5. In § 70.71, paragraphs (b) and (c) are revised to read as follows:

§ 70.71 On a fee basis.

(a) * * *

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $54.40 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $62.76 per hour. Information on legal holidays is available from the Supervisor.

6. In § 70.77, paragraph (a)(4) is revised to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00036, except that the minimum charge per billing period shall be $250 and the maximum charge shall be $2,650. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: August 7, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–20246 Filed 8–10–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–99–04]

RIN 0581–AB59

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service (General Specifications) by reducing the maximum allowable bacterial estimate and somatic cell count in producer herd milk, by reducing the maximum allowable bacterial estimate in commingled milk, and by modifying the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate. These changes would align the General Specifications with model regulations relating to quality and sanitation requirements of the production and processing of manufacturing grade milk. In addition, this document proposes to revise the process by which drug residue test methods are evaluated and accepted to provide greater consistency with the Grade A milk program and proposes certain other changes to the regulations for clarity and consistency.

DATES: Comments must be submitted on or before October 12, 2001.

ADDRESSES: Written comments may be submitted to: Duane R. Spomer, Chief, Dairy Standardization Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2946–S, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments may also be faxed to (202) 720–2643 or e-mailed to Duane.Spomer@usda.gov.

Comments should reference the date and page of this issue of the **Federal Register**. All comments received will be available for public inspection at the above address during regular business hours (8 a.m.–4:30 p.m.).

The current General Specifications for Dairy Plants Approved for USDA Inspection and Grading are available either through the above address or by accessing AMS' Home Page on the Internet at www.ams.usda.gov/dairy/stand.htm.

FOR FURTHER INFORMATION CONTACT: Susan Sausville, Dairy Products Marketing Specialist, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2746, South Building, P.O. Box 96456, Washington, D.C. 20290–6456, (202) 720–7473, Susan.Sausville@usda.gov.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

The proposed rule has been reviewed in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

AMS provides, under the authority of the Agricultural Marketing Act of 1946, voluntary, user-fee funded inspection and grading services to approximately 400 dairy manufacturing plants. All of the dairy manufacturing plants utilizing the program would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

The proposed amendments would not have a significant economic impact because many State regulatory agencies have already incorporated these changes into State laws and regulations governing dairy manufacturing plants. The proposed changes would more closely align the General Specifications with mandatory State regulatory requirements in a number of areas including:

- The reduction of producer herd milk somatic cell count,
- The reduction of producer herd milk bacterial estimate,
- The follow-up protocol for producers whose herd milk exceeds the permitted bacterial estimate,
- The reduction in the bacterial estimate for commingled milk counts,
- The laboratory procedures that determine somatic cell content of producer herd milk, and
- The drug residue monitoring program.

Furthermore, the proposed amendments would not have a significant economic impact since participation in the USDA-approved plant program is voluntary and the cost

to those utilizing the program would not increase.

C. Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, 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 represent an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

D. Paperwork Reduction Act

The information collection requirements that appear in Part 58 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581–0110 under the Paperwork Reduction Act (44 U.S.C. chapter 35). This action will not impose any additional reporting or recordkeeping requirements on large or small dairy processors.

Background and Proposed Changes

Under provisions of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), the United States Department of Agriculture maintains a set of model regulations relating to quality and sanitation requirements for the production and processing of manufacturing grade milk. The Recommended Requirements are a separate document developed by AMS and recommended for State adoption and enforcement by the various States that regulate manufacturing grade milk. The purpose of the model requirements is to promote, through State adoption and enforcement, uniformity in State dairy laws and regulations relating to manufacturing grade milk. The Recommended Requirements are available from the Dairy Standardization Branch at the address provided in the **ADDRESSES** Section of this proposal. Additionally, the Recommended Requirements are available by accessing AMS' Home Page on the Internet at *www.ams.usda.gov/dairy/stand.htm.*

On November 12, 1996, AMS reduced the somatic cell count and the bacterial estimate provisions in the Recommended Requirements (61 FR 48120). This reduction was requested by the National Association of State Departments of Agriculture (NASDA) and was developed in cooperation with NASDA, dairy trade associations, and producer groups. Now that State regulatory agencies have had an opportunity to implement these new limits and the dairy industry has had time to adapt to this new level, the Department is recommending similar changes be made in the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. This alignment is needed in order to support the reduced levels of somatic cells and bacteria in the USDA Recommended Requirements and to promote improvements in the quality of raw milk utilized by USDA approved plants.

