Montana Board of Milk Control Telephonic Meeting Minutes

May 13, 2020 8:30 a.m.

Physical Location of Meeting: Milk Control Bureau Office, 1404 8th Avenue, Helena, Montana

PUBLIC MEETING

Call to Order

Chairperson Scott Mitchell called the telephonic meeting to order at 8:42 a.m.

Attendance

Board Members:

	Present	Absent
W. Scott Mitchell, Chair	Х	
Jerrold A. Weissman, Vice Chair	Х	
Brian Beerman	Х	
R. James Parker	Х	
Erik Somerfeld	Х	

Montana Department of Livestock Staff:

Chad Lee, Bureau Chief, Department of Livestock Milk Control Bureau

Mark Curtis, Department of Livestock Milk Control Bureau

Mike Honeycutt, Department of Livestock

Dan Olson, Department of Livestock

Brian Simonson, Department of Livestock

Rob Stutz, Montana Department of Justice, Agency Legal Services (attorney representing the Montana Department of Livestock)

Guests:

Rob Adamson, Meadow Gold Susan Brown, Montana Board of Livestock Dairy/Poultry representative Dan Daugherty, producer delivering milk to Darigold Scott Langford, Meadow Gold Krista Lee Evans, Montana Milk Producers Association (MMPA) representative David Lewis, producer delivering milk to Darigold, Northwest Dairy Association/Darigold board member Dan McBride, Darigold

Due to technical difficulties, over 40% of the audio recording of the meeting was unintelligible or difficult to understand. Accordingly, the Board Chair instructed bureau staff to prepare written minutes for the meeting.

I. MINUTES (April 9, 2020 Meeting)

Motion: Mr. Weissman moved and Mr. Somerfeld seconded a motion to approve the time stamp document as written for the audio recorded minutes of the April 9, 2020 Board of Milk Control meeting. The motion carried. All members voted in favor.

II. UNFINISHED BUSINESS & GENERAL ORDERS

None

A. Milk Donation

1. Board Discussion

Mr. Mitchell introduced the topic and provided an overview. Mr. Mitchell drew attention to information provided to the board and public by the Milk Control Bureau, including an information package made available a week before the meeting and additional information made available the day before the meeting. *Both documents are attached to the minutes.* The board discussed milk donations in general and the specific donation (12,000 gallons of white milk containing 2% butterfat) that members of the Montana Milk Producers Association (MMPA) made in April 2020 to the Montana Food Bank Network. All board members wanted insight as to whether additional donations were likely to be made by MMPA members in the future. All board members praised MMPA for its members' generosity in the time of need.

2. Industry Input

Krista Lee Evans, representing the Montana Milk Producers Association, discussed the donation made by MMPA members. Ms. Evans expressed that in the future, donations to charities by MMPA members, other dairies, and pool handlers will likely occur, although she was not aware of plans for additional donations by MMPA members. Ms. Evans advocated for proactive development of rules specifically addressing donations so that parties would have a clear understanding how such donations would be accounted for in the future. Ms. Evans committed to working with the MMPA board and consulting with other Montana dairy producers to develop rule recommendations pertaining to donations to bring to the board. Ms. Evan stated that, in federal order markets, donations of fluid milk were valued at the lowest price class instead of Class I; this statement was address later in the meeting by Dan McBride of Darigold and by bureau staff. Ms. Evans stated that the MMPA membership accepted the administrative rules in place regarding the April 2020 donation. Ms. Evans stated that MMPA members were frustrated with the concept of donating and having to pay to make the donation. When asked by Mr. Mitchell whether MMPA members understood that they were being paid for the milk being donated and would need to authorize a deduction or make a payment to complete the donation, Ms. Evans thought that members might not understand and noted that the level of understanding the accounting of milk amongst the MMPA members varied. Ms. Evans left the meeting at approximately 9:26 a.m. to attend another meeting, before other industry members provided input on milk donations and before the board completed its discussion of milk donations.

Rob Adamson, representing Meadow Gold, discussed the donation and expressed agreement with Ms. Evans. Mr. Adamson noted that regarding the MMPA milk donation, what has been done has been done and the current rules are what they are. Mr. Adamson left the meeting at approximately 9:30 a.m. to attend another meeting, before other industry members provided input on milk donations and before the board completed its discussion of milk donations.

