

Proposed Rules

Federal Register

Vol. 60, No. 43

Monday, March 6, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-93-04]

Grading and Inspection, General Specification for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Instant Nonfat Dry Milk

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the United States Standards for Instant Nonfat Dry Milk. The proposed changes would reduce the direct microscopic clump count, limit the use of lactose as a processing aid in the instantizing process, provide fortification levels for instant nonfat dry milk with added vitamins A and D, and delete the optional phosphatase test. This proposal was developed in cooperation with the American Dairy Products Institute and other dairy trade associations.

DATES: Comments should be filed by May 5, 1995.

ADDRESSES: Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2968-S, P.O. Box 96456, Washington, DC 20090-6456. They will be available for public inspection at the Dairy Division in Room 2750-S during regular business hours.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/ Dairy Division, Room 2750-S, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-7473.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would

not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions would not increase costs to those utilizing the standards.

The Department is issuing this rule in conformance with Executive Order 12866.

To provide quality grade standards that reflect the ability of the U.S. dairy industry to produce high-quality instant nonfat dry milk, USDA is proposing the following changes in the U.S. Standards for Instant Nonfat Dry Milk.

1. Reduce the Direct Microscopic Clump (DMC) Count Requirements

For many years, the enumeration of bacteria in instant nonfat dry milk by the direct microscopic clump (DMC) count method has been used as a means of determining the quality of the product. Improvements in the quality of raw milk and the sanitary production of instant nonfat dry milk have resulted in a reduction in the DMC count. Proposed changes to reduce the allowable DMC count from 75 million per gram to 40 million per gram would more accurately reflect the ability of the U.S. dairy industry to produce high quality instant nonfat dry milk.

2. Restrict the Amount of Lactose Used as a Processing Aid

The use of lactose as a processing aid in the production of instant nonfat dry milk is an acceptable practice provided the amount used does not exceed the amount necessary to produce the desired effect. If more lactose than necessary is added, the additional lactose serves no purpose other than to displace nonfat dry milk. Proposed changes would permit the use of lactose as a processing aid and restrict the amount added to a maximum of 2.0 percent of the weight of the nonfat dry milk.

3. Provide Fortification Levels for Instant Nonfat Dry Milk With Added Vitamins A and D

The current U.S. Standards for Instant Nonfat Dry Milk do not provide fortification levels for product with added vitamins A and D. Proposed changes would incorporate fortification levels that are consistent with the Food and Drug Administration's standards of identity for nonfat dry milk fortified with vitamins A and D (21 CFR 131.127).

4. Delete the Reference to the Optional Phosphatase Test

Pasteurization destroys pathogenic organisms and occurs when milk is heated to pasteurization temperature and held at that temperature for a specified period of time. To be considered pasteurized, the heating and holding of milk must take place in properly designed and installed equipment which has been inspected and sealed by the State Regulatory Agency. Phosphatase testing confirms only that a given sample of instant nonfat dry milk has been pasteurized but does not ensure that pasteurization has occurred for product manufactured before and after the sample tested.

Before U.S. grade can be assigned to instant nonfat dry milk, it must be produced in a dairy plant which has been inspected by USDA. When a USDA dairy plant inspection is conducted, the inspector evaluates the pasteurization system for compliance with program requirements.

The Department believes that the inspection and sealing of pasteurization equipment by the State Regulatory Agency and a review of the system by the USDA inspector provide adequate assurance that the instant nonfat dry milk has been properly pasteurized. For this reason, the Department is proposing to delete the reference to the optional phosphatase test that appears in 7 CFR part 58.2756. This action does not prohibit using the phosphatase test upon request.

5. Update the Terminology and Format of the Standards

The current U.S. Standards for Instant Nonfat Dry Milk were last revised in 1984. Since that time, changes in terminology and formatting of standards have taken place. The proposal would update the standards to provide

consistency among the various U.S. grade standards.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When instant nonfat dry milk is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. The Agency believes this proposal would accurately identify quality characteristics in instant nonfat dry milk.

Corollary changes are also proposed for the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform the definition of instant nonfat dry milk set forth therein with the proposed revision of the United States Standards for Instant Nonfat Dry Milk.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 58 be amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. In subpart B, § 58.205 (b) is revised to read as follows:

§ 58.205 Meaning of words.

