

**PROPOSED REGULATION OF THE  
STATE DAIRY COMMISSION**

**LCB File No. R150-01**

November 19, 2001

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

AUTHORITY: §§1 and 9-18, NRS 584.067; §2, NRS 584.067 and 584.585; §§3-8, NRS 584.067 and 584.077.

**Section 1.** NAC 584.5565 is hereby amended to read as follows:

584.5565 1. “Class I” means any skim milk ~~or~~ *or* butterfat, or a combination thereof, which is used to produce fluid milk, and any milk lost *exceeding 2 percent* as plant loss during the production of fluid milk.

2. “Class II” means any skim milk ~~or~~ *or* butterfat, or a combination thereof, *which is* used to produce ice cream, yogurt, sour cream, sour cream dressing, sour half and half, cottage cheese, eggnog or buttermilk, milk lost as plant loss during the production of such products, and any other milk which is not within the definition of class I or class III.

3. “Class III” means *any* skim milk ~~or~~ *or* butterfat, or a combination thereof, *which is* used to produce butter, cheese other than cottage cheese, canned milk, canned cream or dried milk . ~~or any milk lost as plant loss during the production of such products.~~

**Sec. 2.** NAC 584.6053 is hereby amended to read as follows:

584.6053 1. A distributor may lend, without charge, a bunker to a *wholesale* customer during an active promotional period of the *wholesale* customer if:

(a) Except as otherwise provided in subsection 2, the bunker does not exceed ~~52~~ *60* inches in length;

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

(c) The distributor does not lend the bunker to the *wholesale* customer for the purpose of securing or retaining the fluid milk or fluid cream business of ~~[any customer.]~~ *that wholesale customer or any other wholesale customer.*

2. A distributor may lend, without charge, a bunker that exceeds ~~[52]~~ 60 inches in length to a *wholesale* customer during an active promotional period of the *wholesale* customer if the distributor:

(a) Receives prior approval from the commission; and

(b) Complies with the requirements set forth in paragraphs (b) and (c) of subsection 1.

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

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

(b) Shall release the bunker to the distributor not later than 5 days after the last day of the active promotional period.

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

**Sec. 3.** NAC 584.6131 is hereby amended to read as follows:

584.6131 *1.* An applicant for a distributor’s license must complete and file with the commission all forms required by the commission. The applicant must answer all applicable questions on the forms and must furnish the commission ~~[such]~~ *with any* other information ~~[as it]~~ *that the commission* requires.

2. The application must include a designation of each ~~[zone of the]~~ marketing area in which the applicant intends to distribute dairy products.

**Sec. 4.** 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 ~~[.]~~ *or* dairy by-products, or both, in ~~[Nevada]~~ *this state*, 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 *applicable* requirements set forth in *chapter 584 of* NRS ~~[584.325 to 584.690, inclusive,]~~ or NAC 584.5551 to 584.9391, inclusive;

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. 5.** NAC 584.6177 is hereby amended to read as follows:

584.6177 ~~[If a majority of the members of the commission deem it appropriate, the]~~ *The* executive director of the commission may issue *a temporary permit* to an applicant ~~[a temporary]~~

~~permit~~ to distribute dairy products in ~~[this state which expires not]~~ *the marketing area in which the applicant wishes to distribute dairy products. The temporary permit expires no* later than the date of the next scheduled meeting of the commission ~~[.]~~ *held within that marketing area.* The temporary permit is subject to cancellation without recourse upon notifying the holder in writing of the cancellation not less than 24 hours before the permit is canceled. *The executive director shall report to the commission any temporary permit that the executive director issues pursuant to this section.*

**Sec. 6.** NAC 584.6184 is hereby amended to read as follows:

584.6184 The commission may place restrictions upon a license issued to a distributor, which:

1. Limit the products he may distribute;
2. Require the distributor to place a particular label on the products he distributes;
3. Prohibit the distributor from distributing products to certain *wholesale* customers; or
4. Designate the ~~[zones of a]~~ marketing area in which the distributor may distribute

products.

