

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 34 DAIRY AND EGG PRODUCERS
PART 2 RETAIL SALE OF RAW MILK

21.34.2.1 ISSUING AGENCY: New Mexico State University, New Mexico Department of Agriculture
[7/1/97; 21.34.2.1 NMAC - Rn & A, 21 NMAC 34.2.1, 05/29/09]
[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.34.2.2 SCOPE: Part 2 shall apply to any person producing or selling raw milk.
[7/1/97; 21.34.2.2 NMAC - Rn, 21 NMAC 34.2.2, 05/29/09]

21.34.2.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university
under the New Mexico Dairy Product Act, Chapter 25, Article 7A, Sections 1 through 19, New Mexico Statutes
Annotated 1978 Compilation.
[7/1/97; 21.34.2.3 NMAC - Rn, 21 NMAC 34.2.3, 05/29/09]

21.34.2.4 DURATION: Permanent.
[7/1/97; 21.34.2.4 NMAC - Rn, 21 NMAC 34.2.4, 05/29/09]

21.34.2.5 EFFECTIVE DATE: July 1, 1997.
[7/1/97; 21.34.2.5 NMAC - Rn, 21 NMAC 34.2.5, 05/29/09]

21.34.2.6 OBJECTIVE: The objective of Part 2 of Chapter 34 is to establish the conditions under which
raw milk can be produced and sold in retail establishments, in processed products and to the public.
[7/1/97; 21.34.2.6 NMAC - Rn, 21 NMAC 34.2.6, 05/29/09]

21.34.2.7 DEFINITIONS:

- A. "Adulterated raw milk or raw milk or raw milk products" means any packaged raw milk or raw milk products:
- (1) if it fails to conform in physical or chemical composition to the definition adopted by the board of regents of New Mexico state university;
 - (2) if it fails to conform to the chemical, bacteriological and temperature standards in 21.34.2.13 NMAC;
 - (3) if it has not been produced, packaged and held according to the sanitation standards in 21.34.2.13 NMAC; or if it contains any unwholesome substance.
- B. "Department" means the New Mexico department of agriculture.
- C. "Dairy farm" means any place or premises where one or more cows or goats are kept and from which a part or all of the raw milk or raw milk product(s) is sold or offered for sale.
- D. "Director" means the director of the New Mexico department of agriculture or his designated representative.
- E. "Goat milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of healthy goats, which contains not less than 8-1/4 percent milk solids not-fat and not less than 3-1/4 percent milkfat (milkfat or butterfat is the fat of milk). All standards and requirements applicable to cow milk shall apply to goat milk.
- F. "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, which contains not less than 8-1/4 percent milk solids not-fat and not less than 3-1/4 percent milkfat. (Milkfat or butterfat is the fat of milk).
- G. "Misbranded raw milk and raw milk products" means any raw milk or raw milk products when:
- (1) their containers bear or accompany any false or misleading written, printed or graphic matter;
 - (2) such raw milk or raw milk products do not conform to their definitions as contained in Chapter 34, Part 2;
 - (3) such products are not labeled in accordance with 21.34.2.12 NMAC.
- H. "Official laboratory" means biological, chemical or physical laboratory which is under the direct supervision of the state scientific laboratory system; or the state department of agriculture, state chemist laboratory.
- I. "Person" means any individual, partnership, corporation, company, firm, trustee or association.

J. "Raw milk" means any milk which has not been treated or manipulated in any manner to destroy pathogens.

K. "Raw milk product" means any of the following products which have been derived from raw milk and have not been treated or manipulated in any manner to destroy pathogens: cream, flavored milk and half and half.

[7/1/97; 21.34.2.7 NMAC - Rn, 21 NMAC 34.2.7, 05/29/09]

21.34.2.8 ADULTERATED OR MISBRANDED RAW MILK OR RAW MILK PRODUCTS PROHIBITED:

A. No person shall, within the state of New Mexico, sell, offer or expose for sale or have in possession with intent to sell, any raw milk or raw milk products which are adulterated or misbranded.

