

**TITLE 21      AGRICULTURE AND RANCHING**  
**CHAPTER 34    DAIRY AND EGG PRODUCERS**  
**PART 5        OPEN DATE LABELING FOR DAIRY PRODUCTS**

**21.34.5.1      ISSUING AGENCY:** New Mexico State University, New Mexico Department of Agriculture  
[1/1/98; 21.34.5.1 NMAC - Rn & A, 21 NMAC 34.5.1, 05/29/09]  
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**21.34.5.2      SCOPE:** All producers, processors and retailers of dairy products.  
[7/15/97; 21.34.5.2 NMAC - Rn, 21 NMAC 34.5.2, 05/29/09]

**21.34.5.3      STATUTORY AUTHORITY:** Granted to the board of regents of New Mexico state university,  
under the Dairy Act, Chapter 25, Article 7, Sections 1 through 8, New Mexico Statutes Annotated, 1978  
Compilation.  
[7/15/97; 21.34.5.3 NMAC - Rn, 21 NMAC 34.5.3, 05/29/09]

**21.34.5.4      DURATION:** Permanent.  
[1/1/98; 21.34.5.4 NMAC - Rn, 21 NMAC 34.5.4, 05/29/09]

**21.34.5.5      EFFECTIVE DATE:** January 1, 1998, unless a different date is cited at the end of a section or  
paragraph.  
[1/1/98; 21.34.5.5 NMAC - Rn, 21 NMAC 34.5.5, 05/29/09]

**21.34.5.6      OBJECTIVE:** This rule establishes the open date labeling requirements for fresh, fluid dairy  
products sold or offered for sale.  
[1/1/98; 21.34.5.6 NMAC - Rn, 21 NMAC 34.5.6, 05/29/09]

**21.34.5.7      DEFINITIONS:**

A. "Cultured product" means the product resulting from the souring by lactic acid producing bacteria  
or similar culture of a milk product.

B. "Dairy dessert mixes" means a product in fluid form intended to be used for dessert purposes and  
shall include, but not be limited to ice cream mix, mellorine mix, yogurt mix, eggnog or other product of similar  
nature.

C. "Director" means the director of the New Mexico department of agriculture.

D. "Hermetically sealed product" means a product packaged in such a way as to be impervious to air  
and gasses, thus preventing microbial spoilage.

E. "Pull date" means the last day on which a product is to be sold or offered for sale for human  
consumption.

F. "Sterilized product" means a product that has been heated to a temperature of two hundred twelve  
(212) degrees fahrenheit or higher for a length of time sufficient to kill all organisms present.

G. "Ultra-pasteurized" means a product thermally processed at two hundred eighty (280) degrees  
fahrenheit or higher for at least two (2) seconds so as to produce a product which has an extended shelf life under  
refrigerated conditions.

[7/15/97; 1/1/98; 1/1/98; 21.34.5.7 NMAC - Rn, 21 NMAC 34.5.7, 05/29/09]

**21.34.5.8      [RESERVED]**

**21.34.5.9      LABELING REQUIREMENTS FOR DATING:**

A. In addition to other labeling requirements, except as otherwise exempted in this rule, all  
processors and producer distributors shall label each container of one-half (1/2) pint or larger of milk, lowfat milk,  
non-fat milk, flavored milk, skim milk, half and half and creams sold or offered for sale with a legible pull date.

B. The length of pull date for pasteurized products shall be determined by the processor.

C. The length of pull date for raw products shall not exceed five (5) days including the date of  
packaging.

D. No product required to have a pull date may be sold or offered for sale by any person if it does not meet all pull date requirements of this rule.  
[7/15/97; 1/1/98; 21.34.5.9 NMAC - Rn, 21 NMAC 34.5.9, 05/29/09]

**21.34.5.10 DATING EXPRESSION:**

A. The pull date shall be expressed numerically or by the first three (3) letters of the month followed by the numeral or numerals constituting the appropriate calendar date.

B. A space, slash or dash shall appear between the month and day.  
[1/1/98; 21.34.5.10 NMAC - Rn, 21 NMAC 34.5.10, 05/29/09]

**21.34.5.11 DATING LOCATION:** The pull date shall appear in such a location on the container so as to be easily located and seen by the purchaser. The method of dating shall not interfere with the legibility of other mandatory labeling requirements of the container.

[1/1/98; 21.34.5.11 NMAC - Rn, 21 NMAC 34.5.11, 05/29/09]

**21.34.5.12 EXEMPT PRODUCTS:**

A. Those products sold directly to the consumer by a processor or producer distributor and all cultured, sterilized, ultra-pasteurized or hermetically sealed products and dairy dessert mixes shall be exempt from the pull date requirements.

B. At the option of the processor, exempt products may be labeled with a pull date determined by the processor.  
[1/1/98; 21.34.5.12 NMAC - Rn, 21 NMAC 34.5.12, 05/29/09]

**21.34.5.13 - 21.34.5.15 [RESERVED]**

**21.34.5.16 COMPLIANCE:** Dairy products required to be labeled with a pull date and those dairy products labeled with an optional pull date, except frozen, dried, condensed or evaporated products, may not be sold or offered for sale for human consumption by any person after the pull date.

[1/1/98; 21.34.5.16 NMAC - Rn, 21 NMAC 34.5.16, 05/29/09]

**21.34.5.17 EMERGENCY WAIVER:** Any or all of the provisions of this rule may be temporarily waived by the director when he determines, in his discretion, that an emergency warrants such waiver.

[1/1/98; 21.34.5.17 NMAC - Rn, 21 NMAC 34.5.17, 05/29/09]

**HISTORY OF 21.34.5 NMAC:**

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

DOA 70-5, New Mexico Dairy Act, Regulatory Order No. 1, (Revised), Dairy Standards, 12/24/70.

DOA 70-5, Amendment No. 1, Regulatory Order No. 1, Dairy Standards, 1/30/74.

DOA 74-9, Regulatory Order No. 9, Open Dating, 12/16/74.

DOA 75-3, Regulatory Order No. 3, Dairy Standards, 9/15/75.

DOA 77-6, Regulatory Order No. 4, Dairy Standards, 9/19/77.

DOA 78-2, Regulatory Order No. 5, Standards, Open Dating, 9/21/78.

NMDA Rule No. 91-3, Open Date Labeling for Dairy Products, filed 2/14/19.

History of Repealed Material:

DOA 74-9, Regulatory Order No. 9, Open Dating, repealed by DOA 77-7, Regulatory Order No. 13, 9/19/77.