### **Proposed Rules**

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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