

## 2023 SUPPORTING STATEMENT

### REGULATIONS GOVERNING THE REVIEW OF BUTTERFAT TESTING RECORDS FOR THE GRADE LABEL BUTTER PROGRAM OMB NO. 0581-0340

#### A. Justification.

1. **EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY. IDENTIFY ANY LEGAL OR ADMINISTRATIVE REQUIREMENTS THAT NECESSITATE THE COLLECTION.**

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) directs the Department to develop programs that will provide for and facilitate the marketing of agricultural products. One of these programs is the Grade Label Program, a USDA voluntary inspection and grading program for dairy products (7 CFR Part 58). In this program a USDA grader grades dairy products according to U.S. grade standards. Products meeting U.S. grade standards are permitted to use the applicable USDA grade shield on the packaging. Dairy processors, buyers, retailers, institutional users, and consumers requested this program to assure the uniform quality of dairy products in the marketplace.

In order for any service program to perform satisfactorily, there must be written guides and rules, which in this case are regulations for the provider and user. For the above reasons, General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service were developed and issued under the authority of the Act. These regulations are essential to administer the program needed by the user and to carry out the purposes of the Act.

This information collection seeks to replace butterfat testing by a USDA inspector with an annual review of a plant's butterfat testing records which are kept as part of their normal business records. A recordkeeping requirement is needed to authorize a USDA inspector to review plant records on-site.

2. **INDICATE HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED. EXCEPT FOR A NEW COLLECTION, INDICATE THE ACTUAL USE THE AGENCY HAS MADE OF THE INFORMATION RECEIVED FROM THE CURRENT COLLECTION.**

The dairy plant inspection portion of the Grade Label program ensures dairy products are produced under sanitary conditions and buyers are purchasing a quality product. In order for the Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products to serve the government, industry, and the consumer, laboratory butterfat test results must be retained.

The new recordkeeping section will be 7 C.F.R. 58.148(h), Plant Records, which will provide for retention of laboratory butterfat test records for 12 months. This will replace testing performed by a USDA inspector at the time of grading with a review of a plant's testing records. The required records will be routinely reviewed and evaluated during the butterfat testing record review.

Without a recordkeeping requirement for laboratory butterfat testing results, the current requirement for testing by a USDA inspector, which is duplicative of laboratory butterfat testing, will remain.

3. **DESCRIBE WHETHER, AND TO WHAT EXTENT, THE COLLECTION OF INFORMATION INVOLVES THE USE OF AUTOMATED, ELECTRONIC, MECHANICAL, OR OTHER TECHNOLOGICAL COLLECTION TECHNIQUES OR OTHER FORMS OF INFORMATION TECHNOLOGY, E.G. PERMITTING ELECTRONIC SUBMISSION OF RESPONSES, AND THE BASIS FOR THE DECISION FOR ADOPTING THIS MEANS OF COLLECTION. ALSO DESCRIBE ANY CONSIDERATION OF USING INFORMATION TECHNOLOGY TO REDUCE BURDEN.**

The respondents will not have to submit records to USDA. They are only required to maintain the records for review and evaluation by a USDA inspector. The format and preparation of the records is up to the respondent, provided the records requirements of 7 C.F.R. 58.148 are met. No technical or legal obstacles to reducing recordkeeping burden are foreseen.

4. **DESCRIBE EFFORTS TO IDENTIFY DUPLICATION. SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN ITEM 2 ABOVE.**

Recordkeeping of test results applies to each specific plant or operation; therefore, duplication is not possible. The recordkeeping of test results is not available from any other source since it is specific to each butterfat sample taken from a specific batch at a manufacturing facility.

5. **IF THE COLLECTION OF INFORMATION IMPACTS SMALL BUSINESSES OR OTHER SMALL ENTITIES (ITEM 5 OF THE OMB FORM 83-1), DESCRIBE THE METHODS USED TO MINIMIZE BURDEN.**

The Small Business Administration's (SBA) definition of small agricultural service firms, which includes dairy processors, varies based on the type of dairy product manufactured. Small butter manufacturing processors are defined as having 750 or fewer employees (13 CFR 121.101(b)). For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the employee limit to be considered small business, the plant will be considered a large business even if the local plant has 750 or fewer employees.

The Grade Label Program has 17 plants in the program producing grade label butter in the United States. According to AMS calculations, about 12, or two-thirds, are operated by dairy farmer cooperatives, while the remaining five are independently owned. AMS estimates that six of the 17 participating butter processors would be considered small businesses.

