

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 32.24.450 milk control) AMENDMENT
assessments)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On March 16, 2018, the Board of Milk Control (board) and the Department of Livestock (department) propose to amend the above-stated rule.

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 February 2, 2018 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 rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

32.24.450 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 \$0.06 ~~\$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 \$0.03 ~~\$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 \$0.03 ~~\$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 ARM 32.24.460 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.

(6) To calculate the amount of fees levied on the sale of manufactured dairy products for the assessment described in (1), the following milk equivalent conversion factors must be used:

(a) Milk equivalent conversion factors, pounds of milk per gallon of product:

(i) Homogenized whole milk: 7.94 lbs milk per gallon of product;

(ii) Homogenized 2% milk: 7.10 lbs milk per gallon of product;

(iii) Homogenized 1% milk: 6.40 lbs milk per gallon of product;

(iv) Homogenized skim milk: 6.07 lbs milk per gallon of product;

(v) Flavored whole milk: 8.13 lbs milk per gallon of product;

(vi) Flavored 2% milk: 7.24 lbs milk per gallon of product;

(vii) Flavored 1% milk: 6.54 lbs milk per gallon of product;

(viii) Flavored skim milk: 6.18 lbs milk per gallon of product;

(ix) Buttermilk: 6.87 lbs milk per gallon of product;

(x) Egg Nog: 9.82 lbs milk per gallon of product;

(xi) Half and Half (10.5% - 18% milkfat): 12.53 lbs milk per gallon of product;

(xii) Creamers: 12.53 lbs milk per gallon of product;

(xiii) Light Cream (18% - 30% milkfat): 17.60 lbs milk per gallon of product;

(xiv) Light Whipping Cream (30 – 36% butterfat): 25.50 lbs milk per gallon of product;

(xv) Heavy Whipping Cream (>36% butterfat): 29.41 lbs milk per gallon of product;

(xvi) Aerosol Whip: 17.44 lbs milk per gallon of product;

(xvii) Ice cream: 7.23 lbs milk per gallon of product;

(xviii) Ice milk / sherbet: 0.96 lbs milk per gallon of product;

(xix) Frozen yogurt: 5.40 lbs milk per gallon of product;

(xx) Frozen dairy novelties: 6.05 lbs milk per gallon of product;

(xxi) Ice cream mix: 14.75 lbs milk per gallon of product;

(xxii) Shake mix / yogurt mix: 11.80 lbs milk per gallon of product;

(b) Milk equivalent conversion factors, pounds of milk per pound of product:

- (i) Cottage Cheese: 1.61 lbs milk per pound of product;
- (ii) Cottage Cheese (low fat or no fat): 1.41 lbs milk per pound of product;
- (iii) Dry Curd Cottage Cheese: 1.61 lbs milk per pound of product;
- (iv) Sour Cream and similar dips and dressings: 1.91 lbs milk per pound of product;
- (v) Non-fat sour cream: 0.51 lbs milk per pound of product;
- (vi) Yogurt: 0.92 lbs milk per pound of product;
- (vii) Kefir: 0.92 lbs milk per pound of product;
- (viii) Butter: 6.51 lbs milk per pound of product;
- (ix) Cream cheese: 3.61 lbs milk per pound of product; and
- (x) Hard cheese: 4.90 lbs milk per pound of product.

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 to amend the above-stated rule:

- to implement 81-23-202(3), MCA, as amended by the 2017 Montana Legislature with House Bill 377, which provides for the Board of Milk Control adopting rules to identify the milk hundredweight equivalent conversion factor used for calculating the amount of fees levied on manufactured dairy products;
- to raise sufficient revenue to provide for the administration of Title 81, chapter 23, MCA, as proposed for Fiscal Year 2019; and
- to ensure assessments are commensurate with the costs as required by 81-1-102(2), MCA, while maintaining a reasonable cash balance in the related special revenue fund to ensure solvency.

The proposed amendments to ARM 32.24.450 would affect approximately 128 businesses licensed by the Milk Control Bureau.

Compared to the factors currently in use, the proposed milk equivalent conversion factors would reduce milk control assessment revenue by approximately \$64,000, using current assessment rates.

The proposed assessment rates would increase milk control assessment revenue by approximately \$44,000.

Adoption of the proposed milk equivalent conversion factors and proposed assessment rates would result in a cumulative decrease in milk control assessment revenue of \$20,000 in fiscal year 2019.

4. The department intends to adopt the proposed amendment effective July 1, 2018.

5. 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., February 9, 2018.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as in 5 above. The written request for hearing must be received no later than 5:00 p.m., February 9, 2018.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 13, based upon there being approximately 128 businesses licensed by the Milk Control Bureau that are currently operating.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. The primary bill sponsor, Representative Alan Redfield, was contacted by telephone at 406-220-1427 and e-mail at Rep.Alan.Redfield@mt.gov on December 4, 2017.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule 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 January 2, 2018.