In addition, AMS has also identified additional areas where changes can be made to improve the regulations. All of the changes are explained in further detail below. AMS is proposing to amend the General Specifications as follows:

1. *Reduce the maximum bacterial estimate permitted in producer herd milk and modify the follow-up procedures when herd milk exceeds the maximum allowable bacterial estimate.*

Current § 58.135 provides for a maximum permissible bacteria count in producer herd milk of 1,000,000 per milliliter. We are proposing to revise § 58.135 by reducing the maximum bacteria estimate permitted in producer herd milk to 500,000 per milliliter for the following reasons:

The number of bacteria present in milk increases when the equipment and utensils used to collect and store the milk are improperly cleaned and sanitized. This number increases rapidly in milk that is not cooled promptly or that is not maintained at refrigerated temperatures throughout storage. Enhanced milk quality can be attained when dairy equipment is properly cleaned and sanitized and when milk is promptly cooled and stored at refrigerated temperatures. Improvements in sanitation practices and milk cooling equipment have resulted in enhanced milk quality. Therefore, to reflect these improvements in enhanced milk quality, this proposal would reduce the maximum permissible bacteria count in producer herd milk from 1,000,000 to 500,000 per ml. This and additional changes to § 58.135 are proposed as follows:

Current § 58.135(a) references ''Standard Methods for the Examination of Dairy Products,'' for test methods that may be used to determine the bacterial estimate of the milk from individual producers. This proposal would identify this reference as a publication of the American Public Health Association and provide the following list of acceptable methods for determining the bacterial estimate of milk from individual producers: Direct Microscopic Clump Count, Standard Plate Count, Plate Loop Count, Pectin Gel Plate Count, Petrifilm Aerobic Count, Spiral Plate Count, Hydrophobic Grid Membrane Filter Count, Impedence/Conductance Count, and Reflectance Calorimetry.

Current § 58.135(b) provides bacterial estimate classifications for milk from individual producers of: No. 1 (Not over 500,000 per ml.), No. 2 (Not over 1,000,000 per ml.) and Undergrade (Over 1,000,000 per ml.). This proposal would lower the maximum allowable bacteria estimate in milk from individual producers to a maximum of 500,000 per ml., thus eliminating the need to classify milk as No.1, No. 2, or Undergrade. Therefore, this proposal would delete all information currently contained in § 58.135(b).

Current § 58.135(c) establishes the frequency at which individual producer milk is to be tested for bacterial estimate. This proposal maintains the current frequency, adds a provision that the samples be analyzed in accordance with State regulations, and redesignates this information to § 58.135(b).

Current § 58.135(d) provides for the acceptance of milk based on information previously contained in § 58.135(b). This proposal would establish new procedures for individual producer's milk that exceeds the maximum allowable bacterial estimate to provide consistency with the Recommended Requirements and many State regulations. This new procedure would require that the producer be notified of all bacterial estimates exceeding the maximum permitted. In addition, when two of the last four consecutive bacterial estimates exceed the maximum permitted, the appropriate regulatory authority would be notified. The producer would be provided a written notice that two of the last four bacterial estimates exceed the maximum permitted. When two out of the last four bacterial estimates exceed the maximum permitted, the proposal provides that an additional sample be taken, the result of which determines the acceptability of milk from a producer. These proposed changes will provide increased uniformity with producer herd milk bacteria and somatic cell follow-up procedures and provide greater adaptability to computer-based recordkeeping. This revised section will now appear as § 58.135(c). Information contained in proposed § 58.135(b) and § 58.135(c) provides the information necessary to determine the acceptability of milk for bacterial content. Accordingly, § 58.135(d) is no longer needed and is being removed.

Current § 58.135(e) provides for retests based on information previously contained in § 58.135(b) and § 58.135(c). Information contained in proposed

§ 58.135(b) and § 58.135(c) provides the information necessary to determine the acceptability of milk for bacterial content. Accordingly, § 58.135(e) is no longer needed and is being removed.