Keeping records on the fat testing portion of the Grade Label Butter Program will not unduly or disproportionately burden small dairy processing entities. All entities, regardless of size, can participate in the program. The paperwork required to participate asks for information that is part of testing records routinely used by the inspected facility for their own supervisory and quality control purposes. This change would eliminate duplication of butterfat testing by a USDA inspector that a manufacturer currently must pay.

AMS has determined establishment of this program will not have a significant economic impact on small entities. Program provisions will be applied uniformly to both large and small businesses and are not expected to unduly or disproportionately burden small entities.

**6. DESCRIBE THE CONSEQUENCE TO FEDERAL PROGRAM OR POLICY ACTIVITIES IF THE COLLECTION IS NOT CONDUCTED OR IS CONDUCTED LESS FREQUENTLY, AS WELL AS ANY TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.**

If this collection is not approved, the current requirement for testing by a USDA inspector, which is duplicative of laboratory butterfat testing, will remain. The annual cost per plant for testing by a USDA inspector ranges from \$5,000 to \$32,000 per plant.

**7. EXPLAIN ANY SPECIAL CIRCUMSTANCES THAT WOULD CAUSE AN INFORMATION COLLECTION TO BE CONDUCTED IN A MANNER:**

- **REQUIRING RESPONDENTS TO REPORT INFORMATION TO THE AGENCY MORE OFTEN THAN QUARTERLY:**
- **REQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE TO A COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT.**

- **REQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;**

Respondents are not required to submit information to the agency. The records are to be maintained and made available for evaluation by a USDA inspector during the time of a records review.

- **REQUIRING RESPONDENTS TO RETAIN RECORDS, OTHER THAN HEALTH, MEDICAL, GOVERNMENT CONTRACT, GRANT-IN-AID, OR TAX RECORDS FOR MORE THAN 3 YEARS;**

Respondents are required to retain records pertaining to the product manufactured for 12 months.

- **IN CONNECTION WITH A STATISTICAL SURVEY, THAT IS NOT DESIGNED TO PRODUCE VALID AND RELIABLE RESULTS THAT CAN BE GENERALIZED TO THE UNIVERSE OF STUDY;**

- **REQUIRING THE USE OF A STATISTICAL DATA CLASSIFICATION THAT HAS NOT BEEN REVIEWED AND APPROVED BY OMB;**

- **THAT INCLUDES A PLEDGE OF CONFIDENTIALITY THAT IS NOT SUPPORTED BY AUTHORITY ESTABLISHED IN STATUTE OR REGULATION, THAT IS NOT SUPPORTED BY DISCLOSURE AND DATA SECURITY POLICIES THAT ARE CONSISTENT WITH THE PLEDGE, OR WHICH UNNECESSARILY IMPEDES SHARING OF DATA WITH OTHER AGENCIES FOR COMPATIBLE CONFIDENTIAL USE; OR**

- **REQUIRING RESPONDENTS TO SUBMIT PROPRIETARY TRADE SECRET, OR OTHER CONFIDENTIAL INFORMATION UNLESS THE AGENCY CAN DEMONSTRATE THAT IT HAS INSTITUTED PROCEDURES TO PROTECT THE INFORMATION'S CONFIDENTIALITY TO THE EXTENT PERMITTED BY LAW.**

There are no other special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6, which gives administrative personnel instructions on controlling paperwork burdens on the public.

8. **IF APPLICABLE, PROVIDE A COPY AND IDENTIFY THE DATE AND PAGE NUMBER OF PUBLICATION IN THE FEDERAL REGISTER OF THE AGENCY'S NOTICE, REQUIRED BY 5 CFR 1320.8(d), SOLICITING COMMENTS ON THE INFORMATION COLLECTION PRIOR TO SUBMISSION TO OMB. SUMMARIZE PUBLIC COMMENTS RECEIVED IN RESPONSE TO THAT NOTICE AND DESCRIBE ACTIONS TAKEN BY THE AGENCY IN RESPONSE TO THESE COMMENTS. SPECIFICALLY ADDRESS COMMENTS RECEIVED ON COST AND HOUR BURDEN.**

The Agency published the notice of information collection and requests for comments, in the Federal Register on Vol. 88, No. 156, pages 55426. The 60-day comment period ended on October 16, 2023.

