

Rules and Regulations

Federal Register

Vol. 68, No. 75

Friday, April 18, 2003

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

[Docket Number FGIS 2003-003]

RIN 0580-AA76

Exceptions to Geographic Areas for Official Agencies Under the USGSA

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Final rule.

SUMMARY: This rule revises regulations issued under the United States Grain Standards Act (USGSA) to establish criteria to allow more than one designated official agency to inspect or weigh grain within a single geographic area. The rule will enhance the orderly marketing of grain by providing segments of the grain industry with more cost-effective and responsive official grain inspection and weighing services without undermining the integrity of the official system.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Porter, Director, Compliance Division at (202) 720-8262.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Executive Order 12988, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The U.S. Grain Standards Act (USGSA) (7 U.S.C. 71 *et seq.*) provides in § 87g that no

subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this rule would not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of Grain Inspection, Packers and Stockyards Administration (GIPSA) has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA conducted a 6-year voluntary pilot program. The pilot program permitted more than one official agency to operate in the same geographic area. There are 58 official agencies (15 States and 43 private agencies) designated under the USGSA. Thirty-six agencies (7 States and 29 private agencies) or 61 percent participated in the pilot program. All 43 private agencies are classified as business services, and all are "small business entities" under the guidelines of the Small Business Administration (SBA). The SBA does not classify States as small or large business entities. Volumes were down for state agencies. Of the 43 private agencies, 29 or 67 percent participated in the pilot program. Fourteen of the 29 saw an increase in service requests and 15 saw a decrease in service requests due to the greater flexibility provided by the pilot program. All increases and decreases in service requests represented inspections of railcars or barges. A 5-year average of official railcar and barge inspections is about 850,000 railcars per year, and about 28,000 barges per year. Less than 2 percent of the total number of railcars and less than 3 percent of the total number of barges were inspected under the pilot program by designated official agencies.

The customers (grain elevators) of the official agencies that requested service under the pilot program represented a mix of both large and small entities as defined for the grain industry by the SBA. GIPSA expects that this would remain the case. Approximately 70

percent of the 128 grain elevators that participated in the pilot program were small entities under the SBA guidelines, and accounted for 82 percent of the service volume for railcars. The 128 elevators that participated in the pilot program represent less than two percent of the estimated 9,695 off-farm storage facilities in the United States that could receive official inspection services.

Fifty-six percent of the volume of railcar inspection services during the pilot program was performed at grain elevators that had not used official services for more than a year. GIPSA believes that the pilot program has enhanced the orderly marketing of grain by providing grain elevators with improved services without undermining the integrity of the USGSA and the official system. At the same time, there has been no significant economic impact on small entity official agencies or grain elevators.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in part 800 have been previously approved by the Office of Management and Budget under control number 0580-0013. There would be no additional reporting or recordkeeping requirements imposed by this action. The request to GIPSA for approval can be done by telephone. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this rule.

Background

In 1976, the USGSA specified exclusive geographic boundaries for each designated entity performing official inspections. In later years, some grain firms reported delays in getting service due to the distance from the inspection laboratories serving them. Others had difficulty getting service during harvest or other peak demand periods. In April 1993, the General Accounting Office released a study, entitled "Grain Inspection Industry Views on the Decline in Official Inspections and Inspection Costs," which questioned maintaining exclusivity of boundaries.

On November 1, 1995, GIPSA, under the authority of the 1993 Amendments to the USGSA, initiated a pilot program to study the effect of permitting more than one designated agency to inspect or weigh grain in a single geographic area. GIPSA concluded, based on information

gathered from the pilot program, that less restrictive geographic service area requirements on designated official agencies would improve the quality of services provided to the American grain industry and facilitate the marketing of grain without undermining the integrity of the USGSA and the official system. Legislative authority was requested to permit more than one designated official agency to provide official services within a single geographic area.

Congress amended the USGSA in 2000 to give the Department discretion, under certain circumstances, to allow more than one designated official agency to provide official inspection services within a single geographic area. GIPSA is implementing this authority by revising the regulations under the USGSA. Under certain circumstances, more than one designated official agency can provide official inspection services within a single geographic area. This provides segments of the grain industry with more cost-effective and responsive official grain inspection and weighing services.