B. No person, elsewhere than in a private home, shall have in his possession any adulterated or misbranded raw milk or raw milk products.

C. Any adulterated, misbranded or improperly labeled raw milk or raw milk products may be embargoed by the department in accordance with the Dairy Product Act, Laws of 1993.

[7/1/97; 21.34.2.8 NMAC - Rn, 21 NMAC 34.2.8, 05/29/09]

21.34.2.9 PERMITS:

A. No person shall sell or offer for sale in the state of New Mexico raw milk or raw milk products without a permit issued by the department to use grade A labeling in advertising, representing or labeling such raw milk or raw milk products.

B. Any person desiring a grade A permit shall make a written application to the department. The application shall:

- (1) be made on forms furnished by the department;
- (2) state the applicant's name and address;
- (3) state the date of the application;
- (4) be accompanied by plans and specifications for the applicant's facilities;
- (5) contain such other information as the department may reasonably require; and
- (6) be signed by the applicant.

C. Within fifteen (15) days after the filing of an application for a permit, the department shall either grant the permit, grant the permit subject to conditions or deny the permit. The department shall notify the applicant by certified mail of the decision and the reasons therefor.

D. The department may grant a permit pursuant to this section only if it finds that all the conditions in Sections 16, 17 and 18 of Chapter 34, Part 2 will be met.

E. Any permit issued hereunder shall be conditioned upon the applicant allowing inspections to be made pursuant to 21.34.2.13 NMAC.

F. The issuance of a permit does not relieve any person from responsibility for complying with all applicable laws, ordinances and regulations.

G. If the applicant is dissatisfied with the action taken by the department, he may request a hearing before the director. The request must be made in writing to the director within fifteen (15) days after notice of the department's action has been received by the applicant. Unless a timely request for hearing is made, the decision of the department shall be final. A reapplication for a permit may not be filed within thirty (30) days following a final determination on a permit application.

[7/1/97; 21.34.2.9 NMAC - Rn, 21 NMAC 34.2.9, 05/29/09]

21.34.2.10 PERMIT REVOCATION:

A. The department may, after opportunity for hearing, revoke a permit issued pursuant to Section 10 for serious or repeated violations of Chapter 34, Part 2.

B. Not less than fifteen (15) days prior to the revocation of a permit, the department shall notify the permittee by certified mail of the impending revocation and the reasons therefor. The notice shall also state the date, time and place where a hearing on the revocation will take place.

C. The department may suspend or temporarily revoke a permit whenever the department determines that a serious threat to public health exists. A permit may not be suspended or temporarily revoked for longer than thirty (30) days or until the threat is abated, whichever is sooner.

[7/1/97; 21.34.2.10 NMAC - Rn, 21 NMAC 34.2.10, 05/29/09]

21.34.2.11 PERMIT REINSTATEMENT:

A. Any distributor of raw milk or raw milk products, whose permit has been suspended or temporarily revoked, at any time may make application for the reinstatement of his permit.

B. Upon receipt of a satisfactory application for reinstatement of a permit based on correction of the violations of Chapter 34, Part 2, the department shall reinstate the permit. The said application must be accompanied by a statement, signed by the applicant, that the violated item(s) has (have) been corrected. Within seven (7) days of the receipt of such application and statement, the department shall make a reinspection of the applicant's establishment, and thereafter as many additional reinspections as it may deem necessary, to assure that the applicant is again complying with the requirements of Chapter 34, Part 2, and in the case the findings justify, shall reinstate the permit.

[7/1/97; 21.34.2.11 NMAC - Rn, 21 NMAC 34.2.11, 05/29/09]

21.34.2.12 LABELING:

A. All retail containers of raw milk or raw milk products shall be conspicuously labeled or marked in accordance with the New Mexico Food Act and in addition shall contain:

- (1) the name of the contents given in the definitions of these of Chapter 34, Part 2;
- (2) the identity of the permit holder and distributor;
- (3) the word "raw";
- (4) the statement "raw milk is not pasteurized and may contain organisms that cause human disease";
- (5) the labeling required by 21.34.2.12 NMAC shall be conspicuously displayed on the label and in letters of at least 1/8 inch size; the other labeling requirements of 21.34.2.12 NMAC shall be conspicuously displayed on the label and be of a letter size, kind and color acceptable to the department; and
- (6) no marks or words which are misleading.

