

**BOARD OF MILK CONTROL
ARM & MCA**

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32.24.101 ORGANIZATION OF BOARD AND PROCEDURAL RULES

(1) The organization of the Board of Milk Control is set out in chapter 1 and the procedural rules of the Board of Milk Control are set out in chapter 2.

History: 81-23-103, 81-23-302 MCA; IMP, 2-4-201 MCA; Eff. 12/31/72; TRANS, from Commerce, 1996 MAR p. 456; AMD, 2017 MAR p. 1151, Eff. 8/1/17.

32.24.110 SAVING CLAUSE

(1) It is the intention of the board that if any provision of this chapter, or the application of such provision to any person or circumstance is held to be invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, is not affected.

History: 81-23-103, MCA; IMP, 81-23-103, MCA; NEW, 2017 MAR p. 1151, Eff. 8/1/17.

32.24.150 DEFINITIONS

As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Act" or "Milk Control Act" means the milk control laws contained in Title 81, chapter 23, MCA.

(2) "Board" means the Board of Milk Control.

(3) "Bureau" means the Milk Control Bureau of the department.

(4) "Classes of utilization." All milk subject to the Act will be classified by utilization as defined here, regardless of the location of such utilization. For purposes of classification, the ultimate utilization of milk, if unknown, may be presumed to be the reasonably expected utilization of that milk.

(a) "Class I milk" means all skim milk and butterfat:

- (i) disposed of in the form of fluid milk products, except as otherwise provided in this section;
- (ii) in packaged fluid milk products in inventory at the end of the month; and
- (iii) in shrinkage in excess of 2% of current producer receipts and plant overages.

(b) "Class II milk" means all skim milk and butterfat:

- (i) in fluid milk products in containers larger than 1 gallon and fluid cream products disposed of or diverted to a commercial food processing establishment, because of the authority provided to the department in 81-23-401, MCA; or
- (ii) used to produce:

(A) cottage cheese, low fat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(B) milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in half-gallon containers or larger and intended to be used in soft or semi-solid form;

(C) aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items; yogurt, including yogurt containing beverages with 20 percent or more yogurt by weight and kefir, and any other semi-solid product resembling a Class II product;

- (D) custards, puddings, pancake mixes, coatings, batter, and similar products;
- (E) buttermilk biscuit mixes and other buttermilk for baking that contain food starch in excess of 2% of the total solids, provided that the product is labeled to indicate the food starch content;
- (F) products especially prepared for infant feeding or dietary use (meal replacements) that are packaged in hermetically sealed containers and products that meet the compositional standards of fluid milk product but contain no fluid milk products included in the definition of fluid milk product;
- (G) candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products;
- (H) a fluid cream product or any product containing artificial fat or fat substitutes that resembles a fluid cream product, except as otherwise provided in (c) of this section; and
- (I) any product not otherwise specified in this section.

(c) "Class III milk" means all skim milk and butterfat:

- (i) used to produce:
 - (A) cream cheese and other spreadable cheeses, and hard cheese of types that may be shredded, grated, or crumbled;
 - (B) plastic cream, anhydrous milkfat, and butteroil;
 - (C) butter;
 - (D) Evaporated or sweetened condensed milk in a consumer-type package; and
 - (E) any milk product in dried form;
- (ii) in shrinkage of 2% or less of current producer receipts;
- (iii) in inventory at the end of the month of fluid milk products and fluid cream products in bulk form;
- (iv) in the skim milk equivalent of nonfat milk solids used to modify a fluid milk product that has not been accounted for in Class I; or
- (v) used for other uses, including skim milk and butterfat used in any product described in this section that is dumped, used for animal feed, destroyed, or lost by a handler in a vehicular accident, flood, fire, or similar occurrence beyond the handler's control. Such uses of skim milk and butterfat are assigned to Class III instead of being assigned to shrink for the month to the extent that the quantities destroyed or lost can be verified from records satisfactory to the bureau.

(5) "Dairy animal" means a lactating cow.

(6) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(7) "Department" means the Montana Department of Livestock.

(8) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term does not include a person purchasing milk from a dealer licensed under this chapter for resale over the counter at retail or for consumption on the premises.

(9) "Dumped milk" or "dumped" means or refers to milk that is dumped or otherwise destroyed without further processing or usage and includes skim milk that is dumped after separation.

(10) "Eligible producer" is a producer who is eligible to own quota by the fact that the producer:

- (a) is licensed to produce milk in Montana;
- (b) has a contractual agreement with a pool plant; and
- (c) has either produced milk in Montana and sold milk to a Montana pool plant within 90 days or been accepted by a pool plant as a producer and produces milk delivered to a pool plant not later than the last day of the month.

(11) "Excess milk" means all the milk received from a pool producer during the month which is in excess of the pool producer's quota milk.

(12) "Excess price" means the weighted average price for all excess milk testing 3.5% butterfat as computed for the month by the bureau as provided for in ARM 32.24.513.

(13) "Farm pickup charges" means the actual freight charges to the producer for transporting milk to a pool plant.

(14) "Fluid cream product" means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9% or more butterfat, with or without the addition of other ingredients.

(15) "Fluid milk product"

(a) Except as provided in (b), fluid milk product means any milk products in fluid or frozen form that are intended to be used as beverages containing less than 9% butterfat and 6.5% or more nonfat solids or 2.25% or more true milk protein. Sources of such nonfat solids/protein include but are not limited to: Casein, whey protein concentrate, milk protein concentrate, dry whey, caseinates, lactose, and any similar dairy derived ingredient. Such products include, but are not limited to: Milk, fat-free milk, low fat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added or reduced nonfat solids, sterilized, concentrated, or reconstituted. As used in this part, the term concentrated milk means milk that contains not less than 25.5%, and not more than 50%, total milk solids.

(b) The term fluid milk product does not include:

(i) Any product that contains less than 6.5% nonfat milk solids and contains less than 2.25% true milk protein; whey; plain or sweetened evaporated milk/skim milk; sweetened condensed milk/skim milk; yogurt containing beverages with 20 or more percent yogurt by weight and kefir; products especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers; and products that meet the compositional standards specified in (a) but contain no fluid milk products included in (a).

(ii) The quantity of skim milk equivalent in any modified product specified in (a) that is greater than an equal volume of an unmodified product of the same nature and butterfat content.

(16) "Hardship" means a casualty, act of nature, or detrimental health of an eligible producer that prevents milk production.

(a) Terminal illness, progressive degenerative illness, or permanent disability may be a hardship.

(b) Loss of milk production due to inability to obtain adequate labor to maintain milk production is not a hardship.

(17) "Hundredweight" or "cwt" means one hundred pounds. A hundredweight is a common measure of weight for milk, particularly raw milk.

(18) "Import jobber" means a distributor who purchases milk already processed and packaged for resale to wholesale and retail customers from a source or sources whose headquarters are geographically located outside the boundaries of Montana.

(19) "Jobber" means any independent business person other than a store, wholesale grocery purchasing organization, or wholesale grocery broker, who has no financial connection with any distributor other than acquiring the distributor's packaged product and distributing and selling the same, and whose business practices and policies are within the jobber's exclusive province to establish, and not subject to any influence or control from the distributor.

(20) "Milk" means the lacteal secretion of a dairy animal, including those secretions when raw, cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed.

(21) "Milk price forward contract" means a voluntary agreement between a distributor and a producer to establish a mechanism to adjust a future producer price on a future delivery of milk at a future date, as a means of hedging the future milk price received by the producer.

(22) "New eligible producer" is a producer who is eligible for an assignment of quota as provided for in ARM 32.24.503 because the producer:

- (a) is licensed to produce milk in Montana;
- (b) produces milk within Montana;
- (c) has a contractual agreement with a pool plant; and
- (d) has not ceased production of milk in Montana or disposed of any Montana quota during the three-year period prior to re-entry into the market.

(23) "Nonpool milk" means any milk received or marketed by a pool handler, other than pool milk.

(24) "Nonpool plant" means any milk processing, packaging, or receiving plant which is not a pool plant.

(25) "Other source milk" means all milk as defined in the Act that is received in a plant from any source other than a producer licensed under the Act.

(26) "Overage" means that amount by which milk accounted for exceeds plant receipts.

(27) "Plant" means the processing plant of a distributor.

(28) "Plant receipts" means all milk received from producers, other plants, and other sources, inventory, and all additives used in fluid products.

(29) "Pool area" includes all territory within the borders of the state of Montana.

(30) "Pool handler" means any person who operates one or more pool plants, or an association of milk producers which is incorporated as a cooperative association and which has been approved by the bureau for the marketing of milk produced by pool producers.

(31) "Pool milk" means all of the milk produced by pool producers, under licenses issued by the bureau, which is received at pool plants or marketed to a nonpool plant by a pool handler.

(32) "Pool plant" means any milk plant located within the pool area which receives milk from a producer located in Montana and which is licensed by the department and operated by a distributor or a producer-distributor licensed by the bureau. A milk plant operated by a producer-distributor is a pool plant if it receives dairy products in fluid form from another person in excess of 2,500 pounds of milk or 5% of the producer-distributor's Class I milk dispositions in a month, whichever is less.

(33) "Pool producer" means any producer who produces milk within the pool area which is marketed to or through a pool handler.

(34) "Pool settlement fund" means a reserve fund of money belonging to pool producers that the bureau retains on a revolving basis for the purpose of receiving monies from or paying monies to pool handlers, as provided for in 81-23-302(15), MCA.

(35) "Producer" means a person who produces milk for consumption in this state and sells it to a distributor.

(36) "Producer committee" means the committee provided for in ARM 32.24.506.

(37) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(38) "Quota" is a daily figure expressed in pounds of milk that entitles an eligible producer or new eligible producer to receive the quota price for quota milk sold to a pool plant.

(39) "Quota milk" means that share of producer milk received during the month from a pool producer which falls within the limits of a figure computed by multiplying such pool producer's daily quota by the number of days in the month.

(40) "Quota price" means the weighted average price for all quota milk testing 3.5% butterfat as computed for the month by the bureau as provided for in ARM 32.24.513.

