

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 32.24.150 definitions, 32.24.470)	AMENDMENT
regulation of unfair trade practices,)	
32.24.512 reports and records, and)	NO PUBLIC HEARING
32.24.515 payments to pool)	CONTEMPLATED
producers and adjustment of)	
accounts)	

TO: All Concerned Persons

1. The Board of Milk Control (board), which is administratively attached to the Department of Livestock, proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on June 4, 2021, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

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

(1) through (20) remain the same.

(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.

(21) through (43) remain the same but are renumbered (22) through (44).

AUTH: 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

REASON: "Milk price forward contract" is a new term proposed to implement amendments to 81-23-101 and 81-23-303, MCA, resulting from the enactment of 2021 Senate Bill 131, which enables distributors and producers to voluntarily enter into forward price contracts as a means for producers to hedge future milk prices without violating fair trade practices rules. Per ARM 32.24.150(8), "distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in Montana. The cooperatives operating in Montana

that purchase milk from Montana producers and sell the milk to Class I milk plants in Montana are distributors. These cooperatives and the Class I Montana plants that purchase milk from the cooperatives are also pool handlers, as defined in ARM 32.24.150(29).

The proposed amendment to ARM 32.24.150 would affect approximately 45 businesses licensed by the Milk Control Bureau.

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

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 ~~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) through (2) remain the same.

AUTH: 81-23-104, 81-23-302, 81-23-303, MCA

IMP: 81-23-103, 81-23-302, 81-23-303, MCA

REASON: The board proposes the amendment to implement the amendment to 81-23-303, MCA, resulting from the enactment of 2021 Senate Bill 131 which enables distributors and producers to voluntarily enter into forward price contracts as a means for producers to hedge future milk prices without violating fair trade practices rules. The current rules prohibit distributors from paying producers a price that is lower than the applicable producer price established by the board. The amendment to 81-23-303, MCA, provides that payment subject to a milk price forward contract that is less than the minimum producer price is not a violation of the minimum producer price provision.

The proposed amendment to ARM 32.24.470 would affect approximately 45 businesses licensed by the Milk Control Bureau.

The proposed amendment would only affect producers and distributors that voluntarily enter into milk price forward contracts. A producer entering into such a contract would be paid less than the applicable producer price established by the board if the forward contract price was lower. It is not possible to estimate the economic impact of the voluntary milk price forward contracts to producers. Economic impact to distributors may be minimal because distributors can hedge the contracts with commodity exchange instruments. Milk price forward contracts will have no financial impact to the Milk Control Bureau.

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

32.24.512 REPORTS AND RECORDS (1) remains the same.

(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) through (i) remain the same.

(j) the weight of milk and the transportation charges for shipments of unprocessed pool milk between plants marketed pursuant to ARM 32.24.524; and

(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

(k) remains the same but is renumbered (l).

(3) through (6) remain the same.

AUTH: 81-23-104, 81-23-302, 81-23-303, 81-23-402, MCA

IMP: 81-23-302, 81-23-303, 81-23-402, MCA

REASON: The board proposes this amendment so that the bureau, when it audits the payment from a distributor to a producer, has possession of any milk forward price contract that authorizes a deduction from the producer's minimum required payment. By requiring distributors to submit milk price forward contract information on the 8th business day after the end of each month, the bureau will not be delayed when its staff audit producer payments, shortly after the payments are due (not later than the 15th day after the end of the month that producers' milk was received).

The proposed amendment to ARM 32.24.512 would affect approximately two businesses licensed by the Milk Control Bureau.

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

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) and (b) remain the same.

(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) through (xvii) remain the same but are renumbered (xiii) through (xvii).
- (e) through (2) remain the same.

AUTH: 81-23-104, 81-23-302, 81-23-303, MCA
IMP: 81-23-302, 81-23-303, MCA

REASON: The board proposes these amendments to implement the amendment to 81-23-303, MCA, resulting from the enactment of 2021 Senate Bill 131 which enables distributors and producers to voluntarily enter into forward price contracts as a means for producers to hedge future milk prices without violating fair trade practices rules. The current rules prohibit distributors from paying producers a price that is lower than the applicable producer price established by the board. The amendment to 81-23-303, MCA, provides that payment subject to a milk price forward contract that is less than the minimum producer price is not a violation of the minimum producer price provision.

The proposed amendment to ARM 32.24.515 would affect approximately 45 businesses licensed by the Milk Control Bureau.

The proposed amendment would only affect producers and distributors that voluntarily entered into milk price forward contracts. A producer entering into such a contract would be paid less than the applicable producer price established by the board if the forward contract price was lower. In such instances, the dollar amount specified by (1)(d)(xi) would be a deduction from the minimum required payment. In instances that the milk forward price contract exceeded the minimum required

payment, the dollar amount specified by (1)(d)(xi) would be an addition to the minimum required payment.

It is not possible to estimate the economic impact of the voluntary milk price forward contracts to producers or the extent to which producers will enter into such contracts. Economic impact to distributors is likely small because distributors will likely hedge the contracts with commodity exchange financial instruments. Milk price forward contracts will have no financial impact to the Milk Control Bureau.

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

4. The board intends to adopt these proposed amendments effective July 1, 2021.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov, to be received no later than 5:00 p.m., June 11, 2021.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as in 5 above. The written request for hearing must be received no later than 5:00 p.m., June 11, 2021.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 5, based upon there being approximately 45 businesses licensed by the Milk Control Bureau that are producers or are distributors purchasing milk from producers.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. The primary bill sponsor, Senator Daniel R. Salomon, was contacted by mail sent to 42470 Salomon Road, Ronan, Montana 59864, and by email at dan.salomon@mtleg.gov on April 29, 2021.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Ken Bryan
Ken Bryan
Chair
Board of Milk Control

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

Certified to the Secretary of State May 4, 2021.