AMS received one comment seeking clarification on which records would be reviewed. AMS responded that records reviewed would vary by plant depending on which records are kept by the individual plant in the normal course of business. In the Final Rule, AMS listed examples of records that might be reviewed.

**DESCRIBE EFFORTS TO CONSULT WITH PERSONS OUTSIDE THE AGENCY TO OBTAIN THEIR VIEWS ON THE AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, THE CLARITY OF INSTRUCTIONS AND RECORDKEEPING, DISCLOSURE, OR REPORTING FORMAT (IF ANY), AND ON THE DATA ELEMENTS TO BE RECORDED, DISCLOSED, OR REPORTED.**

Data needed to administer the program are not available elsewhere. Review of test results is not available from any other source since it is specific to each butterfat sample collected and tested at an individual plant. AMS consulted butter manufacturers currently participating in the Grade Label Program to discuss the availability of the required records and their standard records retention policies.

**CONSULTATION WITH REPRESENTATIVES OF THOSE FROM WHOM INFORMATION IS TO BE OBTAINED OR THOSE WHO MUST COMPILE RECORDS SHOULD OCCUR AT LEAST ONCE EVERY 3 YEARS -- EVEN IF THE COLLECTION OF INFORMATION ACTIVITY IS THE SAME AS IN PRIOR PERIODS. THERE MAY BE CIRCUMSTANCES THAT MAY PRECLUDE CONSULTATION IN A SPECIFIC SITUATION. THESE CIRCUMSTANCES SHOULD BE EXPLAINED.**

The information requested by the Department is data routinely collected by the respondents for their internal quality control needs. The Department will only review already-existing records. The Department routinely consults with the Trade Associations representing the segments of the dairy industry in which we provide service on topics of mutual concern. In January 2021, AMS contacted current grade

label butter facilities to determine if a document or record-based review would be a more effective method of administering USDA's butterfat sampling and testing program than the current on-site inspection practice. AMS asked participants about the facility's current butterfat testing methods, how information generated by AMS butterfat testing was utilized by facilities, and if plants were interested in AMS moving toward a record review process.

The industry response to the effort to modernize by using a record-based review was positive since facilities already maintain the records USDA seeks to review for their internal quality programs and outside audits.

The following organizations were contacted in January 2021:

Dr. Ron Thompson  
Directory of Food Safety, Education & Technical Services  
Continental Dairy Facilities, LLC  
999 W Randall St  
Coopersville, MI 49404

Marianne Smukowski  
Center for Dairy Research, Retired  
Babcock Hall Rm 245  
1605 Linden Drive  
Madison, WI 53706

Amy Sellner  
Manager, Quality Assurance  
Associated Milk Producers Inc.  
315 N Broadway  
P.O. Box 455  
New Ulm, MN 56073

**9. EXPLAIN ANY DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS, OTHER THAN REMUNERATION OF CONTRACTORS OR GRANTEES.**

No payments or gifts are provided to respondents.

**10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS AND THE BASIS FOR THE ASSURANCE IN STATUTE, REGULATION, OR AGENCY POLICY.**

Dairy Grading Branch policy instructs employees that all record information concerning an inspected dairy plant shall be maintained as confidential and

subject only to disclosures required by Department policy for the response to Freedom of Information Act (FOIA) requests.

- 11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE. THIS JUSTIFICATION SHOULD INCLUDE THE REASONS WHY THE AGENCY CONSIDERS THE QUESTIONS NECESSARY, THE SPECIFIC USES TO BE MADE OF THE INFORMATION, THE EXPLANATION TO BE GIVEN TO PERSONS FROM WHOM THE INFORMATION IS REQUESTED, AND ANY STEPS TO BE TAKEN TO OBTAIN THEIR CONSENT.**

No questions of such a sensitive nature are included in this information collection.

