

**PROPOSED REGULATION OF THE
STATE DAIRY COMMISSION**

LCB File No. R093-99

September 19, 1999

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

AUTHORITY: §§1-9, NRS 584.474.

Section 1. Chapter 584 of NAC is hereby amended by adding thereto a new section to read as follows:

1. A distributor may lend, without charge, a bunker to a customer during an active promotional period of the customer if:

(a) Except as otherwise provided in subsection 2, the bunker does not exceed 52 inches in length;

(b) The distributor lends such a bunker to any other customer who requests a bunker during an active promotional period; and

(c) The distributor does not lend the bunker to the customer for the purpose of securing or retaining the fluid milk or fluid cream business of any customer.

2. A distributor may lend a bunker that exceeds 52 inches in length to a customer pursuant to subsection 1 if the distributor receives prior approval from the commission.

3. A customer who receives a bunker pursuant to this section:

(a) May use the bunker only to store dairy products that are advertised by the customer for sale at a special price during the active promotional period of the customer; and

(b) Shall return the bunker to the distributor on or before the last day of the active promotional period of the customer.

4. As used in this section, “active promotional period” means a period of not more than 90 days during which a customer advertises a dairy product for sale at a special price.

Sec. 2. NAC 584.5551 is hereby amended to read as follows:

584.5551 As used in NAC 584.5551 to 584.6712, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, the words and terms defined in chapter 584 of NRS and in NAC 584.5561 to 584.5751, inclusive, have the meanings ascribed to them in those sections.

Sec. 3. NAC 584.5762 is hereby amended to read as follows:

584.5762 The stabilization and marketing plan set forth in NAC 584.5551 to 584.6712, inclusive, *and section 1 of this regulation* is the stabilization and marketing plan for the eastern Nevada marketing area, the southern Nevada marketing area and the western Nevada marketing area as those areas are described in NAC 584.6542.

Sec. 4. NAC 584.5772 is hereby amended to read as follows:

584.5772 A person subject to the stabilization and marketing plan set forth in NAC 584.5551 to 584.6712, inclusive, *and section 1 of this regulation* is responsible for any violation of the plan by his employee or agent, or by any subsidiary or affiliated company or corporation controlled by him.

Sec. 5. NAC 584.6051 is hereby amended to read as follows:

584.6051 1. ~~FA~~ *Except as otherwise provided in section 1 of this regulation, a distributor shall not sell, lease, lend or otherwise furnish any equipment to a wholesale customer*

who purchases dairy products, or perform service upon any equipment of such a customer, unless the customer pays consideration equal to:

- (a) The fair market value of the equipment if it is sold;
- (b) The fair market rental of the equipment if it is leased, lent or furnished; or
- (c) The fair market value of the service if service is provided.

2. A distributor who leases equipment to a wholesale customer who purchases dairy products shall file with the commission a copy of the lease agreement for that equipment.

3. As used in this section, “equipment” means any object used to transport, distribute, display or serve dairy products, including, but not limited to, bunkers, bossy carts and self-service ice cream machines.

Sec. 6. NAC 584.6092 is hereby amended to read as follows:

584.6092 1. No distributor, peddler-distributor, retail store or representative of a distributor, peddler-distributor or retail store may engage in any of the following unfair practices:

(a) The payment, allowance or acceptance of secret rebates, secret refunds, secret fees or unearned discounts by any person, whether in the form of money or otherwise.

(b) Except as otherwise provided in NAC 584.6041 ~~§~~ *and section 1 of this regulation*, the giving of any dairy products, substitute dairy products as defined in NRS 584.176, services or articles of any kind, except to bona fide charities.

(c) The extension to certain customers of special prices or services not made available to all customers who purchase dairy products or substitute dairy products, as defined in NRS 584.176, of like quantity under like terms and conditions.

2. A retail store shall not give trading stamps, premiums or any other type of discount for the purchase or sale of dairy products. A violation of this subsection is an unfair practice.

Sec. 7. NAC 584.6171 is hereby amended to read as follows:

584.6171 The commission will not deny an application for a license as a distributor of dairy products, dairy by-products, or both, in Nevada or an application for the amendment of a distributor's existing license unless it finds:

1. That the applicant or licensee has not complied with the requirements set forth in NRS 584.325 to 584.690, inclusive, or NAC 584.5551 to 584.9391, inclusive ~~{}~~, *and section 1 of this regulation;*

2. That the applicant or licensee has failed to provide satisfactory evidence that the dairy product which the applicant or licensee wishes to distribute is not listed on the Interstate Milk Shipper's List;

3. That the applicant or licensee has failed to provide satisfactory evidence that the plant or the facilities from which the applicant or licensee plans to ship dairy products has not been inspected by the agency responsible for conducting such inspections in the state where the plant or facility is located;

4. That the issuance of a license or granting of an amendment to the existing license will tend to create destructive competition in a market already adequately served; or

5. That the issuance of a license is not in the public interest, as the public interest and policy of the State of Nevada are set forth in NRS 584.390, 584.395, 584.410 and 584.415.

Sec. 8. NAC 584.6187 is hereby amended to read as follows:

584.6187 The commission may revoke, suspend or refuse to renew a distributor's license if:

1. The licensee violates any of the provisions of NRS 584.325 to 584.690, inclusive, or NAC 584.5551 to 584.9391, inclusive ~~{}~~, *and section 1 of this regulation;* or

2. The commission determines that the licensee is not serving the marketing area in which he is licensed.

Sec. 9. NAC 584.6712 is hereby amended to read as follows:

584.6712 Before imposing a penalty pursuant to subsection 3 of NRS 584.670, the commission will consider:

1. The severity of the violation and its impact on competition within the dairy industry of this state;

2. Whether the violation was intentional, willful or negligent;

3. Whether the violation was an unfair trade practice;

4. Whether the person who committed the violation has previously violated the provisions of NRS 584.325 to 584.690, inclusive, or NAC 584.5551 to 584.9391, inclusive, *and section 1 of this regulation* or the statutes or regulations which govern the dairy industry of any other state; and

5. Any other factor the commission deems appropriate to determine whether to impose the penalty.