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

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA58

Review Inspection Requirements

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to revise the regulations under the United States Grain Standards Act (Act), as amended, to allow interested persons to specify the quality factor(s) that would be redetermined during a reinspection or appeal inspection for grade. Currently, reinspections and appeal inspections for grade must include a redetermination (i.e., a complete review or examination) of all official factors that may determine the grade, are reported on the original certificate, or are required to be shown. Requiring that all quality factors be completely reexamined during a reinspection or appeal inspection is not efficient, is time consuming, and can be costly. Further, a detailed review of the preceding inspection service is not always needed to confirm the quality of the grain. This proposed action would allow interested parties to specify which official factor(s) should be redetermined during the reinspection or appeal inspection service.

DATES: Comments must be received on or before October 21, 2002.

ADDRESSES: Written comments must be submitted to Tess Butler, GIPSA, USDA, Room 1647–S, Stop 3604, Washington, DC 20250; FAX (202) 690–2755; e-mail, *comments.gipsadc@usda.gov.*

All comments received will be made available for public inspection in Room 1647–South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John Giler, at (202) 720–1748.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the United States Grain Standards Act (Act) (7 U.S.C. 71 *et seq.*) the Official United States Standards for Grain are used to measure and describe the physical and biological properties of grain at the time of inspection. The grade, class, and condition that are reported on the official inspection certificate are based on factors that are defined in these standards. There are three kinds of factors: condition factors, grade determining factors, and nongrade determining factors.

1. Condition factors include heating, odor (musty, sour, and commercially objectionable), infestation, special grade factors (*e.g.,* smut and garlic), and distinctly low quality factors, such as toxic seeds. When grain is found to contain an unacceptable level of one or more of these conditions factors, it is graded U.S. Sample Grade or assigned a special grade, such as Infested.

2. Grade determining factors include, but are not limited to, test weight per bushel, foreign material, damaged kernels, and other classes. These factors are common to most grain. As the percentage of such factors increase (or decreases, as in the case of test weight per bushel), the numerical grade decreases. For example: U.S. No. 2 Hard Red Winter wheat may contain not more than 4.0% total damaged kernels, U.S. No. 3 may contain not more than 7.0%, and U.S. No. 4 may contain not more than 10.0%.

3. Non-grade determining factors include moisture in all grains, dockage in certain small grains, protein in wheat and soybeans, oil in soybeans and sunflower seed, and aflatoxin in corn. The value of each of these factors varies with crop year and end-use. Therefore, except for dockage and moisture, which must always be determined, these factors are only determined upon request.

After the sample has been analyzed for all factors, a grade is assigned to the sample equal to the lowest grade determined for any one of the factors. For example, if all of the factors were determined to be at the U.S. No. 1 level, except for one factor that was at the U.S. No. 3 level, then the lot would be graded U.S. No. 3. Therefore, the final grade assigned to a sample or lot is directly dependent on achieving accuracy (closeness to the true value) and precision (repeatability) in the values obtained for the various grading factors. Accuracy and precision are affected mainly by the type of sampling device, the sampling procedure, and the grading factors; i.e., machine-determined values (objective), human judgement values (subjective), and sample homogeneity (inherent). The sources of variation are highly interrelated; each is involved, to some extent, in the final value ascribed to each grading factor of a lot and to the grade designation of that lot.

Due to inherent sampling and inspection variability, users of the official inspection system have an opportunity to obtain another inspection service when certificated results are questionable. That is, if an interested party disagrees with the grade or factor results assigned to a lot of grain, they may request that the official agency (or in some cases, GIPSA) reinspect the grain or ask GIPSA to perform an appeal inspection. There is a limit, however, on the number of times this can be done. From the original inspection service an interested person may obtain a reinspection service, an appeal inspection service, and a Board Appeal inspection service. The same inspection office that provided the original inspection service provides the reinspection service. The appeal inspection service is handled at one of the GIPSA field offices. The Board of Appeals and Review provides the Board Appeal inspection service, the highest level of inspection service available, in Kansas City, Missouri. The scope of the reinspection or appeal inspection is limited to the scope of the original inspection. Official criteria are considered separately from official grade and official factors when determining kind and scope. If the request specifies a different kind and scope, the request must be dismissed.