- 12. PROVIDE ESTIMATES OF THE HOUR BURDEN OF THE COLLECTION OF INFORMATION.**

**THE STATEMENT SHOULD:**

- **INDICATE THE NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, ANNUAL HOUR BURDEN, AND AN EXPLANATION OF HOW THE BURDEN WAS ESTIMATED. UNLESS DIRECTED TO DO SO, AGENCIES SHOULD NOT CONDUCT SPECIAL SURVEYS TO OBTAIN INFORMATION ON WHICH TO BASE HOUR BURDEN ESTIMATES. CONSULTATION WITH A SAMPLE (FEWER THAN 10) OF POTENTIAL RESPONDENTS IS DESIRABLE. IF THE HOUR BURDEN ON RESPONDENTS IS EXPECTED TO VARY WIDELY BECAUSE OF DIFFERENCE IN ACTIVITY, SIZE, OR COMPLEXITY, SHOW THE RANGE OF ESTIMATED HOUR BURDEN, AND EXPLAIN THE REASONS FOR THE VARIANCE. GENERALLY, ESTIMATES SHOULD NOT INCLUDE BURDEN HOURS FOR CUSTOMARY AND USUAL BUSINESS PRACTICES.**
- **IF THIS REQUEST FOR APPROVAL COVERS MORE THAN ONE FORM, PROVIDE SEPARATE HOUR BURDEN ESTIMATES FOR EACH FORM AND AGGREGATE THE HOUR BURDENS IN ITEM 13 OF OMB FORM 83-I.**

Estimates of the recordkeeping burden have been summarized on the AMS-71 form.

- **IF THIS REQUEST FOR APPROVAL COVERS MORE THAN ONE FORM, PROVIDE SEPARATE HOUR BURDEN ESTIMATES FOR EACH FORM AND AGGREGATE THE**

### **HOUR BURDENS IN ITEM 13 OF OMB FORM 83-I.**

The estimated total recordkeeping burden for all users of the service is estimated at 85 burden hours for 17 recordkeepers (5 hours per recordkeeper). This is a change from the previous 42.5 total burden hours. AMS was inadvertently inconsistent in its previous reporting of the burden. After review, AMS has determined five burden hours per recordkeeper per year is accurate.

According to the Bureau of Labor Statistics ([www.bls.gov](http://www.bls.gov)) the typical hourly rate for the Dairy Product Manufacturing, Managers, All Other is \$. 52.45 per hour. The hourly rate is based on May 2023 data. The annualized cost to all respondents is \$ 4,458.25 (\$52.45 x 85).

As an offsetting benefit, the records required by USDA are also records that are routinely used by the inspected facility for their own supervisory and quality control purposes. AMS estimates the cost to plants for meeting current USDA butterfat testing requirements ranges from \$5,000 to \$32,000 annually. At an hourly rate of \$120, a records review would cost the plant approximately \$480. AMS estimates adopting this new recordkeeping requirement would save participating plants \$ \$4,520 to \$31,520 annually.

**13. PROVIDE AN ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS OR RECORDKEEPERS RESULTING FROM THE COLLECTION OF INFORMATION. (DO NOT INCLUDE THE COST OF ANY HOUR BURDEN SHOWN IN ITEMS 12 AND 14).**

- **THE COST ESTIMATE SHOULD BE SPLIT INTO TWO COMPONENTS: (a) A TOTAL CAPITAL AND START-UP COST COMPONENT (ANNUALIZED OVER ITS EXPECTED USEFUL LIFE); AND (b) A TOTAL OPERATION AND MAINTENANCE AND PURCHASE OF SERVICES COMPONENT. THE ESTIMATES SHOULD TAKE INTO ACCOUNT COSTS ASSOCIATED WITH GENERATING, MAINTAINING, AND DISCLOSING OR PROVIDING THE INFORMATION. INCLUDE DESCRIPTIONS OF METHODS USED TO ESTIMATE MAJOR COST FACTORS INCLUDING SYSTEM AND TECHNOLOGY ACQUISITION, EXPECTED USEFUL LIFE OF CAPITAL EQUIPMENT, THE DISCOUNT RATE(S), AND THE TIME PERIOD OVER WHICH COSTS WILL BE INCURRED. CAPITAL AND START-UP COSTS INCLUDE, AMONG OTHER ITEMS, PREPARATIONS FOR COLLECTING INFORMATION SUCH AS PURCHASING COMPUTERS AND SOFTWARE; MONITORING, SAMPLING, DRILLING AND TESTING EQUIPMENT; AND RECORD STORAGE FACILITIES.**

