or readjusted quota, such as loss of buildings, herds, or other facilities as the result of fire, floods, storms, official quarantine, disease, pesticide residue or condemnation of milk.

(2) A producer may request review from the producer committee to consider whether the producer should be an eligible producer even though, because of hardship, the producer failed or will fail to deliver milk to a pool plant for 90 consecutive days.

(3) A producer may make a request for review of quota ownership not later than 45 days after the notice of change in quota balance or after the occurrence of the alleged hardship. The request must be filed with the bureau, who will forward the request to the producer committee. The request must set forth:

(a) the conditions that caused the alleged inappropriate production history under (1) or hardship under (2);

(b) the extent of relief or adjustment requested;

(c) the basis upon which the amount of relief or adjustment requested should be computed; and

(d) the reasons why relief or adjustment should be granted.

(4) With respect for a producer's request for review of production history, quota, forfeiture of quota, or other related problems, the producer committee may grant or adjust production history quota on average daily producer milk deliveries for the production measurement period in question ~~prior years where it appears appropriate~~, delay forfeiture of quota, or restore forfeited quota ~~or reduce average daily producer milk deliveries where appropriate.~~

(5) Producer committee decisions are ~~shall be final~~ subject to appeal to the board ~~Board of Milk Control~~.

(a) A producer may ~~shall~~ file a notice of appeal to the board within 15 days after written notification of the decision of the producer committee.

(b) In the event that an action by the producer committee is in violation of the administrative rules plan, the bureau administrator must ~~shall~~ bring it to the attention of the aggrieved party.

(6) The board ~~Board of Milk Control~~ shall must hear an appeal at their next scheduled regular board meeting or within 90 days of when the bureau received the appeal ~~its filing at the bureau's office.~~

(7) ~~When an aggrieved person files an appeal to the Board of Milk Control from a decision of the producer committee, the~~ An appeal will be heard as follows:

(a) The aggrieved party will be given the opportunity to make an oral presentation and submit written justification in support of reversal or modification of the producer committee's decision.

(b) Members of the producer committee will be given the opportunity to make an oral presentation and submit written material in opposition to reversal or modification of the producer committee's decision.

(c) The decision of the board ~~Board of Milk Control~~ will be based on the record of the producer committee review hearing as supplemented by oral argument and written submissions to the board. However, the appeal to hearing ~~before the board~~ will not be a trial de novo. New material that could not reasonably be submitted to the producer committee will be accepted if it relates to the grounds set forth in (8) ~~hereof~~.

(8) In ruling on the appeal from the producer committee's decision the board ~~Board of Milk Control~~ will not overrule or modify the decision of the producer committee unless:

(a) there was collusion affecting the producer committee's decision;

(b) the board ~~Board of Milk Control~~ determines that actual bias or prejudice on the part of one or more producer committee members affected the decision;

(c) the producer committee's decision was the result of an incorrect interpretation of a statute or rule applicable to the decision; or

(d) the producer committee's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

(9) On review of a producer committee's decision, the board ~~Board of Milk Control~~ must ~~shall~~ not substitute its judgment (second guess) for that of the producer committee as to the weight of the evidence on question of fact.

(10) An appeal that the board ~~Board of Milk Control~~ overturns (the producer committee's decision) is final and does not have to be approved by the producer committee. The board ~~Board of Milk Control~~ will instruct the bureau administrator how to make equitable remedy ~~handle the transaction~~.

(11) The bureau administrator must ~~shall~~ maintain records of all requests for review made to ~~of~~ the producer committee and the disposition thereof. Such files must ~~shall~~ be open for inspection by any interested persons during the regular office hours of the bureau ~~Montana Milk Control Bureau~~.

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

REASON: The board proposes the amendments to coordinate with the proposed definition of "hardship" in New Rule II; update terminology; eliminate provisions that are historic and no longer applicable; eliminate vague language; and clearly identify the three situations that would allow for a request of review of quota ownership to be made by a producer to the producer committee.

32.24.512 REPORTS AND RECORDS (1) All milk and its component quantities of skim milk and butterfat received by pool handlers will be classified for the purpose of establishing compliance with minimum producer prices. For the purpose of determining the audit value of milk delivered to a plant under 81-23-302, MCA, all butterfat and skim milk received from pool producers is considered to be utilized by the plant in either Class I, II, or III as indicated by plant processing and sales records.

(2) ~~(4)~~ On or before the eighth business day after the end of each month, each pool handler ~~shall~~ must report for such months, to the bureau administrator with respect to the pool plant(s) operated by such handler, and ~~or~~ for all pool milk marketed to nonpool plants, on forms provided by the bureau administrator, the following:

(a) the quantities and butterfat content of milk received or marketed from the farms of pool producers ~~dairymen~~ during the month, the location of the pool plant where the milk was first received, and the pounds thereof which qualified as quota milk;

(b) the quantities and butterfat and skim milk contents of milk and fluid milk products received from other pool plants during the month ~~together with the classification of such products as agreed upon with the operator of the pool plant from which received, provided that if a classification is not agreed upon, such milk shall be assigned to class III, to the extent such use is available, and thereafter in sequence to class II and class I;~~

(c) the quantities and butterfat and skim milk content of any other receipts of nonpool milk, the pounds and butterfat and skim milk content of all other dairy products received during the month (except nonfluid milk products disposed of in the form in which received without further processing);

(d) the quantities and butterfat and skim milk content of all inventories of milk and other dairy products on hand in the pool plant at the beginning of the month;

