

**ADOPTED REGULATION OF
THE STATE DAIRY COMMISSION**

LCB File No. R109-13

Effective June 23, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 584.067, 584.103 and 584.135; §§2 and 4, NRS 584.067; §3, NRS 584.067 and 584.208; §§5-8, NRS 584.067 and 584.547.

A REGULATION relating to dairy products; revising provisions relating to certain publications adopted by reference by the State Dairy Commission; revising provisions governing the production, sale and delivery of dairy products; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the State Dairy Commission is authorized to adopt regulations to carry out the provisions of chapter 584 of NRS governing dairy products and dairy substitutes. (NRS 584.067)

Under existing regulations, the Commission has adopted by reference certain provisions of certain publications concerning dairy products and has provided instructions for how to obtain a copy of these publications. (NAC 584.0103, 584.02415, 584.3001) **Sections 1, 2 and 4** of this regulation revise the manner in which a copy of the publications may be obtained. **Sections 2 and 4** adopt by reference certain additional provisions and amend certain existing provisions that were adopted by reference.

Under existing regulations, the Commission is authorized to obtain samples of certified raw milk and raw milk products for examination. (NAC 584.2091) **Section 3** of this regulation revises where such samples must be analyzed and eliminates certain testing requirements.

Under existing regulations, the Commission administers certain provisions governing wholesale customers and defines the term “wholesale customer” for the purposes of those provisions. (NAC 584.5751) **Section 5** of this regulation revises this definition to include any customer of a processing distributor or a peddler-distributor, other than a retail customer.

Under existing regulations, certain distributors are required to submit a monthly remittance report. (NAC 584.5792) **Section 6** of this regulation revises these provisions to make all distributors subject to the requirement.

Existing regulations establish a minimum price for fluid milk and fluid cream to be paid to a producer by a distributor located in the Northern Nevada Marketing Area and sets forth where information concerning the minimum price may be obtained. (NAC 584.6482) **Section 7** of this regulation revises the manner in which this information may be obtained.

Under existing regulations, a retailer may apply a minimum markup to the purchase price on certain dairy products. (NAC 584.6507) **Section 8** of this regulation revises certain provisions which govern when a retailer must file statements of costs for such dairy products and when the retailer may reduce its price for such dairy products.

Section 1. NAC 584.0103 is hereby amended to read as follows:

584.0103 1. The Commission hereby adopts by reference Parts 53 to 209, inclusive, of Title 7 of the Code of Federal Regulations and Parts 100 to 199, inclusive, of Title 21 of the Code of Federal Regulations, as they existed on January 1, 2011, and any subsequent revision of these regulations that have been approved by the Executive Director for use in this State. Each revision of these regulations shall be deemed approved by the Executive Director unless, after review and consultation with the Commission, the Executive Director files an objection to the revision with the Office of the Secretary of State within 60 days after the date of publication of the revision.

2. A copy of the publications which contain these parts may be obtained from the United States Government Printing Office free of charge on the Internet website

<http://www.gpo.gov/fdsys> . ~~or by mail at P.O. Box 979050, St. Louis, Missouri 63197-9000, for the following prices:~~

~~—(a) For Title 7, Parts 53-209, \$42;~~

~~—(b) For Title 21, Parts 100-169, \$55; and~~

~~—(c) For Title 21, Parts 170-199, \$56.]~~

Sec. 2. NAC 584.02415 is hereby amended to read as follows:

584.02415 1. The Commission hereby adopts by reference the following sections of *Milk for Manufacturing Purposes and Its Production and Processing: Recommended Requirements*, ~~September 2005,~~ *July 2011*, published by the United States Department of Agriculture, and any subsequent revision of the publication that has been approved by the Executive Director for use in this State. Each revision of the publication shall be deemed approved by the Executive Director unless, after review and consultation with the Commission, the Executive Director files an objection to the revision with the Office of the Secretary of State within 60 days after the date of publication of the revision. The following sections are hereby adopted:

(a) Subpart B - Definitions.

(b) Subpart C - Quality Requirements for Milk for Manufacturing Purposes.

(c) Subpart D - Farm Requirements for Milk for Manufacturing.

(d) Subpart E - Requirements for Licensed Dairy Plants:

(1) Sec. E1. General Requirements.

(2) *Sec. E2. Supplemental requirements for plants manufacturing, processing and packaging instant nonfat dry milk, nonfat dry milk, dry whole milk, dry buttermilk, dry whey, and other dry milk products.*

(3) Sec. E3. Supplemental requirements for plants manufacturing, processing and packaging butter and related products.