David Lewis, representing producers delivering milk to Darigold, informed the board that the Darigold plant in Bozeman donates 180 gallons of milk per week and that Darigold has doubled its donations in the region since the COVID-19 emergency began. David stated that Darigold paid Class I prices for the donated milk and that ultimately, the producers paid the cost because of their ownership of the co-op. Mr. Lewis stated that rulemaking pertaining to donated milk was not needed. Mr. Lewis posed a question: if a person calls a milk plant seeking to make donations of milk and pay only the cost, what is the cost of the milk to be donated? Mr. Lewis answered his question by stating that the cost would be the Class I value of the milk.

Dan McBride, representing Darigold, stated that Darigold donated fluid milk and other products throughout the year. Darigold reports the utilizations appropriate to the class of the donated product and pays accordingly, for donated fluid milk it pays Class I prices, for donated cheese it pays Class III prices, etc. Responding to comments made by Ms. Evans regarding donations of fluid milk in federal order markets, Mr. McBride stated that in a federal order, a sale is a sale (including a donation), and a donation of fluid milk would be a Class I utilization. Mr. McBride was not aware of any provision that would reclassify donated fluid milk to be in the lowest price class.

3. Public Comment

None

Following, industry input (Agenda Item III.A.2), the board discussed milk donations further and discussed whether the board should instruct the bureau to start working on rulemaking proposals. Mr. Weissman noted that the circumstances surrounding the MMPA donation had not come before the board at any time while he was on the board or before preceding boards. Mr. Somerfeld expressed concern about the potential for changes to the rules causing negative impacts to producers who were not donors. Mr. Beerman expressed that he thought there was a difference between individual donors and a corporate donor and suggested that the board wait and see what Ms. Evans can come up with in terms of proposals. Mr. Parker stated that milk has been donated on a regular basis in the past and was concerned about potential unintended consequences. Mr. Parker stated that donated milk should be a matter between processors and producers. Mr. Mitchell stated he learned a lot in the process, including that donated milk is nothing new, that the existing administrative rules have worked fine, and that rulemaking specific to donations would be a big undertaking with many considerations and that he did not hear a big need for that right now. Mr. Mitchell praised Ms. Evans' comment that she would work with MMPA members and Darigold producers to see if there was a need for a rulemaking and if so, those groups together could bring facts and petition for rulemaking to the board, which he felt would be more appropriate than the board initiating a rulemaking proceeding.

The bureau informed the board that it made inquiries to the Federal Milk Marketing Administration office in Seattle (Pacific Northwest federal order) regarding donations of fluid milk. The bureau learned that under the federal order system, donations of fluid milk are classified in Class I. The bureau learned about USDA's Milk Donation Reimbursement Program, which reimburses handlers for the difference between the Class I value of donations and the lowest price class. The bureau contacted a program representative to see if the MMPA members' donation might be eligible to participate in the program. The bureau was told that the donation would not be eligible to participate in the program because it did not occur in a market regulated by a federal order, a requirement of the program.

The bureau made additional information available to the board and industry the day before the meeting that illustrated application of the current rules with regard to producer donations and contrasted with other ways of accounting for donated milk that would require rulemaking. The bureau pointed out that under current rules, the pooling calculations for April 2020 included all milk received by the plants (including the donated milk), included all milk utilized in Class I (including the donated milk) and that the volume of milk for which the donors are paid included the donated milk. The MMPA donors will be paid for all milk received by Meadow Gold, and in order to achieve making the donation, MMPA members will need to authorize deductions from milk payments or make direct payment to Meadow Gold to reimburse it for the utilization cost it incurred for the donated milk. *This additional information is attached to the minutes*.

The board took no action on the agenda item.

B. Discussion of Rulemaking for Dumped Milk

1. Board Discussion

Mr. Mitchell provided an overview of the agenda item and context associated with the emergency rule adopted by the board on April 9, 2020. Board members discussed the topic and agreed that the emergency rulemaking it adopted should run its course and that the board should consider rulemaking only in response to future developments.

