

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION,
 RULE I, the amendment of ARM) AMENDMENT, AND REPEAL
 32.3.104, 32.3.108, 32.3.131,)
 32.3.140, 32.3.201, 32.3.207,)
 32.3.216, 32.3.301, 32.3.403,)
 32.3.411, 32.3.416, 32.3.606,)
 32.3.1505, and 32.3.2301, and the)
 repeal of ARM 32.3.132, 32.3.302,)
 32.3.303, 32.3.304, 32.3.305,)
 32.3.307, 32.308, 32.3.309, 32.3.310,)
 32.3.311, 32.3.312, 32.3.313,)
 32.3.314, 32.3.315, 32.3.402,)
 32.3.407, 32.3.412, 32.3.418,)
 32.3.440, 32.3.608, 32.3.1305,)
 32.3.1507, 32.3.2006, and 32.3.2303,)
 pertaining to animal contagious)
 disease control)

TO: All Concerned Persons

1. On July 5, 2024, the Department of Livestock published MAR Notice No. 32-24-345 regarding the proposed adoption, amendment, and repeal of the above-stated rules at page 1530 of the 2024 Montana Administrative Register, Issue No. 13. On July 26, 2024, the department published an amended notice pertaining to the adoption, amendment, and repeal of the above-stated rules at page 1749 of the 2024 Montana Administrative Register, Issue Number 14.

2. The department has amended the following rules as proposed: ARM 32.3.104, 32.3.108, 32.3.131, 32.3.140, 32.3.201, 32.3.207, 32.3.216, 32.3.301, 32.3.403, 32.3.411, 32.3.416, 32.3.606, 32.3.1505, and 32.3.2301.

3. The department has repealed the following rules as proposed: ARM 32.3.132, 32.3.302, 32.3.303, 32.3.304, 32.3.305, 32.3.307, 32.3.308, 32.3.309, 32.3.310, 32.3.311, 32.3.312, 32.3.313, 32.3.314, 32.3.315, 32.3.402, 32.3.407, 32.3.412, 32.3.418, 32.3.440, 32.3.608, 32.3.1305, 32.3.1507, 32.3.2006, and 32.3.2303.

4. The department has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (32.3.2401) INDEMNITY FOR ANIMALS DESTROYED DUE TO DISEASE (1) The owner of cattle, domestic bison, sheep, goats, swine, alternative livestock, and poultry destroyed or slaughtered due to disease as

specified in 81-2-201, MCA, under the direction of the department or by order of the board may be paid indemnity for up to 100% of the appraised value of the animal, provided, however, payment for registered animals shall not exceed two times the determined value of commercial or grade animals.

(2) The indemnity shall be paid when the following conditions exist:

(a) At the time of test or condemnation, the animal for which indemnity is claimed did not belong to or was not upon the premises of any person to whom it had been sold for slaughter, shipped for slaughter, or delivered for slaughter;

(b) The animal was purchased or imported into Montana less than 120 days before the date of a test disclosing reactor animals, and the owner is a farmer or rancher buying and selling animals in the ordinary course of their farm and ranch operation. Cattle must have been branded with said owner's brand prior to the date of the test;

(c) If not already tested, the herd of origin of the reactor animal for which indemnity is claimed is made available by the claimant for an official test;

(d) The provisions of this subchapter pertaining to testing, quarantine, movement of animals under quarantine, cleaning and disinfection have been carried out; and

(e) An application claiming indemnity has been submitted.

(3) The amount of indemnity paid by the Department shall be decided by the Board with consideration given to any indemnity payments already paid on the animals, comparable sales receipts provided by the owner, the U.S. Department of Agriculture (USDA) indemnity calculator, USDA Agriculture Marketing Service market reports, and sales data from Montana livestock markets at the time the animal was taken.

(4) If there is a mortgage or lien recorded with the department on cattle animals specified in 81-2-201, MCA, that are slaughtered and indemnified in accordance with the provisions of this subchapter, the warrant paying the indemnity shall be made payable jointly to the owner of the cattle animal and the lien holder or mortgagee.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA

IMP: 81-2-201, 81-2-209, 81-2-210, MCA

5. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: One commenter recommended changing "cattle" in NEW RULE I(4) to "livestock" to make it more consistent with the species listed in (1).

RESPONSE #1: The department thanks the commenter for the feedback. The department agrees that the term "cattle" in the originally proposed NEW RULE I(4) imposes an unnecessary limitation. However, 81-2-201, MCA, specifically identifies eligible animals and does not use the term "livestock." Use of the term "livestock" in (4) could potentially create ambiguity, in part because "livestock" is defined in ARM 32.3.201(1)(g) and 81-2-702(5), and both definitions include animals that are not eligible for indemnification under 81-2-201, MCA. Accordingly, the adopted rule is

changed from the original proposal by replacing "cattle" with "animals specified in 81-2-201, MCA."

COMMENT #2: One commenter recommended adding a requirement that per capita fees must be paid before an owner can be eligible for indemnification in NEW RULE I.

RESPONSE #2: The department thanks the commenter for the feedback. Requiring an owner to pay per capita fees before they are eligible for indemnification would impose a significant condition to payment that may not have been intended by the Legislature. Additionally, the purpose of the rule is to promote the efficient destruction and slaughter of diseased animals that pose a risk to animal health in the state of Montana, and imposing a requirement that per capita fees must be paid prior to destruction/slaughter may impede or delay that goal.

/s/ Lindsey R. Simon
Lindsey R. Simon
Rule Reviewer

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

Certified to the Secretary of State September 10, 2024.