(e) the quantities and butterfat and skim milk content of all milk and milk products disposed of from the pool plant during the month organized by classes of utilization, and in the case of any such products transferred in fluid form to the pool plants of other pool handlers, the quantities and butterfat and skim milk content transferred to another pool plant ~~classification of such products as agreed upon with the operator of the other pool plants, provided that if no agreement is reached, a classification shall be assigned in accordance with (1)(b) hereof;~~

(f) the quantities and butterfat and skim milk content of all milk and other dairy products utilized in the processing or manufacturing of dairy products in the pool plant during the month, together with the same information for the products produced;

(g) the disposition made of any pool milk marketed by the pool handler during the month ~~that which~~ was not received at ~~his a~~ a pool plant(s), and the utilization made of such milk organized by classes of utilization;

(h) the quantities together with the butterfat and skim milk content of inventories of all milk and dairy products on hand in the pool plant at the end of the month:-

(i) out-of-state sales (packaged and bulk) showing the quantities and butterfat and skim milk content, organized by the classes of utilization, and showing information necessary to calculate adjustments to the pool handler's utilization value described in ARM 32.24.523 for the sale of surplus milk;

(j) the weight of milk and the transportation charges for shipments of unprocessed pool milk between plants marketed pursuant to ARM 32.24.524; and

(k) list of producers who have gone out of business during the preceding month.

~~(2) Each producer handler shall report to the administrator complete information with respect to his receipt or purchase of milk and dairy products during the month, and the disposition of use thereof. Such report shall be made at the times and in such manner as may be required by the administrator, and the producer handler shall maintain records of his operations as required under the rules of the Milk Control Bureau, and present them for audit by the pool administrator when so requested by him.~~

(3) Each pool handler must ~~shall~~ maintain complete records and accounts of all pool milk received or marketed, and all other milk and dairy products received at each of his pool plants, and the use or disposition of such milk and dairy products for each month together with payments received or made therefore, and must ~~shall~~ retain records of the foregoing transactions and other records as required under the rules of the bureau ~~Milk Control Bureau~~ and present them for audit by the bureau ~~administrator~~ upon request as required by him.

(4) When payments to a pool producer are based upon butterfat tests from composite samples, a portion of each composite sample must be retained until the succeeding composite sample is tested.

(5) Each pool handler must maintain a record of butterfat tests of each pool producer's milk covering each pay period and provide each pool producer with each butterfat test result for each receipt of milk from the pool producer. The records must be kept on file for two years and be made available to any authorized agent of the bureau upon request.

(6) The operator of the plant at the Montana State Prison is subject to all records and reporting requirements of this rule for milk utilized at the plant, regardless of whether the plant is a pool plant or whether the plant utilizes pool milk.

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

REASON: The board proposes to amend the above-stated rule to coordinate with the proposed repeal of Chapter 23 and reorganization of Chapter 24.

- The proposed (1) combines the substance of the current ARM 32.23.102(6) and (12).
- The current (1) is proposed to be renumbered (2) and is proposed to be amended to include the following changes of significance.
 - The proposed (2)(b) and (2)(e) would eliminate provisions that allow pool plants to classify utilization in a manner other than actual utilization. The current provisions conflict with provisions in the existing and proposed ARM 32.24.525.
 - The proposed (2)(i) and (2)(k) would provide for reporting requirements that are in the current ARM 32.23.102(8)(a) and (8)(b), respectively.
 - The proposed (2)(j) requires pool handlers to report information needed to adjust a pool handler's utilization value for transportation charges of shipments of unprocessed pool milk between pool plants. The adjustment is provided for in the proposed ARM 32.24.513(1)(b).

- The proposed amendment would strike (2) of the current rule; this provision is included in the proposed New Rule III(5) which would replace the term "producer handler" with "producer-distributor."
- The proposed (4) and (5) would provide for reporting requirements for pool handlers that are in the current ARM 32.23.102(3) and (4), respectively.
- The proposed (6) would establish that the Montana State Prison is subject to the same records and reporting requirements as pool handlers. The proposed provision is necessary to coordinate with proposed amendments to ARM 32.24.502 to provide for the continuation of the practice of including the utilization value of the Montana State Prison plant in the pool utilization value, even though the prison plant is not a pool plant.

32.24.513 COMPUTATION OF THE PRICE FOR QUOTA PRICE MILK AND EXCESS PRICE TO BE PAID TO POOL PRODUCERS FOR POOL MILK (1) On or before the 12th day of each month, or the first business day thereafter, the bureau will administrator shall compute a quota price and an excess price for the preceding month as follows:

(a) Calculate the utilization value of ~~Combine the figures for~~ butterfat and skim usage ~~by class of pool producers' milk for all pool handlers and for milk processed at the Montana State Prison plant~~ to determine a total dollar amount for butterfat and skim respectively.

(b) ~~Add or deduct any all adjustments for surplus sales described in ARM 32.24.523 and deduct transportation charges for shipments of unprocessed pool milk between pool plants described in ARM 32.24.524 from the increased value received or transportation/handling charges accrued to surplus/excess milk (per ARM 32.24.516) to the appropriate butterfat and/or skim totals derived in (1)(a).~~

(c) ~~To the skim total in (1)(b) add~~ Add one-half of the balance of the pool settlement fund to the skim total derived in (1)(b) settlement reserve and deduct an amount equal to 12 cents per hundredweight of quota milk received by pool handlers.

(d) Divide the skim dollar amount derived in (1)(c) by the total skim pounds to determine a poolwide value per skim pound. Similarly, divide the butterfat dollar amount derived in (1)(a)(b) by the total butterfat pounds to determine a poolwide value per butterfat pound.

