

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 AMENDMENT
ARM 32.23.301 pertaining to licensee)
assessments)

TO: All Concerned Persons

1. On December 24, 2015, the Board of Milk Control (board) and the Department of Livestock (department) published MAR Notice No. 32-15-269 regarding the proposed amendment of the above-stated rule at page 2227 of the 2015 Montana Administrative Register, Issue Number 24.

2. The board has amended the above-stated rule as proposed.

3. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: One commenter submitted a request that processed dairy products not be subject to the milk control assessment.

RESPONSE: The board thanks the commenter for the comment. The board disagrees that processed dairy products should not be subject to the milk control assessment. The definition of milk in 81-23-101(1)(h), MCA, does not exclude processed dairy products.

COMMENT 2: Commenters submitted comments that expressed concern that the notice of proposed amendment lacks specific detail as to the cost of the milk control assessment to licensees.

RESPONSE: The board thanks the commenters for the comments. The notice of proposed amendment provided both the current and the proposed milk control assessment rates in dollars per hundredweight of milk sold. Businesses currently licensed by the board can estimate the cost of milk control assessments by applying the proposed rate to the volume of sales they report to the bureau. Distributors that report sales by product volume or weight should use milk equivalent factors to estimate the weight of milk sales subject to the milk control assessment. Businesses not currently licensed by the board may contact the bureau for assistance in estimating the cost of future milk control assessments.

COMMENT 3: Commenters submitted comments that expressed confusion about whether out-of-state businesses or in-state businesses were subject to the milk control assessment.

RESPONSE: The board thanks the commenters for the comments. All businesses required to be licensed by the board as producers, producer-distributors, or distributors, whether in-state or out-of-state, are subject to the milk control assessment.

COMMENT 4: One commenter submitted a comment that the notice of proposed amendment lowers the assessment rate for distributors based outside of Montana and may impact Montana operations' ability to compete.

RESPONSE: The board thanks the commenter for the comment. The board is establishing a single assessment rate for licensed distributors, consistent with 81-23-202(2)(c), MCA, that is independent of the licensee's location. The board believes that establishing a single assessment rate will not have a significant impact on any licensed distributor.

COMMENT 5: One commenter submitted comments inquiring how milk control assessments are used and inquired whether milk control assessments can be used to fund the Department of Livestock's milk inspection and milk diagnostic laboratory activities.

RESPONSE: The board thanks the commenter for the comment. The milk control assessments are not used to fund the milk inspection and milk diagnostic laboratory activities, which are administered and enforced by the Department of Livestock, Milk & Egg Bureau. The milk control assessment by the Board of Milk Control is used to fund the administration and enforcement of the Milk Control Act by the Milk Control Bureau. The Milk Control Bureau's administration and enforcement activities include monthly price announcements, monthly pooling calculation, auditing pooling, maintaining quota records, enforcing trade practice rules, collecting and tracking assessments, gathering data to support board decision making, and other administrative activities.

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

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

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

Certified to the Secretary of State February 8, 2016.