* * * * *

(b) *Instant nonfat dry milk.* Instant nonfat dry milk is nonfat dry milk which has been produced in such a manner as to substantially improve its dispersing and reconstitution characteristics over that produced by the conventional process. Instant nonfat dry milk shall not contain dry buttermilk, dry whey, or products other than nonfat dry milk, except that lactose may be added as a processing aid during instantizing. The instant nonfat dry milk shall not contain any added

preservatives, neutralizing agent, or other chemical. If lactose is used, the amount of lactose shall be the minimum required to produce the desired effect, but in no case shall the amount exceed 2.0 percent of the weight of the nonfat dry milk. If instant nonfat dry milk is fortified with vitamin A, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 2000 International Units thereof. If instant nonfat dry milk is fortified with vitamin D, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

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3. In Part 58, Subpart U is revised to read as follows:

Subpart U—United States Standards for Instant Nonfat Dry Milk¹

Definitions

Sec.

58.2750 Instant nonfat dry milk.

U.S. Grade

58.2751 Nomenclature of the U.S. grade.

58.2752 Basis for determination of the U.S. grade.

58.2753 Specifications for the U.S. grade.

58.2754 U.S. grade not assignable.

58.2756 Test methods.

Explanation of Terms

58.2759 Explanation of terms.

Subpart U—United States Standards for Instant Nonfat Dry Milk¹

Definitions

§ 58.2750 Instant nonfat dry milk.

(a) Instant nonfat dry milk is nonfat dry milk which has been produced in such a manner as to substantially improve its dispersing and reconstitution characteristics over that produced by the conventional processes. Instant nonfat dry milk covered by these standards shall not contain dry buttermilk, dry whey, or products other than nonfat dry milk, except that lactose may be added as a processing aid during instantizing. The instant nonfat dry milk shall not contain any added preservatives, neutralizing agent, or other chemical. If lactose is used, the amount of lactose shall be the minimum required to produce the desired effect, but in no case shall the amount exceed 2.0 percent of the weight of the nonfat dry milk. If instant nonfat

¹ Compliance with the standards in this subpart does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

dry milk is fortified with vitamin A, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 2000 International Units thereof. If instant nonfat dry milk is fortified with vitamin D, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

(b) “Nonfat dry milk” is the product obtained by the removal of only water from pasteurized skim milk. It contains not more than 5 percent by weight of moisture and not more than 1½ percent by weight of milkfat and it conforms to the applicable provisions or 21 CFR part 131, “Milk and Cream” as issued by the Food and Drug Administration. Nonfat dry milk shall not contain nor be derived from dry buttermilk, dry whey, or products other than skim milk, and shall not contain any added preservative, neutralizing agent, or other chemical.

U.S. Grade

§ 58.2751 Nomenclature of the U.S. grade.

The nomenclature of the U.S. grade is U.S. Extra.

§ 58.2752 Basis for determination of the U.S. grade.

The U.S. grade of instant nonfat dry milk is determined on the basis of flavor, physical appearance, bacterial estimate on the basis of standard plate count and coliform count, milkfat content, moisture content, scorched particle content, solubility index, titratable acidity, and dispersibility.

§ 58.2753 Specifications for the U.S. grade.

(a) *U.S. Extra Grade.* U.S. Extra Grade instant nonfat dry milk shall conform to the following requirements (See Tables I, II, and III of this section):

(1) *Flavor.* Reconstituted instant nonfat dry milk shall possess a sweet, pleasing, and desirable flavor, but may possess the following flavors to a slight degree: Chalky, cooked, feed, or flat. See Table I of this section.

(2) *Physical appearance.* Instant nonfat dry milk shall possess a uniform white to light cream natural color. It shall be reasonably free-flowing and free from lumps except those that readily break up with very slight pressure. See Table II of this section.

(3) *Bacterial estimate.* Not more than 30,000 per gram standard plate count. See Table III of this section.

(4) *Coliform count.* Not more than 10 per gram. See Table III of this section.

(5) *Milkfat content.* Not more than 1.25 percent. See Table III of this section.

- (6) *Moisture content*. Not more than 4.5 percent. See Table III of this section.
- (7) *Scorched particle content*. Not more than 15.0 mg. See Table III of this section.
- (8) *Solubility index*. Not more than 1.0 ml. See Table III of this section.
- (9) *Titrateable acidity*. Not more than 0.15 percent (lactic acid). See Table III of this section.
- (10) *Dispersibility*. Not less than 85.0 percent. See Table III of this section.