(41) "Quota transfer" means a transfer of ownership of all or a minimum portion of an eligible producer's quota.

(42) "Shrinkage" or "shrink" means that amount by which milk receipts exceed milk otherwise accounted for.

(43) "Surplus":

(a) means all pool milk received by a pool handler originating from pool producers that exceeds the sum of the following:

- (i) the pool handler's sales of milk sold for consumption in Montana;
- (ii) sales or transfers of bulk unprocessed milk to other pool handlers; and
- (iii) sales of bulk unprocessed milk to nonpool plants located in Montana.

(b) does not include shrink, dumped milk, inventory, and fluid cream products, including fluid cream products sold in bulk.

(44) "Utilization value" means a sum of money computed for each pool handler with respect to the butterfat and skim milk contained in pool milk received from pool producers and disposed of or utilized during the month. The sum is computed, using the class prices and assignment of classes of utilization to the pool milk received, subject to any interplant hauling, reclassification, or other adjustments that are established under rules of the bureau.

History: 81-23-103, 81-23-104, 81-23-302, 81-23-303, 81-23-402, MCA; IMP, 81-23-101, 81-23-103, 81-23-302, 81-23-303, 81-23-402, MCA; NEW, 2017 MAR p. 1151, Eff. 8/1/17; AMD, 2021 MAR p. 763, Eff. 7/1/21.

32.24.401 PENALTIES

(1) Bureau staff must take reasonable administrative actions to assist a person's compliance with applicable law, rules, and orders before the board may impose any of the penalties in (2). If bureau staff cannot secure a person's compliance through administrative action, they must recommend to the board chair that a hearing be scheduled to consider assessment of a penalty.

(2) The board may refuse to grant a license, may suspend a license already granted, may revoke a license already granted, or may assess a civil penalty for any of the following:

- (a) violation of any provision of Title 81, chapter 23, MCA;
- (b) violation of any provision of ARM Title 32, chapter 24;
- (c) violation of any board order;
- (d) failure or refusal to make required statements or reports; or
- (e) failure to pay license or assessment fees.

(3) Before imposing any of the penalties in (2), the board must provide due notice, a hearing, and due cause for the penalty. The contested case procedure in the Montana Administrative Procedure Act applies to these hearings.

(4) Following a determination of due cause for a penalty, the board may order that a penalty be imposed. In place of suspension or revocation of the license, the board may assess a civil penalty, not to exceed \$500 per day for each daily failure to comply or each daily violation, with a deadline for when the payment is due. A person assessed a civil penalty who fails to pay that penalty immediately when due may be subject to further compliance proceedings for failure to comply with the board's order and will be subject to civil proceedings to collect the civil penalty.

(5) A license revoked for failure to pay an assessment under ARM 32.24.450 when due may be reinstated.

- (a) A license revoked for failure to pay an assessment under ARM 32.24.450 when due must be reinstated upon payment of:
 - (i) all accrued assessments through the date the license was revoked; and
 - (ii) a delinquency fee not to exceed 200% of the amount of all accrued assessments.
- (b) An assessment becomes delinquent the day after it was due.

History: 81-23-104, 81-23-202, MCA; IMP, 81-23-103, 81-23-202, 81-23-204, MCA; NEW, 2016 MAR p. 588, Eff. 4/9/16; AMD, 2017 MAR p. 1151, Eff. 8/1/17.

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 \$0.05250 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 \$0.02625 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 \$0.02625 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.

History: 81-23-102, 81-23-104, 81-23-202, MCA; IMP, 81-1-102, 81-23-103, 81-23-202, MCA; NEW, 2017 MAR p. 1151, Eff. 8/1/17; AMD, 2018 MAR p. 450, Eff. 7/1/18; AMD, 2020 MAR p. 330, Eff. 7/1/20; AMD, 2021 MAR p. 69, Eff. 7/1/21.

32.24.460 PRODUCER MILK TESTING ASSESSMENT

(1) An assessment is hereby levied on licensed producers in the amount of no cents (\$0.00) per hundredweight on the total volume of all milk subject to the Act sold by a producer for the purpose of securing the necessary funds to conduct a program of testing raw milk, as required by 81-23-105, MCA.

History: 81-23-105, MCA; IMP, 81-1-102, 81-23-103, 81-23-105, MCA; NEW, 2017 MAR p. 1151, Eff. 8/1/17.

32.24.470 REGULATION OF UNFAIR TRADE PRACTICES

(1) Under authority delegated by the provisions in 81-23-104, MCA, the following transactions of business among licensees under the Act and among licensees and the general public are declared to be unfair trade practices subject to enforcement sanctions provided by statute:

- (a) Except as the result of a milk price forward contract, the payment of a lesser price than the applicable producer price established by the board pursuant to the Act by any distributor to any producer for milk which is distributed to any person, including agencies of the federal, state or local government.
- (b) The payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise.
- (c) The giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer.
- (d) The extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions.

(2) This rule and the rescission herein of any previously existing rule does not affect any act or thing done or begun, liability incurred, or any right accrued or established or any penalty incurred or any such prosecution or proceeding, civil or criminal, pending or instituted under or on account of any such previous rule herein rescinded in whole or in part, to enforce any right or penalty or to punish any offense under the authority of any such previously existing rule, at the time this rule takes effect, but as to all such acts, things, liabilities, rights, penalties, prosecutions or proceedings and any such previously existing rule remain in full force and effect.

History: 81-23-104, 81-23-302, 81-23-303, MCA; IMP, 81-23-103, 81-23-302, 81-23-303, MCA; NEW, 2017 MAR p. 1151, Eff. 8/1/17; AMD, 2021 MAR p. 763, Eff. 7/1/21.

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.

(3) Prices paid producers for Class II milk will be based on the following price formulas for skim milk and butterfat.

- (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 \$0.007 per pound of butterfat and in units of dollars per pound of butterfat.

(4) 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) \$0.20 per pound of butterfat for Class III butterfat utilized before January 1, 2019;
- (B) \$0.15 per pound of butterfat for Class III butterfat utilized from January 1, 2019, through June 30, 2019;
- (C) \$0.10 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.

History: 81-23-104, 81-23-302, MCA; IMP, 81-23-102, 81-23-302, MCA; NEW, 2017 MAR p. 1151, Eff. 8/1/17; AMD, 2018 MAR p. 1828, Eff. 9/19/18.

32.24.490 REJECTION OF MILK AND TERMINATION OF PRODUCER SALES AGREEMENTS

(1) A distributor may reject milk provided by a producer because of inferior quality or noncompliance with the lawful rules of duly constituted health or sanitation agencies. In all cases the rejection of the milk must be supported by a statement to the producer setting forth the reason(s) for which the milk was rejected. A distributor must provide a copy of the statement to the department.

(2) Except for persistent repetition of the cases set forth in (1), no producer's contract or purchasing agreement, whether express or implied, may be terminated by a distributor except for cause after notice and hearing by the board in accordance with the rules and procedures prescribed by the Montana Administrative Procedure Act.

(3) No producer may terminate a contract or selling agreement with any distributor except by giving at least 30 days written notice to the distributor and to the board of the producer's intention to terminate. However, nothing in this rule prevents a distributor and a producer from providing by written contract or agreement for a different period of notice. Termination does not preempt a distributor's obligation to pay the producer in full by the 15th day of the month following the month of such termination.

History: 81-23-104, MCA; IMP, 81-23-103, 81-23-402, MCA; NEW, 2017 MAR p. 1151, Eff. 8/1/17.

32.24.502 QUOTA RECORDS

(1) The bureau maintains records of:

- quota owned by each eligible producer; and
- quota assigned to each new eligible producer under ARM 32.24.503.

(2) The amount of quota owned by an eligible producer is adjusted when quota transfers are approved by the producer committee; reassignments are made pursuant to ARM 32.24.505; readjustments are made pursuant to ARM 32.24.505; forfeitures of quota occur; and adjustments provided for in ARM 32.24.507 are made to quota balance.

(3) Except as provided for in ARM 32.24.507, an eligible producer forfeits all quota following the 90th consecutive day after the eligible producer's last delivery to a pool plant unless such quota is transferred prior to that time.

History: 81-23-302, MCA; IMP, 81-23-302, MCA; NEW, 1988 MAR p. 2300, Eff. 10/28/88; AMD, 1990 MAR p. 931, Eff. 6/1/90; AMD, 1990 MAR p. 2110, Eff. 11/30/90; AMD, 1995 MAR p. 470, Eff. 3/31/95; TRANS, from Commerce, 1996 MAR p. 456; AMD, 2005 MAR p. 2680, Eff. 12/23/05; AMD, 2017 MAR p. 1151, Eff. 8/1/17.

2.24.503 NEW ELIGIBLE PRODUCERS - QUOTA ASSIGNMENT

(1) A new eligible producer is entitled to receive the quota price for milk sales to a pool plant for each month in accordance with the following schedule:

<u>MONTHS</u>	<u>PERCENTAGE OF</u>
<u>MILK SALES ASSIGNED TO QUOTA</u>	

April through August	20%
All other months	35%

- To be eligible for this assignment, the new eligible producer cannot own any quota in the first month of production.
- This assignment is not an assignment of actual quota to such new eligible producer.
- This assignment of quota milk becomes a part of the total quota milk calculated under this chapter.

(2) When the new eligible producer acquires quota by purchase or otherwise, or acquires quota pursuant to ARM 32.24.505, the percentage of milk sales assigned to quota price under this rule must be decreased accordingly so that the total quota equals the applicable percentage in (1).

- A producer who acquires quota by purchase or otherwise which exceeds the applicable percentage in (1) is not eligible to receive an assignment of quota pursuant to this rule.

(3) The percentage of milk sales assigned to quota price under this rule to any one new eligible producer may not exceed 35% of the current producer monthly average production (total quota production for the month, divided by the number of producers in production, times 35%).

