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64th Montana Legislature

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Issues Related to Milk Assessment and Milk and Egg Inspection Bureau Budget
 by Pat Murdo, Legislative Services

The Department of Livestock has proposed a rule under notice number [32-15-268](#) to revise milk assessments to help provide sufficient revenues to operate the Milk and Egg Inspection Bureau. The money is intended to fund the milk inspection and milk lab budgets; egg inspection is funded in other ways.

Follow the money

Table 1 shows appropriated amounts and projected and actual revenues for the Milk and Egg Inspection Bureau. It is not always clear what amounts are combined for milk and egg and which are separate. The numbers in the upper left shaded part of the box are from the Legislative Fiscal Report, based on the FY2016-2017 budget, and the numbers on the right hand side and for the milk lab budget are from reports made by the Central Services Office of the Department of Livestock to the Board of Livestock in January. The \$224,244 for the milk lab for the biennium is from p. C-116 of the Legislative Fiscal Report.

Table 1: FY 2016-2017 Budgeted Amounts, Revenues, and 6-month Expenditures for Bureau, Lab

	FY 2016-2017 Appropriated Sums		FY 2016-17 Proposed Revenues x Source			Actual Expense July - Dec. 2015	Actual Revenue* July - Dec 2015
	FY 2016	FY 2017	Egg Grading	Milk/Egg Insp	Fed. Special		
Total: Milk-Egg	\$1,283,734		\$1,283,734			\$118,488	\$186,991
Milk & Egg Inspection Bureau	\$666,284	\$617,450	\$334,754 for 2 years	\$906,298 for 2 years. (includes 2 budgeted FTE egg inspectors)	\$42,682 (for egg)	\$52,607	(70% is for inspectors -- \$130,894 - and 30% for the milk lab - \$56,097.)
Milk Lab	\$145,294 (includes pay plan)			\$224,244 for biennium - or roughly \$112,122/yr)			

*Revenue shown in January 2016 report to the Board of Livestock indicates revenues from milk assessment for July to December 2015 were \$25,000 less than the year earlier figure.

Table 1 shows a couple of issues being discussed as part of the Milk and Egg Bureau concerns:

- ! revenues, if they run at the current rate, will be \$373,982 at the end of FY 2016, or \$292,302 less than the appropriated amount. This raises questions as to whether the appropriated amount was too large or whether necessary functions are not being done.
- ! expenditures are running less than revenues, which is good, but there are questions of whether the number of inspections (and inspectors) are sufficient to meet federally set

inspection schedules, required to continue allowing Montana milk producers to ship interstate;

- ! revenues as projected in the budget, based on the center portion of Table 1, are less than budgeted expenditures (left side of chart) for the milk lab, which apparently does not charge on a per test basis but gets a portion of the milk assessment (the focus of the rule before the Economic Affairs Interim Committee); and
- ! actual revenues and expenditures for FY 2016 as relayed to the Board of Livestock in January do not delineate as to whether egg inspectors are separated from milk inspectors. According to one department e-mail, the milk inspection portion of the division's budget is 71.1%, with egg shell inspection at 3.7%, and milk lab at 25.2%. The numbers may include or exclude the egg shell inspection portion.

What Table 1 does not show:

- ! seasonal fluctuations in the inspection season, timing of ordering supplies for the lab, or increased salaries if there is (or was) a month with 3 pay periods;
- ! projected annual expenditures as of mid-January of about \$345,000.
- ! positions left vacant in the milk lab (0.5 of a funded 1.5 positions and 1 position of the 2 funded egg inspection positions.) According to an e-mail from Milk and Egg Inspection Bureau Chief Dan Turcotte, there is no backup for sick leave or vacations. He is having to lose vacation time, while inspectors are building comp time. One of the dairy inspectors now is doing some egg grading, while Mr. Turcotte is doing some milk inspections. He adds, "We are operating using existing vehicles and not leasing trucks that were in the budget. Also I have applied to FDA for funding to help pay for travel on several upcoming classes required to maintain certification of the dairy program."

Table 2: Comparison of Planned Expenditures with Projected Assessment Revenues

Projected expenditures for Milk Inspections and Milk Lab as reduced to date are \$345,000 in FY 2016. FY 2017 budgeted expenditures for Milk and Egg Inspectors and the Milk Lab are \$517,752.	Assessments - Status Quo, Plan 1 and Plan 2					
	Plan 1 and Plan 2 are alternatives to the rule as proposed in 32-15-268 MAR. As presented to the Board of Livestock in January, the difference in Plan 1 is that it has a lower assessment than the FY 2016 rate proposed in the rule.					
	By Producers Status Quo	By Plants Status Quo	Plan 1-- Producers	Plan 1-- Plant	Plan 2-- Producers	Plan 2 -- Plant
Allocation of costs	100%	0				
Minimums	\$50/mo	0	\$225/mo	\$725/mo	\$125/mo	\$350/mo
Maximums	\$1,050	0	\$950/mo	\$2,850/mo	\$1,050/mo	\$2,850
Assessment rate \$/cwt	\$0.1550	0	\$0.1450	\$0.1450	\$0.1625	\$0.1625
Amount raised	\$370,337	0	\$521,276		\$518,235	

Points of Contention

- ! *A new assessment for some.* As can be seen from Table 2, both Plans 1 and 2 would begin levying an assessment on plants (processors of cheese, ice cream, and yogurt, primarily) that have never had an assessment under 81-23-202(4), MCA. The rationale for now levying the assessment on plants, as provided in the rule notice, was that the

statute provides for levying the assessment on all those licensed by the Milk and Egg Bureau. Definitions of milk and producers under 81-23-101, MCA, indicate that all types of milk products are covered.