(e) The quota price at 3.5% test will be \$1.50 per hundredweight higher than the price for excess milk. The \$1.50 per hundredweight differential will be split proportionately between butterfat and skim.

(f) To calculate the quota price, divide the excess pounds by total producer pounds. Multiply the resultant percentage by the differential in (1)(e) converted to dollars per pound and add the amount so derived proportionately to the butterfat and skim components of the poolwide prices in (1)(d). This skim price per pound ~~in (1)(d)~~ multiplied by 96.5 pounds added to this the butterfat price per pound ~~in (1)(d)~~ multiplied by 3.5 pounds will result in the quota price per hundredweight at 3.5% butterfat for the month.

(g) To calculate the excess price, subtract the butterfat and skim proportions of the differential in (1)(e)(f) converted to dollars per pound from the quota components in (1)(f)(g) and add these negative amounts to the butterfat and skim

components of the poolwide prices in (1)(d). The skim figure so derived multiplied by 96.5 pounds added to the butterfat figure so derived multiplied by 3.5 pounds will result in the excess price per hundredweight at 3.5% butterfat for the month.

(2) The bureau administrator will shall announce to all interested persons on or before the 13th day of each month, or the first business day thereafter, the quota price and excess prices per hundredweight for milk testing 3.5% butterfat, the quota butterfat price and excess butterfat price per pound, and the quota skim price and excess skim price per pound as computed pursuant to (1)(f) and (1)(g), ~~and a butterfat price for quota and excess milk as provided for producer milk under ARM 32.24.301 to adjust for differences in butterfat content of the milk.~~

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

REASON: The board proposes to amend the above-stated rule to: clarify the computation of the price for quota milk and excess milk; include the utilization value of milk processed at the Montana State Prison in the computation of pool utilization value; eliminate and replace language that refers to ARM 32.24.516, which is proposed to be repealed; and eliminate the provision in (1)(b) that adjusts the butterfat utilization value calculated in (1)(a), since in practice adjustments have not been made to the butterfat utilization value.

The proposed amendment in (1)(a) is necessary to coordinate with proposed amendments to ARM 32.24.502 and to provide for the continuation of the practice of including the utilization value of the Montana State Prison plant in the pool utilization value, even though the prison plant is not a pool plant.

32.24.514 PROCEDURES FOR POOLING OF RETURNS FROM POOL MILK

~~(1) As soon as possible after completing the computation of the quota and excess prices the administrator shall:~~

~~(a) compute the net pool obligation of each pool handler by subtracting from his utilization value the amount of money due pool dairymen from such pool handler, based on the quota and excess prices for milk as adjusted for the butterfat test thereof, and other charges as required or permitted under the rules of the Milk Control Bureau;~~

~~(b) on or before the 13th day of the month provide written notice to each pool handler of the price and butterfat differential for quota and excess milk for the preceding month, the pool handler's utilization value, and the minimum amount owed pool dairymen for pool milk received or marketed;~~

~~(c) on or before the 13th day of the month, notify each pool handler of the amount if any by which his utilization value for the preceding month exceeds the amount due pool dairymen with respect to the pool handler's pool milk, based on the appropriate quota and excess prices. The amount of such difference must then be paid by such pool handler to the administrator on or before the 15th day of the month, or the first business day thereafter, for deposit into the pool settlement reserve. Any amount due that is not received by the administrator by the 25th of the month will have a late charge or an interest charge of 1.5% automatically attached~~

~~each month the payment is not made. For purposes of calculating the interest, the 1.5% charge will be added to the unpaid balance each month.~~

~~(d) pay to each pool handler on or before the 14th day of the month or as soon as funds are available, any sum by which the pool handler's utilization value for the preceding month is less than the amount due those from whom he received pool milk during the preceding month, based on the quota and excess prices as adjusted for the butterfat content of such pool milk.~~

(1) On or before the 13th day of the month, the bureau will provide notice to each pool handler of:

(a) the minimum prices to be paid to pool producers for quota and excess milk received in the preceding month;

(b) the minimum amount owed by each pool handler to each pool producer for milk received in the preceding month, net of audit adjustments or any other adjustments prescribed by the bureau, but before addition of premiums and authorized deductions by the pool handler;

(c) the purchase price for pool milk sold between pool plants pursuant to ARM 32.24.524;

(d) the total amount each pool handler owes pool producers;

(e) the total amount of each pool handler's utilization value for pool milk received or marketed in the preceding month, net of adjustments for sales of surplus milk described in ARM 32.24.523 and transportation charges for shipments of unprocessed pool milk between pool plants pursuant to ARM 32.24.524; and

(f) the net amount that each pool handler owes the pool settlement fund. The net amount that each pool handler owes the pool settlement fund is the amount in (e) less the amount in (d) plus audit adjustments or any other adjustments prescribed by the bureau.

(2) For any pool handler, if the amount calculated in (1)(f) is a negative number, the bureau will pay the pool handler that amount from the pool settlement fund within two business days of the written notice required by (1) or as soon as funds are available if the balance of the pool settlement fund is insufficient.

(3) For any pool handler, if the amount calculated in (1)(f) is a positive number, the pool handler must pay that amount to the bureau by the 25th of the month. The bureau will deposit the amount into the pool settlement fund.

(4) The amounts calculated for (1)(f) of pool handlers affiliated by common ownership may be combined for purposes of determining payments in (2) and (3).

