

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN: 0580-AB18

[Docket # GIPSA-2010-FGIS-0002]

Export Inspection and Weighing Waiver for High Quality Specialty Grains Transported
in Containers

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Interim Rule with request for comments.

SUMMARY: The United States Department of Agriculture's (USDA), Grain Inspection, Packers and Stockyards Administration (GIPSA) is issuing an interim rule to potentially make permanent the current waiver for high quality grain exported in containers from the mandatory inspection and weighing requirements of the United States Grain Standards Act (USGSA). This interim rule only extends for 2 years a 5-year waiver that is set to expire on July 31, 2010, and asks for interested parties to comment on making this waiver permanent. This action advances the objectives of the USGSA by providing relief to an evolving sector of the grain industry.

DATES: Effective [INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]; comments received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be considered prior to the issuance of a final rule.

ADDRESSES: You may submit your written or electronic comments on this interim rule to:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., room 1643-S, Washington, DC 20260-3642.
- Email comments to comments.gipsa@usda.gov.
- Fax: (202) 690-2173.

Comments should be identified as “High Quality Special Grain Waiver,” and should make reference to the date and page number of this issue of the *Federal Register*. All comments will become a matter of public record and available for public inspection at the above address during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management Support Staff at (202) 720-7486 for an appointment to view the comments.

FOR FURTHER INFORMATION CONTACT: Thomas O’Connor, Director, Compliance Division, at his e-mail address: Thomas.C.Oconnor@usda.gov or by telephone at (202) 720-8262.

SUPPLEMENTARY INFORMATION:

Background

The USGSA authorizes USDA to waive the mandatory inspection and weighing requirements of the USGSA in circumstances when the objectives of the USGSA would not be impaired. Current waivers from the official inspection and Class X weighing requirements for export grain appear in § 800.18 (7 CFR 800.18) of the regulations issued

under the USGSA. These waivers are provided for grain exported for seeding purposes, grain shipped in bond, grain exported by rail or truck to Canada or Mexico, grain not sold by grade, exporters and individual elevator operators shipping less than 15,000 metric tons during the current and preceding calendar years, and when services are not available or in emergency situations.

This interim rule extends for 2 years, or until July 31, 2012, a current 5-year waiver for high quality specialty grains exported in containers that was established by a final rule on December 13, 2005 (70 FR 73556). This interim rule also invites interested parties to comment on making this waiver for high quality specialty grain exported in containers permanent.

Typically, shippers of high quality specialty grain exported in containers are small entities that up until recently handled less than 15,000 metric tons of grain annually and thereby were exempt from mandatory inspection and weighing requirements in accordance with § 800.18(b) of the USGSA regulations. As the high quality specialty market has expanded, the volume of this specialty product has begun to exceed the 15,000 metric ton waiver threshold, making such grain subject to mandatory inspection and weighing under the USGSA.

GIPSA implemented the 5-year high quality specialty grain waiver in 2005 to relieve the burden of having to obtain mandatory official inspection and weighing services for this emerging niche market. High quality specialty grain is defined as grain in which all factors exceed the grade limits for U.S. No. 1 grain, except for the factor test weight, or grain designated as “organic” as defined in § 205.2 (7 CFR 205.2) of the regulations issued under the Organic Food Productions Act of 1990, as amended (OFPA) (7 U.S.C.

6501-6522).

GIPSA has found that transactions involving high quality specialty grains typically are made between dedicated buyers and sellers who have ongoing business relationships and fully understand each other's specific needs and capabilities. Typically, sales are for grain that meets strict commercial contract specifications for quality, production, handling, and packaging. GIPSA believes that mandating official inspection and weighing services for this specialty market would add an unnecessary cost. The cost of official inspection and weighing for these specialty operations is approximately \$1.80 per metric ton compared to an average \$0.34 per metric ton for traditional grain exports.

Since establishing the 5-year waiver, GIPSA has required that exporters of high quality specialty grain in containers maintain, submit upon request, and make available documentation that fully and correctly discloses their transactions. GIPSA has used this documentation to determine if the high quality specialty grain waiver continues to advance the objectives of the USGSA and to ensure that exporters of high quality specialty grain comply with the waiver provisions: 1) That all factors exceed the grade limits for U.S. No. 1 grain, except for the factor test weight, or 2) Specify "organic" as defined by the regulations issued under the OFPA. Under this waiver (temporary or permanent), GIPSA still must collect information from exporters of high quality specialty grain in containers in order to ensure the integrity of the high quality specialty grain program.

During the 5-year waiver period, GIPSA reviewed documentation provided by exporters of high quality specialty grain and determined that it complied with the waiver provisions. This action provides regulatory relief to a small but a continuously evolving

sector of the grain industry that specializes in high quality grains. GIPSA believes that the high quality specialty grain waiver should eventually become permanent because it continues to advance the objectives of the USGSA. GIPSA, however, is issuing this interim final rule to extend the waiver until July 31, 2012, and is providing interested parties the opportunity to comment on whether this waiver should instead be made permanent.