TABLE I.—CLASSIFICATION OF FLAVOR

Flavor characteristics	U.S. extra grade
Chalky	Slight.
Cooked	Slight.
Feed	Slight.
Flat	Slight.

TABLE II.—CLASSIFICATION OF PHYSICAL APPEARANCE

Physical appearance characteristics	U.S. extra grade
Color	White to light cream.
Free flowing	Reasonably.
Lumpy	Very slight pressure.

TABLE III.—CLASSIFICATION ACCORDING TO LABORATORY ANALYSIS

Laboratory tests	U.S. extra grade
Bacterial estimate; Standard plate count; per gram (max) ...	30,000
Coliform count; per gram (max) .	10
Milkfat content; percent (max)	1.25
Moisture content; percent (max)	4.5
Scorched particle content; mg (max)	15.0
Solubility index; ml (max)	1.0
Titrateable acidity (lactic acid); percent (max)	0.15
Dispersibility; percent (min)	85.0

§ 58.2754 U.S. grade not assignable.

Instant nonfat dry milk shall not be assigned the U.S. grade for one or more of the following reasons:

- (a) The instant nonfat dry milk fails to meet the requirements for U.S. Extra Grade.
- (b) The instant nonfat dry milk has a direct microscopic clump (DMC) count exceeding 40 million per gram.
- (c) The instant nonfat dry milk is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

§ 58.2756 Test methods.

All required tests shall be performed in accordance with DA Instruction No. 918-RL, "Instruction for Resident Grading Quality Control Service

Programs and Laboratory Analysis," Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20090-6456; the latest revision of "Official Methods of Analysis of the Association of Official Analytical Chemists"; or the latest edition of "Standard Methods for the Examination of Dairy Products" available from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

Explanation of Terms

§ 58.2759 Explanation of terms.

- (a) *With respect to flavor*:
 - (1) *Slight*. Detected only upon critical examination.
 - (2) *Chalky*. A tactual type of flavor lacking in characteristic milk flavor.
 - (3) *Cooked*. Similar to a custard flavor and imparts a smooth aftertaste.
 - (4) *Feed*. Feed flavors (such as alfalfa, sweet clover, silage, or similar feed) in milk carried through into the instant nonfat dry milk.
 - (5) *Flat*. Insipid, practically devoid of any characteristic reconstituted instant nonfat dry milk flavor.
- (b) *With respect to physical appearance*:
 - (1) *Reasonably free-flowing*. Pours in a fairly constant, uniform stream from the open end of a tilted container or scoop.
 - (2) *Very slight pressure*. Lumps fall apart with only light touch.
 - (3) *Lumpy*. Loss of powdery consistency but not caked into hard chunks.
 - (4) *Natural color*. A color that is white to light cream.

Dated: February 24, 1995.
Kenneth C. Clayton,
Acting Administrator.
 [FR Doc. 95-5295 Filed 3-3-95; 8:45 am]
BILLING CODE 3410-2-P

7 CFR Part 58

[DA-93-03]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Nonfat Dry Milk (Spray Process)

AGENCY: Agricultural Marketing Service, USDA.
ACTION: Proposed rule.

SUMMARY: This document proposes to revise the United States Standards for Grades of Nonfat Dry Milk (Spray Process). The proposed changes would

reduce existing bacterial standard plate count maximums and incorporate a coliform requirement to reflect the ability of the U.S. dairy industry to produce high-quality nonfat dry milk. The reduction in the maximum standard plate count is made possible through improved raw milk quality and enhanced processing and sanitation techniques. The inclusion of a maximum coliform count adds to the assurance that post-pasteurization contamination has not occurred. This proposal was developed in cooperation with the American Dairy Products Institute and other trade associations.

DATES: Comments should be filed by May 5, 1995.

ADDRESSES: Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2968-S, P.O. Box 96456, Washington, DC 20090-6456. They will be available for public inspection at the Dairy Division in Room 2750-S during regular business hours.

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The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions would not increase costs to those utilizing the standards.

The Department is issuing this rule in conformance with Executive Order 12866.

To provide quality grade standards that reflect the ability of the U.S. dairy industry to produce high-quality nonfat dry milk, USDA is proposing the following changes in the U.S. Standards for Grades of Nonfat Dry Milk (Spray Process).