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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: Final rule.

SUMMARY: This document amends 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 will 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 amends the process by which drug residue test methods are evaluated and accepted to provide greater consistency with the Grade A milk program and makes certain other changes to the regulations for clarity and consistency.

EFFECTIVE DATE: August 28, 2002.

FOR FURTHER INFORMATION CONTACT: Susan Sausville, Chief, Dairy Standardization Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2746, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250–0230, (202) 720–7473, *Susan.Sausville@usda.gov.*

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866 and Regulatory Flexibility Act

This final 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 final 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 will 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 amendments will 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 amendments will 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 amendments will not have a significant economic impact since participation in the USDA-approved plant program is voluntary and the cost to those utilizing the program will not increase.

B. Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will 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 final rule.

C. 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 are being made to improve the regulations. All of the changes are explained in further detail below. AMS is amending 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. These amendments will reduce the maximum bacteria estimate permitted in producer herd milk in § 58.135 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 final rule will 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 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. These amendments will 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.). These amendments will lower the maximum allowable bacterial 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 final rule will 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. These amendments maintain the current frequency, add a provision that the samples be analyzed in accordance with State regulations, and redesignate 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). These amendments will establish new procedures for an 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 will be notified. The producer will 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 amendments provide that an additional sample be taken, the result of which determines the acceptability of milk from a producer. These amendments 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). Revised § 58.135(b) and § 58.135(c), provide 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). Revised § 58.135(b) and § 58.135(c) provide 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) provide for a maximum somatic cell count in producer herd milk of 1,000,000 per milliliter. These amendments will 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. These amendments will revise § 58.133 (b)(2) by limiting the California Mastitis Test (CMT) and Wisconsin Mastitis Test (WMT) as screening tests for somatic

[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).

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. Because 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. Also, since screening tests would no longer apply to cow's milk, the amendments will revise § 58.133(b)(3) to indicate that the listed tests are only considered confirmatory when performed on goat's milk. The revised 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)—are tests that may be used to determine somatic cell count. In addition, this final rule 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. These amendments will 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, these amendments will 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. The amendments to § 58.135 will eliminate the bacterial-based classification of milk (No. 1, No. 2, or Undergrade). These amendments will revise § 58.137(b) to follow the protocol 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. These amendments will lower the maximum somatic cell count level to 750,000 per ml. These amendments will 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

These amendments will 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 to not specifically be limited to the Virginia Polytechnic Institute and State University. These amendments will 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

These amendments will 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 revising § 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, these amendments will 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 Aurora Ave., Suite 200 W, Des Moines, Iowa 50322–2863.

7. Inclusion of USDA Equipment Guidelines

These amendments will 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. These amendments will revise § 58.346(b)(1) by raising the keeping quality test temperature of whipped butter from 70° F to 72° F. These amendments will 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 will 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 revising § 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 revising § 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. These amendments will 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 amendments will 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 packaging methods and materials.'' These amendments will 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.''

• These amendments will 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.

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

• These amendments will 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).

• These amendments will 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.

• These amendments will 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.

• These amendments will provide information in § 58.134(a) on how to obtain sediment standards.

• These amendments will include DA Instruction 918–RL in § 58.245 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.

Public Comments

On August 13, 2001, the Department published a proposed rule (66 FR 42458) to amend the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. The public comment period closed October 12, 2001. No comments were received.

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, 7 CFR part 58, subpart B, 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. 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, D.C. 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 that have been independently evaluated or evaluated by the Food and Drug Administration (FDA) and that 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. Revise § 58.143(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)(1), (2), and (3), (c), (d), and the last sentence of paragraph (f) to read as follows:

§ 58.505 Meaning of Words.

* * * * *

(b) * * *

(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).

* * * * *

(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).

* * * * *

§ 58.651 [Removed and Reserved].

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. Revise § 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: July 22, 2002.

A.J. Yates,

Administrator.

[FR Doc. 02–18980 Filed 7–26–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 02–40]

RIN 1515–AD04

Access to Customs Security Areas at Airports

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to those provisions of the Customs Regulations that concern standards for employee access to Customs security areas at airports that accommodate international air commerce. The principal amendments set forth in this document involve the addition of a biennial access approval reapplication requirement, an expansion of the grounds for denial of an application for access, the addition of a requirement that each employee granted access must report to Customs certain changes in the employee's circumstances, the inclusion of several new employer responsibilities, an expansion of the grounds for revocation or suspension of access, the inclusion of separate procedures for immediate revocation or suspension of access and for proposed revocation or suspension of access, and a limitation of the opportunity to have a hearing in a revocation or suspension action to only cases in which there is a genuine issue regarding a material fact. These changes are needed to enhance the security environment at airports in Customs security areas and are commensurate with the heightened enforcement posture of the Federal Government following the September 11, 2001, terrorist attacks on the United States.

DATES: Interim rule effective July 29, 2002; comments must be submitted by September 27, 2002.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Tritt, Passengers Programs, Office of Field Operations (202–927–0530).

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1986, Customs published in the **Federal Register** (51 FR 4161) T.D. 86–12 setting forth an amendment to the Customs Regulations to require the use and display of a Customs-approved identification card, strip, or seal on identification cards worn by employees at airports accommodating international air commerce. This Customs-approved identification requirement applies to all persons (other than government law enforcement personnel) who are located at, or operate out of, or are employed by, affected airports and who request access to Customs security areas in order to perform functions associated with their employment. Those regulatory requirements were originally contained in § 6.12a of the Customs Regulations (19 CFR 6.12a) but are currently set forth as Subpart S of part 122 of the Customs Regulations (19 CFR part 122).

In the preamble portion of T.D. 86–12 Customs explained the need for, and purpose of, those regulatory provisions as follows: ''Customs finds it necessary to improve integrity and security in authorized inspection areas, due in large measure to the recent sharp increases in threats to airport security posed by terrorist organizations. The current regulations in 19 CFR part 6 are inadequate for controlling access to the Customs security areas to the extent necessary. The arrival of an aircraft from abroad necessitates the services of numerous persons representing various specialties, such as ground crews, refueling personnel, baggage handlers, and food service personnel, among others. While all of these persons may have legitimate business associated with the arrival of an international flight, Customs needs a method by which access to the aircraft and inspection areas will be restricted, as well as some assurance that the service personnel themselves have been found trustworthy by their employers. While the Federal Aviation Administration has general responsibility for security at airports, Customs has determined that it is necessary to amend 19 CFR part 6 to provide Customs with the needed authority and procedures to achieve these goals at the areas under the Customs jurisdiction. The purpose of this amendment is to establish an identification system for all employees whose duties require access to Customs security areas at airports handling international air commerce, with the exception of uniformed Federal, State, and local law enforcement personnel. Because of recent terrorist incidents at foreign airports, threats of violence at U.S. airports, and in an effort to improve the security of these areas by restricting access to authorized employees, Customs will require that employees apply for a Customs approved identification strip or seal to be affixed to existing identification cards once an authorized official of the employer attests that background checks of employment history have been conducted. Customs will issue the identification strip or seal, once satisfied that the issuance of the additional identification will neither endanger the revenue nor threaten the security of the entire security area (which may include the arriving airplane, ramp area, and Customs