**Sec. 7.** 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 *applicable* provisions of *chapter 584 of NRS* ~~[584.325 to 584.690, inclusive.]~~ or NAC 584.5551 to 584.9391, inclusive; or

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

**Sec. 8.** NAC 584.6201 is hereby amended to read as follows:

584.6201 1. A licensee ~~[which]~~ *that* wishes to change its ownership must file *an application* with the commission ~~[an application]~~ for approval of the change in ownership. If the application is not approved by the commission before the change in ownership of the licensee occurs, the license expires.

2. For the purposes of this section, the ownership of a licensee changes when:

(a) More than ~~[25]~~ *10* percent of the ownership of the licensee is sold;

(b) The licensee pledges, as security for a loan, extension of credit, guaranty or other obligation, more than ~~[25]~~ *10* percent of its ownership;

(c) A court of competent jurisdiction enters an order which transfers more than ~~[25]~~ *10* percent of the ownership of the licensee; or

(d) More than ~~[25]~~ *10* percent of the ownership of the licensee is transferred by gift, devise or bequest.

**Sec. 9.** NAC 584.6261 is hereby amended to read as follows:

584.6261 1. Each processing distributor shall file with the commission the statement of costs required by subsection 5 of NRS 584.583. The statement must be filed with the commission at its office in Reno ~~[not]~~ *no* later than ~~[30 days after the close of each fiscal]~~ *December 31 of each* year. The statement must cover the entire ~~[fiscal]~~ *calendar* year or the fraction of the *calendar* year during which the processing distributor was in operation, as shown by his monthly reports to the commission for the purposes of assessment.

2. A statement of costs must be filed for each licensed processing plant. The statement must separately show the cost for each container size of each product distributed, *regardless of* whether the product ~~[is]~~ *was* processed, manufactured or purchased for resale.

3. The statement must separately show the dock cost, wholesale delivered cost and retail delivered cost.

4. Any significant change in costs during a ~~[[fiscal]]~~ *calendar* year must be reported when the change occurs if the change substantially affects the unit cost of any fluid milk product or ~~[[by-products.]]~~ *by-product*. The statement of costs must be amended from time to time by additional filings in order to correct any errors or make the filings current. Each amendment must clearly state the period and product or products covered.

**Sec. 10.** NAC 584.6392 is hereby amended to read as follows:

584.6392 Before selling or offering or agreeing to sell any dairy product, each distributor who processes or manufactures fluid milk, fluid cream, butter or fresh dairy by-products and each peddler-distributor shall file with the commission separate price lists for retail prices and distributor's or dock prices for each ~~[[zone-of-each]]~~ marketing area in which such products are distributed. A separate price must be filed for each size of each product distributed. The price of like products distributed under different brand names or trademarks must be separately filed. No price may be filed for any product at less than the cost of the product.

**Sec. 11.** NAC 584.6397 is hereby amended to read as follows:

584.6397 1. A price list filed by a distributor must:

- (a) Clearly state the marketing area ~~[[and-zone]]~~ in which the prices apply;
- (b) Include all terms and conditions of service which are applicable in determining the net price ultimately available to wholesale customers; and
- (c) Designate its effective date.

2. A price list filed by a distributor is confidential and not open for public inspection. Information contained in the price list will not be made available to any person, other than

members of the commission and authorized members of its staff, except when the information is to be used in judicial proceedings or administrative proceedings ~~under NRS 584.325 to 584.690, inclusive.]~~ *held pursuant to the provisions of chapter 584 of NRS.*

**Sec. 12.** NAC 584.6417 is hereby amended to read as follows:

584.6417 1. A processing distributor *located in this state* who receives, sells or transfers milk shall keep a monthly usage report which includes:

- (a) The quantity of milk received, sold or transferred;
- (b) The class of usage of the milk;
- (c) The price;
- (d) The total gallons of milk processed by product type during the month;
- (e) The total weight of milk processed by product type;
- (f) The results of a butterfat test for the various product types;
- (g) The total butterfat by product type;
- (h) The source of the milk;
- (i) The person to whom the milk was sold or transferred, if appropriate;
- (j) A statement which indicates whether the milk was graded, ungraded or degraded; and
- (k) Any other information the commission requests to substantiate usage.