~~(3)~~ (4) Sec. E4. Supplemental requirements for plants manufacturing and packaging cheese.

~~(4)~~ (5) *Sec. E5.2 Equipment and utensils.*

(6) Sec. E6. Supplemental requirements for plants manufacturing, processing and packaging pasteurized process cheese and related products.

(7) Sec E7. Supplemental requirements for plants manufacturing, processing and packaging evaporated, condensed, or sterilized milk products.

(e) Subpart F - Administrative Procedures.

2. Copies of this publication are available, free of charge, from the United States Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090-6456, or on the Internet at ~~<http://www.ams.usda.gov/dairy.htm>~~ <http://www.ams.usda.gov>.

Sec. 3. NAC 584.2091 is hereby amended to read as follows:

584.2091 1. The Commission may obtain samples of certified raw milk and products made from it for examination as often as the Commission deems necessary and at any time or place before the milk or product is sold to a consumer.

2. Samples must be analyzed at an official laboratory ~~[-All sampling procedures and laboratory examinations must substantially comply with the requirements set forth in:~~

~~(a) Standard Methods for the Examination of Dairy Products published by the American Public Health Association at 800 I Street, N.W., Washington, D.C. 20001-3710, available for a price of \$58.50 for members and \$85 for nonmembers; and~~

~~—(b) Official Methods of Analysis of AOAC INTERNATIONAL published by AOAC INTERNATIONAL at 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877-2417, available for a price of \$660.]~~ *approved by the Commission.*

Sec. 4. NAC 584.3001 is hereby amended to read as follows:

584.3001 1. The Commission hereby adopts by reference the following publications:

(a) *Grade “A” Pasteurized Milk Ordinance (Includes provisions from the Grade “A” Condensed and Dry Milk Products and Condensed and Dry Whey--Supplement I to the Grade “A” PMO)*, ~~2009~~ **2011** Revision, except as otherwise noted in this section, and any subsequent

revision of the publication that has been approved by the Executive Director for use in this State. Each revision of the publication shall be deemed approved by the Executive Director unless, after review and consultation with the Commission, the Executive Director files an objection to the revision with the Office of the Secretary of State within 60 days after the date of publication of the revision. The following ~~items are deleted from~~ *changes are made to* the Ordinance:

- (1) The fourth paragraph of section 3 ~~is deleted~~.
- (2) Section 15 ~~is deleted~~.
- (3) Section 16 ~~is deleted~~.
- (4) Section 17 ~~is deleted~~.
- (5) Appendix P ~~is deleted~~.
- (6) *The somatic cell count of 750,000 per mL for an individual producer in Table 1 of Section 7, Standards for Grade "A" Milk and Milk Products, is deleted and replaced with 400,000 per mL, exclusive of goat milk.*
- (7) *In Table 12 of Appendix E, Example of Enforcement Procedures for Raw Milk Laboratory Examinations, the somatic cell count of:*
 - (I) *750,000 per mL which is used as the standard is deleted and replaced with 400,000 per mL;*
 - (II) *500,000 per mL is deleted and replaced with 300,000 per mL;*
 - (III) *600,000 per mL is deleted and replaced with 350,000 per mL;*
 - (IV) *800,000 per mL is deleted and replaced with 450,000 per mL;*
 - (V) *900,000 per mL is deleted and replaced with 550,000 per mL;*
 - (VI) *1,200,000 per mL is deleted and replaced with 900,000 per mL;*
 - (VII) *700,000 per mL is deleted and replaced with 375,000 per mL;*

(VIII) 550,000 per mL is deleted and replaced with 325,000 per mL; and

(IX) 400,000 per mL is deleted and replaced with 200,000 per mL.

(b) *Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments*, ~~2009~~ 2011 Revision, and any subsequent revision of the publication that has been approved by the Executive Director for use in this State. Each revision of the publication shall be deemed approved by the Executive Director unless, after review and consultation with the Commission, the Executive Director files an objection to the revision with the Office of the Secretary of State within 60 days after the date of publication of the revision.

(c) *Methods of Making Sanitation Ratings of Milk Shippers*, ~~2009~~ 2011 Revision, and any subsequent revision of the publication that has been approved by the Executive Director for use in this State. Each revision of the publication shall be deemed approved by the Executive Director unless, after review and consultation with the Commission, the Executive Director files an objection to the revision with the Office of the Secretary of State within 60 days after the date of publication of the revision.