2. Industry Input

Prior to leaving the meeting, Krista Lee Evans, representing the Montana Milk Producers Association stated that the emergency rule for dumped milk pertaining to the COVID-19 emergency declaration does not need to continue permanently.

Prior to leaving the meeting, Rob Adamson, representing Meadow Gold, stated that the emergency rule for dumped milk pertaining to the COVID-19 emergency declaration does not need to continue beyond the emergency period.

David Lewis, representing producers delivering milk to Darigold, stated that he did not see a need for the emergency rule to become permanent. Mr. Lewis stated that Darigold handles its own dumps by performing re-blends in the co-op and thinks that Dairy Farmers of America (DFA) will be similar.

Dan McBride, representing Darigold, stated that the emergency rule for dumping milk should not be made permanent.

3. Public Comment

None

The board took no action on the agenda item.

IV. PUBLIC COMMENT

None

V. ADJOURNMENT

Mr. Somerfeld informed the board that there is discussion in the development of a new CARES Act that deals with relief provisions for dumped milk. Mr. Mitchell instructed the bureau to monitor the legislation for developments, particularly watching for provisions that would exclude non-federal order states. Mr. Lewis noted to the board that Darigold will be aware of developments from its own management and involvement with the National Milk Producers Federation.

Mr. Weissman requested that the bureau and department troubleshoot the technical difficulties that made the meeting difficult and, if necessary, consider other alternatives to Zoom for similar meetings.

Motion: Mr. Weissman moved and Mr. Somerfeld seconded a motion to adjourn. The motion carried. All members voted in favor.

Mr. Mitchell adjourned the meeting at 10:15 a.m.

W. Scott Mitchell, Chair

Date: 10/29/2020

Montana Board of Milk Control Zoom / Telephonic Meeting Agenda May 13, 2020 8:30 a.m.

Physical Location of Meeting: Milk Control Bureau Office, 1404 8th Avenue, Helena, Montana

Latest version of agenda will be posted at http://www.liv.mt.gov/mc/public.mcpx

Meeting Participation Instructions: (due to COVID-19 considerations, please access the meeting using the following directions)

If you have the technology, we encourage you to access the meeting by Zoom to see shared documents and see other participants for a better meeting experience.

Zoom Meeting URL:

https://mt-gov.zoom.us/j/97209425816?pwd=T2k0cy9zWGdTblg2a1BPY2ZDRlpqZz09

If you cannot participate by Zoom, you can use the following information to participate telephonically.

Call-in Number: 1-646-558-8656 (toll-free) Meeting ID: 972-0942-5816 and then press # Meeting Password: 250556

Many participants are anticipated. To enable this meeting to run smoothly:

- Place Zoom or your phone on mute. Remember to unmute when you speak in the meeting.
- <u>Do not</u> place your phone on hold.
- The board chair will manage the meeting. Do not speak until called upon by the chair. Opportunity for input will be provided.
- If you have a question during the meeting, you can email your question to livmilkcontrol@mt.gov, and staff will do its best to present the question to the board chair when called upon.

WELCOME

ROLL CALL & INTRODUCTIONS

W. Scott Mitchell, Chair Jerrold A. Weissman, Vice-Chairperson Brian Beerman Jim Parker Erik Somerfeld Montana Department of Livestock Staff Guests

- I. MINUTES (APRIL 9, 2020 MEETING)
- II. UNFINISHED BUSINESS & GENERAL ORDERS

III. NEW BUSINESS

- A. Milk Donation
 - 1. Board Discussion
 - 2. Industry Input
 - 3. Public Comment
- B. Discussion of Rulemaking for Dumped Milk
 - 1. Board Discussion
 - 2. Industry Input
 - 3. Public Comment

