

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the adoption of a) NOTICE OF ADOPTION OF
Temporary Emergency Rule) TEMPORARY EMERGENCY RULE
pertaining to dumped milk relating to)
the COVID-19 pandemic)

TO: All Concerned Persons

1. An emergency rule is being adopted for the following reasons:

A. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana with regards the COVID-19 pandemic in Executive Order 2-2020.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 14, 2020, Governor Steve Bullock extended the emergency in the State of Montana with regards the COVID-19 pandemic in Executive Order 3-2020.

D. On March 15, 2020, Governor Steve Bullock issued a Directive implementing Executive Orders 2-2020 and 3-2020 and providing for measures to combat the spread of COVID-19 Novel Coronavirus stating that all non-residential public schools in Montana are closed through March 27, 2020.

E. On March 20, 2020, Governor Steve Bullock issued a Directive Implementing Executive Orders 2-2020 and 3-2020 and providing for measures to combat the spread of COVID-19 via food and beverage services or casinos that stated all restaurants, food courts, cafes, coffeehouses, and other similar establishments offering food or beverage for on-premises consumption are closed to ingress, egress, use, and occupancy by members of the public.

F. On March 24, 2020, Governor Steve Bullock issued a Directive Implementing Executive Orders 2-2020 and 3-2020 extending closures and updating social distancing requirements and guidance.

G. On March 26, 2020, Governor Steve Bullock issued a Directive Implementing Executive Orders 2-2020 and 3-2020 providing measures to stay at home and designating certain essential functions.

H. On April 7, 2020, Governor Steve Bullock issued a Directive implementing Executive Orders 2-2020 and 3-2020 and extending certain Directives through April 24, 2020.

I. The Board of Milk Control finds there is an immediate need to adopt this temporary emergency rule to protect the public welfare because of the emergency conditions of the COVID-19 pandemic.

J. The closures of schools and limitations on restaurants and other institutional users of milk have caused a significant decrease in the demand for milk in Montana. The Montana Milk Producers Association estimates a decreased milk consumption in Montana of 1,500,000 gallons for the months of March, April, and May 2020 based on current demand compared to March, April, and May 2019. Montana's dairy farmers continue to produce milk. Absent demand, some processors may not purchase their normal volumes of milk and the reduced demand may cause milk to be dumped by dairy farms, which may result in no payment to those dairy producers for that dumped milk. Uniform payment is an objective of milk market regulation that will not be achieved under these pandemic-caused circumstances. The number of dairy producers in Montana has been in decline. With a reduced market for their milk, more Montana dairy producers could go out of business. A temporary emergency rule pertaining to the definition of "dumped milk" will help ensure that there are sufficient dairy producers still in business when demand returns after the COVID-19 pandemic. There is a reasonable necessity to immediately adopt temporary emergency rules to allow milk dumped because of the chaotic market conditions caused by the COVID-19 pandemic to be treated as surplus milk for the purpose of uniform payment to Montana pool producers.

K. This emergency rule would allow processors to dump milk because of the chaotic market conditions caused by the COVID-19 pandemic or to partially process milk to result in income to producers and dump byproduct. If processors partially process milk to concentrate butterfat, the remaining byproduct that is dumped after separation could be defined as surplus milk under the temporary emergency rule. If the dumped milk could not be defined as surplus milk, as under the current rule, processors would decline to take delivery of some individual milk loads of raw milk, causing individual producers to dump milk and individually bear the entire cost. As a result there would be unequal impact of a market condition facing Montana's statewide pooling arrangement at a level that would significantly threaten the immediate viability of those operations. Allowing the economic impact to be spread to all Montana pool producers would help avoid permanent closure of Montana dairies, which have supplied 85% of Montana's fluid milk demand, thereby assuring Montana citizens' supply of milk is adequate. The emergency rule would cause any future government payments made to the milk industry for dumped milk subject to this rule to be paid in a uniform manner to all pool producers through the bureau's quota and excess price determination.

2. The temporary emergency rule is effective April 9, 2020, when this rule notice is filed with the Secretary of State.

3. The text of the temporary emergency rule provides as follows:

NEW RULE I EMERGENCY RULE RELATED TO THE COVID-19 PANDEMIC AND DUMPED MILK (1) This rule is only effective when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) The definition of "dumped milk" or "dumped" provided in ARM 32.24.150(9) includes a new sub-paragraph (a) that states:

"(a) 'Dumped milk' or 'dumped' does not include milk dumped because of chaotic market conditions when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic."

(3) The definition of "surplus" provided in ARM 32.24.150(42) includes a new sub-paragraph (c) that states:

"(c) 'Surplus' includes milk dumped because of chaotic market conditions when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic."

(4) ARM 32.24.523 includes a new paragraph (6) that states:

"(6) As used in this rule, 'proceeds' includes all government payments for milk dumped because of the chaotic market conditions when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic."

(5) ARM 32.24.523 includes a new paragraph (7) that states:

"(7) When a pool producer receives proceeds from government payments for milk dumped because of the chaotic market conditions when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic, the pool producer must make payment to the to the pool settlement fund in the same amount if a pool handler's distributor report included the producer's dumped milk in receipts and utilization as dumped milk. Such payments from a pool producer must be included as a positive adjustment in 32.24.513(1)(b) in the month funds are deposited in the pool settlement fund."

(6) The intention of (5) is that it include in the poolwide utilization value only government payments for milk dumped because of the chaotic market conditions when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic. Any government payments to pool producers or pool handlers to offset low market prices are not included.

AUTH: 2-4-303, 81-23-103, 81-23-104, 81-23-302, 81-23-402, MCA

IMP: 2-4-303, 10-3-104, 81-23-101, 81-23-102, 81-23-103, 81-23-302, 81-23-402, MCA

4. The Department of Livestock 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 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; or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer
Department of Livestock

Certified to the Secretary of State April 9, 2020