Comment Review

GIPSA received 3 comments during the 60-day comment period. One was from a private laboratory wanting an opportunity to do business as an official grain inspection agency. GIPSA infers from the private laboratory's comment that they are interested in becoming an official designated agency for the purpose of conducting domestic inspections pursuant to the USGSA. The commenter may apply for such designation, and must meet the statutory criteria under section 7f(1)(a) of the USGSA. The commenter may obtain further information by accessing GIPSA's Web site at: <http://www.usda.gov/gipsa>, or by calling GIPSA at (202) 720-8525.

One comment was from a professional association of official grain inspection and weighing agencies, and one was from a grain trade association, stating membership of 1,000 grain, feed, processing, and grain-related companies, approximately 70 percent of which are small entities. All three supported GIPSA's proposal, however, the trade association supports the proposal with the following comment: "We oppose including the phrase 'due to reasons other than seasonal shipping fluctuations' in proposed § 800.117(b)(2), Nonuse of Service, because it robs industry of its ability to effectively use the *strict 3-month non-use of service* under the Agency's Open Season pilot program * * * to encourage the assigned designated official agency to provide more cost

effective and responsive service or possibly lose business to a competing official agency."

GIPSA is clarifying the new section 800.117(b)(2) to more accurately describe its intent. GIPSA has revised the criteria for "Nonuse of Service" to read, "* * * due to reasons other than seasonal ice making waterways unnavigable." The inclusion of the phrase "due to reasons other than seasonal ice making waterways unnavigable" allows GIPSA to accomplish the intent of the nonuse exception program, but reduces the possibility that some official agencies will be at an advantage over others because of climatic conditions. GIPSA continually works to provide for cost-effective and responsive official inspection and weighing service, while implementing the USGSA requirements to provide for uniform official inspection and weighing, and carrying out assigned regulatory and service responsibilities.

Final Action

GIPSA revises the following: 7 CFR 800.81, 800.99, 800.116, 800.117, 800.118, 800.185, and 800.196 to implement changes in the USGSA. The changes allow sampling for official sample-lots, and weighing of sacked grain outside the geographical boundaries assigned to the designated official agency. Program criteria for nonuse of service, timely service, and barge probing is provided. Requests for original services allow qualified applicants to use another agency to provide service. Official personnel may operate outside of the area of responsibility assigned to them. The action allows exceptions to the designated areas of responsibility. The sections regarding certification are combined for a more logical sequence.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

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

PART 800—GENERAL REGULATIONS

■ 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 800.81 is amended by revising paragraphs (a)(1) and (d) and the information collection parenthetical to read as follows:

§ 800.81 Sample requirements; general.

(a) *Samples for official sample-lot inspection service*—(1) *Original official*

sample-lot inspection service. For original sample-lot inspection purposes, an official sample shall be obtained by official personnel; representative of the grain in the lot; and protected from manipulation, substitution, and improper or careless handling.

* * * * *

(d) *Restriction on sampling.* Official personnel shall not perform an original inspection or a reinspection service on an official sample or a warehouseman's sample unless the grain from which the sample was obtained was located within the area of responsibility assigned to the agency or field office at the time of sampling, except as provided for in § 800.117, or on a case-by-case basis as determined by the Administrator.

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

■ 3. Section 800.99 is amended by revising paragraph (d) to read as follows:

§ 800.99 Checkweighing sacked grain.

* * * * *

(d) *Restriction on weighing.* No agency shall weigh any lot of sacked grain unless at the time of obtaining the official weight sample the grain from which the sample was obtained was located within the area of responsibility assigned to the agency, except as otherwise provided for in § 800.117, or on a case-by-case basis as determined by the Administrator.

* * * * *

■ 4. Section 800.116 is revised to read as follows:

§ 800.116 How to request original services.