B. All vehicles transporting raw milk shall be legibly marked with the name and address of the distributor.

C. All retail outlets shall have a placard conspicuously displayed next to self service display cases for raw milk. The placard shall display the following statement: "raw milk is not pasteurized and may contain organisms that cause human disease." Labeling requirements shall be of a letter size at least 1/2 inch and be of a kind and color acceptable to the department.

D. Raw milk and raw milk products shall be displayed separately from and shall not be commingled with pasteurized dairy products. In retail situations, such as at driveup outlets at the dairy, where the consumer does not have direct access to self service display cases, the placard shall be prominently displayed next to the service window.

[7/1/97; 21.34.2.12 NMAC - Rn, 21 NMAC 34.2.12, 05/29/09]

21.34.2.13 INSPECTIONS:

A. Every raw milk distributor shall, upon request of the department, permit access by officially designated persons during reasonable hours to all parts of his establishment or facilities to determine compliance with the provisions of Chapter 34, Part 2. A distributor shall furnish the department, upon request, for official use only, a true statement of the actual quantities of raw milk or raw milk products produced and sold.

B. The original copy of the inspection report shall be handed to the operator or other responsible person or be posted in a conspicuous place on an inside wall of the establishment. Said inspection report shall not be defaced and shall be made available to the department upon request. An identical copy of the inspection report shall be filed with the records of the department.

C. Following the issuance of a permit, each dairy farm and packaging operation shall be inspected at least twice every six (6) months. Should a violation of any requirement set forth in Sections 16 and 17 be found to exist, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three (3) days. The reinspection shall be used to determine compliance with the requirements of Sections 16 and 17.

D. Any person whose raw milk or raw milk products are intended for sale within New Mexico shall be inspected by the department prior to the issuance of a permit.

E. It shall be unlawful for any person who in an official capacity obtains any information under the provisions of this section which is entitled to protection as a trade secret (including information as to quality, quantity or disposition of raw milk products or results of inspections or tests thereof) to use such information to his own advantage or reveal it to unauthorized persons.

[7/1/97; 21.34.2.13 NMAC - Rn, 21 NMAC 34.2.13, 05/29/09]

21.34.2.14 EXAMINATION OF RAW MILK AND RAW MILK PRODUCTS:

A. During each six (6) month period, at least six (6) samples of raw milk and raw milk products from each distributor shall be taken on separate days and examined by the department. Samples may be taken at any time before it reaches the consumer. All samples shall be examined in accordance with the most current edition of *standard methods for the examination of raw milk and raw milk products* published by the United States public health service, food and drug administration.

B. All proprietors of retail outlets shall furnish the department, upon request, the names of all distributors from whom they obtain raw milk and raw milk products.

C. Bacterial plate counts, direct microscopic counts, coliform determinations, phosphates tests, efficiency of bactericidal treatment and other laboratory and screening tests shall conform to the latest procedures of *standard methods for the examination of dairy products* recommended by the American public health association. Examinations may include such other chemical and physical determinations as the department may deem necessary for the detection of adulteration.

D. If a bacterial count, somatic cell count, coliform determination or cooling temperature exceeds the limit of the standard for raw milk and/or raw milk products, the department shall furnish a written warning of impending permit suspension or court action to the permittee within forty-eight (48) hours of the department receiving notice of the violative sample result. In addition, a "check" sample shall be taken by the department not less than three (3) days nor more than ten (10) days after furnishing the permittee with a written warning of the sample that exceeded the limit. If the check sample or the next consecutive regularly taken sample exceeds the limit for any of four (4) parameters for which there is a standard, the permit shall be suspended immediately in accordance with Section 10, and court action may be instituted by the department. If the check sample and the next consecutive sample do not exceed the limit, the warning notice shall no longer be in effect.