(5) The bureau will report applicable information described in (1) through (4) to the operator of the plant at the Montana State Prison, regardless of whether the plant is a pool plant or whether the plant utilizes pool milk.

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

REASON: The board proposes to amend the above-stated rule to clarify the reporting requirements of the bureau following pooling calculations and specify how amounts pool handlers owe the pool settlement fund are calculated when the producer committee directs the marketing of surplus milk sold in bulk.

The proposed (5) is necessary to coordinate with proposed amendments to ARM 32.24.502 and ARM 32.24.513 and to provide for the continuation of the practice of including the utilization value of the Montana State Prison plant in the pool utilization value and to treat the plant as a pool plant for pooling purposes, even though the prison plant is not a pool plant.

32.24.515 PAYMENTS TO POOL PRODUCERS DAIRYMEN AND ADJUSTMENT OF ACCOUNTS

(1) Each pool producer dairyman must be paid twice each month by the appropriate pool handler(s) for the pool milk received or marketed from such pool producer dairyman during the month as follows:

(a) A partial or advance payment approximately equal to the value of the pool milk marketed during the first two weeks of the month, less one-half of the approximate monthly deductions ~~herein sanctioned~~, must be paid to the pool producer dairyman, or the pool producer's his authorized agent, not later than 30 days after the first day of each month. Such payment need not be accompanied by an itemized statement.

(b) Payments must be made to each pool producer dairyman, or the pool producer's his authorized agent, not later than 15 days after the end of the month ~~for that the pool producer's milk was received of such pool dairyman for such month~~. This payment must be based on at the appropriate quota price and/or excess price as adjusted for the weighted average butterfat content ~~(the rate of such adjustment to be based on the weighted average value of butterfat in the different classes of utilization)~~, and subject to deductions for partial payments under (1)(a) ~~hereof~~, ~~administrative assessments, hauling and other~~ and deductions authorized under (1)(c) ARM 32.23.102(3), and if The payment must be accompanied by a statement to each pool producer dairyman setting forth the information required in (1)(d) ARM 32.23.102(10).

~~(c) As soon as possible after each monthly computation of quota and excess prices is completed, the administrator must audit the books and records of each pool handler, and determine whether there have been proper accounting for and payment of the amount owed the administrator and/or individual pool dairyman, or cooperative associations from whom the pool handler has received pool milk. If errors are found in the accounting or payments of the pool handler, the administrator must notify him thereof promptly, and if there were underpayments by the pool handler, the additional amounts due must be paid within 10 days after notice thereof is given. Money paid to adjust for underpayments to the administrator must be deposited into the pool settlement reserve. In the case of overpayments by a pool handler to the administrator, the administrator must promptly remit the amount due to such pool handler.~~

(c) Deductions of any kind (other than assessments that are required under 81-23-105 and 81-23-202, MCA, license fees, mandatory assessments, hauling fees, advance payments made pursuant to this section, and audit adjustments) from payments due a pool producer may be made only upon written authorization from a pool producer, or, in the case where a pool producer is a member of a cooperative, upon formal resolution of the cooperative directors at a regular business meeting. A copy of the authorization must be retained by the pool handler as part of its permanent records.

(d) Payments provided for in this section must be accompanied by a statement to each pool producer showing each of the following items for the prior month:

(i) name and address of the pool handler issuing the statement;

(ii) date of statement;

(iii) period for which the statement is rendered;

(iv) name of the pool producer for whom the statement is intended;

(v) the date, weight, and butterfat test result for each receipt of milk during the month;

(vi) the total pounds of milk and weighted average butterfat test of milk received from the pool producer for the month for which the statement is rendered;

(vii) weight of milk, butterfat, and skim received that is within the pool producer's quota;

(viii) weight of milk, butterfat, and skim received that is in excess of the pool producer's quota;

(ix) quota butterfat price (to seven decimal places) and quota skim price (to seven decimal places);

(x) excess butterfat price (to seven decimal places) and excess skim price (to seven decimal places);

(xi) minimum payment required by the bureau for quota and excess milk received;

(xii) amounts paid as premiums or bonuses;

(xiii) itemization of deductions for advance payments, hauling, assessments, licenses, and authorized deductions;

(xiv) total deductions;

(xv) audit adjustments; and

(xvi) net amount due and paid.

(e) On or before the 15th day of each month, each pool handler must submit to the bureau a copy of the statements described in (1)(d) that were provided to each pool producer for the prior month's receipts.

(2) The bureau will periodically audit the books and records of pool handlers to verify the utilization of all milk reported pursuant to ARM 32.24.512. The audits may examine whether there has been proper accounting for and payment of the amount owed to individual pool producers from whom the pool handler received milk. Audits may also examine whether correct payment has occurred for amounts owed between each pool handler and the pool settlement fund and amounts owed between pool handlers for sales of milk between pool handlers.

(a) Upon completion of each audit, the bureau will furnish each pool handler with an audit summary, commentary regarding audit findings, and prescribed adjustments, if any, for each month audited.

(b) Within ten business days of the date the bureau sent the audit summary to the pool handler, the pool handler must communicate in writing to the bureau any disagreement with the audit findings or prescribed adjustments.

(c) Audit adjustments will be incorporated into the following month's pooling process if no disagreements are communicated during the review period or if all disagreements or inquiries are resolved.

(d) If the audit determines that pool producers were overpaid, pool handlers may elect to spread the prescribed audit adjustments over the following three months through deductions to the final payments for those months.