History: 81-23-302, MCA; IMP, 81-23-302, MCA; NEW, 1988 MAR p. 2300, Eff. 10/28/88; AMD, 1990 MAR p. 931, Eff. 6/1/90; AMD, 1991 MAR p. 1550, Eff. 8/30/91; AMD, 1991 MAR p. 2600, Eff. 12/27/91; AMD, 1992 MAR p. 563, Eff. 3/27/92; TRANS, from Commerce, 1996 MAR p. 456; AMD, 2000 MAR p. 78, Eff. 1/14/00; AMD, 2017 MAR p. 1151, Eff. 8/1/17.

32.24.504 TRANSFER OF QUOTA

(1) Quota is the property of each eligible producer. It may be transferred pursuant to the following terms and conditions:

- (a) Quota transfers must be a minimum of 100 pounds a day. If the eligible producer is going out-of-business and has a daily quota balance amount that is less than 100 pounds, then that amount may be transferred.
- (b) The bureau must be notified in writing by the proposed quota transferor at least seven days prior to the first day of the month during which the transfer is contemplated. Such notice must include the name of the prospective transferee, the effective date of the proposed transfer, and the amount of quota to be transferred. The producer must also notify the producer's pool plant of the transfer. The bureau will notify the producer committee of any proposed transfers.
- (c) All quota transfers are effective only upon approval by the producer committee. The proposed quota transfer must be bona fide and not for the purpose of evading any provisions of applicable law.
- (d) A quota transfer may be made only to an eligible producer.
- (e) Leasing of quota is prohibited.

History: 81-23-302, MCA; IMP, 81-23-302, MCA; NEW, 1988 MAR p. 2300, Eff. 10/28/88; AMD, 1989 MAR p. 973, Eff. 7/28/89; AMD, 1990 MAR p. 931, Eff. 6/1/90; AMD, 1990 MAR p. 2110, Eff. 11/30/90; AMD, 1991 MAR p. 1550, Eff. 8/30/91; AMD, 1991 MAR p. 2600, Eff. 12/27/91; AMD, 1992 MAR p. 563, Eff. 3/27/92; TRANS, from Commerce, 1996 MAR p. 456; AMD, 1996 MAR p. 3215, Eff. 12/20/96; AMD, 1997 MAR p. 1662, Eff. 9/23/97; AMD, 2000 MAR p. 78, Eff. 1/14/00; AMD, 2005 MAR p. 2680, Eff. 12/23/05; AMD, 2010 MAR p. 1800, Eff. 9/1/10; AMD, 2017 MAR p. 1151, Eff. 8/1/17.

32.24.505 REASSIGNMENT OF QUOTA FROM THE UNASSIGNED QUOTA POOL AND READJUSTMENT OF QUOTA INTO THE STATEWIDE QUOTA SYSTEM

(1) The quota accumulated in the unassigned quota pool will be re-assigned pro-rata to all eligible producers and new eligible producers when the unassigned quota pool is equal to or greater than 500 pounds.

- (a) For application of (1) the bureau determines the total pounds of quota that has been forfeited and accumulated through March 31 of each year.
- (b) The resulting pounds in (1)(a) are prorated to all eligible producers and new eligible producers on the basis of these producers' average daily marketing of milk to all pool plants during the preceding months of September through December and assigned to them as quota effective on May 1.

(2) Readjustment of quota into the statewide quota system will occur if the Montana market needs exceed the current established total quota.

(3) Market needs are not met when the following conditions exist:

- (a) when greater than 83.5% of quota milk received is utilized in non-surplus Class I and II usage; and
- (b) when utilization of quota milk for non-surplus Class I and Class II usage has increased from two years prior to the preceding year. When a negative figure results, there will be no readjustment.

(4) When the statewide quota system needs additional quota added to meet market needs, the bureau must calculate on or before the first day of April each year the additional quota to be assigned to each eligible producer and new eligible producer in accordance with the following computations:

- (a) For application of (3)(a), using the preceding calendar year (January 1 through December 31), the total non-surplus Class I and Class II usage is divided by the total quota pounds to determine the percentage of quota milk utilized in non-surplus Class I and II usage.
- (b) For application of (3)(b), using the preceding calendar year (January 1 through December 31), compute the total pounds of non-surplus Class I and Class II usage from all pool plants and subtract the total pounds of non-surplus Class I and II usage in the calendar year prior to the preceding calendar year.

(c) If the percentage in (4)(a) exceeds 83.5%, take the positive figure resulting from the computation in (4)(b) and divide it by the total days in the year to determine how many pounds of quota will be issued into the statewide quota system.

(d) The resulting pounds in (4)(c) must be prorated to all eligible producers and new eligible producers on the basis of their average daily marketing of milk to all pool plants during the preceding months of September through December and assigned to them as quota effective on May 1.

History: 81-23-302, MCA; IMP, 81-23-302, MCA; NEW, 1988 MAR p. 2300, Eff. 10/28/88; AMD, 1990 MAR p. 502, Eff. 3/16/90; AMD, 1990 MAR p. 931, Eff. 6/1/90; AMD, 1990 MAR p. 2110, Eff. 11/30/90; AMD, 1991 MAR p. 49, Eff. 1/18/91; AMD, 1991 MAR p. 2600, Eff. 12/27/91; AMD, 1993 MAR p. 3018, Eff. 12/24/93; AMD, 1995 MAR p. 470, Eff. 3/31/95; TRANS, from Commerce, 1996 MAR p. 456; AMD, 1997 MAR p. 314, Eff. 12/20/96; AMD, 1997 MAR p. 1662, Eff. 9/23/97; AMD, 2000 MAR p. 78, Eff. 1/14/00; AMD, 2005 MAR p. 2680, Eff. 12/23/05; AMD, 2017 MAR p. 1151, Eff. 8/1/17.

32.24.506 PRODUCER COMMITTEE

(1) The producer committee has authority to approve all transfers of quota and to review all requests for hardship or equitable relief and has authority to control and direct the marketing of surplus milk as specified in ARM 32.24.523.

(2) The producer committee consists of at least five members, each of whom is a pool producer who produced pool milk during the month prior to the meeting. The producer committee must have an odd number of members.

(3) The board appoints the members of the producer committee.

(a) Pool producers interested in serving on the producer committee must apply to the board.

(b) The board selects the producer committee members as follows:

(i) A committee member must be appointed from the pool producers delivering milk to each pool plant for each 20%, rounded, of the total pool-wide receipts of raw pool milk received by the pool plant from its reported group of pool producers in the prior month of June. The calculation is done by using the total of each pool plant's prior June raw pool milk received from its group of pool producers, divided by the pool-wide total raw milk receipts in the prior month of June, rounded to the nearest 20% and divided by 20%.

(ii) A minimum of at least one committee representative will be appointed from the pool producers delivering to each pool plant.

(iii) If the number of pool producers applying to represent the pool producers delivering to a pool plant is less than the calculated allotment of producer committee members representing pool producers delivering to that pool plant, or if no pool producer delivering to the pool plant applies to serve on the producer committee, the board may appoint an applicant who delivers to a different pool plant.

(iv) If the calculated number of committee members is less than five or is an even number, the board may select an appointee from the group of applicants without regard to the pool plant so that the committee has at least five members and has an odd number of members.

(c) When a vacancy occurs, the board will appoint a committee member to complete the term of the departing committee member.

(d) The producer committee members will serve terms of two calendar years beginning January 1, 2016, and every two years thereafter.

(4) A representative of the bureau will attend, participate, and maintain a record of each producer committee meeting. The representative of the bureau will not have a vote in any decision of the producer committee.

(5) The bureau will notify the manager of each pool plant or a designated representative of scheduled meetings. No manager or designated representative will have a vote in any decision of the producer committee.

(6) Producer committee meetings will be held after reasonable notice has been given to each committee member, the bureau, and each manager of a pool plant or the designated representative.

(7) A majority of the producer committee constitutes a quorum for the transaction of business. A majority vote of committee members present is sufficient to make an official decision.

(8) Committee members will be compensated by the bureau in accordance with 2-15-124(7), MCA.

History: 81-23-302, MCA; IMP, 81-23-302, MCA; NEW, 1988 MAR p. 2300, Eff. 10/28/88; AMD, 1989 MAR p. 973, Eff. 7/28/89; AMD, 1990 MAR p. 931, Eff. 6/1/90; TRANS, from Commerce, 1996 MAR p. 456; AMD, 1996 MAR p. 3215, Eff. 12/20/96; AMD, 1997 MAR p. 1662, Eff. 9/23/97; AMD, 2009 MAR p. 2258, Eff. 11/26/09; AMD, 2016 MAR p. 319, Eff. 2/20/16; AMD, 2017 MAR p. 1151, Eff. 8/1/17.

32.24.507 REQUEST FOR REVIEW AND APPEALS PERTAINING TO QUOTA

(1) After quota is reassigned or readjusted as provided for in ARM 32.24.505, any eligible producer may request review from the producer committee on the grounds that the eligible producer's production history is not appropriate because of unusual conditions during the production measurement period used to prorate reassigned or readjusted quota, such as loss of buildings, herds, or other facilities as the result of fire, floods, storms, official quarantine, disease, pesticide residue or condemnation of milk.

(2) A producer may request review from the producer committee to consider whether the producer should be an eligible producer even though, because of hardship, the producer failed or will fail to deliver milk to a pool plant for 90 consecutive days.

(3) A producer may make a request for review of quota ownership not later than 45 days after the notice of change in quota balance or after the occurrence of the alleged hardship. The request must be filed with the bureau, who will forward the request to the producer committee. The request must set forth:

- (a) the conditions that caused the alleged inappropriate production history under (1) or hardship under (2);
- (b) the extent of relief or adjustment requested;
- (c) the basis upon which the amount of relief or adjustment requested should be computed; and
- (d) the reasons why relief or adjustment should be granted.

(4) With respect for a producer's request for review of production history, quota, forfeiture of quota, or other related problems, the producer committee may grant or adjust production history quota on average daily producer milk deliveries for the production measurement period in question, delay forfeiture of quota, or restore forfeited quota.

(5) Producer committee decisions are subject to appeal to the board.

- (a) A producer may file a notice of appeal to the board within 15 days after written notification of the decision of the producer committee.
- (b) In the event that an action by the producer committee is in violation of the administrative rules, the bureau must bring it to the attention of the aggrieved party.