- **IF COST ESTIMATES ARE EXPECTED TO VARY WIDELY, AGENCIES SHOULD PRESENT RANGES OF COST BURDENS AND EXPLAIN THE REASONS FOR THE VARIANCE. THE COST OF PURCHASING OR CONTRACTING OUT INFORMATION COLLECTION SERVICES SHOULD BE A PART OF THIS COST BURDEN ESTIMATE. IN DEVELOPING COST BURDEN ESTIMATES, AGENCIES MAY CONSULT WITH A SAMPLE OF RESPONDENTS (FEWER THAN 10), UTILIZE THE 60-DAY PRE-OMB SUBMISSION PUBLIC COMMENT PROCESS AND USE EXISTING ECONOMIC OR REGULATORY IMPACT ANALYSIS ASSOCIATED WITH THE RULEMAKING CONTAINING THE INFORMATION COLLECTION, AS APPROPRIATE.**
  
- **GENERALLY, ESTIMATES SHOULD NOT INCLUDE PURCHASES OF EQUIPMENT OR SERVICES, OR PORTIONS THEREOF, MADE: (1) PRIOR TO OCTOBER 1, 1995, (2) TO ACHIEVE REGULATORY COMPLIANCE WITH REQUIREMENTS NOT ASSOCIATED WITH THE INFORMATION COLLECTION, (3) FOR REASONS OTHER THAN TO PROVIDE INFORMATION OR KEEPING RECORDS FOR THE GOVERNMENT, OR (4) AS PART OF CUSTOMARY AND USUAL BUSINESS OR PRIVATE PRACTICES.**

There is no capital start-up or ongoing operation maintenance costs associated with this information collection.

14. **PROVIDE ESTIMATES OF ANNUALIZED COST TO THE FEDERAL GOVERNMENT. ALSO, PROVIDE A DESCRIPTION OF THE METHOD USED TO ESTIMATE COST, WHICH SHOULD INCLUDE QUANTIFICATION OF HOURS, OPERATION EXPENSES (SUCH AS EQUIPMENT, OVERHEAD, PRINTING, AND SUPPORT STAFF), AND ANY OTHER EXPENSE THAT WOULD NOT HAVE BEEN INCURRED WITHOUT THIS COLLECTION OF INFORMATION. AGENCIES ALSO MAY AGGREGATE COST ESTIMATES FROM ITEMS 12, 13, AND 14 IN A SINGLE TABLE.**

There is no direct cost to the Federal government because this is a voluntary, user-fee funded program and all costs are recovered.

15. **EXPLAIN THE REASON FOR ANY PROGRAM CHANGES OR ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-1.**

There are no changes to report. This is a new request.

- 16. FOR COLLECTIONS OF INFORMATION WHOSE RESULTS WILL BE PUBLISHED, OUTLINE PLANS FOR TABULATION, AND PUBLICATION. ADDRESS ANY COMPLEX ANALYTICAL TECHNIQUES THAT WILL BE USED. PROVIDE THE TIME SCHEDULE FOR THE ENTIRE PROJECT, INCLUDING BEGINNING AND ENDING DATES OF THE COLLECTION OF INFORMATION, COMPLETION OF REPORT, PUBLICATION DATES, AND OTHER ACTIONS**

Information under this request is not published.

- 17. IF SEEKING APPROVAL TO NOT DISPLAY THE EXPIRATION DATE FOR OMB APPROVAL OF THE INFORMATION COLLECTION, EXPLAIN THE REASONS THAT DISPLAY WOULD BE INAPPROPRIATE.**

The records that are reviewed by USDA are also records that are routinely used by the inspected facility for their own supervisory and quality control purposes. USDA does not require the submission of this information on any forms.

- 18. EXPLAIN EACH EXCEPTION TO THE CERTIFICATION STATEMENT IDENTIFIED IN ITEM 19, "CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS," OF OMB FORM 83-1.**

The agency is able to certify compliance with all provisions under Item 19 of OMB Form 83-1.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

**THE AGENCY SHOULD BE PREPARED TO JUSTIFY ITS DECISION NOT TO USE STATISTICAL METHODS IN ANY CASE WHERE SUCH METHODS MIGHT REDUCE BURDEN OR IMPROVE ACCURACY OF RESULTS. WHEN ITEM 17 ON THE FORM OMB 83-1 IS CHECKED "YES", THE FOLLOWING DOCUMENTATION SHOULD BE INCLUDED IN THE SUPPORTING STATEMENT TO THE EXTENT THAT IT APPLIES TO THE METHODS PROPOSED.**

The proposed information collection procedures do not employ statistical methods of collection. The records must be maintained for each individual producer, as the data has no relation to other producers.