(a) *General.* Except as otherwise provided for in § 800.117, requests for original services shall be filed with an agency or field office authorized to operate in the area in which the original service is to be performed. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel, as specified in § 800.46. Copies of request forms may be obtained from the agency or field office upon request. If the information specified by § 800.46 is not available at the time the request is filed, official personnel may, at their discretion, withhold service pending receipt of the required information. An official certificate shall not be issued unless the information as required by § 800.46 has been submitted, or official personnel determine that sufficient information

has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(b) *Request requirements.* Except as provided for in § 800.117, requests for original services, other than submitted sample inspections, must be made to the agency or field office responsible for the area in which the service will be provided. Requests for submitted sample inspections may be made with any agency, or any field office that provides original inspection service. Requests for inspection or Class X weighing of grain during loading, unloading, or handling must be received in advance of loading so official personnel can be present. All requests will be considered filed when official personnel receive the request. A record shall be maintained for all requests. All requests for service that is to be performed outside normal business hours must be received by 2 p.m. the preceding day.

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

■ 5. Section 800.117 is revised to read as follows:

§ 800.117 Who shall perform original services.

(a) *General.* Original services shall be performed by the agency or field office assigned the area in which the service will be provided, except as provided in paragraph (b) of this section.

(b) *Exceptions for official agencies to provide service—(1) Timely service.* If the assigned official agency cannot provide service within 6 hours of a request, the service may be provided by another official agency upon approval from the Service.

(2) *Nonuse of service.* If the assigned official agency has not provided official services to an applicant for 90 consecutive days, due to reasons other than seasonal ice making waterways unnavigable, service may be provided by another official agency upon approval from the Service.

(3) *Barge probe service.* Any official agency may provide probe sampling and inspection service for barge-lots of grain with no restrictions due to geographical locations.

(c) *Interim service at other than export port locations.* If the assigned official agency is not available on a regular basis to provide original services, and no official agency within a reasonable proximity is willing to provide such services on an interim basis, the services shall be provided by

authorized employees of the Secretary, or other persons licensed by the Secretary, until the services can be provided on a regular basis by an official agency, as provided in § 800.196.

■ 6. Section 800.118 is revised to read as follows:

§ 800.118 Certification.

Official certificates shall be issued according to § 800.160. Upon request, a combination inspection and Class X weighing certificate may be issued when both services are performed in a reasonably continuous operation at the same location by the same agency or field office. An official certificate shall not be issued unless the information as required by § 800.46 has been submitted, or official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(Approved by Office of Management and Budget under Control Number 0580-0013)

■ 7. Section 800.185 is amended by revising paragraph (d) and the informational parenthetical to read as follows:

§ 800.185 Duties of official personnel and warehouse samplers.

* * * * *

(d) *Scope of operations.* Official personnel and warehouse samplers shall operate only within the scope of their license or authorization and except as otherwise provided in § 800.117, operate only within the area of responsibility assigned to the official agency, field office, or contractor which employs them. Official personnel and warehouse samplers may perform official inspection or weighing services in a different area of responsibility with the specific consent of the Service.

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

■ 8. Section 800.196 is amended by revising paragraph (f)(1) and the information collection parenthetical to read as follows:

§ 800.196 Designations.

* * * * *

(f) *Area of responsibility—(1) General.* Each agency shall be assigned an area of responsibility by the Service. Each area shall be identified by geographical boundaries and, in the case of a State or local government, shall not exceed the jurisdictional boundaries of the State or

the local government, unless otherwise approved by the Service. The area of responsibility may not include any export elevators at export port locations or any portion of an area of responsibility assigned to another agency that is performing the same functions, except as otherwise provided in § 800.117. A designated agency may perform official services at locations outside its assigned area of responsibility only after obtaining approval from the Service, or in accordance with provisions set forth in § 800.117.

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

Dated: April 15, 2003.

Donna Reifschneider,

Administrator.

[FR Doc. 03-9630 Filed 4-17-03; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV00-927-3]

Winter Pears Grown in Oregon and Washington; Order Amending Marketing Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing order for winter pears grown in Oregon and Washington (order). Three amendments were proposed by the Winter Pear Control Committee (Committee), which is responsible for local administration of the order. Of these three, only one proposal was favored by winter pear growers in a mail referendum, held July 17 through August 2, 2002. The single amendment to the order will change provisions related to alternate Committee members serving for absent members at Committee meetings. This amendment will improve the operation and functioning of the winter pear marketing order program by ensuring industry representation at Committee meetings. The two amendments that failed to receive grower support in the referendum include authorizing the Committee to recommend maturity regulations, and authorizing the Committee to recommend container or marking requirements. These amendments will not be implemented.