2. *Reduce the maximum somatic cell count permitted in producer herd milk and delete the laboratory screening tests for somatic cells (no changes are being proposed for goat milk).*

Current § 58.133(b)(5), § 58.133(b)(5)(ii) and § 58.133(b)(6) provides for a maximum somatic cell count in producer herd milk of 1,000,000 per milliliter. We are proposing to revise these sections by reducing the maximum allowable somatic cell count in producer herd cow's milk to 750,000 per milliliter for the following reasons:

The number of leukocytes (somatic cells) present in milk increases as a result of mammary gland infection (mastitis) and provides information regarding the health of the dairy herd. Through effective herd management, dairy farmers have reduced the number of somatic cells present in raw milk. Identification and treatment of infected animals and improved milking techniques are two examples of herd management tools being used to reduce somatic cell counts. Therefore, to reflect these improvements in enhanced milk quality, this proposal would reduce the maximum permissible somatic cells in producer herd milk from 1,000,000 to 750,000 per ml. Because the number of somatic cells found in milk produced from healthy goats is normally higher than the number found in cow's milk, similar reductions are not being proposed for goat milk. Research indicates that physiological and microbiological differences exist in goat and cow milk independent of disease status which justify different standards between the two species.[1]

Current § 58.133(b)(2) lists the California Mastitis Test (CMT) and the Wisconsin Mastitis Test (WMT) as acceptable screening tests for somatic cells in producer herd milk samples. We are proposing to revise § 58.133(b)(2) by limiting the California Mastitis Test (CMT) and Wisconsin Mastitis Test (WMT) as screening tests for somatic cells in goat herd milk samples for the following reasons:

The CMT and the WMT are used as screening tests for somatic cells. However, these screening tests are reliable for samples containing 1,000,000 or more somatic cells per milliliter. Since this action would reduce the maximum somatic cell count in cow's milk to 750,000 per ml., the CMT and WMT tests are not accurate enough to screen cow milk at the reduced level. Since the maximum somatic cell count for goat milk remains at 1,000,000 per ml., the CMT and WMT tests may continue to be used to screen goat milk. Since screening tests would no longer apply to cow's milk, the proposed changes would revise § 58.133(b)(3) to indicate that the listed tests are only considered confirmatory when performed on goat's milk. The proposal lists in § 58.133(b)(3), the Direct Microscopic Somatic Cell Count, the Electronic Somatic Cell Count (particle counter), and the Electronic Somatic Cell Count (fluorescent dye) as tests that may be used to determine somatic cell count. In addition, this proposal provides for additional methods that may later be included in the latest edition of ''Standard Methods for the Examination of Dairy Products,'' a publication of the American Public Health Association. A copy of this document is available from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

3. *Reduce the maximum permitted bacterial estimate in commingled milk.*

Current § 58.143(b) provides for a maximum allowable bacterial estimate in commingled milk in storage tanks of 3,000,000 per milliliter. This proposal would revise § 58.143(b) by reducing the maximum allowable bacterial estimate in commingled milk in storage tanks to 1,000,000 per milliliter for the following reasons:

Commingled milk is the combined milk from more than one producer. Farm improvements in sanitation practices and milk cooling equipment have resulted in enhanced milk quality. Therefore, to reflect these improvements and the resulting improvements of enhanced commingled milk quality, this proposal would reduce the maximum permissible bacterial estimate in commingled milk from 3,000,000 to 1,000,000 per milliliter.

4. *Update procedures for excluding milk.*

Current § 58.137(b) provides for the exclusion of milk that has been classified as Undergrade for bacterial estimate for more than four successive weeks. Proposed changes to § 58.135 would eliminate the bacterial based classification of milk (No.1, No.2, or Undergrade). Therefore, we are proposing to revise § 58.137(b) to follow the protocol proposed in § 58.135(c)(3) and exclude milk when three of the last five milk samples have exceeded the maximum bacterial estimate of 500,000 per ml.

Current § 58.137(c) provides for milk to be excluded when three out of the last five milk samples have exceeded the maximum somatic cell count level of 1,000,000 per ml. This proposal would lower the maximum somatic cell count level to 750,000 per ml. Therefore, we are proposing to revise § 58.137(c) to exclude milk when three out of the last five milk samples have exceeded the maximum somatic cell count level of 750,000 per ml.

5. *Update the Drug Residue Testing Program.*

We are proposing to revise § 58.133(c) to provide greater consistency with current Grade A milk requirements. When the General Specifications were revised in 1993, provisions detailing a drug residue testing program were added. At that time, those provisions were consistent with the drug residue program developed by the National Conference for Interstate Milk Shipment and used to monitor drug residues in Grade A milk. When the Grade A milk drug residue monitoring program was developed, the program allowed for the approval of test methods by the Virginia Polytechnic Institute and State University. Since that time, the Grade A milk program has changed to allow further independent evaluations and not specifically limited to the Virginia Polytechnic Institute and State University. The proposed changes would revise § 58.133(c) to provide greater consistency in the methods used to analyze samples for drug residues, and test methods would now be independently evaluated or evaluated by the Food and Drug Administration (FDA) and accepted by FDA as effective to detect drug residues at current safe or tolerance levels.