IV. PUBLIC COMMENT

V. ADJOURNMENT

Rulemaking Required?	Ways of Dealing with Donation	Individual Donor's Receipts	Pool Handler's Pool Milk Receipts	Pool Handler's Class I Utilization	Pool Handler's Class I Utilization Value
No	CURRENT RULE: Authorized Deduction or direct payment from Donor to Pool Handler at Pool Handler's Cost <i>(Class I Utilization Value)</i>	No change from actual receipts (includes milk to be donated)	No change from actual	No change from actual	Includes donation
Yes	BACK OUT WEIGHT OF DONATION Reduce donors' milk receipts and pool handler's Class I utilization by butterfat and skim milk of donation (12,000 gallons of white milk with 2% butterfat)	Reduced by individual's donation	Reduced by combined individuals' donations	Reduced by combined individuals' donations (butterfat and skim milk weight of 12,000 gallons of white milk with 2% butterfat)	Donation not included (utilization is reduced relative to current rule)
Yes	DONATION IN LIEU OF DUMPING: Reclassify Donation from Class I to Class III Utilization <u>Plus</u> Adjustment to reduce the utilization value of the donation to \$0 (<i>similar to the emergency</i> <i>rule making for dumped milk</i>)	No change from actual receipts (includes milk to be donated)	No change from actual	Reduced by donated weight of butterfat and skim milk (12,000 gallons of white milk with 2% butterfat)	Decreases

Rulemaking Required?	Ways of Dealing with Donation	Pool Handler's Class III Utilization	Pool Handler's Class III Utilization Value	Pool Handler's Utilization Value Adjustments	Pool Handler's Utilization Value
No	CURRENT RULE: Authorized Deduction or direct payment from Donor to Pool Handler at Pool Handler's Cost (<i>Class I</i> <i>Utilization Value</i>)	No change	No change	No change	Includes donation at Class I value
Yes	BACK OUT WEIGHT OF DONATION Reduce donors' milk receipts and pool handler's Class I utilization by butterfat and skim milk of donation (12,000 gallons of white milk with 2% butterfat)	No or minimal change	No or minimal change	No change	Donation not included in pool handler's utilization value, so pool handler's utilization value is reduced relative to current rule
Yes	DONATION IN LIEU OF DUMPING: Reclassify Donation from Class I to Class III Utilization <u>Plus</u> Adjustment to reduce the utilization value of the donation to \$0 (<i>similar to the emergency</i> <i>rule making for dumped milk</i>)	Increased by donated weight of butterfat and skim milk (12,000 gallons of white milk with 2% butterfat)	Increases	Negative adjustment eliminates Class III value of donation	Includes donation at \$0 cost

Rulemaking Required?	Ways of Dealing with Donation	Poowide Utilization Value	Quota / Excess Prices	Individual Donor's Minimum Payment
No	CURRENT RULE: Authorized Deduction or direct payment from Donor to Pool Handler at Pool Handler's Cost (<i>Class I</i> <i>Utilization Value</i>)	Includes donation	Value of donation contributes to quota / excess prices	Includes payment for all milk delivered (including donated milk)
	BACK OUT WEIGHT OF	Donation not included in	Impacted negatively	
Yes	DONATION Reduce donors' milk receipts and pool handler's Class I utilization by butterfat and skim milk of donation (12,000 gallons of white milk with 2% butterfat)	pool handler's utilization value, so poolwide utilization value is reduced relative to current rule	by reduction of Class I utilization (due to donation being backed out)	Does not include payment for donated milk
	DONATION IN LIEU OF			Includes payment for all
Y	DUMPING: Reclassify Donation from Class I to Class III Utilization		Impacted negatively because of \$0 contributed to	milk delivered. However amount is reduced
Yes	<u>Plus</u> Adjustment to reduce the utilization value of the donation to \$0 (<i>similar to the emergency</i> <i>rule making for dumped milk</i>)	Includes donation at \$0 cost	utilization value for donation and no change in receipts	because of decreased quota / excess prices - because utilization value of donation is \$0.