2. A processing distributor shall submit his monthly usage report to the commission's office in Reno on or before the 15th day of the month following the calendar month for which the report is submitted. The report must be made on a form prescribed and furnished by the commission ~~or~~ or on a facsimile of the form.

**Sec. 13.** NAC 584.6422 is hereby amended to read as follows:

584.6422 ~~For the purpose of determining the assessment to be paid to the commission pursuant to NRS 584.630, a~~ A distributor shall use the standards for determining the weight of ~~the milk fat contained in~~ fluid milk or fluid cream adopted by the United States Department of Agriculture, which are hereby adopted by reference. A copy of the standards may be obtained at no cost from the United States Department of Agriculture, Agricultural Marketing Service, Dairy ~~Division, 5501 North 19th Avenue, Suite 230, Phoenix, Arizona 85015-2449.~~ *Programs, Office of Market Administrator, 1930-220th Street SE, Suite 102, Bothell, Washington 98021-8471.*

**Sec. 14.** NAC 584.6437 is hereby amended to read as follows:

584.6437 A cooperative association of producers shall furnish *a monthly report to* each producer from whom ~~it~~ *the association* receives milk . ~~a monthly report.~~ The report must state the quantity, price and usage of all milk received from or handled for that producer and all deductions, withholdings, handling charges and assessments related to the milk. The association shall mail a copy of the report to the commission when ~~it~~ *the report* is furnished to the producer. ~~The report must be made on forms furnished by the commission.~~

**Sec. 15.** 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 western Nevada marketing area ~~except a distributor located in zone 9 of the western 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 western Nevada marketing ~~[area, except a distributor located in zone 9 of the western Nevada marketing]~~ area. The minimum price for fluid milk and fluid cream to be paid to a producer by a distributor located in the western Nevada marketing area ~~[, except a distributor located in zone 9 of the western Nevada marketing area,]~~ may be obtained at no cost:

(a) By mail, from the State Dairy Commission, 4600 Kietzke Lane, Building A, Suite 107, Reno, Nevada 89502;

(b) By telephone, at (775) 688-1211; ~~for~~

~~—(c) By electronic mail, at [dairycom@govmail.state.nv.us](mailto:dairycom@govmail.state.nv.us).]~~

*(c) By electronic mail, at [dairycom@dairy.state.nv.us](mailto:dairycom@dairy.state.nv.us); or*

*(d) On the Internet, at <http://dairy.state.nv.us>.*

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 eastern Nevada marketing area ~~[, except a distributor located in zone 5 of the eastern Nevada marketing area,]~~ is the minimum price for fluid milk and fluid cream set each month in the Federal Milk Marketing Orders. If the minimum price for fluid milk and fluid cream established in the Federal Milk Marketing Orders for the eastern Nevada 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 established in the Federal Milk Marketing Orders is revised, determines that the revised price is unacceptable, the revised price set forth in the Federal Milk Marketing Orders shall be deemed

the minimum price for fluid milk and fluid cream to be paid to a producer by a distributor located in the eastern Nevada marketing ~~[area, except a distributor located in zone 5 of the eastern Nevada marketing]~~ area. A copy of the *Market Administrator Price Announcements under the Federal Milk Marketing Orders* may be obtained at no cost:

(a) By mail, from the State Dairy Commission, 4600 Kietzke Lane, Building A, Suite 107, Reno, Nevada 89502;

(b) By telephone, at (775) 688-1211; or

(c) By electronic mail, at ~~[dairycom@govmail.state.nv.us.]~~ *dairycom@dairy.state.nv.us.*

3. 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, zone 5 of the eastern Nevada marketing area or zone 9 of the western 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, zone 5 of the eastern Nevada marketing area or zone 9 of the western Nevada marketing]~~ area may be obtained at no cost:

(a) By mail, from the State Dairy Commission, 1840 East Sahara Avenue, Suite 111, Las Vegas, Nevada 89104;

(b) By telephone, at (702) 486-8212; ~~for~~

~~—(c) By electronic mail, at dairycom@govmail.state.nv.us.]~~

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

*(d) On the Internet, at <http://dairy.state.nv.us>.*

**Sec. 16.** 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~~ *any applicable* provisions of *chapter 584 of* NRS ~~[584.325 to 584.690, inclusive,]~~ or NAC 584.5551 to 584.9391, inclusive, 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.