6. *Update of 3–A Sanitary Standards References.*

This proposal would update the 3–A Sanitary Standard references in § 58.131(a)(2) to properly reflect the title of the two standards for dairy farm cooling and storage tanks. Therefore, we are proposing to revise § 58.131(a)(2) to reference the 3–A Sanitary Standard for Farm Cooling and Holding Tanks and the 3–A Sanitary Standard for Farm Milk Storage Tanks. In addition, this proposal would reflect a change in the title of the document detailing methods to produce culinary steam in § 58.127(d). The current title is the 3–A Accepted Practices for a Method of Producing Steam of Culinary Quality. Copies of each of these documents are available from the International Association for Food Protection, 6200

[1] G.F. Haenlein, L.S. Hinckley, ''Goat Milk Somatic Cell Count Situation in the United States'', Goat Management: (http://bluehen.ags.udel.edu/deces/goatmgt/gm-11.htm).

Aurora Ave., Suite 200 W, Des Moines, Iowa 50322–2863.

7. *Inclusion of USDA Equipment Guidelines.*

The proposed change would reference the ''USDA Guidelines for the Sanitary Design and Fabrication of Dairy Processing Equipment'' in § 58.128(o). The Guidelines address design and fabrication requirements for dairy processing equipment not covered by an existing 3–A Sanitary Standard.

8. *Increase the Keeping Quality Test Temperature of Whipped Butter.*

Currently, § 58.346(b)(1) provides for a keeping quality test temperature for whipped butter of 70° F. We are proposing to revise § 58.346(b)(1) by raising the keeping quality test temperature of whipped butter from 70° F to 72° F. This proposal would provide consistent keeping quality test temperature requirements for butter and whipped butter. Agricultural Marketing Service graders have confirmed that accurate keeping quality results can be achieved for both butter and whipped butter when using 72° F. Alignment of this temperature requirement would allow the storage of both butter and whipped butter samples in the same temperature controlled keeping quality cabinet.

9. *Addition of Reduced Fat, Light, and Fat Free Cottage Cheese and Ice Cream.*

Current § 58.505(b)(3) provides for the term lowfat cottage cheese. We are proposing to revise § 58.505(b)(3) by including terms consistent with FDA labeling requirements such as ''reduced fat,'' ''light,'' and ''fat free'' cottage cheese.

Current § 58.605(c) provides for the term ice milk. We are proposing to revise § 58.605(c) by replacing the term ice milk with terms consistent with FDA labeling requirements such as ''reduced fat,'' ''light,'' and ''fat free'' ice cream. The proposed changes would also add the following CFR references to the General Specifications: ''Nutrient content claims for fat, fatty acid, and cholesterol content of foods,'' (21 CFR 101.62), and ''Requirements for foods named by use of a nutrient content claim and a standardized term,'' (21 CFR 130.10).

10. *Other Changes.*

• The proposed changes would correct § 58.124 by revising (j) and adding (k). These errors were inadvertent and occurred when the section was printed in the **Federal Register** and reproduced in the Code of Federal Regulations. A portion of the information in paragraphs (j) and (k) was inadvertently dropped from the CFR. Section 58.124(j) incorrectly contains the following wording: ''(j) proper storage conditions for ingrpackaging methods and materials.'' This proposal would correct this error by revising the information to read ''(j) proper storage conditions for ingredients and dairy products, or (k) suitable and effective packaging methods and materials.''

• The proposed changes would update citations made to CFR references in § 58.101(e), § 58.405(a), § 58.505, § 58.605, § 58.705(a), § 58.905, § 58.915, and § 58.938 to provide accurate information.

• The proposed changes would update Dairy Division to Dairy Programs in § 58.245 and § 58.812 and would update AMS Science Division to AMS Science and Technology Programs in § 58.126(e)(5)(ii) to reflect the name changes.

• The proposed changes would update the compositional standards in § 58.905 for evaporated milk, concentrated milk, and sweetened condensed milk to reflect compositional changes in the FDA Standards of Identity for evaporated milk (21 CFR 131.130), concentrated milk (21 CFR 131.115), and sweetened condensed milk (21 CFR 131.120).