Finally, a reinspection certificate supersedes the original inspection certificate and an appeal inspection certificate supersedes the original and reinspection certificate, if a reinspection was performed. The superseded certificate(s) are considered null and void as of the date of the reinspection or appeal inspection certificate, and must be promptly surrendered. If the

superseded original certificate(s) is in the custody of the office that performed the review inspection, it is marked VOID. If the superseded certificate is not in the custody of the reviewing office at the time the reinspection or appeal inspection certificate is issued, the following statement is shown on the appeal certificate: ''The superseded certificate has not been surrendered.'' Furthermore, each reinspection and appeal inspection certificate must clearly show the word ''Reinspection'' or ''Appeal Inspection,'' and the following statement: ''This certificate supersedes Certificate No. __, dated _____.

For export vessels, a reinspection or appeal inspection may be requested on either the entire lot or on a material portion (*i.e.,* part of a lot that has been found to be inferior to the contract or declared grade). When a material portion occurs, the applicant for service is entitled to one field review (either a reinspection or appeal inspection) and a Board Appeal inspection in an attempt to remove the material portion designation. If the review inspection does not eliminate the material portion designation and the applicant elects to leave the grain on board the carrier, it is considered as a separate lot and is certificated as such. If the review inspection eliminates the material portion designation, the review inspection results replace the original results on the shiplot inspection log. In such cases, no statement regarding the reinspection is required to be shown on the inspection certificate.

In addition to these restrictions, §§ 800.125 and .135 of the regulations currently require that reinspections and appeal inspections for grade must include a complete review of all official factors that: (1) May determine the grade; or (2) are reported on the original certificate; and (3) are required to be shown. Consequently, even if the official inspector who is performing the reinspection or appeal inspection finds there is only one grade-determining factor, all of the factors that were reported on the original certificate must be redetermined.

In most instances, the applicant for service does not need a complete review. Usually, applicants for a reinspection or an appeal inspection service only question the result of a specific quality factor. This is evidenced by the many applications for reinspections and appeal inspections that request a review inspection of a specific factor. In addition to being unwanted, redetermining all official factors requires significant time to complete. This increases inspection costs and may cause delays in elevator operations.

Various industry groups have indicated that requiring all factors to be completely reviewed on reinspections and appeal inspections is usually unnecessary and always costly. But, others have indicated that the regulations must not allow official personnel to overlook questionable factor results just because the applicant for the inspection does not request that certain factors be redetermined during the course of a review inspection. Both of these views have merit. All official inspections (original, reinspection, or appeal inspection) must be accurate.

To provide effective and efficient official inspection services that better meet industry needs, GIPSA proposes that applicants for service would be allowed to specify the factor(s) that are to be redetermined as part of a reinspection or an appeal inspection service. However, reinspections for grade, appeal and Board appeal inspections for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel. If there is an indication that a factor (or factors) may have been misgraded or overlooked on the previous inspection, then the factor(s) in question will be redetermined.

Under the current regulations, when official grade or official factor and official criteria are reported on the same certificate, a reinspection or appeal inspection certificate is required to show a special statement. The special statement indicates that the reinspection results or appeal or Board appeal inspection results represent the official grade, official factors or official criteria and that all other results are those of the original, reinspection, or, in the case of a Board appeal, the appeal inspection service. In formulating this proposal, GIPSA considered requiring reinspection and appeal inspection certificates to show a statement that would identify which factors were determined during the review inspection(s) and which were determined on a preceding inspection. GIPSA has not included such additional certification requirements in this proposal. However, GIPSA is seeking comments specifically about this issue, particularly from those who are currently using official inspection services.

Proposed Action

GIPSA proposes to revise § 800.125 to allow requests for reinspection to be limited to one or more grade or condition factors, and to revise § 800.135 to allow requests for appeal inspections to be limited to one or more grade or condition factors. In addition, GIPSA is proposing to revise §§ 800.125 and 800.135 to simplify the wording of both regulations.

Executive Order 12866 and Effect on Small Entities

This proposed rule has been determined to be significant for purpose of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). In addition, pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), GIPSA has considered the economic impact of this proposed rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The proposed rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States. GIPSA estimates there are approximately 9,500 off-farm storage facilities and 57 export elevators in the United States that could receive official inspection services by GIPSA, delegated States, or designated agencies. Official inspection services are provided by 12 GIPSA field offices, 2 Federal/State offices, 7 GIPSA suboffices, 8 delegated States, and 59 designated agencies. Under provisions of the Act, it is not mandatory for non-export grain to be officially inspected. Further, most users of the official inspection services and those entities that perform these services do not meet the requirements for small entities. Even though some users could be considered small entities, this proposed rule relieves regulatory requirements and improves the efficiency of official inspection services. No additional cost is expected to result from this action.