2. Copies of these publications are available, free of charge, from the Food and Drug Administration, Milk Safety Branch, 5100 Paint Branch Parkway, College Park, Maryland 20740-3835, or on the Internet at <http://www.fda.gov>.

Sec. 5. NAC 584.5751 is hereby amended to read as follows:

584.5751 “Wholesale customer” means any customer of a processing distributor or a peddler-distributor . ~~It is other than a home delivery~~ *The term does not include a retail* customer.

Sec. 6. NAC 584.5792 is hereby amended to read as follows:

584.5792 1. Each distributor ~~{subject to the stabilization and marketing plan set forth in NAC 584.5551 to 584.6712, inclusive,}~~ shall submit to the Commission, on a form prescribed and furnished by the Commission, or on a facsimile of the form, a monthly remittance report showing the distributor's monthly distribution of fluid milk, fluid cream, butter and fresh dairy by-products.

2. The monthly remittance report must be submitted to the Commission at its office in Reno on or before the 20th day of the month following the month during which the fluid milk, fluid cream, butter and fresh dairy by-products were distributed.

Sec. 7. NAC 584.6482 is hereby amended to read as follows:

584.6482 1. Except as otherwise provided in this subsection, the minimum price for fluid milk and fluid cream to be paid to a producer by a distributor located in the Northern Nevada Marketing Area is the minimum price established for fluid milk and fluid cream set each month by the State of California Department of Food and Agriculture for the Northern California Marketing Area. If the minimum price for fluid milk and fluid cream established for the Northern California Marketing Area is revised, the Commission will review the revised price to determine whether it is acceptable. Unless the Commission, within 5 days after the price for the Northern California Marketing Area is revised, determines that the revised price is unacceptable, the revised price for the Northern California Marketing Area shall be deemed the minimum price for fluid milk and fluid cream to be paid to a producer by a distributor located in the Northern Nevada Marketing Area. The minimum price for fluid milk and fluid cream to be paid to a producer by a distributor located in the Northern Nevada Marketing Area may be obtained at no cost:

(a) By mail, from the State *Department of Agriculture, Attn: Division of Food and Nutrition, State* Dairy Commission, ~~14600 Kietzke Lane, Building A, Suite 107, Reno, Nevada 89502;~~ *405 South 21st Street, Sparks, Nevada 89431;*

(b) By telephone, at (775) ~~688-1211;~~ *353-3758;*

(c) By electronic mail, at ~~dairycom@dairy.state.nv.us;~~ *fnd@agri.nv.gov;* or

(d) On the Internet, at **http://dairy.nv.gov**.

2. Except as otherwise provided in this subsection, the minimum price for fluid milk and fluid cream to be paid to a producer by a distributor located in the Southern Nevada Marketing Area is the advanced pricing factors or the component prices set each month by the United States Department of Agriculture, as applicable, plus the class differential set by the Commission. The minimum price for fluid milk and fluid cream to be paid to a producer by a distributor located in the Southern Nevada Marketing Area may be obtained at no cost:

(a) By mail, from the State *Department of Agriculture, Attn: Division of Food and Nutrition, State* Dairy Commission, ~~11830 East Sahara Avenue, Suite 112;~~ *2300 McLeod,* Las Vegas, Nevada 89104;

(b) By telephone, at (702) ~~486-8212;~~ *668-4585;*

(c) By electronic mail, at ~~dairycom@dairy.state.nv.us;~~ *fnd@agri.nv.gov;* or

(d) On the Internet, at **http://dairy.nv.gov**.

Sec. 8. NAC 584.6507 is hereby amended to read as follows:

584.6507 1. A retailer may apply to butter a minimum markup of 6 percent of the purchase price and may apply to milk and fresh dairy by-products a minimum markup of 10 percent of the purchase price. Retailers shall file statements of costs for butter and fresh dairy by-

products in accordance with NRS 584.583, unless they are using *a markup equal to or greater than* the *minimum* markup permitted by this subsection.

2. A retailer may reduce ~~{the prescribed markup}~~ *its price* to the extent necessary to meet a lawful competitive price *and is not subject to penalty* if it submits information to the Commission in the manner set forth for distributors in NRS 584.584.

3. As used in this section, “purchase price” includes the cost of the product and the cost to transport the product to the retailer.