

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 PUBLIC HEARING ON
ARM 32.24.480 producer pricing) PROPOSED AMENDMENT
rules)

TO: All Concerned Persons

1. On August 3, 2018, at 9:00 a.m., the Department of Livestock (department) 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 amendment of 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 July 27, 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:

32.24.480 PRODUCER PRICING RULES (1) The bureau will use the federal order advanced pricing factors to calculate the producer prices for all classes. Advanced federal order butterfat and skim milk prices are announced on or before the 23rd day of the month and apply to the milk received during the following month. 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 based on the following price formulas for skim milk and butterfat. ~~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~~

~~\$.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 \$.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 \$.0895, multiplied by 0.111, rounded to nearest half cent (\$.005).~~

(a) Class II Skim Milk Price Formula. The price of the skim milk utilized in Class II will be the Class II skim milk price published in the United States Department of Agriculture Announcement of Advanced Prices and Pricing Factors or its successor publication, converted to units of dollars per pound of skim milk.

(b) Class II Butterfat Price Formula. The price of butterfat utilized in Class II will be the Advanced Butterfat Pricing Factor published in the United States Department of Agriculture Announcement of Advanced Prices and Pricing Factors plus \$.007 per pound of butterfat and in units of dollars per pound of butterfat.

~~(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 \$.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 \$.0125 per pound for freight, multiplied by 8.2, less 17%. Prices paid producers for Class III milk will be based on the following price formulas for skim milk and butterfat.~~

(a) Class III Skim Milk Price Formula. The price of the skim milk utilized in Class III will be the lower of the Advanced Class III Skim Milk Pricing Factor or the Advanced Class IV Skim Milk Pricing Factor published in the United States Department of Agriculture Announcement of Advanced Prices and Pricing Factors or its successor publication, converted to units of dollars per pound of skim milk.

(b) Class III Butterfat Price Formula. The price of butterfat utilized in Class III will be the Advanced Butterfat Pricing Factor published in the United States Department of Agriculture Announcement of Advanced Prices and Pricing Factors or its successor publication less the Montana Class III Butterfat Price Differential and in units of dollars per pound of butterfat.

(i) Class III Montana Butterfat Price Differential. The Montana Class III Butterfat Price Differential is:

(A) \$.20 per pound of butterfat for Class III butterfat utilized before January 1, 2019;

(B) \$.15 per pound of butterfat for Class III butterfat utilized from January 1, 2019 through June 30, 2019;

(C) \$.10 per pound of butterfat for Class III butterfat utilized after June 30, 2019.

(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: 81-23-104, 81-23-302, MCA

IMP: 81-23-102, 81-23-302, MCA

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

- to implement recommendations made in the Montana Milk Market Regulation Study Final Report submitted to the Board of Milk Control in June 2018 by Dairy Technomics LLC, including a recommendation for a transition period for changing the Class III butterfat price formula;
- to replace Class II and Class III price formulas with price formulas that have underlying structures that are the same as, or similar to, markets that regulate prices of a majority portion of milk produced in the United States;
- to address a characteristic of the current structure of the Class III butterfat price formula that causes the Montana Class III butterfat price to be substantially lower than Class III butterfat prices in most other regulated markets in the United States and for which the difference between the Montana Class III butterfat price and federal Class III butterfat price increases as national butter prices increase;
- to increase producer blend prices for raw milk to be more similar to prices received elsewhere in the United States;
- to provide for an advance price announcement of all Class II and Class III prices to allow distributors to know raw material costs in advance of processing and marketing raw and processed milk products;
- to maintain a negative Montana price differential for the Class III butterfat price to encourage expanded Class III processing in Montana;

- to provide a negative Montana price differential for Class III butterfat price to reduce Montana processors' risk of market volatility of having an advanced Class III butterfat price formula that is based on an earlier and shorter reference price data collection period than the United States Department of Agriculture (USDA) Butterfat Price announced in the USDA Announcement of Class and Component Prices, which sets the Class III and Class IV butterfat price for much of the United States milk market; and
- to correct and relocate text in (2)(b) that pertains to describing advanced pricing factors calculated and announced by the USDA for use in calculating certain advanced prices in federal order markets.

The proposed amendments would affect approximately 57 businesses licensed by the Milk Control Bureau.

Compared to the price formulas for Class II and Class III currently in use, the proposed price formulas would have collectively increased revenue to Montana producers in calendar years 2015 - 2017 by approximately 3.5% - 4.4%, dependent upon which proposed Montana Class III Butterfat Price Differential would have been in effect. In 2017, the proposed rules would have increased the overall blend value of all pool milk by \$0.68/cwt - \$0.84/cwt, depending upon the proposed Montana Class III Butterfat Price Differential. The proposed Class III butterfat price formula would have accounted for nearly all of the increase. The proposed amendments to the Class III price formulas would have increased producers' revenue by approximately 3.3% - 4.2%, dependent upon which proposed Montana Class III Butterfat Price Differential would have been in effect. The proposed amendments to the Class II price formulas would have increased producers' revenue by approximately 0.2%.

While Montana producers would realize an increase in revenue if the proposed price formulas were adopted, Montana distributors that operate pool plants would realize increased raw material costs. The approximate impact the proposed amendments would have had in 2015 - 2017 to distributors' costs compared to current rules for the skim and butterfat portions of Class II and Class III utilization values are as follows:

- Class III Butterfat. Dependent upon which proposed Montana Class III Butterfat Price Differential would have been in effect, the proposed amendments to the Class III price formulas would have increased distributors' costs for the butterfat portion of milk utilized in Class III by approximately 18.1% - 23.5% and would have increased the total Class III utilization cost by approximately 15.1% - 19.6%.
- Class III Skim Milk. The proposed amendments to the Class III price formulas would have decreased distributors' costs for the skim milk portion of milk utilized in Class III by approximately 1% and would have decreased the total Class III utilization cost by approximately 0.1%.
- Class II Butterfat. The proposed amendments to the Class II price formulas would have increased distributors' costs for the butterfat portion of milk

utilized in Class II by approximately 4% and would have increased the total Class II utilization cost by approximately 3%.

- Class II Skim Milk. The proposed amendments to the Class II price formulas would have increased distributors' costs for the skim milk portion of milk utilized in Class II by approximately 1% and would have increased the total Class II utilization cost by approximately 0.2%.

The board proposes to revise the Class II and Class III price formulas based upon facts within its own knowledge. These facts include the data collected by the Department of Livestock Milk Control Bureau; the data contained in the Montana Milk Market Regulation Study Final Report, authored by Dairy Technomics LLC; the data contained in the small business impact statement for this proposal; and data considered by the Board of Milk Control at its June 25, 2018 meeting. So that interested parties may have an opportunity to be heard and to question or rebut the facts as a matter of record, interested parties may request the bureau to provide electronic copies of this information by telephoning (406) 444-2875, by faxing at (406) 444-1432, or by emailing LIVMilkControl@mt.gov.

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority.

4. The department intends to adopt the proposed amendment effective September 19, 2018.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to 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., August 3, 2018.

6. Rob Stutz, attorney for the department, has been designated to preside over and conduct this hearing.

7. 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.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will 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 June 26, 2018.