(e) If a pool handler communicates in writing to the bureau as provided in (2)(b), the review period will be extended while the bureau considers the pool handler's objections. Within ten days after the bureau sends notice to the pool handler of its decision, the pool handler may file written application for appearance before the board to review the decision of the bureau. Audit adjustments will be stayed until the review by the board is completed. After review, the board will issue an order resolving the disagreement.

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

REASON: The board proposes to amend the above-stated rule to coordinate with the proposed repeal of Chapter 23 and reorganization of Chapter 24.

- The proposed (1)(c) would require written authorization of deductions not specified in the rule, a provision in the current ARM 32.23.102(2).
- The proposed (1)(d) would require pool handlers to send monthly statements to pool producers with final payments. This is currently required in ARM 32.23.102(7).
- The proposed (1)(e) would require pool handlers to send the bureau copies of the producer statements provided for in (1)(d). This is currently required in ARM 32.23.102(9).
- The proposed (2) addresses auditing of pool handlers' books and records, replacing the current (1)(c). The proposed amendments include some provisions from ARM 32.23.102(11), update due process for pool handlers, and establish a ten-day deadline to file for board review of bureau audit findings and adjustments.

32.24.523 MARKETING OF SURPLUS MILK TO NONPOOL HANDLERS

~~(1) All surplus milk not directed to other pool handlers for use in Montana class I and II sales as required by this subchapter shall be marketed and sold in an economically advantageous manner and any gain or loss shall be exclusively shared by all Montana pool dairymen.~~

~~(a) The surplus milk purchased by Montana pool handlers for out-of-state use, but processed in Montana, shall be treated the same as sales to nonpool handlers such as to a cheese plant.~~

~~(2) The pool dairymen, acting through the producer committee, shall retain the right to control and direct the marketing of the surplus milk.~~

~~(3) Unless directed otherwise by the producer committee or until a pool handler declines to perform the service, all surplus milk will be marketed and sold directly by the pool handlers in possession of that surplus milk under such direction, supervision, and approval as the producer committee in its discretion may elect to employ.~~

~~(a) In the event the producer committee markets the milk directly, it shall have the authority to hire such agents and incur such other expenses as necessary to fulfill that function.~~

~~(4) All proceeds received from the sale of surplus milk shall be deposited in the pool settlement reserve less the following deductions which shall be retained by the pool handler:~~

~~(a) the amount for which the pool handler is obligated to account to the pool settlement reserve based on the Montana class III minimum producer price;~~
~~(b) an administrative fee not exceeding \$.02/CWT; and~~
~~(c) reasonable transportation expenses actually incurred by the pool handler. No farm pickup charges will be included as deductions. Farm pickup charges are the usual charges to the producer for transporting milk to the pool plant.~~

~~(5) The amounts paid into the pool settlement reserve account shall include all valuable consideration paid in any form and shall be accompanied by such reporting forms, invoices, contracts, and other documentation as may be requested by the Milk Control Bureau.~~

(1) Surplus milk must be marketed and sold in a manner that is economically advantageous to pool producers, with all gain or loss shared by all pool producers.

(2) All surplus milk sold in bulk will be marketed and sold directly by pool handlers unless directed otherwise by the producer committee or unless a pool handler declines to perform the service.

(a) A pool handler must provide 90 days written notice to the producer committee prior to declining to market surplus milk in bulk.

(b) The producer committee retains the right to supervise, approve, control, or direct the marketing of the surplus milk sold in bulk.

(i) After receiving approval from the board, the producer committee must provide the affected pool handler 90 days written notice before controlling and directing marketing of surplus milk sold in bulk.

(ii) In the event the producer committee directs the marketing of surplus milk sold in bulk, it may hire agents and incur other expenses as necessary to fulfill that function.

(3) All proceeds received by a pool handler from the surplus milk sold in bulk:

(a) must be added to the utilization value that the pool handler owes the pool settlement fund, less the following deductions:

(i) the amount for which the pool handler owes or has paid the pool settlement fund based on the class of utilization for the sale;

(ii) an optional administrative fee not exceeding \$0.02/cwt; and

(iii) reasonable transportation expenses incurred by the pool handler, which may not include farm pickup charges; and

(b) includes all valuable consideration paid in any form and must be documented by reporting forms, invoices, contracts, and other evidence as may be requested by the bureau.

(4) A pool handler may request negative adjustments to the utilization value that the pool handler owes the pool settlement fund for sales of Class I packaged products that are surplus milk. Negative adjustments offset the costs associated with processing and marketing surplus milk that otherwise would have been

marketed and sold in a manner that is less economically advantageous to the pool producers.

(a) Negative adjustments may be allocated to sales in individual states or groups of states in any manner as long as the aggregate of the adjustments does not exceed the sum of maximum adjustments allowed. Negative adjustments may be allocated in any manner between pool handlers affiliated by common ownership.

(b) Adjustments are calculated on the net export weight of Class I packaged products that are surplus milk, as determined by the bureau.

(c) The maximum negative adjustment for the net export weight of Class I packaged products that are surplus milk sold to markets in states contiguous to Montana is \$2.55/cwt.

(d) The maximum negative adjustment for the net export weight of Class I packaged products that are surplus milk sold to markets in states not contiguous to Montana is \$3.05/cwt.

(5) When the producer committee directs the marketing of surplus milk sold in bulk, the following will occur:

(a) All proceeds received by the producer committee from the sale of surplus milk sold in bulk must be deposited in the pool settlement fund.

(b) All proceeds received include all valuable consideration paid in any form and must be documented by reporting forms, invoices, contracts, and other evidence as may be requested by the bureau.

