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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 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:** Final rule.

**SUMMARY:** This document revises the United States Standards for Grades of Nonfat Dry Milk (Spray Process). The revision reduces existing bacterial standard plate count maximums and incorporates 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 revision was developed in cooperation with the American Dairy Products Institute and other trade associations.

**EFFECTIVE DATE:** May 22, 1996.

**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 final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule does 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 final 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 final rule will 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 changing the U.S. Standards for Grades of Nonfat Dry Milk (Spray Process) as follows:

#### 1. Expand the U.S. Grade Standards To Include a Maximum Coliform Count in USDA-Graded Product

Coliform bacteria, abundantly present in the environment, are destroyed by pasteurization. Post-pasteurization contamination has occurred when coliform bacteria are present in nonfat dry milk. The addition of a coliform requirement into the U.S. grade standard increases the assurance that USDA graded nonfat dry milk is produced and packaged in a sanitary manner.

#### 2. Reduce the Standard Plate Count Requirements

Enumeration of bacteria by the standard plate count method has been a criterium used in the determination of U.S. grade for many years. Improvements in the sanitary production of nonfat dry milk have resulted in a gradual reduction in the number of bacteria present in the product. The revision reduces the allowable bacteria from 50,000 to 40,000 per gram for U.S. Extra Grade and from 100,000 to 75,000 per gram for U.S. Standard Grade. These changes accurately reflect the ability of the U.S. dairy industry to produce high-quality nonfat dry milk and enhances the image of U.S. products on the world market.

#### 3. Update the Terminology and Format of the Standards

The current U.S. Standards for Grades of Nonfat Dry Milk (Spray Process) were last revised in 1984. Since that time, changes in terminology and formatting of standards have taken place. The revision updates 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 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 revision accurately identifies quality characteristics in nonfat dry milk.

Corollary changes have also been made for the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform the definition of nonfat dry milk set forth therein with the final revision of the United States Standards for Grades of Nonfat Dry Milk (Spray Process).

#### Public Comments

On March 6, 1995, the Department published a proposed rule (60 FR 12156) to revise the United States Standards for Grades of Nonfat Dry Milk (Spray Process). The public comment period closed May 5, 1995. One comment was received from a dairy trade association representing the dry milk industry. That comment supported the proposed changes to the standards.

#### List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58 is amended as follows:

**PART 58—[AMENDED]**

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

Authority: 7 U.S.C. 1621–1627.

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

**§ 58.205 Meaning of words.**

\* \* \* \* \*

(a) *Nonfat dry milk*. 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 of 21 CFR 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.

\* \* \* \* \*

3. Subpart L—United States Standards for Grades of Nonfat Dry Milk (Spray Process) is revised to read as follows:

**Subpart L—United States Standards for Grades of Nonfat Dry Milk (Spray Process)<sup>1</sup>****Definitions****Sec.**

58.2525 Nonfat dry milk.

**U.S. Grades**

58.2526 Nomenclature of U.S. grades.

58.2527 Basis for determination of U.S. grade.

58.2528 Specifications for U.S. grades.

58.2529 U.S. grade not assignable.

58.2532 Test methods.

**Explanation of Terms**

58.2537 Explanation of terms.

Supplement to U.S. Standards for Grades of Nonfat Dry Milk (Spray Process): U.S. Heat Treatment Classification

58.2538 Basis for obtaining heat treatment classification.

58.2539 Nomenclature of U.S. Heat Treatment Classification.

58.2540 Basis for determination of U.S. Heat Treatment Classification.

58.2541 Test method; whey protein nitrogen.

**Subpart L—United States Standards for Grades of Nonfat Dry Milk (Spray Process)<sup>1</sup>****Definitions****§ 58.2525 Nonfat dry milk.**

(a) “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 of 21 CFR part 131 “Milk and Cream” as issued by the Food and Drug Administration. Nonfat dry milk covered by these standards 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. Grades****§ 58.2526 Nomenclature of U.S. grades.**

The nomenclature of U.S. grades is as follows:

(a) U.S. Extra.

(b) U.S. Standard.

**§ 58.2527 Basis for determination of U.S. grade.**

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

(b) The final U.S. grade shall be established on the basis of the lowest rating of any one of the quality factors.

**§ 58.2528 Specifications for U.S. grades.**

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

(1) *Flavor*. Reconstituted 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*. Nonfat dry milk shall possess a uniform white to light cream natural color. It shall be free from lumps, except those that readily break up with slight pressure, and be practically free from visible dark particles.

The reconstituted product shall be free from graininess. See Table II of this section.

(3) *Bacterial estimate*. Not more than 40,000 per gram standard plate count. See Table III of this section.

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

(5) *Moisture content*. Not more than 4.0 percent. See Table III of this section.

(6) *Scorched particle content*. Not more than 15.0 mg. See Table III of this section.

(7) *Solubility index*. Not more than 1.2 ml., except that product classified as U.S. High-heat may have not more than 2.0 ml. See Table III of this section.