**Sec. 17.** NAC 584.6442, 584.6552, 584.6562 and 584.6572 are hereby repealed.

**Sec. 18.** This regulation becomes effective on January 1, 2002.

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### TEXT OF REPEALED SECTIONS

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**584.6442 Producer determination: Plant loss.** Plant loss exceeding 2 percent of the total milk purchased from producers is deemed to receive class I usage. Plant loss not exceeding a total of 2 percent must be included in the allocation of class II usage.

**584.6552 Zones of southern Nevada marketing area.**

1. Zone 1 of the southern Nevada marketing area consists of that part of Clark County south of the boundary between Townships 16 and 17 South, Mount Diablo Base and Meridian, and north of the boundary between Townships 26 and 27 South, Mount Diablo Base and Meridian.
2. Zone 2 of the southern Nevada marketing area consists of that part of Nye County south of the 37th parallel.
3. Zone 3 of the southern Nevada marketing area consists of that part of Nye County between the 37th and 38th parallels.
4. Zone 4 of the southern Nevada marketing area consists of those parts of Clark and Lincoln counties south of the boundary between Townships 7 and 8 South, Mount Diablo Base and Meridian, and north of the boundary between Townships 16 and 17 South, Mount Diablo Base and Meridian.
5. Zone 5 of the southern Nevada marketing area consists of that part of Clark and Lincoln counties north of the boundary between Townships 7 and 8 South, Mount Diablo Base and Meridian.
6. Zone 6 of the southern Nevada marketing area consists of that part of Clark County south of the boundary between Townships 26 and 27 South, Mount Diablo Base and Meridian.

**584.6562 Zones of eastern Nevada marketing area.**

1. Zone 1 of the eastern Nevada marketing area consists of White Pine County.

2. Zone 2 of the eastern Nevada marketing area consists of that part of Elko County west of the 115th meridian and south of the boundary between Townships 41 and 42 North, Mount Diablo Base and Meridian.

3. Zone 3 of the eastern Nevada marketing area consists of Eureka County.

4. Zone 4 of the eastern Nevada marketing area consists of that part of Elko County east of the 115th meridian and south of the boundary between Townships 41 and 42 North, Mount Diablo Base and Meridian.

5. Zone 5 of the eastern Nevada marketing area consists of that part of Nye County north of the 38th parallel and east of the 117th meridian.

6. Zone 6 of the eastern Nevada marketing area consists of that part of Elko County north of the boundary between Townships 41 and 42 North, Mount Diablo Base and Meridian.

**584.6572 Zones of western Nevada marketing area.**

1. Except for that part of Carson City and each county which is within 5 miles of the shore of Lake Tahoe or that part of Washoe County north of the 40th parallel, zone 1 of the western Nevada marketing area consists of Carson City, the counties of Douglas, Storey and Washoe and those parts of Churchill and Lyon counties west of the 119th meridian and north of the boundary between Townships 18 and 19 North, Mount Diablo Base and Meridian.

2. Zone 2 of the western Nevada marketing area consists of Pershing County and that part of Washoe County between the 40th and the 41st parallel.

3. Zone 3 of the western Nevada marketing area consists of Churchill and Lyon counties, except those parts west of the 119th meridian and north of the boundary between Townships 18 and 19 North, Mount Diablo Base and Meridian.

4. Zone 4 of the western Nevada marketing area consists of those parts of Carson City and Douglas and Washoe counties which are within 5 miles of the shore of Lake Tahoe.
5. Zone 5 of the western Nevada marketing area consists of Mineral County.
6. Zone 6 of the western Nevada marketing area consists of Humboldt County and that part of Washoe County north of the 41st parallel.
7. Zone 7 of the western Nevada marketing area consists of that part of Lander County north of the 40th parallel.
8. Zone 8 of the western Nevada marketing area consists of that part of Lander County south of the 40th parallel.
9. Zone 9 of the western Nevada marketing area consists of Esmeralda County and that part of Nye County west of the 117th meridian and north of the 38th parallel.