Pursuant to 5 U.S.C 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to public interest to give preliminary notice prior to putting this rule in effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the *Federal Register* for the following reasons: 1) This interim rule will avoid market disruption that would result should the waiver expire and avoid uncertainty in the markets that would likewise result; 2) continued relief of the regulatory burden on affected entities is necessary to facilitate the continuing development of the high quality specialty export market and; therefore, this action should be implemented as soon as possible and 3) this rule provides a 60-day opportunity for comment; and all written comments timely received will be considered prior to finalization of the rule.

Alternatives Considered

GIPSA considered allowing this waiver to expire, but rejected that option since it would be financially burdensome to small businesses by requiring that they pay approximately \$1.80 per metric ton for weighing and inspection services for high quality specialty grain, compared to an average \$0.34 per metric ton for bulk grain exports.

GIPSA also considered requiring relaxed inspection and weighing requirements for these

grains, but determined that even relaxed inspection and weighing requirements would still place an undue burden on these types of shipments.

Executive Order 12866 and Effect on Small Entities

This interim final rule has been determined not to be significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

This rule would provide regulatory relief to both large and small businesses. The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS).¹ The SBA defines small grain exporters in its regulations (13 CFR 121.201) as entities having less than \$7,000,000 in average annual receipts (NAICS code 115114). GIPSA believes this waiver effectively eliminates a cost impact on all high quality specialty grain exporters that would otherwise have to pay for GIPSA's onsite inspection and weighing services, without impairing the objectives of the USGSA. GIPSA estimates that there are currently 32 small and 8 large businesses (as defined by the SBA) operating as exporters of high quality specialty grain.

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 - 612), GIPSA has considered the economic impact of this interim rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities. GIPSA invites interested parties to comment on the impacts of this action on small businesses and on whether this waiver should be made permanent.

¹ See: http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf

The growing market for high quality specialty grain exported in containers has caused shippers of high quality specialty grains to exceed the 15,000 metric ton waiver threshold for export inspection and weighing. GIPSA has consulted with its Grain Inspection Advisory Committee (Advisory Committee) on this issue. GIPSA's Advisory Committee is composed of members representing grain producers, handlers, processors, and exporters. The Advisory Committee has advocated that GIPSA make permanent the waiver for high quality specialty grains exported in containers. While GIPSA agrees with the Advisory Committee that permanently waiving high quality specialty grains exported in containers is consistent with the intent of the USGSA and will allow this market to continue to grow, GIPSA is issuing this interim final rule to 1) extend by 2 years the waiver, and 2) request that interested parties comment on whether this waiver should instead be made permanent.

This interim rule will continue to allow exporters of high quality specialty grains shipped in containers to ship high quality specialty grain without the cost burden of mandatory inspection and weighing, while allowing them to request the service when desired. Relieving this cost burden will continue to allow the industry to grow and equitably compete with global competitors.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The USGSA provides in section 87g (7 U.S.C. 87g) that no State or subdivision thereof may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this interim rule would not preempt any State or local

laws, or regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this interim rule.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the information collection and recordkeeping included in this interim rule were approved by Office of Management and Budget under Control No. 0580-0022, and expire on May 31, 2012. This information collection continues to be necessary in order for GIPSA to ensure that exporters of high quality specialty grain shipped in containers comply with the waiver provisions contained in § 800.18 (7 CFR 800.18) of the regulations issued under the USGSA..

E-Government Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain

For reasons set out in the preamble, 7 CFR Part 800 is amended as follows:

PART 800--GENERAL PROVISIONS

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

Authority: 7 U.S.C. 71–87k.

2. In § 800.0, paragraph (b)(44) is revised to read as follows:

800.0 Meaning of terms.

* * * * *

(b) * * *

(44) *High Quality Specialty Grain*. Grain sold under contract terms that specify all factors exceed the grade limits for U.S. No. 1 grain, except for the factor test weight, or specify “organic” as defined by 7 CFR Part 205. This waiver expires on July 31, 2012.

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3. In § 800.18, paragraph (b)(8) is revised to read as follows:

§800.18 Waivers of the official inspection and Class X weighing requirements.

* * * * *

(b) * * *

(8) *High Quality Specialty Grain Shipped in Containers*. Official inspection and weighing requirements do not apply to high quality specialty grain exported in containers. Records generated during the normal course of business that pertain to these shipments must be made available to the Service upon request, for review or copying. These records must be maintained for a period of 3 years. This waiver expires on July 31, 2012.

J. Dudley Butler
Administrator
Grain Inspection, Packers and Stockyards Administration

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