(8) *Titratable acidity*. Not more than 0.15 percent (lactic acid). See Table III of this section.

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

(1) *Flavor*. Reconstituted nonfat dry milk shall possess a fairly pleasing flavor, but may possess the following flavors to a slight degree: Bitter, oxidized, scorched, storage, or utensil; the following to a definite degree: Chalky, cooked, feed, or flat. See Table I of this section.

(2) *Physical appearance*. Nonfat dry milk may possess a slight unnatural color. It shall be free from lumps, except those that break readily under moderate pressure, and be reasonably free from visible dark particles. The reconstituted product shall be reasonably free from graininess. See Table II of this section.

(3) *Bacterial estimate*. Not more than 75,000 per gram standard plate count. See Table III of this section.

(4) *Milkfat content*. Not more than 1.50 percent. See Table III of this section.

(5) *Moisture content*. Not more than 5.0 percent. See Table III of this section.

(6) *Scorched particle content*. Not more than 22.5 mg. See Table III of this section.

(7) *Solubility index*. Not more than 2.0 ml., except that product classified as U.S. High-heat may have not more than 2.5 ml. See Table III of this section.

(8) *Titratable acidity*. Not more than 0.17 percent (lactic acid). See Table III of this section.

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE

Flavor characteristics	U.S. extra grade	U.S. standard grade
Bitter .....	—	S
Chalky .....	S	D
Cooked .....	S	D
Feed .....	S	D
Flat .....	S	D
Oxidized .....	—	S

<sup>1</sup> Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

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

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE—Continued

Flavor characteristics	U.S. extra grade	U.S. standard grade
Scorched .....	—	S
Storage .....	—	S
Utensil .....	—	S

- = Not permitted S = Slight D = Definite.

TABLE II.—CLASSIFICATION OF PHYSICAL APPEARANCE WITH CORRESPONDING U.S. GRADE

Physical appearance characteristics	U.S. extra grade	U.S. standard grade
Dry Product:		
Lumpy .....	Slight .....	Moderate.
Unnatural color.	—	Slight.
Visible dark particles.	Practically free.	Reasonably free.
Reconstituted Product:		
Grainy .....	—	Reasonably free.

- = Not permitted.

TABLE III.—CLASSIFICATION ACCORDING TO LABORATORY ANALYSIS WITH CORRESPONDING U.S. GRADE

Laboratory tests	U.S. extra grade	U.S. standard grade
Bacterial estimate; Standard plate count; per gram (max) .....	40,000	75,000
Milkfat content; percent (max) ....	1.25	1.50
Moisture content; percent (max) ....	4.0	5.0
Scorched particle content; mg (max) .....	15.0	22.5
Solubility index; ml (max) .....	1.2	2.0
U.S. High-heat (max) .....	2.0	2.5
Titrate acidity (lactic acid); percent (max) .....	0.15	0.17

#### § 58.2529 U.S. grade not assignable.

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

(a) The nonfat dry milk fails to meet or exceed the requirements for U.S. Standard Grade.

(b) The nonfat dry milk has a direct microscopic clump (DMC) count exceeding 100 million per gram.

(c) The nonfat dry milk has a coliform count exceeding 10 per gram.

(d) The nonfat dry milk is produced in a plant that is rated ineligible for USDA grading service or is not USDA approved.

#### § 58.2532 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

#### § 58.2537 Explanation of terms.

(a) *With respect to flavor:*

(1) *Slight.* Detected only upon critical examination.

(2) *Definite.* Not intense but detectable.

(3) *Bitter.* Distasteful, similar to the taste of quinine.

(4) *Chalky.* A tactual type of flavor lacking in characteristic milk flavor.

(5) *Cooked.* Similar to a custard flavor and imparts a smooth aftertaste.

(6) *Feed.* Feed flavors (such as alfalfa, sweet clover, silage, or similar feed) in milk carried through into the nonfat dry milk.

(7) *Flat.* Insipid, practically devoid of any characteristic reconstituted nonfat dry milk flavor.

(8) *Oxidized.* A flavor resembling cardboard and sometimes referred to as "cappy" or "tallowy".

(9) *Scorched.* A more intensified flavor than "cooked" and imparts a burnt aftertaste.

(10) *Storage.* Lacking in freshness and imparting a "stale" aftertaste.

(11) *Utensil.* A flavor that is suggestive of improper or inadequate washing and sanitation of milking machines, utensils, or manufacturing equipment.

(b) *With respect to physical appearance:*

(1) *Practically free.* Present only upon very critical examination.

(2) *Reasonably free.* Present only upon critical examination.

(3) *Slight pressure.* Only sufficient pressure to disintegrate the lumps readily.

(4) *Moderate pressure.* Only sufficient pressure to disintegrate the lumps easily.

(5) *Grainy.* Minute particles of undissolved powder appearing in a thin film on the surface of a glass or tumbler.

(6) *Lumpy.* Loss of powdery consistency but not caked into hard chunks.

