



BLAKE CREEK PROJECT MANAGEMENT, INC.

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To: Montana Board of Livestock

From: Krista Lee Evans, On Behalf of Montana Milk Producers Association

RE: Amendment of ARM 32.2.406 pertaining to licensee assessments

Date: January 15, 2016

The Montana Milk Producers Association is providing written comment to express our strong disagreement with the proposed changes to the amount assessed to licensees pursuant to 32.2.406 A.R.M. We would argue that this fee increase is not necessary – certainly not at this magnitude. Our concerns and suggestions are outlined below.

- (1) The dairy industry in Montana grows smaller and smaller each year as producers succumb to more and more challenges facing the dairy industry. The assessments are used to protect public health and the public should bear a majority if not all of the cost.
- (2) It has been stated that the proposed fee increase is necessary to offset a budget shortfall of \$147,415. It has also been stated that this funding is necessary for the milk inspection program and the milk diagnostic lab.
- (3) On August 15, 2014, Dr. Layton presented a letter to the Legislative Economic Affairs Interim Committee (EAIC) outlining costs associated with the Veterinary Diagnostic Lab. In the letter he states:  
“The test volume performed at the MVDL that could potentially identify the zoonotic agents listed in the table is 85,978 or 31.6% of the total FY2014 volume. If I include the Milk Laboratory test volume which has both public health and consumer protection responsibilities, the test volume would be increased to 111,982 tests or 41.1% of the total FY2014 test volume.”  
(emphasis added)
- (4) In the 2015 Legislature information was presented to House Appropriations Committee showing that the total Diagnostic Lab need for FY 16 was \$2,121,478 and for FY 17 was \$2,134,001. Additionally it was shown that 41% of that money was needed from general fund – or \$896,806 for FY16 and \$874,940 for FY17 – to cover the human health part of the labs duties.
- (5) HB 2 appropriated \$896,806 from general fund for FY16 and \$874,940 for FY17 to the Diagnostic Laboratory Program. Clearly this general fund appropriation was based off of the numbers presented by Dr. Layton to the EAIC as a means of offsetting the public health component of the lab’s duties.

- (6) Based on Dr. Layton’s letter to the EAIC, 10% of that 41.1% is the result of duties associated with the Milk Laboratory test volume. Because we don’t have actual cost per test data we are forced to use the volume of tests. This is not a fiscally responsible method of calculation. We all know that the costs of tests are variable and sometimes can vary extensively. Until the fixed and variable costs per test are made available we are forced to use the volume numbers provided to the interim legislative EAIC.
- (7) Based on the above numbers, 10% of the general fund appropriated in HB 2 for Laboratory functions should be allocated to the Milk Lab. 10% of \$896,806 would be \$89,680.60 for FY16 and 10% of \$874,940 would be \$87,490 for FY 17. The general fund appropriation should be applied on a per test basis as a % of that test that is for the purpose of protecting public health the remainder of that test (if any) should be paid by state special revenue.

FY2016 Need from increased fees	Unused FY2016 GF appropriation	Outstanding Need after applying GF FY2016	FY2017 Need from increased fees	Unused FY2017 GF appropriation	Outstanding Need after applying GF FY2017
\$147,415.00	\$89,680.60	\$57,734.40	\$147,415.00	\$87,490.00	\$59,925.00

- (8) Requiring the dairy producers in Montana to pay substantially higher assessments without taking into account and/or applying the general fund appropriation towards its intended use is simply wrong and unfair to producers and should not be done.
- (9) The staff paperwork that was presented to the Board of Livestock outlines a shortfall of \$147,415.00 for FY 2016 as compared to FY 2015. Additionally the rule proposal states that the fee increases will become effective on January 1, 2016. January 1, 2016 is half way through FY2016. It begs the question of how the same amount can be needed for half of a year (FY16) as compared to a full year (FY17). This raises the question of whether the proposed fee rates are truly necessary and commensurate with costs as required in 81-1-102(2), MCA.
- (10) Section 81-1-102(2), MCA makes it very clear that fees assessed through a rule must be commensurate with costs. There has been no evidence provided to the industry to show that the costs require this significant of a fee increase. Again, without details associated for cost per test run in the milk lab it is not feasible to determine whether the proposed fees are commensurate with cost.

**81-1-102. Duties and powers of department -- fees based on costs -- notice of rules and orders.** (1) The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legislation that in the judgment of the department fosters the livestock industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of livestock interests, and assist in the prosecution of persons charged with illegal branding or theft of livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

**(2) Except as provided in 81-8-901, the department shall by rule establish all fees that it is authorized to charge, commensurate with costs.** (emphasis added)

(3) (a) In addition to the requirements of Title 2, chapter 4, the department shall provide notice of adopted, amended, and repealed administrative rules and orders as provided in subsection (3)(b).