- ! *Substantial economic impact for some.* The rationale provided with the proposed increase or additional assessment also noted that 72 entities would be affected by the rule change. A [small business impact statement](#) developed by the Department of Livestock suggested that a significant impact would be 5% or more of the estimated value of the monthly production at a business or the products' estimated retail price. At a Town Hall meeting in Bozeman in December concerned businesses indicated that many of their products were sold at wholesale and that the impacts could not be adequately calculated. Others noted that they do not produce at the same level throughout the year and that the minimums would be required regardless of what was produced (or inspected).
- ! *Addition of minimum assessments.* Complaints voiced at the Town Hall meeting indicated that the new minimum assessments would be onerous, particularly on businesses that have seasonal fluctuations.
- ! *Concerns that costs are actually commensurate with fees.* At the Town Hall meeting in Bozeman some people pointed out that commensurate cost analyses were hard to judge because no one has provided an overall estimate of the cost of testing of milk samples or of inspections. Another suggested that inspection costs in time spent per plant were possibly equal so that the maximum cap might be inappropriate. The Department of Livestock has indicated that use of maximums and minimums for the assessments helps to keep costs commensurate with fees because, it says, inspectors spend more time at smaller dairies or plants than at larger dairies or plants. Capping the amount that larger dairies or plants pay is one way to recognize the similar time and effort spent by inspectors on large or small facilities. Having a minimum is a way to make sure small dairies or plants pay more, to meet the actual costs, than they might pay based on small production volumes.

Other problems

Also at the Bozeman Town Hall meeting some participants suggested that the general fund ought to pay for at least some of the milk plant and dairy inspections because of the public health and safety component with inspections. A letter from Blake Creek Project Management, Inc. on behalf of Montana Milk Producers Association, provided to the Board of Livestock Jan. 15, 2016, also noted that the rationale used by the 2015 Legislature to commit general funds to the Veterinary Diagnostic Lab had included milk lab tests as part of the reason for providing general funds. In brief, the argument is that licensees ought not to bear the full cost of running the Milk and Egg Inspection Bureau and the Milk Lab in the Veterinary Diagnostic Laboratory.

Further, the licensing fees for the Milk and Egg Inspection Bureau go into the general fund, as provided in 81-21-102. MCA. Because the Board of Livestock can change assessments by rule, and because the assessments are intended to be used for administration, according to 81-23-202, MCA, there has not been pressure to change licensing fees. See

Grade A Dairy License	\$5/year
Grade B Facility License	\$50/year
Milk Hauler License	\$30/year

Table 3 for an example of the types of licenses that one dairy pays. The Appendix shows the

types of licenses that producers, distributors, and other licensees pay and whether the money goes to the Milk Control Bureau or to the Milk and Egg Inspection Bureau. The assessments and licenses under discussion here are only about the Milk and Egg Inspection Bureau.

Two assessments allowed under 81-23-202, MCA, are:

- ! for administration and enforcement of the "milk price control" chapter, Title 81, chapter 23, an assessment set by rule upon producers, producer-distributors, and distributors based on a fee per hundredweight. The amounts are not to exceed levels "sufficient to provide for the administration of this chapter."
- ! an assessment "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. This assessment is in addition to the other fees. Subsection (4) allows assessments per hundredweight on all classes, which means milk, cream, cheese, ice cream, yogurt, etc.

Options for Committee to Consider

The Economic Affairs Interim Committee asked for a hold on implementation of the rule until the committee had an opportunity for a hearing on the rule. The committee has to vote at its February meeting on whether to continue its objection, which prevents the rule from going into place for 6 months (possibly creating budgetary or other problems before the end of the fiscal year). Or the committee can lift its objection. Regardless of the action, the committee might want the Department of Livestock to provide one or more of the following:

- an analysis of what components are needed for milk inspection and milk lab testing. If lab tests have not been priced according to costs for overhead, supplies, and staffing, then ask for estimates on those costs. Reportedly, Idaho's milk lab tests cost \$30 for each test (this has not been verified.) Provide an analysis of the difference in revenue streams and impacts if the Department of Livestock's milk lab charged per test and per inspection, using increases in licensing fees to pay for administration by having the money go into a special revenue account for the department, instead of charging an assessment. A change in fund designation would require legislative action.
- an analysis of what changes would be in effect if no minimums were charged and only maximums imposed, since the assessments are to be per hundredweight and some dairies might not reach the hundredweight minimums;
- a revised small business economic impact assessment to include the impact of business closures;
- a specific budget analysis that removes egg inspections from the budgeting to determine what revenues and expenditures are actual milk inspection and milk lab costs;
- an analysis of the time spent to inspect large dairies, small dairies, travel time, and reporting time;
- an analysis of what problems may occur to the dairy industry in Montana:
 - if there are too few inspections and inspectors are stretched too thin. The lab apparently is authorized for 1.5 full time equivalent positions but has not filled the 0.5 position.
 - if there is a delay in milk lab processing of samples and how severe a delay would need to be to create large problems; and
 - if plants were allowed to mail samples in state.

Department reports indicate that consolidation within the dairy industry has led to less revenue, either because dairies have gone out of business or been bought out by larger dairies that would not have to pay more because they already are at their maximum payment amount. Mr. Turcotte noted in his January e-mail that the state still expects to pass FDA ratings but will not have the excellent scores of past ratings. "It's not the way we want to run the program or have our reputation go, but we are making it work," he wrote. "Our priority is public health and we are insuring that nothing is being compromised there the best we can."