Rulemaking Required?	Ways of Dealing with Donation	Authorized Deduction by Donor (or direct payment to pool handler by individual donor)	Individual Non-donor's Minimum Payment
No	CURRENT RULE: Authorized Deduction or direct payment from Donor to Pool Handler at Pool Handler's Cost (<i>Class I</i> <i>Utilization Value</i>)	YES - the matter is between the donor and pool handler. In order for it to be the producer's donation, it is necessary for the individual producer to reimburse the pool handler for the pool handler's cost of the milk, which was the Class I value of the donation. Note that the individual producer was paid for all milk received at the poolwide quota and excess prices.	
Yes	BACK OUT WEIGHT OF DONATION Reduce donors' milk receipts and pool handler's Class I utilization by butterfat and skim milk of donation (12,000 gallons of white milk with 2% butterfat)	NO - None	Reduced because of decrease in quota/excess prices (loss of share of Class I utilization from donation)
Yes	DONATION IN LIEU OF DUMPING: Reclassify Donation from Class I to Class III Utilization <u>Plus</u> Adjustment to reduce the utilization value of the donation to \$0 (similar to the emergency rule making for dumped milk)	No - None. Reimbursement to Pool Handler would be Reimbursement of \$0. <i>Essentially, all pool producers would be</i> <i>making the donation, not just a group of</i> <i>members</i> .	Reduced because of decrease in quota/excess prices (donation's utilization value went from having a Class I utilization value to being having a value of \$0)

Rulemaking Required?	Ways of Dealing with Donation	Producer Receipts (lbs)	Class I Utilization (lbs)	Class II Utilization (lbs)	Class III Utilization (lbs)	Change in Producer Receipts (lbs)	Change in Class I Utilization (lbs)	Change in Class III Utilization (Ibs)
No	CURRENT RULE: Authorized Deduction or direct payment from Donor to Pool Handler at Pool Handler's Cost (<i>Class I</i> <i>Utilization Value</i>)	20,238,553	16,703,042	799,379	2,736,132	0	0	0
Yes	BACK OUT WEIGHT OF DONATION Reduce donors' milk receipts and pool handler's Class I utilization by butterfat and skim milk of donation (12,000 gallons of white milk with 2% butterfat)	20,135,110	16,599,658	799,379	2,736,073	(103,443)	(103,384)	(59)
Yes	DONATION IN LIEU OF DUMPING: Reclassify Donation from Class I to Class III Utilization <u>Plus</u> Adjustment to reduce the utilization value of the donation to \$0 (similar to the emergency rule making for dumped milk)	20,238,553	16,613,583	799,379	2,825,591	0	(89,459)	89,459

Milk Donations

April 2020 Illustration

Rulemaking Required?	Ways of Dealing with Donation	Utilization Value Net of Pool Settlement Fund Adjusment (\$)	Minimum Producer Payments (\$)	Minimum Producer Payments: Donors (\$)	Minimum Producer Payments: Non- donors (\$)	Change in Minimum Producer Payments (\$)	Minimum Producer Payments: Donors (\$)	Minimum Producer Payments: Non- donors (\$)
No	CURRENT RULE: Authorized Deduction or direct payment from Donor to Pool Handler at Pool Handler's Cost (<i>Class I</i> <i>Utilization Value</i>)	\$3,524,143.79	\$3,524,144.05	\$1,579,139.89	\$1,945,004.16	\$0.00	\$0.00	\$0.00
Yes	BACK OUT WEIGHT OF DONATION Reduce donors' milk receipts and pool handler's Class I utilization by butterfat and skim milk of donation (12,000 gallons of white milk with 2% butterfat)	\$3,507,281.96	\$3,507,281.04	\$1,563,650.13	\$1,943,630.91	(\$16,863.01)	(\$15,489.76)	(\$1,373.25)
Yes	DONATION IN LIEU OF DUMPING: Reclassify Donation from Class I to Class III Utilization <u>Plus</u> Adjustment to reduce the utilization value of the donation to \$0 (similar to the emergency rule making for dumped milk)	\$3,507,169.34	\$3,507,169.57	\$1,571,549.84	\$1,935,619.73	(\$16,974.48)	(\$7,590.05)	(\$9,384.43)