(c) All expenses incurred by the producer committee to market the surplus milk sold in bulk must be paid from the pool settlement fund. All expenses must be documented by reporting forms, invoices, contracts, and other evidence as may be requested by the bureau.

(d) Before the 8th day of the month after related sales, the producer committee must communicate the following information to the pool handler that would have otherwise marketed the surplus milk:

(i) If unknown to the pool handler, the identity of pool dairies whose milk was utilized for the surplus milk bulk sales and the quantities and butterfat and skim milk content of milk utilized from each pool dairy.

(ii) The total quantities and butterfat and skim milk content of surplus milk sold in bulk and the classes of utilization.

(e) The pool handler that would have otherwise marketed the surplus milk must include the information reported in (d) in the reports it is required to file with the bureau.

(f) For purposes of calculating the quota price and excess price in ARM 32.24.513, all proceeds received by the producer committee must be added to the utilization value, less the following deductions:

(i) the amount for which the pool handler has paid the pool settlement fund based on the class of utilization for the sale or the amount owed by the pool handler if proceeds are received by the producer committee in the same month as the sale;

(ii) reasonable transportation expenses incurred by the pool handler. Farm pickup charges may not be included as deductions. Farm pickup charges are the usual charges to the producer for transporting milk to the pool plant; and

(iii) expenses incurred by the producer committee to market the surplus milk sold in bulk.

(g) Following the deposit of proceeds received by the producer committee, the amount that the pool handler owes to the pool settlement fund for utilization of pool milk will be reduced by the following:

(i) reasonable transportation expenses incurred by the pool handler, which may not include farm pickup charges; and

(ii) the amount the pool handler:

(A) paid the pool settlement fund based on the class of utilization for the sale;

or

(B) would have owed to the pool settlement fund based on the class of utilization for the sale, if proceeds are received by the producer committee in the same month as the sale.

AUTH: 81-23-104, MCA

IMP: 81-23-103, 81-23-302, MCA

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

- specify that all surplus milk sold must be marketed and sold in a manner that is economically advantageous to pool producers;
- limit the producer committee's right to market surplus milk to marketing of surplus milk sold in bulk;
- provide for 90-day notice period for producer committee to take over marketing of surplus milk sold in bulk;
- provide for 90-day notice period for pool handlers to decline to market surplus milk sold in bulk, turning that responsibility over to the producer committee;
- establish surplus sales adjustments (to the utilization value that a pool handler owes the pool settlement fund) separately for pool handler's sales of surplus milk sold in bulk form and sales of surplus milk sold as Class I packaged milk; and
- establish process and necessary adjustments for when the producer committee markets surplus milk sold in bulk form.

32.24.524 REQUIRED UTILIZATION OF SURPLUS MILK SOURCED FROM

MONTANA DAIRIES ~~(1) Any pool handlers with surplus milk shall first make that milk available to other pool handlers under the terms and conditions provided in subchapter 5 before disposing of that surplus milk to any nonpool handler.~~

~~(2) Any pool handlers without raw milk sufficient to satisfy their Montana class I and II market needs shall first utilize surplus milk available from other pool handlers under the terms and conditions provided in subchapter 5 before purchasing milk from other sources.~~

(1) Any plant operated by a pool handler with milk in excess of that plant's processing needs must first make that milk available to other pool handlers under the terms and conditions in ARM 32.24.525 before disposing of that milk as surplus milk.

(2) Any plant operated by a pool handler without milk sufficient to satisfy its non-surplus processing needs must first utilize milk available from other pool

handlers under the terms and conditions in ARM 32.24.525 before purchasing milk from other sources.

AUTH: 81-23-104, 81-23-302, MCA
IMP: 81-23-103, 81-23-302, MCA

REASON: The board proposes to amend the above-stated rule to more clearly implement 81-23-302(10), MCA, which requires distributors with processing facilities in Montana to source milk from Montana dairies, if available at the price set by the board. Language changes for the rule are proposed to coordinate with the proposed definition of surplus in New Rule II.

32.24.525 PROCEDURES, PURCHASE PRICE, AND TERMS FOR INTERPLANT SALES BETWEEN POOL HANDLERS (1) ~~The Milk Control Bureau shall have full authority to direct the transfer of surplus milk as necessary to implement ARM 32.24.524. Any pool handler shall be deemed in compliance with the requirements of ARM 32.24.524 if it calls for surplus milk or makes surplus milk available in the following manner:~~

~~(a) On Wednesday of the preceding week, a pool handler in need of milk may telephone or fax its milk needs for the coming week to a pool handler reasonably believed to have surplus milk and that pool handler shall fax its confirmation or rejection of the order back by Friday of that same week.~~

~~(b) Unless otherwise agreed, delivery to the purchasing pool handler shall be the responsibility of the selling pool handler.~~

~~(c) The Milk Control Bureau shall have the authority to issue alternative or additional procedures as necessary to implement this provision.~~

~~(2) The purchase price at which a pool handler must make surplus milk available and at which a pool handler must purchase surplus milk shall be as follows:~~

~~(a) The price per hundredweight of the raw Montana milk shall be based on the usage by class of the purchasing pool handler for such milk. The listed prices for butterfat and skim by class for the month in which such surplus milk is shipped will be used to calculate its value.~~

~~(b) Since the usage is not known until the next month after the applicable sale(s) has taken place, the most recent month's quota price will be used. Once the Milk Control Bureau has calculated usage and pricing for the month in which the sale(s) took place, the bureau will adjust the raw milk pricing to reflect the proper price. This information will be provided to the selling and purchasing pool handlers, and it will be their responsibility to make the appropriate invoice and payment adjustments.~~

~~(c) No premiums, hauling, or handling fees will be charged to the purchasing pool handler.~~

~~(3) Pool handlers will use the following method and manner of payment between them for surplus milk purchases:~~

~~(a) A pool handler who purchases surplus milk agrees to pay in cash the purchase price for all milk delivered on a weekly basis. All milk purchased each~~

weekly period shall be paid for in full on the Friday of the following week by depositing payment in the United States mail.