(6) The board must hear an appeal within 90 days of when the bureau received the appeal.

(7) An appeal will be heard as follows:

- (a) The aggrieved party will be given the opportunity to make an oral presentation and submit written justification in support of reversal or modification of the producer committee's decision.
- (b) Members of the producer committee will be given the opportunity to make an oral presentation and submit written material in opposition to reversal or modification of the producer committee's decision.
- (c) The decision of the board will be based on the record of the producer committee review as supplemented by oral argument and written submissions to the board. However, the appeal to the board

will not be a trial de novo. New material that could not reasonably be submitted to the producer committee will be accepted if it relates to the grounds set forth in (8).

(8) In ruling on the appeal from the producer committee's decision the board will not overrule or modify the decision of the producer committee unless:

- (a) there was collusion affecting the producer committee's decision;
- (b) the board determines that actual bias or prejudice on the part of one or more producer committee members affected the decision;
- (c) the producer committee's decision was the result of an incorrect interpretation of a statute or rule applicable to the decision; or
- (d) the producer committee's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

(9) On review of a producer committee's decision, the board must not substitute its judgment (second guess) for that of the producer committee as to the weight of the evidence on question of fact.

(10) An appeal that the board overturns (the producer committee's decision) is final and does not have to be approved by the producer committee. The board will instruct the bureau how to make equitable remedy.

(11) The bureau must maintain records of all requests for review made to the producer committee and the disposition thereof. Such files must be open for inspection by any interested persons during the regular office hours of the bureau.

History: 81-23-302, MCA; IMP, 81-23-302, MCA; NEW, 1997 MAR p. 1662, Eff. 9/23/97; AMD, 2005 MAR p. 2680, Eff. 12/23/05; AMD, 2017 MAR p. 1151, Eff. 8/1/17.

32.24.512 REPORTS AND RECORDS

(1) All milk and its component quantities of skim milk and butterfat received by pool handlers will be classified for the purpose of establishing compliance with minimum producer prices. For the purpose of determining the audit value of milk delivered to a plant under 81-23-302, MCA, all butterfat and skim milk received from pool producers is considered to be utilized by the plant in either Class I, II, or III as indicated by plant processing and sales records.

(2) On or before the eighth business day after the end of each month, each pool handler must report for such months, to the bureau with respect to the pool plant(s) operated by such handler, and for all pool milk marketed to nonpool plants, on forms provided by the bureau, the following:

- (a) the quantities and butterfat content of milk received or marketed from the farms of pool producers during the month, the location of the pool plant where the milk was first received, and the pounds thereof which qualified as quota milk;
- (b) the quantities and butterfat and skim milk content of milk and fluid milk products received from other pool plants during the month;
- (c) the quantities and butterfat and skim milk content of any other receipts of nonpool milk, the pounds and butterfat and skim milk content of all other dairy products received during the month (except nonfluid milk products disposed of in the form in which received without further processing);
- (d) the quantities and butterfat and skim milk content of all inventories of milk and other dairy products on hand in the pool plant at the beginning of the month;
- (e) the quantities and butterfat and skim milk content of all milk and milk products disposed of from the pool plant during the month organized by classes of utilization, and in the case of any such products transferred in fluid form to the pool plants of other pool handlers, the quantities and butterfat and skim milk content transferred to another pool plant;

- (f) the quantities and butterfat and skim milk content of all milk and other dairy products utilized in the processing or manufacturing of dairy products in the pool plant during the month, together with the same information for the products produced;
- (g) the disposition made of any pool milk marketed by the pool handler during the month that was not received at a pool plant and the utilization made of such milk organized by classes of utilization;
- (h) the quantities together with the butterfat and skim milk content of inventories of all milk and dairy products on hand in the pool plant at the end of the month;
- (i) out-of-state sales (packaged and bulk) showing the quantities and butterfat and skim milk content, organized by the classes of utilization, and showing information necessary to calculate adjustments to the pool handler's utilization value described in ARM 32.24.523 for the sale of surplus milk;
- (j) the weight of milk and the transportation charges for shipments of unprocessed pool milk between plants marketed pursuant to ARM 32.24.524;
- (k) a copy of each milk price forward contract in effect for the month or any other information applicable to the application of a milk price forward contract for the month; and
- (l) list of producers who have gone out of business during the preceding month.

(3) Each pool handler must maintain complete records and accounts of all pool milk received or marketed, and all other milk and dairy products received at each pool plant, and the use or disposition of such milk and dairy products for each month together with payments received or made therefore, and must retain records of the foregoing transactions and other records as required under the rules of the bureau and present them for audit by the bureau upon request.

(4) When payments to a pool producer are based upon butterfat tests from composite samples, a portion of each composite sample must be retained until the succeeding composite sample is tested.

(5) Each pool handler must maintain a record of butterfat tests of each pool producer's milk covering each pay period and provide each pool producer with each butterfat test result for each receipt of milk from the pool producer. The records must be kept on file for two years and be made available to any authorized agent of the bureau upon request.

(6) The operator of the plant at the Montana State Prison is subject to all records and reporting requirements of this rule for milk utilized at the plant, regardless of whether the plant is a pool plant or whether the plant utilizes pool milk.

History: 81-23-104, 81-23-302, 81-23-303, 81-23-402, MCA; IMP, 81-23-302, 81-23-303, 81-23-402, MCA; NEW, 1990 MAR p. 931, Eff. 6/1/90; TRANS, from Commerce, 1996 MAR p. 456; AMD, 2017 MAR p. 1151, Eff. 8/1/17; AMD, 2021 MAR p. 763, Eff. 7/1/21.

32.24.513 COMPUTATION OF THE QUOTA PRICE AND EXCESS PRICE TO BE PAID TO POOL PRODUCERS FOR POOL MILK

(1) On or before the 12th day of each month, or the first business day thereafter, the bureau will compute a quota price and an excess price for the preceding month as follows:

- (a) Calculate the utilization value of butterfat and skim usage of pool producers' milk for all pool handlers and for milk processed at the Montana State Prison plant to determine a total dollar amount for butterfat and skim respectively.
- (b) Add all adjustments for surplus sales described in ARM 32.24.523 and deduct transportation charges for shipments of unprocessed pool milk between pool plants described in ARM 32.24.524 from the skim totals derived in (1)(a).
- (c) Add one-half of the balance of the pool settlement fund to the skim total derived in (1)(b) and deduct an amount equal to 12 cents per hundredweight of quota milk received by pool handlers.
- (d) Divide the skim dollar amount derived in (1)(c) by the total skim pounds to determine a poolwide value per skim pound. Similarly, divide the butterfat dollar amount derived in (1)(a) by the total butterfat pounds to determine a poolwide value per butterfat pound.

- (e) The quota price at 3.5% test will be \$1.50 per hundredweight higher than the price for excess milk. The \$1.50 per hundredweight differential will be split proportionately between butterfat and skim.
- (f) To calculate the quota price, divide the excess pounds by total producer pounds. Multiply the resultant percentage by the differential in (1)(e) converted to dollars per pound and add the amount so derived proportionately to the butterfat and skim components of the poolwide prices in (1)(d). This skim price per pound multiplied by 96.5 pounds added to this butterfat price per pound multiplied by 3.5 pounds will result in the quota price per hundredweight at 3.5% butterfat for the month.
- (g) To calculate the excess price, subtract the butterfat and skim proportions of the differential in (1)(e) converted to dollars per pound from the quota components in (1)(f) and add these negative amounts to the butterfat and skim components of the poolwide prices in (1)(d). The skim figure so derived multiplied by 96.5 pounds added to the butterfat figure so derived multiplied by 3.5 pounds will result in the excess price per hundredweight at 3.5% butterfat for the month.

- (2) The bureau will announce to all interested persons on or before the 13th day of each month, or the first business day thereafter, the quota price and excess price per hundredweight for milk testing 3.5% butterfat, the quota butterfat price and excess butterfat price per pound, and the quota skim price and excess skim price per pound as computed pursuant to (1)(f) and (1)(g).

History: 81-23-302, MCA; IMP, 81-23-302, MCA; NEW, 1990 MAR p. 931, Eff. 6/1/90; AMD, 1991 MAR p. 1550, Eff. 8/30/91; AMD, 1995 MAR p. 470, Eff. 3/31/95; TRANS, from Commerce, 1996 MAR p. 456; AMD, 2006 MAR p. 330, Eff. 2/10/06; AMD, 2017 MAR p. 1151, Eff. 8/1/17.

32.24.514 PROCEDURES FOR POOLING OF RETURNS FROM POOL MILK

- (1) On or before the 13th day of the month, the bureau will provide notice to each pool handler of:
 - (a) the minimum prices to be paid to pool producers for quota and excess milk received in the preceding month;
 - (b) the minimum amount owed by each pool handler to each pool producer for milk received in the preceding month, net of audit adjustments or any other adjustments prescribed by the bureau, but before addition of premiums and authorized deductions by the pool handler;
 - (c) the purchase price for pool milk sold between pool plants pursuant to ARM 32.24.524;
 - (d) the total amount each pool handler owes pool producers;
 - (e) the total amount of each pool handler's utilization value for pool milk received or marketed in the preceding month, net of adjustments for sales of surplus milk described in ARM 32.24.523 and transportation charges for shipments of unprocessed pool milk between pool plants pursuant to ARM 32.24.524; and
 - (f) the net amount that each pool handler owes the pool settlement fund. The net amount that each pool handler owes the pool settlement fund is the amount in (e) less the amount in (d) plus audit adjustments or any other adjustments prescribed by the bureau.
- (2) For any pool handler, if the amount calculated in (1)(f) is a negative number, the bureau will pay the pool handler that amount from the pool settlement fund within two business days of the written notice required by (1) or as soon as funds are available if the balance of the pool settlement fund is insufficient.
- (3) For any pool handler, if the amount calculated in (1)(f) is a positive number, the pool handler must pay that amount to the bureau by the 25th of the month. The bureau will deposit the amount into the pool settlement fund.
- (4) The amounts calculated for (1)(f) of pool handlers affiliated by common ownership may be combined for purposes of determining payments in (2) and (3).
- (5) The bureau will report applicable information described in (1) through (4) to the operator of the plant at the Montana State Prison, regardless of whether the plant is a pool plant or whether the plant utilizes pool milk.