(7) *Natural color.* A color that is white to light cream.

(8) *Unnatural color.* A color that is more intense than light cream and is brownish, dull, or grey-like.

(9) *Visible dark particles.* The presence of scorched or discolored specks.

Supplement to U.S. Standards for Grades of Nonfat Dry Milk (Spray Process): U.S. Heat Treatment Classification

#### § 58.2538 Basis for obtaining heat treatment classification.

Heat treatment classification is not a U.S. grade requirement except in cases when the higher solubility index specified for U.S. High-heat product is permitted. In all other instances, product submitted for USDA grading may be analyzed for heat treatment classification upon request and the results shown on the grading certificate. Heat treatment classification will be made available only upon a product graded by USDA.

#### § 58.2339 Nomenclature of U.S. Heat Treatment Classification.

The nomenclature of U.S. Heat Treatment Classification is as follows:

- (a) U.S. High-heat.
- (b) U.S. Medium-heat.
- (c) U.S. Low-heat.

#### § 58.2540 Basis for determination of U.S. Heat Treatment Classification.

The whey protein nitrogen test shall be used in determining the heat treatment classification as follows:

(a) *U.S. High-heat.* The finished product shall not exceed 1.50 mg. undenatured whey protein nitrogen per gram of nonfat dry milk.

(b) *U.S. Medium-heat.* The finished product shall exceed 1.50 mg. undenatured whey protein nitrogen per gram of nonfat dry milk and shall be less than 6.00 mg. undenatured whey protein nitrogen per gram of nonfat dry milk.

(c) *U.S. Low-heat.* The finished product shall be not less than 6.00 mg. undenatured whey protein nitrogen per gram of nonfat dry milk.

#### § 58.2541 Test method; whey protein nitrogen.

The whey protein nitrogen test shall be performed in accordance with DA

Instruction 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, 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.

Dated: April 16, 1996.

Lon Hatamiya,  
Administrator.

[FR Doc. 96-9823 Filed 4-19-96; 8:45 am]

BILLING CODE 3410-02-P

## Animal and Plant Health Inspection Service

### 7 CFR Part 301

[Docket No. 95-063-2]

#### Imported Fire Ant Quarantined Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with one change, an interim rule that amended the imported fire ant regulations by designating all or portions of the following as quarantined areas: The entire State of Mississippi; Mecklenburg County in North Carolina; Bradley, Hamilton, McMinn, and Wayne Counties in Tennessee; and Brooks, Cameron, Delta, Dimmit, Duval, Jack, Kenedy, Kinney, Lamar, Mason, McCulloch, Montague, San Saba, Webb, Young, and Zavala Counties in Texas. As amended by this document, the rule expands the quarantined areas and imposes certain restrictions on the interstate movement of quarantined articles from those areas. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

**EFFECTIVE DATE:** April 22, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-7338; or e-mail: mstefan@aphis.usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81-10, and referred to below as the regulations) quarantine infested States or infested areas within States and

impose restrictions on the interstate movement of certain regulated articles for the purpose of preventing the artificial spread of the imported fire ant.

Imported fire ants, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, are aggressive, stinging insects that, in large numbers, can seriously injure or even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery. The imported fire ant is not native to the United States. The regulations prevent the imported fire ant from spreading throughout its ecological range within this country.

The regulations in § 301.81-3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with imported fire ants. The Administrator will designate less than an entire State only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81-2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from the infested locality for quarantine purposes.

In an interim rule effective and published in the Federal Register on October 11, 1995 (60 FR 52831-52833, Docket No. 95-063-1), we amended the imported fire ant regulations by designating all or portions of the following as quarantined areas: The entire State of Mississippi; Mecklenburg County in North Carolina; Bradley, Hamilton, McMinn, and Wayne Counties in Tennessee; and Brooks, Cameron, Delta, Dimmit, Duval, Jack, Kenedy, Kinney, Lamar, Mason, McCulloch, Montague, San Saba, Webb, Young, and Zavala Counties in Texas. This action expanded the quarantined areas and imposed certain restrictions on the interstate movement of quarantined articles from those areas. This action was necessary because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant had spread to these areas.

We solicited comments concerning the interim rule for 60 days ending December 11, 1995. We received 1 comment by that date. The comment was from a State Department of Agriculture.

The commenter stated that our description of the new quarantined area in Wayne County, Tennessee, was not clear and could be misread to describe a smaller portion of the county than what the commenter believed we intended. We agree with the commenter and are, therefore, amending the interim rule by revising the description of the quarantined area in Wayne County, Tennessee, to make it clear that it includes that portion of the county south of Highway 64 and that portion of the county west of Longitude 87° 55'.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, the National Environmental Policy Act, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the Federal Register. The interim rule adopted as final by this rule was effective on October 11, 1995. This rule revises the description of the quarantined area in the interim rule. Immediate action is necessary in order to prevent the artificial spread of imported fire ant to noninfested areas of the United States. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the Federal Register.

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).