(b) The selling handler will fax invoices of the surplus milk sales to the purchasing handler and the Milk Control Bureau. These invoices will include:

(i) weights and butterfat tests; those weights and butterfat tests will be deemed accurate unless contested by the purchaser; and

(ii) butterfat and skim prices based on the most recently available quota price for each component.

(c) The purchasing handler will then mail payment directly to the seller, with a copy of payment faxed to the Milk Control Bureau.

(d) In turn, the Milk Control Bureau will compile the invoices and record of payments, monitoring them for accuracy. In the event of an error, the bureau will immediately fax this information to both purchasing and selling handlers. At the end of the month, once usage and actual pricing are known, the bureau will fax a statement to both the selling and purchasing handlers, reflecting the calculations outlined in (2) (b).

(e) Per ARM 32.24.516(1), any freight costs incurred by the selling pool handler in shipment of this surplus milk may be deducted from that handler's pool account. It is the responsibility of the selling pool handler to provide this information to the Milk Control Bureau no later than the eighth business day of the month following shipment of such milk.

(4) All surplus milk purchased and sold hereunder must, at the time of delivery, meet all applicable local, state, and federal laws and regulations and any tendered surplus milk which does not meet such standards may be rejected.

(5) The weight and butterfat tests shall be determined on the basis of producer ticket weights and tests. If the purchasing pool handler contests the reported weights it shall notify the Milk Control Bureau, which shall reconcile any discrepancies.

(6) No pool handler shall be obligated to make surplus milk available to any other pool handler who is then in default on payment for any previous purchases of surplus milk. Any pool handler who makes surplus milk available and who has not been paid for that milk because of default in payment by the purchasing pool handler shall retain a direct right of action against the defaulting pool handler for the monies owed together with interest at the rate of 1.5% per month plus attorney's fees and costs.

(1) A pool handler is in compliance with the requirements of ARM 32.24.524 if it calls for milk or makes milk available in the following manner:

(a) On Wednesday of the preceding week, a requesting pool handler in need of milk may communicate its milk needs for the coming week to a pool handler reasonably believed to have milk. The solicited pool handler must communicate its confirmation or rejection of the order back by Friday of that same week.

(b) Delivery to the requesting pool handler is the responsibility of the solicited pool handler.

(c) No pool handler is obligated to make milk available to any other pool handler who is then in default on payment for any previous purchases of milk.

(2) The purchase price at which a pool handler must make milk available and at which a pool handler must purchase milk is the utilization value based on the

usage by class of the purchasing pool handler for such milk. This utilization value is calculated in the month following the month of transfer by the bureau using announced prices for the month in which the sale(s) took place.

(a) The bureau will calculate and communicate the purchase price to the selling and purchasing pool handlers on or before the 13th day of each month following the sale, or first business day thereafter. The pool handlers involved are responsible for making the appropriate invoice and payment.

(b) Premiums, hauling, or handling fees may not be charged to the purchasing pool handler.

(3) A pool handler who purchases milk agrees to pay the purchase price for all milk delivered on a monthly basis, with payment due by the last day of the month following delivery.

(4) The purchase price calculated in (2) is included in the amount the selling pool handler owes the pool settlement fund.

(a) A negative adjustment will be made to the utilization value that the selling pool handler owes the pool settlement fund for transportation charges incurred by the selling pool handler for shipments of bulk milk between pool plants.

(5) All milk purchased and sold must, at the time of delivery, meet all applicable local, state, and federal laws and regulations and any tendered milk that does not meet applicable standards may be rejected.

(6) The weight and butterfat tests are determined on the basis of producer ticket weights and tests. If the purchasing pool handler contests the reported weights, it may notify the bureau, which may reconcile any discrepancies.

(7) The bureau has full authority to direct the transfer of milk as necessary to implement ARM 32.24.524 and has the authority to issue alternative or additional procedures as necessary to implement this provision.

AUTH: 81-23-101, 81-23-103, 81-23-104, 81-23-302, 81-23-402, MCA

IMP: 81-23-101, 81-23-103, 81-23-104, 81-23-302, 81-23-402, MCA

REASON: The board proposes to amend the above-stated rule to improve the clarity of the provisions that regulate the procedures, purchase price, and terms for sales or transfers of milk between pool handlers and to eliminate references to ARM 32.24.516, which the board proposes to repeal.

The proposed amendments to Chapter 24 affect approximately 133 businesses licensed by the Milk Control Bureau.