History: 81-23-302, MCA; IMP, 81-23-302, MCA; NEW, 1990 MAR p. 931, Eff. 6/1/90; AMD, 1990 MAR p. 2110, Eff. 11/30/90; AMD, 1993 MAR p. 3018, Eff. 12/24/93; TRANS, from Commerce, 1996 MAR p. 456; AMD, 2017 MAR p. 1151, Eff. 8/1/17.

32.24.515**PAYMENTS TO POOL PRODUCERS AND ADJUSTMENT OF ACCOUNTS**

(1) Each pool producer must be paid twice each month by the appropriate pool handler(s) for the pool milk received or marketed from such pool producer during the month as follows:

(a) A partial or advance payment approximately equal to the value of the pool milk marketed during the first two weeks of the month, less one-half of the approximate monthly deductions, must be paid to the pool producer, or the pool producer's authorized agent, not later than 30 days after the first day of each month. Such payment need not be accompanied by an itemized statement.

(b) Payments must be made to each pool producer or the pool producer's authorized agent, not later than 15 days after the end of the month that the pool producer's milk was received. This payment must be based on the appropriate quota price and excess price as adjusted for the weighted average butterfat content, and subject to deductions for partial payments under (1)(a) and deductions authorized under (1)(c). The payment must be accompanied by a statement to each pool producer setting forth the information required in (1)(d).

(c) Deductions of any kind (other than assessments that are required under 81-23-105 and 81-23-202, MCA, license fees, mandatory assessments, hauling fees, advance payments made pursuant to this section, adjustments to implement milk price forward contracts, and audit adjustments) from payments due a pool producer may be made only upon written authorization from a pool producer, or, in the case where a pool producer is a member of a cooperative, upon formal resolution of the cooperative directors at a regular business meeting. A copy of the authorization must be retained by the pool handler as part of its permanent records.

(d) Payments provided for in this section must be accompanied by a statement to each pool producer showing each of the following items for the prior month:

- (i) name and address of the pool handler issuing the statement;
- (ii) date of statement;
- (iii) period for which the statement is rendered;
- (iv) name of the pool producer for whom the statement is intended;
- (v) the date, weight, and butterfat test result for each receipt of milk during the month;
- (vi) the total pounds of milk and weighted average butterfat test of milk received from the pool producer for the month for which the statement is rendered;
- (vii) weight of milk, butterfat, and skim received that is within the pool producer's quota;
- (viii) weight of milk, butterfat, and skim received that is in excess of the pool producer's quota;
- (ix) quota butterfat price (to seven decimal places) and quota skim price (to seven decimal places);
- (x) excess butterfat price (to seven decimal places) and excess skim price (to seven decimal places);
- (xi) minimum payment required by the bureau for quota and excess milk received;
- (xii) milk price forward contract adjustment, if applicable;
- (xiii) amounts paid as premiums or bonuses;
- (xiv) itemization of deductions for advance payments, hauling, assessments, licenses, and authorized deductions;
- (xv) total deductions;
- (xvi) audit adjustments; and
- (xvii) net amount due and paid.

(e) On or before the 15th day of each month, each pool handler must submit to the bureau a copy of the statements described in (1)(d) that were provided to each pool producer for the prior month's receipts.

(2) The bureau will periodically audit the books and records of pool handlers to verify the utilization of all milk reported pursuant to ARM 32.24.512. The audits may examine whether there has been proper accounting for and payment of the amount owed to individual pool producers from whom the pool handler received milk. Audits may also examine whether correct payment has occurred for amounts owed between each pool handler and the pool settlement fund and amounts owed between pool handlers for sales of milk between pool handlers.

(a) Upon completion of each audit, the bureau will furnish each pool handler with an audit summary, commentary regarding audit findings, and prescribed adjustments, if any, for each month audited.

- (b) Within ten business days of the date the bureau sent the audit summary to the pool handler, the pool handler must communicate in writing to the bureau any disagreement with the audit findings or prescribed adjustments.
- (c) Audit adjustments will be incorporated into the following month's pooling process if no disagreements are communicated during the review period or if all disagreements or inquiries are resolved.
- (d) If the audit determines that pool producers were overpaid, pool handlers may elect to spread the prescribed audit adjustments over the following three months through deductions to the final payments for those months.
- (e) If a pool handler communicates in writing to the bureau as provided in (2)(b), the review period will be extended while the bureau considers the pool handler's objections. Within ten days after the bureau sends notice to the pool handler of its decision, the pool handler may file written application for appearance before the board to review the decision of the bureau. Audit adjustments will be stayed until the review by the board is completed. After review, the board will issue an order resolving the disagreement.

History: 81-23-104, 81-23-302, 81-23-303, MCA; IMP, 81-23-302, 81-23-303, MCA; NEW, 1990 MAR p. 931, Eff. 6/1/90; AMD, 1995 MAR p. 470, Eff. 3/31/95; TRANS, from Commerce, 1996 MAR p. 456; AMD, 2017 MAR p. 1151, Eff. 8/1/17; AMD, 2021 MAR p. 763, Eff. 7/1/21.

32.24.523 MARKETING OF SURPLUS MILK

- (1) Surplus milk must be marketed and sold in a manner that is economically advantageous to pool producers, with all gain or loss shared by all pool producers.
- (2) All surplus milk sold in bulk will be marketed and sold directly by pool handlers unless directed otherwise by the producer committee or unless a pool handler declines to perform the service.
 - (a) A pool handler must provide 90 days written notice to the producer committee prior to declining to market surplus milk in bulk.
 - (b) The producer committee retains the right to supervise, approve, control, or direct the marketing of the surplus milk sold in bulk.
 - (i) After receiving approval from the board, the producer committee must provide the affected pool handler 90 days written notice before controlling and directing marketing of surplus milk sold in bulk.
 - (ii) In the event the producer committee directs the marketing of surplus milk sold in bulk, it may hire agents and incur other expenses as necessary to fulfill that function.
- (3) All proceeds received by a pool handler from the surplus milk sold in bulk:
 - (a) must be added to the utilization value that the pool handler owes the pool settlement fund, less the following deductions:
 - (i) the amount for which the pool handler owes or has paid the pool settlement fund based on the class of utilization for the sale;
 - (ii) an optional administrative fee not exceeding \$0.02/cwt; and
 - (iii) reasonable transportation expenses incurred by the pool handler, which may not include farm pickup charges; and
 - (b) includes all valuable consideration paid in any form and must be documented by reporting forms, invoices, contracts, and other evidence as may be requested by the bureau.
- (4) A pool handler may request negative adjustments to the utilization value that the pool handler owes the pool settlement fund for sales of Class I packaged products that are surplus milk. Negative adjustments offset the costs associated with processing and marketing surplus milk that otherwise would have been marketed and sold in a manner that is less economically advantageous to the pool producers.
 - (a) Negative adjustments may be allocated to sales in individual states or groups of states in any manner as long as the aggregate of the adjustments does not exceed the sum of maximum adjustments allowed.

Negative adjustments may be allocated in any manner between pool handlers affiliated by common ownership.

(b) Adjustments are calculated on the net export weight of Class I packaged products that are surplus milk, as determined by the bureau.

(c) The maximum negative adjustment for the net export weight of Class I packaged products that are surplus milk sold to markets in states contiguous to Montana is \$2.55/cwt.

(d) The maximum negative adjustment for the net export weight of Class I packaged products that are surplus milk sold to markets in states not contiguous to Montana is \$3.05/cwt.

(5) When the producer committee directs the marketing of surplus milk sold in bulk, the following will occur:

(a) All proceeds received by the producer committee from the sale of surplus milk sold in bulk must be deposited in the pool settlement fund.

(b) All proceeds received include all valuable consideration paid in any form and must be documented by reporting forms, invoices, contracts, and other evidence as may be requested by the bureau.

(c) All expenses incurred by the producer committee to market the surplus milk sold in bulk must be paid from the pool settlement fund. All expenses must be documented by reporting forms, invoices, contracts, and other evidence as may be requested by the bureau.

(d) Before the 8th day of the month after related sales, the producer committee must communicate the following information to the pool handler that would have otherwise marketed the surplus milk:

(i) If unknown to the pool handler, the identity of pool dairies whose milk was utilized for the surplus milk bulk sales and the quantities and butterfat and skim milk content of milk utilized from each pool dairy.

(ii) The total quantities and butterfat and skim milk content of surplus milk sold in bulk and the classes of utilization.

(e) The pool handler that would have otherwise marketed the surplus milk must include the information reported in (d) in the reports it is required to file with the bureau.

(f) For purposes of calculating the quota price and excess price in ARM 32.24.513, all proceeds received by the producer committee must be added to the utilization value, less the following deductions:

(i) the amount for which the pool handler has paid the pool settlement fund based on the class of utilization for the sale or the amount owed by the pool handler if proceeds are received by the producer committee in the same month as the sale;

(ii) reasonable transportation expenses incurred by the pool handler. Farm pickup charges may not be included as deductions. Farm pickup charges are the usual charges to the producer for transporting milk to the pool plant; and

(iii) expenses incurred by the producer committee to market the surplus milk sold in bulk.

(g) Following the deposit of proceeds received by the producer committee, the amount that the pool handler owes to the pool settlement fund for utilization of pool milk will be reduced by the following:

(i) reasonable transportation expenses incurred by the pool handler, which may not include farm pickup charges; and

(ii) the amount the pool handler:

(A) paid the pool settlement fund based on the class of utilization for the sale; or

(B) would have owed to the pool settlement fund based on the class of utilization for the sale, if proceeds are received by the producer committee in the same month as the sale.

History: 81-23-104, MCA; IMP, 81-23-103, 81-23-302 MCA; NEW, 1996 MAR p. 2428, Eff. 10/1/96; AMD, 2000 MAR p. 1753, Eff. 9/1/00; AMD, 2000 MAR p. 3413, Eff. 12/8/00; AMD, 2009 MAR p. 2258, Eff. 11/26/09; AMD, 2017 MAR p. 1151, Eff. 8/1/17.