[7/1/97; 21.34.2.14 NMAC - Rn, 21 NMAC 34.2.14, 05/29/09]

21.34.2.15 SUBMISSION OF PLANS AND SPECIFICATIONS: All dairies and raw milk bottling operations within New Mexico from which graded raw milk and raw milk products are sold which are hereafter constructed, reconstructed or extensively altered, shall conform in their construction to the grade A requirements of Chapter 34, Part 2. Properly prepared plans for all dairies and raw milk bottling operations which are hereafter constructed, reconstructed or extensively altered, shall be submitted to the department for approval before work is begun. The department shall return a copy of the plans to the applicant with approval or recommended changes within fifteen (15) days of receipt. A copy of the approved plans pertaining to a raw milk dairy and bottling operation shall remain on file with the department.

[7/1/97; 21.34.2.15 NMAC - Rn, 21 NMAC 34.2.15, 05/29/09]

21.34.2.16 SUBMISSION OF PLANS AND SPECIFICATIONS: All dairies and raw milk bottling operations within New Mexico from which graded raw milk and raw milk products are sold which are hereafter constructed, reconstructed or extensively altered, shall conform in their construction to the grade A requirements of Chapter 34, Part 2. Properly prepared plans for all dairies and raw milk bottling operations which are hereafter constructed, reconstructed or extensively altered, shall be submitted to the department for approval before work is begun. The department shall return a copy of the plans to the applicant with approval or recommended changes within fifteen (15) days of receipt. A copy of the approved plans pertaining to a raw milk dairy and bottling operation shall remain on file with the department.

[7/1/97; 21.34.2.16 NMAC - Rn, 21 NMAC 34.2.16, 05/29/09]

21.34.2.17 CHEMICAL, BACTERIOLOGICAL AND TEMPERATURE STANDARDS FOR GRADE A RAW MILK AND RAW MILK PRODUCTS: All raw milk or raw milk products sold at retail shall meet the following requirements:

A. temperature cooled to between 45 degrees F (7 degrees C) and 32 degrees F (0 degrees C) within two hours after completion of milking and maintained at that temperature until sold;

B. bacterial limits 20,000/ml (standard plate count);

C. coliform limits 50/ml;

D. WMT 20 mm;

E. DMSCC 1,000,000/ml;

- F. freezing point -0.530 degrees C;
- G. antibiotics no detectable residue;
- H. pesticides no detectable residue.

[7/1/97; 21.34.2.17 NMAC - Rn, 21 NMAC 34.2.17, 05/29/09]

21.34.2.18 SANITATION STANDARDS:

A. Cows health.

(1) A tuberculin test of all herds and additions thereto shall be made before any milk therefrom is sold, and at least once every twelve (12) months thereafter, by a veterinarian recognized by the state livestock board and the United States department of agriculture, animal disease eradication branch. Said tests shall be made and any reactors disposed of in accordance with the requirements approved by the U.S. department of agriculture, animal disease eradication branch. A certificate identifying each animal, by number, signed by the veterinarian or attested to by the department and filed as directed by the department, shall be evidence of the above test.

(2) Cows which show a complete induration of one quarter or extensive induration in one or more quarters of the udder upon physical examination, whether secreting abnormal milk or not, shall be permanently excluded from the milking herd: provided that this shall not apply in case of a quarter that is completely dry. Cows giving bloody, stringy or otherwise abnormal milk, but without entire or extensive induration of the udder, shall be excluded from the herd until reexamination shows that the milk has become normal.

(3) Results of all brucella ring tests performed in New Mexico by the U.S. department of agriculture laboratories and the scientific laboratory division shall be filed with the department. When the results of brucella ring test are positive, the herd must be individually tested and any reactors disposed of in accordance with the requirements approved by the U.S. department of agriculture, animal disease eradication branch.