• The proposed changes would update the association names and addresses in § 58.101 for the Association of Official Analytical Chemists, the American Public Health Association, and the International Association for Food Protection.

• The proposed changes would improve the current definition of a sanitizing treatment in § 58.101(e) and provide a definition consistent with terminology currently used in the dairy industry.

• The proposed changes in § 58.134(a) would provide information on how to obtain sediment standards.

• The proposed changes in § 58.245 would include DA Instruction 918–RL as a reference for methods of laboratory analysis and delete DA Instructions 918–103, 918–109–1, and 918–109–3. These DA instructions have been combined into 918–RL and no longer exist.

AMS is publishing this proposed rule with a 60-day comment period in order to provide sufficient time for interested persons to comment on the revisions.

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, Subpart B, be amended to read as follows:

PART 58—[AMENDED]

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

Authority: Agricultural Marketing Act of 1946, 7 U.S.C. 1621–1627.

2. Amend § 58.101 by revising paragraphs (e), (m), (v), and (w) to read as follows:

§ 58.101 Meaning of words.

* * * * *

(e) *Sanitizing treatment.* Subjection of a clean product contact surface to steam, hot water, hot air, or an acceptable sanitizing solution for the destruction of most human pathogens and other vegetative microorganisms to a level considered safe for product production. Such treatment shall not adversely affect the equipment, the milk or the milk product, or the health of consumers. Sanitizing solutions shall comply with 21 CFR 178.1010.

* * * * *

(m) *Official Methods of Analysis of the Association of Official Analytical Chemists.* ''Official Methods of Analysis of the Association of Official Analytical Chemists,'' a publication of the Association of Official Analytical Chemists International, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

* * * * *

(v) *Standard Methods for the Examination of Dairy Products.* ''Standard Methods for the Examination of Dairy Products,'' a publication of the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

(w) *3–A Sanitary Standards and Accepted Practice.* The latest standards for dairy equipment and accepted practices formulated by the 3–A Sanitary Standards Committees representing the International Association for Food Protection, the Food and Drug Administration, and the Dairy Industry Committee. Published by the International Association for Food Protection, 6200 Aurora Avenue, Suite 200 W, Des Moines, Iowa 50322–2863.

* * * * *

3. Amend § 58.124 by revising (j) and adding (k) to read as follows:

§ 58.124 Denial or suspension of plant approval.

* * * * *

(j) proper storage conditions for ingredients and dairy products, or (k) suitable and effective packaging methods and material.

4. Amend § 58.126 by revising paragraph (e)(5)(ii) to read as follows:

§ 58.126 Buildings.

* * * * *

(e) * * *

(5) * * *

(ii) Approved laboratories shall be supervised by the USDA resident inspector in all aspects of official testing and in reporting results. Plant laboratory personnel in such plants may be authorized by USDA to perform official duties. The AMS Science and Technology Programs will provide independent auditing of laboratory analysis functions.

* * * * *

5. Amend § 58.127 by revising paragraph (d) to read as follows:

§ 58.127 Facilities.

* * * * *

(d) *Steam.* Steam shall be supplied in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment. Culinary steam used in direct contact with milk or dairy products shall be free from harmful substances or extraneous material and only those boiler water additives that meet the requirements of 21 CFR 173.310 shall be used, or a secondary steam generator shall be used in which soft water is converted to steam and no boiler compounds are used. Steam traps, strainers, and condensate traps shall be used wherever applicable to insure a satisfactory and safe steam supply. Culinary steam shall comply with the 3–A Accepted Practices for a Method of Producing Steam of Culinary Quality, number 609. This document is available from the International Association for Food Protection, 6200 Aurora Avenue, Suite 200 W, Des Moines, Iowa 50322–2863.

* * * * *

6. Amend § 58.128 by revising paragraph (o) to read as follows:

§ 58.128 Equipment and utensils.

* * * * *

(o) *New replacement or modified equipment, processing system, or utensils.* All new, replacement or modified equipment and all processing systems, cleaning systems, utensils, or replacement parts shall comply with the most current, appropriate 3–A Sanitary Standards or 3–A Accepted Practices. If 3–A Sanitary Standards or 3–A Accepted Practices are not available, such equipment and replacements shall meet the general criteria of this section and the USDA Guidelines for the Sanitary Design and Fabrication of Dairy Processing Equipment available from USDA, Agricultural Marketing Service, Dairy Programs, Dairy Grading Branch, or by accessing the Internet at www.ams.gov/dairy/grade.htm.