Milk Donations

April 2020 Illustration

Rulemaking Required?	Ways of Dealing with Donation	Change in Minimum Producer Payments: Donors (\$)	Total Authorized Deductions by Donors (or direct payment to pool handler by individual donor) - if donors reimburse pool handler for the utilization value of donated milk (\$)		Average Net Cost of Donation Per Donor (29) (\$/donor)	Net Cost of Donation to Non- donors (19) (\$)	Average Net Cost of Donation to Non- donors (19) (\$/donor)
No	CURRENT RULE: Authorized Deduction or direct payment from Donor to Pool Handler at Pool Handler's Cost (<i>Class I</i> <i>Utilization Value</i>)	\$0.00	(\$16,974.46)	(\$16,974.46)	(\$585.33)	\$0.00	\$0.00
Yes	BACK OUT WEIGHT OF DONATION Reduce donors' milk receipts and pool handler's Class I utilization by butterfat and skim milk of donation (12,000 gallons of white milk with 2% butterfat)	(\$15,489.76)	\$0.00	(\$15,489.76)	(\$534.13)	(\$1,373.26)	(\$72.28)
Yes	DONATION IN LIEU OF DUMPING: Reclassify Donation from Class I to Class III Utilization <u>Plus</u> Adjustment to reduce the utilization value of the donation to \$0 (<i>similar to the emergency</i> <i>rule making for dumped milk</i>)	(\$7,590.06)	\$0.00	(\$7,590.06)	(\$261.73)	(\$9,384.45)	(\$493.92)

April 2020 Illustration

Determination of Quantity of Donation

Donation - 2% White Milk (gal)	12,000
Density (lbs/gal)	8.62
Donation - 2% White Milk (lbs)	103,440

		MMPA Member Donation				
		Donation per MMPA (lbs) rounded to the		Individual Donations		
		Member Donor (lbs)	nearest whole pound	Recombined (lbs)		
Donation - Butterfat (lbs) rounded to nearest whole pound	2,069	71.34	71	2,059		
Donation - Skim Milk (lbs) rounded to nearest whole pound	101,371	3,495.55	3,496	101,384		
Subtotal	103,440	3,566.90	3,567	103,443		

Raw Milk Conversion to Finished Product

Raw Milk (3.8% butterfat content)	Milk (lbs)	Butterfat (lbs)	Skim Milk (lbs)
Amount of Milk Donated per Donor (per MMPA correspondence)	3,500	133	3,367
Milk Donated 29 Donors - if based on Raw Milk (per MMPA correspondence)	101,500	3,857	97,643
Milk Delivered to MFBN: 12,000 gallons white milk (2%) (recombined amount) Difference:	103,443 1.943	2,059	101,384 3,741
Directioned.	1,545	(1,750)	3,741

more total	less butterfat	more skim milk
weight delivered	weight delivered	weight delivered
to MFBN	to MFBN	to MFBN

BREAKDOWN OF PROCESSING OF RAW MILK

Assumptions:	
Raw milk butterfat content (%)	3.80%
Fluid milk butterfat content (%)	2.00%
Cream butterfat content (%)	42.00%
Shrink (%) assume the same for both butterfat and skim milk	2.00%

100 lbs Raw Milk Accounted For in the Following: Fluid milk (2% butterfat content) Cream (42% butterfat content) Class I Shrink Class III Shrink	Milk (lbs) 93.5900 4.4100 0.0000 2.0000	Butterfat (lbs) 1.8718 1.8522 0.0000 0.0760	Skim Milk (lbs) 91.7182 2.5578 0.0000 1.9240	Butterfat (% of Total) 49.2579% 48.7421% 0.0000% 2.0000%	Total) 95.3412% 2.6588% 0.0000%
Total	100.0000	3.8000	96.2000	100.0000%	100.0000%
Class I Class III	93.5900 6.4100	1.8718 1.9282	91.7182 4.4818	49.2579% 50.7421%	
Total	100.0000	3.8000	96.2000	100.0000%	100.0000%

What would 29 deliveries of 3,500 lbs of milk (3.8% butterfat) produce?	Milk (lbs)	Butterfat (lbs)	Skim Milk (lbs)	
Raw Milk (3.8% butterfat content)	101,500	3,857	97,643	
Fluid Milk - 2% butterfat	94,994	1,900	93,094 (Cls I
Cream - 42% butterfat	4,476	1,880	2,596 (Cls III
Shrink (2%, so all Class III)	2,030	77	1,953	Cls III
	101,500	3,857	97,643	

11,020 gallons (8.62 lbs per gallon) - rounded 537 gallons (8.33 lbs per gallon) - rounded