(4) Cows which show evidence of the secretion of abnormal milk in one or more quarters, based upon bacteriological, chemical or physical amination, shall be milked last or with separate equipment; and the milk shall be discarded. Cows treated with, or cows which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk and which, in the judgment of the department, may be deleterious to human health, shall be milked last or with separate equipment, and the milk disposed of as the department may direct.

(5) For diseases other than brucellosis and tuberculosis, the department shall require such physical, chemical or bacteriological tests as it deems necessary to protect public health.

B. Milking barns.

(1) Milking barn lighting. A milking barn, stable or parlor shall be provided. It shall be provided with adequate light, properly distributed, for both day and night milking.

(2) Milking barn air space and ventilation. Such sections of the milking barn or parlor where cows are milked, shall be well ventilated with either normal or artificial means.

(3) Milking barn floors. The floors and gutters of that portion of the barn or parlor in which cows are milked shall be constructed of concrete or other approved, impervious and easily cleaned material. Floors and gutters shall be graded so as to drain properly and shall be kept clean and in good repair. No swine or fowl shall be permitted in the milking barn or parlor.

(4) Milking barn walls and ceilings. The interior walls and ceilings of the milking barn or parlor shall be painted as often as may be necessary, or finished in an approved manner and shall be kept clean and in good repair. A tight ceiling is required. If feed should be ground or mixed or sweet feed should be stored, in a feed room or feed storage space which adjoins the milking area, it shall be separated therefrom by a dust-tight door.

C. Manure disposal. All manure shall be removed or disposed of in such a manner as best to prevent the breeding of flies therein and shall be inaccessible to cows.

D. Milk house and milk washroom construction and equipment. There shall be provided a milk house or milk room for the cooling, storing of raw milk and raw milk products and packaging. There shall be a washroom for the washing, bactericidal treatment and storing of milk containers and utensils.

(1) The milk house or room and the washroom shall be provided with a smooth floor, constructed of concrete or other impervious material maintained in good repair and graded to provide proper drainage.

(2) Both rooms shall have walls and ceilings of such construction as to permit easy cleaning and shall be well painted or finished in an approved manner.

(3) They shall be well lighted and well ventilated.

(4) They shall have all openings effectively screened, including outward opening self-closing doors unless other effective means are provided to prevent the entrance of flies and insects.

(5) They shall not be used for any purpose other than those specified above, except as may be approved by the department; they shall not open directly into a milking barn, parlor or room used for domestic purposes; provided that a direct opening between the milk house and milking barn or parlor is permitted when a tight-fitting, self-closing solid door(s) hinged to be single or double acting is provided.

(6) The washroom shall have water piped into it and shall have adequate facilities for heating water to clean utensils and milking equipment; and it shall be equipped with a three-compartment stationary sink, wash, rinse and sanitizing vats.

(7) The milk house or room shall have convenient handwashing facilities, soap and towels.

(8) Calf bottles, medicinals and pesticides shall not be stored in the milk room.

E. Milk house and washroom and flies. The floors, walls, ceilings, windows and equipment of the milk room or washroom shall be kept clean at all times and all approved means for the elimination of flies shall be used.

F. Toilet. Each dairy farm shall be provided with one or more sanitary toilets, conveniently located and properly constructed, operated and maintained, so that waste is inaccessible to flies and does not contaminate surface or ground water.

G. Water supply. Water for all dairy purposes shall be from a supply in conformance with environmental improvement board water supply regulations. Water samples for bacteria analysis shall be obtained and comply with drinking water standards before a permit is issued. It shall be sampled after all work is completed, after breaking the seal on the plate and routinely sampled once a year for coliform bacteria.

H. Utensils.

(1) All multi-use containers and equipment, pipeline milking systems and other equipment in the handling, storage, bottling, capping or transportation of raw milk or raw milk products shall be made of smooth, nonabsorbent, non-corrodible, non-toxic material, shall be fabricated and installed as to be easily cleaned and shall be self draining and kept in good repair, as recommended in the *3-A sanitary standards*. Woven wire cloth shall not be used and shall not be reused. All milk pails shall be of the seamless hooded type. All single-service articles shall have been manufactured, packaged, transported, stored and handled in a sanitary method.