32.24.524 REQUIRED UTILIZATION OF MILK SOURCED FROM MONTANA DAIRIES

(1) Any plant operated by a pool handler with milk in excess of that plant's processing needs must first make that milk available to other pool handlers under the terms and conditions in ARM 32.24.525 before disposing of that milk as surplus milk.

(2) Any plant operated by a pool handler without milk sufficient to satisfy its non-surplus processing needs must first utilize milk available from other pool handlers under the terms and conditions in ARM 32.24.525 before purchasing milk from other sources.

History: 81-23-104, 81-23-302 MCA; IMP, 81-23-103, 81-23-302 MCA; NEW, 2000 MAR p. 3413, Eff. 12/8/00; AMD, 2017 MAR p. 1151, Eff. 8/1/17.

32.24.525 PROCEDURES, PURCHASE PRICE, AND TERMS FOR INTERPLANT SALES BETWEEN POOL HANDLERS

(1) A pool handler is in compliance with the requirements of ARM 32.24.524 if it calls for milk or makes milk available in the following manner:

- (a) On Wednesday of the preceding week, a requesting pool handler in need of milk may communicate its milk needs for the coming week to a pool handler reasonably believed to have milk. The solicited pool handler must communicate its confirmation or rejection of the order back by Friday of that same week.
- (b) Delivery to the requesting pool handler is the responsibility of the solicited pool handler.
- (c) No pool handler is obligated to make milk available to any other pool handler who is then in default on payment for any previous purchases of milk.

(2) The purchase price at which a pool handler must make milk available and at which a pool handler must purchase milk is the utilization value based on the usage by class of the purchasing pool handler for such milk. This utilization value is calculated in the month following the month of transfer by the bureau using announced prices for the month in which the sale(s) took place.

- (a) The bureau will calculate and communicate the purchase price to the selling and purchasing pool handlers on or before the 13th day of each month following the sale, or first business day thereafter. The pool handlers involved are responsible for making the appropriate invoice and payment.
- (b) Premiums, hauling, or handling fees may not be charged to the purchasing pool handler.

(3) A pool handler who purchases milk agrees to pay the purchase price for all milk delivered on a monthly basis, with payment due by the last day of the month following delivery.

(4) The purchase price calculated in (2) is included in the amount the selling pool handler owes the pool settlement fund.

- (a) A negative adjustment will be made to the utilization value that the selling pool handler owes the pool settlement fund for transportation charges incurred by the selling pool handler for shipments of bulk milk between pool plants.

(5) All milk purchased and sold must, at the time of delivery, meet all applicable local, state, and federal laws and regulations and any tendered milk that does not meet applicable standards may be rejected.

(6) The weight and butterfat tests are determined on the basis of producer ticket weights and tests. If the purchasing pool handler contests the reported weights, it may notify the bureau, which may reconcile any discrepancies.

(7) The bureau has full authority to direct the transfer of milk as necessary to implement ARM 32.24.524 and has the authority to issue alternative or additional procedures as necessary to implement this provision.

History: 81-23-101, 81-23-103, 81-23-104, 81-23-302, 81-23-402, MCA; IMP, 81-23-101, 81-23-103, 81-23-104, 81-23-302, 81-23-402 MCA; NEW, 2000 MAR p. 3413, Eff. 12/8/00; AMD, 2005 MAR p. 2680, Eff. 12/23/05; AMD, 2017 MAR p. 1151, Eff. 8/1/17.

TITLE 81. LIVESTOCK

CHAPTER 23. MILK PRICE CONTROL

Part 1. General Administration

Definitions

81-23-101. Definitions.

(1) Unless the context requires otherwise, in this chapter, the following definitions apply:

- (a) "Board" means the board of milk control provided for in 2-15-3105.
- (b)
 - (i) "Class" refers to the classes of utilization of milk that the board defines by rule.
 - (ii) In adopting rules under this subsection (1)(b), the board shall use the current definitions of classes of utilization of milk that are found in 7 CFR, part 1000.40, except that the board may combine any of the classes of milk provided for in the federal definitions into a single class.
- (c) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.
- (d) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.
- (e)
 - (i) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors.
 - (ii) The term does not include a person purchasing milk from a dealer licensed under this chapter for resale over the counter at retail or for consumption on the premises.
- (f) "Licensee" means a person who holds a license from the board.
- (g) "Market" means an area of the state designated by the board as a natural marketing area.
- (h) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which are designated as grade A by a constituted health authority and including those secretions that are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.
 - (i) "Milk price forward contract" means a voluntary agreement between a distributor and a producer to establish a mechanism to adjust a future producer price on a future delivery of milk at a future date, as a means of hedging the future milk price received by the producer.
- (j) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections at the Montana state prison.
- (k) "Producer" means a person who produces milk for consumption in this state and sells it to a distributor.
- (l) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.
- (m) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.
- (n) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(2) The board may assign new milk products not provided for under 7 CFR, part 1000.40, to the class that the board considers proper.

History: En. Sec. 3, Ch. 204, L. 1939; amd. Sec. 1, Ch. 192, L. 1959; amd. Sec. 3, Ch. 4, L. 1967; amd. Sec. 1, Ch. 107, L. 1971; amd. Sec. 89, Ch. 431, L. 1975; R.C.M. 1947, 27-403; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 56, L. 1993; amd. Sec. 1, Ch. 242, L. 1995; amd. Sec. 2, Ch. 333, L. 1995; amd. Sec. 557, Ch. 546, L. 1995; amd. Sec. 1, Ch. 135, L. 2003; amd. Sec. 1, Ch. 23, L. 2007; amd. Sec. 2, Ch. 361, L. 2009; amd. Sec. 1, Ch. 189, L. 2021.

Policy

81-23-102. Policy.

(1) It is hereby declared that:

- (a) milk is a necessary article of food for human consumption;
- (b) the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;
- (c) the production, transportation, processing, storage, distribution, and sale of milk in the state of Montana is an industry affecting the public health and interest;
- (d) unfair, unjust, destructive, and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk and products manufactured from milk, which trade practices constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of content and purity of milk;
- (e) health regulations alone are insufficient to prevent disturbances in the milk industry and to safeguard the consuming public from further inadequacy of a supply of this necessary commodity;
- (f) it is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of milk and cream and products manufactured from milk and cream, to eliminate speculation and waste, and to make the distribution of milk and cream and products manufactured from milk and cream between the producer and consumer as direct as can be efficiently and economically done, and to stabilize the marketing of those commodities;
- (g) investigations have revealed and experience has shown that, due to the nature of milk and the conditions surrounding the production and marketing of milk and due to the vital importance of milk to the health and well-being of the citizens of this state, it is necessary to invoke the police powers of the state to provide a constant supervision and regulation of the milk industry of the state to prevent the occurrence and recurrence of those unfair, unjust, destructive, demoralizing, and chaotic conditions and trade practices within the industry which have in the past affected the industry and which constantly threaten to be revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to the consuming public and to the citizens of this state;
- (h) milk is a perishable commodity that is easily contaminated with harmful bacteria, that cannot be stored for any great length of time, that must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day but, due to natural and seasonal conditions, must be produced on a constantly uniform and even basis;
- (i) the demand for this perishable commodity fluctuates from day to day and from time to time making it necessary that the producers and distributors shall produce and carry on hand a surplus of milk in order to guarantee and ensure to the consuming public an adequate supply at all times, which surplus must of necessity be converted into byproducts of milk at great expense and often at a loss to the producer and distributor;
- (j) this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and destroy the milk industry, which causes producers to relax their diligence in complying with the provisions of the health authorities and often to produce milk of an inferior and unsanitary quality;
- (k) investigation and experience have further shown that, due to the nature of milk and the conditions surrounding its production and marketing, unless the producers are guaranteed and ensured a reasonable profit on milk, both the supply and quality of milk are affected to the detriment of and against the best interest of the citizens of this state whose health and well-being are thereby vitally affected;
- (l) where no supervision and regulation are provided for the orderly and profitable marketing of milk, past experience has shown that the credit status of both producers and distributors of milk is adversely affected to a serious degree, thereby entailing loss and hardship upon all within the community with whom these producers and distributors carry on business relations;
- (m) due to the nature of milk and the conditions surrounding its production and distribution, the natural law of supply and demand has been found inadequate to protect the industry in this and other states and in the public interest it is necessary to provide state supervision and regulation of the milk industry in this state.

(2) The general purpose of this chapter is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police powers of the state.

History: (1)En. Sec. 1, Ch. 204, L. 1939; amd. Sec. 1, Ch. 4, L. 1967; Sec. 27-401, R.C.M. 1947; (2)En. Sec. 2, Ch. 204, L. 1939; amd. Sec. 2, Ch. 4, L. 1967; amd. Sec. 88, Ch. 431, L. 1975; Sec. 27-402, R.C.M. 1947; R.C.M. 1947, 27-401, 27-402; amd. Sec. 2, Ch. 242, L. 1995.

General Powers of Department and Board

81-23-103. General powers of department and board.

(1) Except for milk produced from a small dairy as defined in 81-21-101, the board shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. The board shall conduct hearings and make determinations under this chapter and under board rules and orders promulgated pursuant to this chapter. This chapter does not affect the status, force, or operation of any provision of public health laws, county board of health rules, or municipal ordinances for the promotion or protection of the public health.

(2) The department may cooperate with the department of public health and human services, a county or city board of health, or the department of agriculture in enforcing this chapter.

(3) The department shall assist the board by investigating all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and by bringing proceedings to enforce the orders of the board. The department, in exercising its enforcement duties, may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter. The department may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness.

(4) The department shall provide staff to the board as provided in 2-15-121 to assist in technical, enforcement, and regulatory activities.

History: En. Sec. 5, Ch. 204, L. 1939; amd. Sec. 3, Ch. 192, L. 1959; amd. Sec. 4, Ch. 4, L. 1967; amd. Sec. 1, Ch. 267, L. 1975; amd. Sec. 90, Ch. 431, L. 1975; amd. Sec. 1, Ch. 19, L. 1977; R.C.M. 1947, 27-405; amd. Sec. 3, Ch. 333, L. 1995; amd. Sec. 359, Ch. 418, L. 1995; amd. Sec. 558, Ch. 546, L. 1995; amd. Sec. 3, Ch. 361, L. 2009; amd. Sec. 30, Ch. 320, L. 2021.