5. The department proposes to repeal the following rules:

LIVESTOCK CHAPTER 23

32.23.101 DEFINITIONS

AUTH: 81-23-103, 81-23-402, MCA

IMP: 81-23-103, 81-23-402, MCA

32.23.102 TRANSACTIONS INVOLVING THE PURCHASE AND RESALE OF MILK WITHIN THE STATE

AUTH: 81-23-104, 81-23-105, 81-23-202, MCA
IMP: 81-23-103, 81-23-105, 81-23-202, 81-23-402, MCA

32.23.201 REGULATION OF UNFAIR TRADE PRACTICES

AUTH: 81-23-104, MCA
IMP: 81-23-103, MCA

32.23.301 LICENSEE ASSESSMENTS

AUTH: 81-1-102, 81-23-104, 81-23-202, MCA
IMP: 81-1-102, 81-23-103, 81-23-202, MCA

32.23.302 ADDITIONAL PRODUCER ASSESSMENT

AUTH: 81-23-105, MCA
IMP: 81-23-103, MCA

32.23.401 PENALTIES

AUTH: 81-23-104, 81-23-202, MCA
IMP: 81-23-103, 81-23-104, 81-23-202, 81-23-204, MCA

REASON: The board proposes to repeal Chapter 23 to organize all administrative rules pertaining to milk control into one chapter, ARM Title 32, chapter 24.

The following definitions in ARM 32.23.101 are not included in the proposed New Rule II:

ARM 32.23.101(1)(j) "Hauler" is only used in its definition.

ARM 32.23.101(1)(e) "Skim milk dumped" is proposed to be replaced by "dumped milk" or "dumped" in New Rule II.

The provisions in ARM 32.23.201(3) and (4) are not included in the proposed New Rule V:

- The substance of (3) is a savings clause that is the proposed New Rule I.
- The provision in (4) is extraneous.

The repeal affects approximately 133 businesses licensed by the Milk Control Bureau.

LIVESTOCK CHAPTER 24

32.24.201 PROCEDURAL RULES

AUTH: 81-23-102, 81-23-302, MCA
IMP: 2-4-201, MCA

REASON: The board proposes to repeal this rule as the procedural rules of the Board of Milk Control are set out in ARM Title 32, chapter 2. Reference to these rules' location has been added to proposed ARM 32.24.101.

32.24.301 PRICING RULES

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

REASON: The board proposes to repeal ARM 32.24.301 as part of its proposed reorganization of Chapter 24. It would be replaced with the proposed New Rule VI, which has the following substantive differences:

- New Rule VI does not include provisions to replace ARM 32.24.301(1) and (2) because these provisions are extraneous.
- New Rule VI would not include a provision to replace ARM 32.24.301(3) because New Rule I would cover the provision.
- New Rule VI would not include provisions to replace ARM 32.24.301(8) because this provision became obsolete when the \$1.50/cwt quota price differential was established in ARM 32.24.513. New Rule VI(5) would replace ARM 32.24.301(9).

32.24.501 QUOTA DEFINITIONS

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

32.24.511 POOLING PLAN DEFINITIONS

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

32.24.516 PROCEEDS AND LOSSES FOR SURPLUS MILK IN QUOTA AND EXCESS MILK OVER QUOTA

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

32.24.520 DEFINITIONS

AUTH: 81-23-104, MCA
IMP: 81-23-103, MCA

REASON: The board proposes to repeal ARM 32.24.501, ARM 32.24.511, and ARM 32.24.520 as part of its proposed consolidation and reorganization of definitions into one rule, the proposed New Rule II.

In New Rule II, the following defined terms are proposed to be changed:

- "Administrator" (ARM 32.24.501(1)) would be replaced by "bureau," which means the Milk Control Bureau of the department.
- "Pool dairyman" (ARM 32.24.511(5)) would be replaced by "pool producer" to maintain consistency with the Milk Control Act, which defines "producer" and uses "pool producer" in 81-23-302(15)(b)(iii), MCA, but does not define or use the term "dairyman."
- "Producer handler" (ARM 32.24.511(6)) would be replaced by "producer-distributor" to maintain consistency with 81-23-101(I), MCA.
- "Pool settlement reserve" (ARM 32.24.511(9)) would be replaced by "pool settlement fund" to maintain consistency with 81-23-302(15)(b)(ii), MCA.

The following definitions are not included in the proposed New Rule II:

- "He or his" (ARM 32.24.501(4)) - Gender-neutral language is used in proposed amendments to Chapter 24.
- "Immediate family" (ARM 32.24.501(5)) - "Immediate family" is only used in the definition and thereby has no purpose in the ARM.
- "Excess milk over quota" (ARM 32.24.511(1)) - "Excess milk over quota" is only used in the definition and in ARM 32.24.516, which the board proposes to repeal, and thereby has no purpose in the proposed ARM.
- "Surplus milk in quota" (ARM 32.24.511(12)) - "Surplus milk in quota" is only used in the definition and in ARM 32.24.516, which the board proposes to repeal. The term also creates confusion with the defined term "surplus." The definition of "surplus" is unrelated to an individual dairy's milk production.

The board proposes to repeal ARM 32.24.516 because the provisions in (1) would be substantively accomplished in the proposed amendments to ARM 32.24.513 and because (2) is no longer applicable.

The repeal affects approximately 65 businesses licensed by the Milk Control Bureau.

6. The department intends to adopt the proposed adoption, amendment, and repeal of the above-stated rules effective on the first day of the month after the publication of the adoption notice.

7. 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., July 7, 2017.

8. Rob Stutz, Attorney for the department, 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 above or may be made by completing a request form at any rules hearing held by the department.

10. 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.

11. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. The primary bill sponsor, Senator Mark Blasdel, was contacted by mail sent to P.O. Box 1493, Kalispell, MT 59903-1493, and by e-mail at Sen. Mark.Blasdel@mt.gov on April 21, 2017.

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

/s/ W. Scott Mitchell
W. Scott Mitchell
Chair
Board of Milk Control

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

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

Certified to the Secretary of State May 30, 2017.