



October 16, 2023

USDA/AMS Dairy Programs
U.S. Department of Agriculture
Stop 0225-Room 2530
1400 Independence Avenue
Washington, DC 20250-0225

Re: Docket No. AMS-DA-22-0064 “Plant Records to Include Grade Label Butterfat Testing”

Dear Sir or Madam:

The American Butter Institute offers these comments in response to the proposed rule entitled “Plant Records to Include Grade Label Butterfat Testing” published in the *Federal Register* on August 15, 2023. The American Butter Institute (ABI) is an Arlington, VA-based trade association for manufacturers, processors, marketers, and Distributors of butter and butter products. ABI’s member companies market the majority of all the butter manufactured in the U.S.

ABI supports the proposed changes to USDA/AMS regulations. We agree that historically when the Grading and Inspection Program was established, the quality of butter was not always consistent, and the quality testing performed by USDA was necessary to ensure a consistent product for the market. But, as USDA has noted in the proposed rule, times have changed, and butter manufacturers now consistently manufacture the highest-quality butter products and consistently maintain the butter standard of identity which is necessary to be granted a USDA grade label for butter. Current industry practices are vastly more rigorous and informative than isolated USDA testing protocols of the past. We commend USDA for recognizing the changed circumstances and adapting to them with this sensible proposal.

We would like clarity in several areas of the proposal.

- With respect to testing, numerous tests are performed, in-process as well as finished products tests. ABI’s members would like to know what tests are going to be reviewed. We strongly suggest that only finished products tests should be considered as that would be consistent with USDA historical testing methodology.
- The proposal also references two acceptable testing methodologies – the Kohman and modified Kohman. ABI believes that other validated methodologies

either available today or in the near future should be included as acceptable methods.

- With respect to the annual review of records, what records are to be reviewed? Is it the intent to review a year's worth of records to establish compliance? Please note that many butter manufacturers test multiple times a day so looking at all records that cover an entire year is going to be problematic for the facility and for the inspector.
- The proposal mentions that facilities may be determined to be out of compliance, in which case it can no longer use the Shield, or the facility may be asked to take corrective action to maintain or restore eligibility when it has been revoked. ABI members need much more detail as to how the determinations will be made and the process that will be followed.

ABI also concurs with the proposal that records should be retained for 12 months and that there should be no need to submit those records to USDA, rather they should be made available as needed to substitute for redundant USDA butterfat testing. And ABI concurs with USDA's assessment that this proposed change will not have a significant economic impact and that in most, if not all cases, it will represent a net positive economic impact for regulated parties that avail themselves of USDA's grading program.

Finally, we note that AMS is proposing a revision of an administrative nature to correct a misspelling in the regulations. A proposed revision to § 58.336(a) would replace the word "insure" with "ensure." We believe that same change needs to be made in newly proposed § 58.336(b) as well.

It is important to note that this proposal does not address many of the larger concerns expressed to USDA around butter grading by the ABI membership. Many butter manufacturers still have a difficult time getting butter graders in their manufacturing facilities on a timely basis causing delays and other issues in getting their product to customers. At the same time the industry is having difficulty obtaining graders as USDA graders are limited while costs for grading are escalating. In addition, consumers are unfamiliar with what the USDA seal means and the value behind the grading seal – limiting it as a product differentiator for manufacturers who are competing with imported butter products that do not use the seal. While we appreciate the response to some of our industry concerns, we still feel that there is a need for USDA to specifically address the concerns stated here. As a potential solution, as discussed in August, butter manufacturers propose to take the lead in performing the grading in their own facilities – following the procedures set forth by USDA. USDA can then audit those records to ensure manufacturer compliance with USDA grading procedures and allow the finished goods to use the USDA shield.

Thank you for the opportunity to provide comments on this important improvement to the grading program, please do not hesitate to contact us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Clay Detlefsen". The signature is written in a cursive style with a large initial "C".

Clay Detlefsen, Esq.

Senior Vice President, Environmental and Regulatory Affairs & Staff Counsel