Rules And Orders

81-23-104. Rules and orders.

The board may adopt and enforce rules and orders necessary to carry out the provisions of this chapter and any orders adopted under it by the board. A rule or order must be posted for public inspection in the main office of the department for 30 days, and a copy must be filed in the office of the department. A copy must also be sent by registered or certified letter to the secretary of each area, except in the case of an order directed only to a person or persons named in it, which must be served by personal delivery of a copy or by mailing a copy to each person to whom the order is directed or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with laws of this state. The posting, in the main office of the department, of a rule or order not required to be personally served as provided in this section and the filing in the office of the department is sufficient notice to all persons affected by the rule or order. A rule or order when properly posted and filed or served, as provided in this section, has the force of law.

History: En. Sec. 13, Ch. 204, L. 1939; amd. Sec. 97, Ch. 431, L. 1975; R.C.M. 1947, 27-413; amd. Sec. 4, Ch. 361, L. 2009.

Testing Of Milk

81-23-105. Testing of milk.

(1) For the purpose of determining the value of milk supplied by producers during routine audits of milk processing plants that receive raw milk directly from producers, the department may establish a program of testing raw milk.

(2) The department may levy an assessment on licensed producers to secure the necessary funds to administer this program. This assessment is in addition to those provided in 81-23-202.

(3) All personnel employed in the sampling and testing program must be licensed by the animal health division of the department.

(4) The department may conduct all types of sampling, grading, and testing techniques that the department considers necessary to carry out the intent of this section.

History: En. 27-430 by Sec. 1, Ch. 245, L. 1977; R.C.M. 1947, 27-430; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 316, L. 1985; amd. Sec. 4, Ch. 333, L. 1995.

Application

81-23-106. Application.

This chapter does not apply to foreign or interstate commerce except insofar as it may be effective in compliance with the United States constitution and with the laws of the United States. It is the intention of the legislature, however, that the instant, whenever that may be, that the handling within the state by a dealer of milk produced outside of the state becomes the subject of regulation by the state in the exercise of its police powers, the provisions of this chapter affecting intrastate milk immediately apply and the powers conferred by this chapter attach thereto.

History: En. Sec. 23, Ch. 204, L. 1939; amd. Sec. 106, Ch. 431, L. 1975; R.C.M. 1947, 27-423(2).

TITLE 81. LIVESTOCK

CHAPTER 23. MILK PRICE CONTROL

Part 2. Licensing

Licenses To Producers, Producer-Distributors, Distributors, And Jobbers

81-23-201. Licenses to producers, producer-distributors, distributors, and jobbers.

In a market where the provisions of this chapter apply, it is unlawful for a producer, producer-distributor, distributor, or jobber to produce, transport, process, store, handle, distribute, buy, or sell milk unless the dealer is properly licensed as provided by this chapter. It is unlawful for a person to buy, sell, handle, process, or distribute milk that the person knows or has reason to believe has been previously dealt with or handled in violation of any provision of this chapter. The board may decline to grant a license or may suspend or revoke a license already granted upon due cause and after hearings.

History: En. Sec. 8, Ch. 204, L. 1939; amd. Sec. 4, Ch. 107, L. 1971; amd. Sec. 93, Ch. 431, L. 1975; R.C.M. 1947, 27-408; amd. Sec. 2708, Ch. 56, L. 2009; amd. Sec. 5, Ch. 361, L. 2009.

Licenses -- Disposition of Income

81-23-202. Licenses -- disposition of income.

(1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department as provided in 81-22-202 or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the board. The annual fee for the license is \$2, is due before July 1, and must be deposited by the department in the

general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter applies to every part of the state of Montana.

(2) In addition to the annual license fee, the board shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

- (a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;
- (b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;
- (c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The board shall adopt rules fixing the amount of the fees under this section, including rules identifying the milk hundredweight equivalent conversion factor used for calculating the amount of the fees levied on manufactured dairy products. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4)

- (a) In addition to the fees established in subsections (1) through (3), the department shall assess a fee per hundredweight on the volume of all classes of milk produced and sold by a person licensed by the department to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department. The fee must be established pursuant to 81-1-102(2).
- (b) A person licensed by the department shall report to the department on a monthly basis the volume of milk produced. All reporting documentation must be submitted on forms approved or provided by the department.

(5) The assessments upon producer-distributors, producers, and distributors must be paid before the 25th day of each month. The amount of the assessments must be computed by applying the fee designated by the board and the fee established in subsection (4) to the volume of milk sold in the preceding month.

(6) Failure of a producer-distributor, producer, or distributor to pay an assessment when due is a violation of this chapter, and the board may revoke a license upon due cause and after a hearing. A licensee shall pay all assessments accrued through the date a license is revoked under this section. A revoked license must be reinstated by the board upon payment of all accrued assessments and a delinquency fee established by rule.

(7) All assessments required by this chapter must be deposited by the department in the state special revenue fund. All costs of administering chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this chapter, must be paid out of the board money in that fund.

(8) The board may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year.

History: Ap. p. Sec. 9, Ch. 204, L. 1939; amd. Sec. 6, Ch. 192, L. 1959; amd. Sec. 157, Ch. 147, L. 1963; amd. Sec. 5, Ch. 107, L. 1971; amd. Sec. 2, Ch. 127, L. 1974; amd. Sec. 94, Ch. 431, L. 1975; Sec. 27-409, R.C.M. 1947; Ap. p. Sec. 23, Ch. 204, L. 1939; amd. Sec. 106, Ch. 431, L. 1975; Sec. 27-423, R.C.M. 1947; R.C.M. 1947, 27-409, 27-423(part); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 566, L. 1993; amd. Sec. 3, Ch. 242, L. 1995; amd. Sec. 5, Ch. 333, L. 1995; amd. Sec. 2, Ch. 135, L. 2003; amd. Sec. 6, Ch. 361, L. 2009; amd. Sec. 1, Ch. 271, L. 2015; amd. Sec. 1, Ch. 79, L. 2017.

Application For Licenses

81-23-203. Application for licenses.

An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared by the department and containing the information required by the board. The application must certify the applicant to be the holder of all licenses required by the board for the conduct of the applicant's business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug, and Cosmetic Act. The application must be accompanied by the license fee required to be paid.

History: En. Sec. 10, Ch. 204, L. 1939; amd. Sec. 7, Ch. 192, L. 1959; amd. Sec. 6, Ch. 107, L. 1971; amd. Sec. 95, Ch. 431, L. 1975; R.C.M. 1947, 27-410; amd. Sec. 6, Ch. 333, L. 1995; amd. Sec. 7, Ch. 361, L. 2009.

Declining, Suspending, And Revoking Licenses -- Penalties In Lieu Of Suspension or Revocation

81-23-204. Declining, suspending, and revoking licenses -- penalties in lieu of suspension or revocation.

(1) The board may refuse to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this chapter or of any lawful order or rule of the board, the failure or refusal to make required statements or reports, or failure to pay license or assessment fees are causes for which the board may suspend or revoke a license.

(2) In place of suspension or revocation of a license, the board may assess a civil penalty not to exceed \$500 per day for each daily failure to comply with or each daily violation of the provisions of this chapter or of any lawful order or rule of the board. A penalty may not be assessed until after the cause of the penalty has been upheld following the notice and hearing requirements of subsection (1). If the person against whom a civil penalty is assessed fails to pay the civil penalty immediately, the board shall collect the civil penalty by a civil proceeding in the district court of the first judicial district. This penalty must be construed as civil and not criminal in nature. Any money received by the board as a result of collection of civil penalties must be paid into the state special revenue fund as provided by 81-23-403.

History: En. Sec. 11, Ch. 204, L. 1939; amd. Sec. 7, Ch. 107, L. 1971; amd. Sec. 96, Ch. 431, L. 1975; R.C.M. 1947, 27-411; amd. Sec. 3, Ch. 23, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 361, L. 2009.

TITLE 81. LIVESTOCK

CHAPTER 23. MILK PRICE CONTROL

Part 3. Regulation of Milk Prices

Establishment Of Minimum Prices

81-23-302. Establishment of minimum prices.

(1) The board shall, by adopting rules, fix minimum producer prices for classes of utilization of milk as defined by the board.

(2) The board shall establish prices by means of flexible formulas that must be devised so that the formulas bring about automatic changes in all minimum prices that are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices that are fair and equitable to producers and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors that must be taken into consideration in establishing the formulas and, in particular, in determining costs of production and of the actual dollars and cents costs of production that preliminary studies and investigations

of auditors or accountants in the department's employment indicate will or should be shown at the hearing so that all interested parties will have an opportunity to be heard and to question or rebut the considerations as a matter of record.

(5) Specific factors may include but are not limited to the following items:

- (a) current and prospective supplies of milk in relation to current and prospective demands for milk for all purposes;
- (b) the cost factors in producing milk, which must include among other things the prices paid by farmers generally, as used in parity calculations of the United States department of agriculture, prices paid by farmers for dairy feed in particular, and farm wage rates in this state;
- (c) the alternative opportunities, both farm and nonfarm, open to milk producers, which must include among other things the prices received by farmers for all products other than milk, the prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;
- (d) the prices of butter, nonfat dry milk, and cheese;
- (e) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or part of an official order establishing or revising milk pricing formulas upon facts within its own knowledge, as distinguished from evidence that may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, notify the consuming public and the milk industry of the specific facts within its own knowledge that it will consider so that all interested parties will have an opportunity to be heard and to question or rebut the facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula under which minimum producer prices for milk must be computed.

(8) This section may not be construed as requiring the board to promulgate a specific number of formulas, but it must be construed liberally so that the board may adopt a reasonable method of expression to accomplish the objective set forth in subsection (7).

(9) Each rule establishing or revising milk pricing formulas must classify milk by forms, classes, grades, or uses as the board considers advisable and must specify the minimum prices for the forms, classes, grades, and uses.