* * * * *

7. Amend § 58.131 by revising the first sentence of paragraph (a)(2) to read as follows:

§ 58.131 Equipment and facilities.

* * * * *

(a)(2) *Farm bulk tanks.* Farm bulk tanks shall comply with 3–A Sanitary Standards for Farm Cooling and Holding Tanks or 3–A Sanitary Standards for Farm Milk Storage Tanks, as applicable. * * *

* * * * *

8. Amend § 58.133 by revising paragraphs (b)(2), (b)(3), (b)(4), (b)(5) introductory text, (b)(5)(ii), (b)(6), and (c)(1) to read as follows:

* * * * *

§ 58.133 Methods for quality and wholesomeness determination.

* * * * *

(b) * * *

(2) A screening test may be conducted on goat herd milk. When a goat herd screening sample test exceeds either of the following results, a confirmatory test identified in paragraph (b)(3) of this section shall be conducted.

* * * * *

(3) Milk shall be tested for somatic cell content by using one of the following procedures or by any other method approved by Standard Methods for the Examination of Dairy Products, (confirmatory test for somatic cells in goat milk):

(i) Direct Microscopic Somatic Cell Count (Single Strip Procedure). Pyronin Y-methyl green stain or ''New York'' modification shall be used as the confirmatory test for goat's milk.

(ii) Electronic Somatic Cell Count (particle counter).

(iii) Electronic Somatic Cell Count (fluorescent dye).

(4) The somatic cell test identified in paragraph (b)(3) of this section shall be considered as the official results.

(5) Whenever the official test indicates the presence of more than 750,000 somatic cells per ml. (1,000,000 per ml. for goat milk), the following procedures shall be applied:

(i) * * *

(ii) Whenever two out of the last four consecutive somatic cell counts exceed 750,000 per ml. (1,000,000 per ml. for goat milk), the appropriate State regulatory authority shall be notified and a written notice given to the producer. This notice shall be in effect as long as two of the last four consecutive samples exceed 750,000 per ml. (1,000,000 per ml. for goat milk).

(6) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (b) (5) (ii) of this section. If this sample also exceeds 750,000 per ml. (1,000,000 per ml. for goat milk), subsequent milkings shall not be accepted for market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer may be assigned a full reinstatement status when three out of four consecutive somatic cell count tests do not exceed 750,000 per ml. (1,000,000 per ml. for goat milk). The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

(c) *Drug residue level.* (1) USDA-approved plants shall not accept for processing any milk testing positive for drug residue. All milk received at USDA-approved plants shall be sampled and tested, prior to processing, for beta lactam drug residue. When directed by the regulatory agency, additional testing for other drug residues shall be performed. Samples shall be analyzed for beta lactams and other drug residues by methods which have been independently evaluated or evaluated by the Food and Drug Administration (FDA) and have been accepted by the (FDA) as effective to detect drug residues at current safe or tolerance levels. Safe and tolerance levels for particular drugs are established by the FDA and can be obtained from the U.S. Food and Drug Administration Center for Food Safety and Applied Nutrition, 200 C Street SW., Washington, DC 20204.

* * * * *

9. Amend § 58.134 by revising paragraph (a) to read as follows:

§ 58.134 Sediment content.

(a) *Method of testing.* Methods for determining the sediment content of the milk of individual producers shall be those described in the latest edition of Standard Methods for the Examination of Dairy Products. Sediment content shall be based on comparison with applicable charts of the United States Sediment Standards for Milk and Milk Products, available from USDA, AMS, Dairy Programs, Dairy Standardization Branch.

* * * * *

10. Revise § 58.135 to read as follows:

§ 58.135 Bacterial estimate.

(a) *Methods of testing.* Milk shall be tested for bacterial estimate by using

one of the following methods or by any other method approved by Standard Methods for the Examination of Dairy Products.

(1) Direct microscopic clump count;
(2) Standard plate count;
(3) Plate loop count;
(4) Pectin gel plate count;
(5) Petrifilm aerobic count;
(6) Spiral plate count;
(7) Hydrophobic grid membrane filter count;
(8) Impedance/conductance count;
(9) Reflectance calorimetry.

(b) *Frequency of testing.* A laboratory examination to determine the bacterial estimate shall be made on a representative sample of each producer's milk at least once each month at irregular intervals. Samples shall be analyzed at a laboratory in accordance with State regulations.