(2) All multi-use containers, equipment and other utensils used in the handling, storage, filling, capping or transportation of raw milk and raw milk products shall be thoroughly cleaned immediately after each usage.

(3) All multi-use containers, equipment, pipelines and other utensils used in milking, packaging, capping of raw milk and raw milk products shall, before each usage, be subjected effectively to an approved bactericidal process using steam, hot water, chemicals or hot air.

(4) All containers, strainer pads and other milking equipment used in the production, transportation of raw milk and raw milk products unless stored in bactericidal solutions, shall be stored as to drain dry and so as not to be contaminated before being used. All ports and openings shall be covered on bulk milk utensils which contain milk. Crates in which clean bottles are stored shall be kept clean and bottles inverted and elevated above the floor to prevent contamination.

(5) After bactericidal treatment, containers and other raw milk and raw milk product utensils and equipment shall be handled in such a manner as to prevent contamination of any surface with which raw milk and raw milk products come into contact.

I. Milking udders and tests.

(1) Milking shall be done in the milking barn or parlor.

(2) The udders and teats of each milking cow shall be washed until clean with a bactericidal solution approved by the department using one or more single service towels and completely dried with one or more different single service towels. If an iodine bactericidal agent is used, the minimum concentration of iodine shall be 25 ppm. Other bactericidal agents and concentrations may be used as approved by the director of the department. The bactericidal solution shall be maintained at approved strength throughout the entire milking process.

(3) Abnormal milk shall be kept out of the raw milk supply and be so handled and disposed of as to preclude the infection of the healthy cows and the contamination of milking utensils.

(4) Cows giving abnormal milk shall be milked last.

J. Milking-flanks. The flanks and tails of all milking cows shall be free from visible dirt at the time of milking. All brushing shall be completed before milking commences.

K. Milkers' hands.

(1) Milkers' hands shall be washed clean, rinsed with an effective bactericidal solution and dried with a single service towel, immediately before milking and immediately after any interruption in the milking operation.

- (2) Wet hand milking is prohibited.
 - (3) Convenient hand washing facilities shall be provided for washing of milkers' hands.
 - (4) No person with an infected cut or lesion on hands or arms shall milk cows, or handle milking utensils or other equipment.
 - L. Clean clothing. All personnel shall wear clean outer garments while milking or handling milk, milk products, containers, utensils or equipment.
 - M. Removal of milk.
 - (1) Each pail or can of milk shall be removed immediately to the milk house or milk room.
 - (2) No milk shall be strained or poured in the milking barn or parlor, unless it is protected from flies and other contamination.
 - N. Bottling and capping.
 - (1) Raw milk and raw milk products shall be bottled on the farm where produced.
 - (2) Bottling and capping shall be done in a sanitary method by means of approved mechanical filler and capper and these operations shall be integral in one machine.
 - (3) Caps or cap stock shall be purchased in sanitary containers and shall be stored in such a manner that will preclude contamination.
 - O. Vehicles and surroundings.
 - (1) All vehicles used for the transportation of raw milk or raw milk products shall be constructed and operated so as to protect their contents from the sun, from freezing and from contamination.
 - (2) All vehicles used for the distribution of raw milk and raw milk products shall have the distributor's name and address prominently displayed thereon.
 - P. The immediate surroundings of the dairy shall be kept in a clean, neat condition to prevent breeding of flies and rodents.
- [7/1/97; 21.34.2.18 NMAC - Rn, 21 NMAC 34.2.18, 05/29/09]

HISTORY OF 21.34.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

EIB 78-1, Regulations Governing the Retail Sale of Raw Milk, 4/17/78.

EIB/RM 1, Regulations Governing the Retail Sale of Raw Milk, 1/15/84.

NMDA Rule 93-1, Regulations Governing the Retail Sale of Raw Milk, filed 5/28/93.

History Of Repealed Material:

EIB/RM 1, Regulations Governing the Retail Sale of Raw Milk, repealed 8/20/93.