(10) Distributors who have processing facilities in this state shall, whenever possible, purchase milk from Montana producers for the processing of products to be sold in this state if milk is available from Montana producers at the price set by the board.

(11) The board shall adopt rules to regulate transportation rates that distributors, contract haulers, and others charge producers for interplant transportation of milk. An allowance for transportation of milk between plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest. The board may promulgate rules regarding the requirement for first call on Montana milk supplies as provided in subsection (10). Rules must be coordinated with those adopted pursuant to fair trade practices under 81-23-303.

(12) All milk purchased by a distributor must be purchased on a uniform basis. The basis to be used must be established by the board after the producers and the distributors have been consulted.

(13) The board may amend a rule in the same manner provided in this section for the original establishment of milk pricing formulas. The board may in its discretion, when it determines that the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

(14) Upon petition of a distributor or a majority of a distributor's producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices. If the board finds that the evidence presented at the hearing warrants the establishment of a base or quota plan, the board shall proceed by order to establish the base or quota plan.

(15)

(a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by a licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at the hearing, the board shall, among other things, specifically receive and consider evidence concerning production and marketing practices that have historically prevailed statewide. If the board finds that the evidence presented at the hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by order to establish the arrangement. An order is not effective until it is approved in a referendum conducted by the board by mail among affected producers, producer-distributors, and distributors. The order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions that the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

- (i) a statewide base or quota plan contemplated in subsection (14);
- (ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and
- (iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but withdrawals from the cash reserve must be reimbursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (15)

- (a). The order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing.

(16) The requirements of this section concerning notices of hearings for the establishment of milk pricing formulas apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment of base or quota plans or statewide pooling arrangements.

(17) Rules adopted pursuant to this section must be audited for compliance by the department and enforced by the board. An enforcement action is subject to the provisions of 81-23-407.

History: En. Sec. 7, Ch. 204, L. 1939; amd. Sec. 5, Ch. 192, L. 1959; amd. Sec. 5, Ch. 4, L. 1967; amd. Sec. 3, Ch. 107, L. 1971; amd. Sec. 1, Ch. 127, L. 1974; amd. Sec. 92, Ch. 431, L. 1975; amd. Sec. 2, Ch. 19, L. 1977; R.C.M. 1947, 27-407; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 4, Ch. 23, L. 1983; amd. Sec. 1, Ch. 274, L. 1987; amd. Sec. 4, Ch. 242, L. 1995; amd. Sec. 7, Ch. 333, L. 1995; amd. Sec. 17, Ch. 416, L. 1999; amd. Sec. 2, Ch. 23, L. 2007; amd. Sec. 9, Ch. 361, L. 2009.

Rules of Fair-Trade Practices

81-23-303. Rules of fair-trade practices.

(1) The board may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this chapter and among licensees and the general public. Except for provisions regarding the requirement for first call on Montana milk supplies, as provided in 81-23-302(10), rules adopted pursuant to 81-23-302(11), and as provided in subsection (2), fair trade practice rules must contain but are not limited to provisions prohibiting the following methods of doing business that are unfair, unlawful, and not in the public interest:

- (a) the payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise;
- (b) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer;
- (c) the extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions; and
- (d) the payment of a price lower than the applicable producer price, established by the board, by a distributor to a producer for milk that is distributed to any person, including agencies of the federal, state, or local government.

(2) A payment subject to a milk price forward contract that is less than the minimum producer price is not a violation of this section.

History: En. Sec. 14, Ch. 204, L. 1939; amd. Sec. 8, Ch. 192, L. 1959; amd. Sec. 98, Ch. 431, L. 1975; R.C.M. 1947, 27-414; amd. Sec. 5, Ch. 23, L. 1983; amd. Sec. 5, Ch. 242, L. 1995; amd. Sec. 75, Ch. 7, L. 2001; amd. Sec. 10, Ch. 361, L. 2009; amd. Sec. 2, Ch. 189, L. 2021.

TITLE 81. LIVESTOCK

CHAPTER 23. MILK PRICE CONTROL

Part 4. Enforcement

Entry, Inspection, And Investigation

81-23-401. Entry, inspection, and investigation.

Except for the premises of a small dairy as defined in 81-21-101, the department may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled, or stored or where the books, papers, records, or documents relative to those transactions are kept, and may inspect and copy them in any place in this state. The department may administer oaths and take testimony for the purpose of ascertaining facts which, in the judgment of the department, are necessary to administer this chapter.

History: En. Sec. 15, Ch. 204, L. 1939; amd. Sec. 6, Ch. 4, L. 1967; amd. Sec. 101, Ch. 431, L. 1975; R.C.M. 1947, 27-415; amd. Sec. 11, Ch. 361, L. 2009; amd. Sec. 31, Ch. 320, L. 2021.

Reports Of Dealers -- Accounting System -- Records

81-23-402. Reports of dealers -- accounting system -- records.

(1)

- (a) The department may require licensees to file reports with it at reasonable or regular times that the board may require, showing the licensee's production, sale, or distribution of milk and any information considered necessary by the board that pertains to the production, sale, or distribution of milk, either under oath or otherwise, as the board may direct. Failure or refusal to file a report when directed to do so is grounds for the revocation of the license and is a violation for which the licensee may be fined as provided by this chapter, one or both, at the discretion of the board.
- (b) The department and the board may request only the records necessary for establishing milk prices pursuant to this chapter. The department shall provide licensees with information concerning procedures

a licensee may use to assert a claim of confidentiality with respect to constitutionally protected information that must be submitted to the department, such as trade secret or proprietary information.

(2) The board shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

(3) A distributor and producer-distributor shall keep:

- (a) a record of all milk, cream, or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, deductions or charges made, and the use to which the milk or cream was put;
- (b) a record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold;
- (c) a complete record of all milk, cream, or dairy products sold, classified as to kind and grade, showing where sold, and the amount received in payment;
- (d) a record of the wastage or loss of milk or dairy products;
- (e) a record of the items of handling expense;
- (f) a record of all refrigeration facilities sold for storage purposes to any person, showing types, sizes, and location of the facilities and the original or duplicate original of all agreements covering sales for them;
- (g) other records that the board considers necessary for the proper enforcement of this chapter.

History: En. Sec. 16, Ch. 204, L. 1939; amd. Sec. 9, Ch. 192, L. 1959; amd. Sec. 102, Ch. 431, L. 1975; R.C.M. 1947, 27-416; amd. Sec. 12, Ch. 361, L. 2009.

Disposition Of Fines

81-23-403. Disposition of fines.

(1) All fines assessed by a court, other than a justice's court, for violation of this chapter must be paid by the court to the department.

(2) All fines received by the department must be deposited with the state treasurer and must be placed by the treasurer in the state special revenue fund. Fines assessed for violations of this chapter are earmarked for the purposes of this chapter.

History: En. Sec. 17, Ch. 204, L. 1939; amd. Sec. 158, Ch. 147, L. 1963; amd. Sec. 103, Ch. 431, L. 1975; R.C.M. 1947, 27-417; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 58, Ch. 557, L. 1987; amd. Sec. 2710, Ch. 56, L. 2009.

Cooperation With Other Governmental Agencies

81-23-404. Cooperation with other governmental agencies.

In order to secure a uniform system of milk control, the board shall confer and cooperate with the proper authorities of other states and of the United States, including the secretary of agriculture of the United States, and for those purposes, the board may conduct joint hearings, issue joint or concurrent orders, and exercise all its powers under this chapter.

History: En. Sec. 21, Ch. 204, L. 1939; amd. Sec. 104, Ch. 431, L. 1975; R.C.M. 1947, 27-421; amd. Sec. 13, Ch. 361, L. 2009.

Violations Made Misdemeanors -- Penalties

81-23-405. Violations made misdemeanors -- penalties.

(1) Except for a person operating a small dairy as defined in 81-21-101, a person who produces, sells, distributes, or handles milk in any way, except as a consumer, without a license from the board as required by this chapter or who violates a lawful rule of the department or board is guilty of a misdemeanor punishable by a fine not exceeding \$600. Each day's violation is a separate offense.

(2) The district courts have original jurisdiction in all criminal actions for violations of this chapter and in all civil actions for the recovery or enforcement of penalties provided for in this chapter. All of those actions, both criminal and civil, must be tried in the district court.

(3) The county attorneys, in their respective counties, shall diligently prosecute all violations of this chapter.

History: En. Sec. 22, Ch. 204, L. 1939; amd. Sec. 105, Ch. 431, L. 1975; R.C.M. 1947, 27-422; amd. Sec. 14, Ch. 361, L. 2009; amd. Sec. 32, Ch. 320, L. 2021.

Additional Remedies

81-23-406. Additional remedies.

The board may begin any proceeding at law or in equity as may appear necessary to enforce compliance with this chapter or to enforce compliance with an order or rule of the board or department adopted under this chapter or to obtain a judicial interpretation of any of them. In addition to any other remedy, the board may apply to the district court of the district where the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. The board may not be required to post bond in an action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board or department in the name of the department, and it is not necessary in an action to which the department is a party that the action be brought by or against this state on relation of the department. The board may sue by its own attorney, and it may also call upon a county attorney to represent it in the district court of the county attorney's county or the attorney general to represent it on appeal to the supreme court, or it may associate its own attorney with either in court.

History: En. Sec. 24, Ch. 204, L. 1939; amd. Sec. 107, Ch. 431, L. 1975; R.C.M. 1947, 27-424; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 8, Ch. 333, L. 1995; amd. Sec. 15, Ch. 361, L. 2009.

Appeal of Action or Decision

81-23-407. Appeal of action or decision.

An entity receiving notice of a violation of a provision of this chapter may within 60 days of receiving the notice from the department or board submit a request to the board for a contested case proceeding pursuant to Title 2, chapter 4, part 6. Upon receiving a request, the board shall appoint a hearings examiner to conduct the hearing and issue a proposal for decision. The board shall issue a final decision within 90 days of receiving the proposal for decision.

History: En. Sec. 16, Ch. 361, L. 2009.