(c) *Acceptance of milk.* The following procedures shall be applied with respect to bacterial estimates:

(1) Whenever the bacterial estimate indicates the presence of more than 500,000 bacteria per ml., the producer shall be notified with a warning of the excessive bacterial estimate.

(2) Whenever two of the last four consecutive bacterial estimates exceed 500,000 per ml., the appropriate regulatory authority shall be notified and a written warning notice given to the producer. The notice shall be in effect so long as two out of the last four consecutive samples exceed 500,000 per ml.

(3) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (c) (2) of this section. If this sample also exceeds 500,000 per ml., subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed when an additional sample of herd milk is tested and found satisfactory.

11. Amend § 58.137 by revising paragraphs (b) and (c) to read as follows:

§ 58.137 Excluded milk.

* * * * *

(b) Three of the last five milk samples have exceeded the maximum bacterial estimate of 500,000 per ml. (§ 58.135 (c)(3)).

(c) Three of the last five milk samples have exceeded the maximum somatic cell count level of 750,000 per ml. (1,000,000 per ml. for goat milk) (§ 58.133 (b)(6)); or

* * * * *

12. Amend § 58.143 by revising paragraph (b) to read as follows:

§ 58.143 Raw product storage.

* * * * *

(b) The bacteriological quality of commingled milk in storage tanks shall not exceed 1,000,000/ml.

13. Revise § 58.245 to read as follows:

§ 58.245 Method of sample analysis.

Samples shall be tested according to the applicable methods of laboratory analysis contained in either DA Instruction 918–RL as issued by the USDA, Agricultural Marketing Service, Dairy Programs, or Official Methods of Analysis of the Association of Analytical Chemists or Standard Methods for the Examination of Dairy Products.

14. Amend § 58.346 by revising paragraph (b)(1) to read as follows:

§ 58.346 Whipped butter.

* * * * *

(b) * * *

(1) Proteolytic count, not more than 50 per gram; yeast and mold count, not more than 10 per gram; coliform count, not more than 10 per gram; and keeping-quality test, satisfactory after 7 days at 72° F.

* * * * *

15. Amend § 58.405 by revising paragraph (a) to read as follows:

§ 58.405 Meaning of words.

* * * * *

(a) *Cheese.* The fresh or matured product obtained by draining after coagulation of milk, cream, skimmed, or partly skimmed milk or a combination of some or all of these products and including any cheese that conforms to the requirements of the Food and Drug Administration for cheeses and related cheese products (21 CFR part 133).

* * * * *

16. Amend § 58.505 by revising paragraphs (b), (c), and (d), and the last sentence of paragraph (f) to read as follows:

§ 58.505 Meaning of Words.

* * * * *

(b) *Cottage cheese.* (1) *Cottage cheese dry curd.* The soft uncured cheese meeting the requirements of the Food and Drug Administration for dry curd cottage cheese (21 CFR 133.129).

(2) *Cottage cheese.* The soft uncured cheese meeting the requirements of the Food and Drug Administration for cottage cheese (21 CFR 133.128).

(3) *Reduced Fat, Light, and Fat Free Cottage cheese.* The products conforming to all applicable Federal Regulations including ''Cottage cheese,'' Food and Drug Administration (21 CFR 133.128), ''Dry curd cottage cheese,'' Food and Drug Administration (21 CFR 133.129), ''Nutrient content claims for fat, fatty acid, and cholesterol content of foods,'' Food and Drug Administration (21 CFR 101.62), and ''Requirements for foods named by use of a nutrient content claim and a standardized term,'' Food and Drug Administration (21 CFR 130.10).

(c) *Direct acidification.* The production of cottage cheese, without the use of bacterial starter cultures, through the use of approved food grade acids. This product shall be labeled according to the requirements of the Food and Drug Administration, 21 CFR 133.128 or 133.129, as appropriate.

(d) *Cottage cheese with fruits, nuts, chives, or other vegetables.* Shall consist of cottage cheese to which has been added fruits, nuts, chives and other vegetables. The finished cheese shall comply with the requirements of the Food and Drug Administration for cottage cheese (21 CFR 133.128).

(e) * * *

(f) * * * The creaming mixture in its final form may or may not be homogenized and shall conform to the requirements of the Food and Drug Administration (21 CFR 133.128(b)).

17. Amend § 58.605 by revising paragraphs (a), (b), (c), (d) and (e).

§ 58.605 Meaning of words.

