

**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~~ *is deleted.*
- (2) Section 15 ~~is~~ *is deleted.*
- (3) Section 16 ~~is~~ *is deleted.*
- (4) Section 17 ~~is~~ *is deleted.*
- (5) Appendix P ~~is~~ *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.  ~~, 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, ~~{4600 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](mailto: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, ~~{1830 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](mailto: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.

**LEGISLATIVE REVIEW OF AMENDED REGULATIONS AS REQUIRED BY  
ADMINISTRATIVE PROCEDURED ACT, NRS 233B.066  
LCB FILE R-109-13**

The following informational statement is submitted for amendments, repeal, or adoption of regulations under Nevada Administrative Code (NAC) Chapter 584.

**1. A clear and concise explanation of the need for the adopted regulation.**

- Currently the adoption of the USDA publication of “Milk for Manufacturing Purposes” does not include the provisions for dry milk, equipment & utensils, or condensed milk. Adopting these sections of the requirements will assist in providing standardized inspection requirements for the environmental health staff.
- Current regulations adopt the “2009 Pasteurized Milk Ordinance”, “Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments”, and “Methods of Making Sanitation Ratings of Milk Shippers”. The 2011 Revision is available and when adopted keeps the state in compliance with the interstate milk shippers laws.
- The currently listed addresses for the Dairy Commission offices are not correct and need to be changed to the new locations.
- Currently the addresses and price listings for the public to obtain certain federal documents is incorrect. The list is changed to only list the website addresses.
- Currently the state approves milk analysis to be conducted at a laboratory that follows the “Standard Methods for the Examination of Dairy Products” and “Official Methods of Analysis of AOAC International”. These documents are not always up to date so approval will be at the discretion of the agency using approved and evaluated methods.
- Currently there are sections that are confusing to the public and simple language clarification is necessary and will not affect any business practices. One section was changed to agree with NRS.
- Currently the state allows up to a 750,000 somatic cell count per mL for cows. The limit is being reduced to 400,000 somatic cell count per mL. Prior to the 2009 National Conference of Interstate Milk Shippers the Northern Nevada members of Dairy Farmers of America voted for the state to vote yes on the proposal vote in favor of the change. The vote did not pass so after several meeting with the dairymen they were in favor of moving forward with the change at the state level. The reduction will help the dairies meet the international standards so they may sell powdered milk internationally. Dairies that are not part of DFA were consulted and there were no objections. A review of sample results of all the dairies in the state was conducted for a 4 year period and it was concluded that no dairies would have been impacted by the reduction.

**2. A description of how public comment was solicited, a summary of public response, an explanation how other interested persons may obtain a copy of the summary.**

The possibility of amending, repealing, or adopting regulations contained under Nevada Administrative Code (NAC) Chapter 584 was discussed at the regular meeting of the Nevada Dairy Commission on September 18, 2013. Notices were sent out to all Dairy

Commission Licensees and posted at various locations indicating the dates of the workshop and hearing and soliciting any written comments. A workshop was held on November 14, 2013, in Sparks, NV, with teleconferencing to Las Vegas, NV. On January 15, 2014, a public hearing was held in Sparks, NV, with teleconferencing to Las Vegas, NV. Public response was positive to the changes to the regulations and the regulation changes were as permanent by the Dairy Commission on January 15, 2014. A copy of the transcripts for the workshop and hearing may be viewed, and copies made available, at the Nevada Department of Agriculture, Division of Food & Nutrition, Dairy Commission at 405 S. 21<sup>st</sup> Street, Sparks, NV 89431, (775)-353-3758, or on our website at dairy.nv.gov.

**3. The number of persons who:**

- (a) **Attended each hearing:** 11/14/2013 –0, 1/15/2014 – 5
- (b) **Testified at each hearing:** 11/14/2013 –0, 1/15/2014 – 0
- (c) **Submitted to the agency written comments:** No written comments were submitted.

**4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

- (a) **Name;** None
- (b) **Telephone number;** None
- (c) **Business address;** None
- (d) **Business telephone number;** None
- (e) **Electronic mail address; and,** None
- (f) **Name of entity or organization represented.** None

**5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected business by a direct mail-out to all licensees and permitted clients of the Nevada Dairy Commission and by the posting of required notices for the above meetings as well as posting to our website. A transcript of the workshop & hearing may be viewed at the Nevada Department of Agriculture, Food & Nutrition Division, Dairy Commission, 405 S. 21<sup>st</sup> Street, Sparks, NV 89431, phone (775) 353-3758, or on our website at dairy.nv.gov.

**6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

No changes were needed because no public comment or suggestions were made during the hearings or public meetings. The amended, repealed, and adopted regulations were adopted at the Nevada Dairy Commission Meeting on January 15, 2014, with no changes to the LCB Draft of Proposed Regulations R-109-13 dated November 18, 2013.

**7. The estimated economic effect of the amended regulation on the businesses that it is to regulate and on the public. These must be stated separately, and each case must include:**  
**(a) Both adverse and beneficial effects; and**

**(b) Both immediate and long term effects.**

- a. There is expected to be no adverse economic effect or impact on any dairy business or the public. The change will benefit dairy licensees by simplifying or eliminating outdated or unnecessary regulations.
- b. The immediate and long-term effect of these regulations will be to make the Dairy Commission regulations more user friendly and easier to understand for the dairy industry.

**8. The estimated cost to the agency for enforcement of the amended regulation.**

Since this amendment is an administrative change, there will be no cost for enforcement.

**9. A description of any regulations of other state of government agencies that the proposed regulation overlaps or duplicated, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicated a federal regulation, the name of the regulating federal agency.**

There are no other state or governmental agency regulations that the proposed amendment duplicates.

**10. If the regulation included provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

The federal regulation limits for somatic cell counts is 750,000 / mL. The USDA requirements are 400,000 / mL. Adopting the USDA limits will help our industry sell their milk products internationally.

**11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

These regulations do not provide or involve a new fee, and hence since no fee is involved, there is no total amount expected to be collected or used.

March 4, 2014

Anna Vickrey  
Environmental Health Specialist,  
... Nevada Dairy Commission