Requiring all reinspections and appeal inspections for grade to include a complete review of all official factors is not needed by applicants or other parties to transactions, or by official inspection personnel. Furthermore, this requirement often reduces the efficiency of providing official inspection services and may cause unnecessary delays in elevator operations. Allowing applicants to specify which official factor(s) are to be redetermined during the reinspection or appeal inspection service will improve the efficiency of the inspection service due to the time required to analyze all official quality factors.

Prior to developing this proposed rule change, GIPSA considered restricting the proposed action to either appeal

inspections or to reinspections. Our analysis was as follows:

1. Restrict Proposed Action To Appeal Inspections

GIPSA inspectors, who are assigned to specific GIPSA field offices, are the only ones who can perform appeal inspections. Currently, GIPSA has only fourteen field offices and less than 200 full-time GIPSA inspectors nationwide. Most domestic inspection services are provided by official agencies and not by GIPSA field offices. Therefore, applicants for service usually opt for a reinspection, rather than requesting an appeal inspection. (*See* Table 1.) The only applicants for service that would benefit from this alternative are those located at the few export ports where GIPSA does onsite original inspection services. GIPSA believes that restricting the current proposed action to only appeal inspections would adversely impact the cost benefits and the flexibility associated with the current proposal. Table 1 below illustrates this point.

TABLE 1.—FULL-GRADE INSPECTION SUMMARY, FY 1994–2001

Year	Original inspections			Reinspections			Appeals
	OA's [1]	GIPSA [2]	Total	OA's [1]	GIPSA [2]	Total	GIPSA [2]
FY 1997	1,828,519	119,907	1,948,426	36,698	4,844	41,542	3,140
FY 1998	1,861,718	117,267	1,918,985	29,012	5,058	34,078	3,443
FY 1999	1,750,211	117,916	1,868,127	26,046	4,529	30,575	3,103
FY 2000	1,717,625	110,114	1,827,739	19,778	4,515	24,293	3,103
FY 2001	1,706,817	102,295	1,809,112	22,073	4,797	26,870	3,105

[1] Total performed by all state and private official agencies.
[2] Total performed by all GIPSA field offices.

2. Restrict Proposed Action to Reinspections

Licensed inspectors employed by state or private official agencies perform most reinspections. GIPSA only performs reinspections at certain export port locations. GIPSA believes that if the proposed action were limited to reinspections, more applicants for service could potentially benefit than limiting the proposed action to appeal inspections. Some applicants, however, might be placed at a competitive disadvantage because their sales contracts require them to request appeal inspections on some or all original inspection services. Additionally, about ten percent of all reinspections are appealed. If the grading procedures for appeals are different from the preceding reinspection, the review inspection process is not similar for all levels of the review inspection process.

The review inspection process should provide all applicants the same opportunity for inspection services. Reinspection services and appeal inspection services should be similar in scope and effect. For this reason, GIPSA decided to propose the regulatory change that would favorably affect both the reinspection process and the appeal inspection process.

The cost savings of the proposed action on the grain industry could be very positive. Although it is impossible to estimate an exact dollar savings, the time spent waiting for inspection results could be reduced by at least 50 percent and could, in certain circumstances, exceed 90 percent. Since grain elevators often ''idle'' their load-out operations until the results of a reinspection or appeal are known, domestic shippers could save several hundred dollars in operation and demurrage costs on an average 100-car unit train. The savings for exporters could reach $10,000 for some vessels. For example: If elevator X has a fixed operating cost of $500 an hour and it takes an average of 30 minutes to perform a reinspection or appeal inspection, then each reinspection or appeal will cost the elevator an additional $250 in down time. If the time required to perform the reinspection or appeal is reduced to 15 minutes, the elevator saves $125 per inspection due to the more efficient inspection service. These savings could be multiplied if the time saved on performing the reinspections or appeals allows the elevator to avoid or limit demurrage (*i.e.,* a fee assessed to the elevator for failing to complete the loading of a unit train or ship within a specified period). Currently, the demurrage for railcars can range up to $50 per day per car. The demurrage on export vessels can reach $10,000 a day.

The potential revenue impact of the proposed action on GIPSA and official agencies should not be significant. In the long run, this proposed rule may encourage slightly more reinspection and appeal inspection services because of the increased efficiencies associated with the proposal. However, GIPSA does not believe that its net revenue will significantly change. GIPSA routinely reviews the agency's revenue and cost of service as part of its ongoing fee review process. If inspection services and revenue from those services change significantly, GIPSA may determine a change in fees is needed and would do so as part of a fee proposal.

Executive Order 12988 and 12898

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administration procedures that must be exhausted prior to any judicial challenge to the provision of this rule.