* * * * *

(a) *Ice cream.* The product conforming to the requirements of the Food and Drug Administration for ice cream (21 CFR 135.110).

(b) *Frozen custard.* The product conforming to the requirements of the Food and Drug Administration for frozen custard (21 CFR 135.110).

(c) *Reduced Fat, Light, or Fat Free ice cream.* The products conforming to all applicable Federal Regulations including ''Ice cream and frozen custard,'' Food and Drug Administration (21 CFR 135.110), ''Nutrient content claims for fat, fatty acid, and cholesterol content of foods,'' Food and Drug Administration (21 CFR 101.62), and ''Requirements for foods named by use of a nutrient content claim and a standardized term,'' Food and Drug Administration (21 CFR 130.10).

(d) *Sherbet.* The product conforming to the requirements of the Food and Drug Administration for sherbet (21 CFR 135.140).

(e) *Mellorine.* The product conforming to the requirements of the Food and Drug Administration for mellorine (21 CFR 135.130).

* * * * *

18. Remove and reserve § 58.651.

19. Amend § 58.705 by revising paragraph (a) to read as follows:

§ 58.705 Meaning of words.

(a) *Pasteurized process cheese and related products.* Pasteurized process

cheese and related products are the foods which conform to the applicable requirements of the Food and Drug Administration for cheeses and related cheese products (21 CFR part 133).

* * * * *

20. Amend § 58.812 to read as follows:

§ 58.812 Methods of sample analysis.

Samples shall be tested according to the applicable methods of laboratory analysis contained in either DA Instruction 918–RL, as issued by the USDA, Agricultural Marketing Service, Dairy Programs, or the Official Methods of Analysis of the Association of Official Analytical Chemists, or Standard Methods for the Examination of Dairy Products.

* * * * *

21. Amend § 58.905 by revising paragraphs (a), (b), and (c) to read as follows:

§ 58.905 Meaning of words.

* * * * *

(a) *Evaporated milk.* The liquid food made by evaporating sweet milk to such point that it contains not less than 6.5 percent of milkfat and not less than 16.5 percent of the total milk solids. The finished product shall conform to the requirements of the Food and Drug Administration for evaporated milk (21 CFR 131.130).

(b) *Concentrated milk, plain condensed milk.* The product which conforms to the standard of identity for evaporated milk except that it is not processed by heat to prevent spoilage. The container may be unsealed, and stabilizing ingredients are not used. The finished product shall conform to the requirements of the Food and Drug Administration for concentrated milk (21 CFR 131.115).

(c) *Sweetened condensed milk.* The liquid or semi-liquid food made by evaporating a mixture of sweet milk and refined sugar (sucrose) or any combination of refined sugar (sucrose) and refined corn sugar (dextrose) to such point that the finished sweetened condensed milk contains not less than 28.0 percent of total milk solids and not less than 8.0 percent of milkfat. The quantity of sugar used is sufficient to prevent spoilage. The finished product shall conform to the requirements of the Food and Drug Administration for sweetened condensed milk (21 CFR 131.120).

* * * * *

22. Revise § 58.915 to read as follows:

§ 58.915 Batch or continuous in-container thermal processing equipment.

Batch or continuous in-container thermal processing equipment shall meet the requirements of the Food and Drug Administration for thermally processed low-acid foods packaged in hermetically sealed containers (21 CFR part 113). The equipment shall be maintained in such a manner as to assure control of the length of processing and to minimize the number of damaged containers.

23. Amend § 58.938 by revising paragraph (g) to read as follows:

§ 58.938 Physical requirements and microbiological limits for sweetened condensed milk

* * * * *

(g) *Composition.* Shall meet the minimum requirements of the Food and Drug Administration for sweetened condensed milk (21 CFR 131.120). In addition, the quantity of refined sugar used shall be sufficient to give a sugar-in-water ratio of not less than 61.5 percent.

* * * * *

Authority (7 U.S.C. 1621–1627).

Dated: August 7, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–20189 Filed 8–10–01; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–01–001]

2001 Proposed Amendment to Cotton Board Rules and Regulations Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to amend the Cotton Board Rules and Regulations by raising the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. An adjustment is required on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton.

DATE: Comments must be received on or before September 12, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments may be mailed to USDA, AMS, Cotton Program, STOP 0224, 1400 Independence Avenue, SW, Washington, DC 20250–0224 or Email *cottoncomments@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection at this address during the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, (202) 720–2259.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be ''not significant'' for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.