Pursuant to Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations,'' GIPSA has considered potential civil rights implications of this proposed rule on minorities, women, or persons with disabilities to ensure that no person or group will be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familial status. The proposed rule will apply in the same manner to all persons and groups whose activities are regulated, regardless of race, gender, national origin, or disability. Preliminary information indicates that the proposal will have no effect on protected populations. GIPSA will make wide distribution of this proposal and will address all comments in the final rulemaking.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements in Part 800 have been previously approved by OMB and assigned OMB No. 0580–0013.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grains.

PART 800—GENERAL PROVISIONS

For reason set out in the preamble, GIPSA proposes to amend 7 CFR part 800 as follows:

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.125 (b) is revised to read as follows:

§ 800.125 Who may request reinspection services or review of weighing services.

* * * * *

(b) *Kind and scope of request.* A reinspection or review of weighing service is limited to the kind and scope of the original service. If the request specifies a different kind or scope, the request shall be dismissed but may be resubmitted as a request for original services: Provided, however, that an applicant for service may request a reinspection of a specific factor(s), official grade and factors, or official criteria. In addition, reinspections for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel. Official criteria are considered separately from official grade or official factors when determining the kind and scope. When requested, a reinspection for official grade or official factors and official criteria may be handled separately even though both sets of results are reported on the same certificate. Moreover, a reinspection or review of weighing may be requested on either the inspection or Class X weighing results when both results are reported on a combination inspection and Class X weight certificate.

3. Section 800.135(b) is revised to read as follows:

§ 800.135 Who may request appeal inspection services.

* * * * *

(b) *Kind and scope of request.* An appeal inspection service is limited to the kind and scope of the original or reinspection service; or, in the case of a Board Appeal inspection service, the kind and scope of the appeal inspection service. If the request specifies a different kind or scope, the request shall be dismissed but may be resubmitted as a request for original services: Provided, however, that an applicant for service may request an appeal or Board Appeal inspection of a specific factor(s), official grade and factors, or official criteria. In addition, appeal and Board Appeal inspections for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel. Official criteria are considered separately from official grade or official factors when determining kind and scope. When requested, an appeal inspection for grade, or official factors, and official criteria may be handled separately even though both results are reported on the same certificate. Moreover, an appeal inspection may be requested on the inspection results when both inspection and Class X weighing results are reported on a combination inspection and Class X weight certificate.

(Approved by the Office of Management and Budget under control number 0580–0013)

Dated: August 15, 2002.

Donna Reifschneider,

Administrator.

[FR Doc. 02–21158 Filed 8–20–02; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII

[Docket No. 020725179–2179–01]

Effectiveness of Licensing Procedures for Agricultural Commodities to Cuba

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is requesting public comments on the effectiveness of its licensing procedures as defined in the Export Administration Regulations for the export of agricultural commodities to Cuba. BIS is required to submit a biennial report to the Congress on the operation of the licensing system for such exports, which was created to implement the Trade Sanctions Reform and Export Enhancement Act of 2000. To help make this assessment, BIS is seeking public comments on the effectiveness of these measures.

DATES: Comments must be received by September 20, 2002.

ADDRESSES: Written comments (three copies) should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Comments may also be e-mailed to Brian Nilsson, Office of Strategic Trade and Foreign Policy Controls, at *BNilsson@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Bureau of Industry and Security, Telephone: (202) 482–5400. Additional information on BIS procedures is available under the heading ''Trade Sanctions Reform and Export Enhancement Act'' at *www.bis.doc.gov.* Copies of this material may also be requested by contacting the Office of Strategic Trade and Foreign Policy Controls.

SUPPLEMENTARY INFORMATION: The current procedures of the Bureau of Industry and Security (BIS) for authorizing the export of agricultural commodities to Cuba are set forth in § 740.18 of the Export Administration Regulations (EAR). Under the provisions of section 906(c) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (Pub. L. 106–387), as amended, BIS must submit a report to the Congress on the operation of the licensing system under Section 906 of TSRA for the preceding two-year period. This report is to include the number and types of licenses applied for, the number and types of licenses approved, the average amount of time elapsed from the date of filing of a license application until the date of its approval, the extent to which the licensing procedures were effectively implemented, and a description of comments received from interested parties about the extent to which the licensing procedures were effective, after holding a public 30-day comment period. This notice serves as public notice to solicit such comments.

Parties submitting comments are asked to be as specific as possible. All comments received by the close of the comment period will be considered by BIS in developing the report to Congress. All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

Copies of the public record concerning these regulations may be requested from: Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 1401 Constitution Avenue, NW., Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BIS's website (which can be reached through *www.bis.doc.gov*). If requesters cannot