

Directive

9020.1 10-2-06

EXEMPTIONS AND WAIVERS OF OFFICIAL INSPECTION AND CLASS X WEIGHING REQUIREMENTS

1. PURPOSE

This directive establishes procedures for handling exemptions and waivers under the United States Grain Standards Act (USGSA).

2. REPLACEMENT HIGHLIGHTS

This directive supersedes FGIS Program Directive 9020.1, dated 5-1-97. This directive is updated to reflect a new exemption for high quality specialty grain exported in containers and organizational changes but does not revise policy.

3. POLICY

The USGSA, as amended, requires that all grain exported from the United States be officially inspected and weighed unless an exemption or waiver of this requirement is in effect according to the regulations and instructions prescribed by the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA), Federal Grain Inspection Service (FGIS).

4. EXEMPTIONS

a. 15,000 Metric Ton Exemption.

- (1) Eligibility. Section 800.18(b)(1) of the regulations under the USGSA exempts exporters and individual elevator operators from official inspection and weighing requirements if they exported less than 15,000 metric tons of grain on an individual elevator basis during the preceding calendar year and each such facility plans to export less than 15,000 metric tons of grain during the current calendar year.

- (2) Qualifications. A grain elevator, warehouse, or other storage or handling facility qualifies for a 15,000 metric ton exemption if less than 15,000 metric tons of grain are loaded into a final container and exported directly without further handling.
- (a) Grain firms with elevators, warehouses, and storage and handling facilities at more than one location may have a 15,000 metric ton exemption for each location.
 - (b) In the case of bagged grain, the 15,000 metric ton exemption applies to the facility that bags the grain or, in mobile bagging operations, to the bagging equipment itself.
 - (c) In the case of a floating rig, the 15,000 metric ton exemption applies to the rig regardless of its location.
- (3) Conditions. Exporters and individual elevator operators planning to operate under the exemption must agree to the following conditions:
- (a) Notify USDA, GIPSA, FGIS, Compliance Division (CP), Regulatory Branch, in writing each calendar year prior to exporting grain of their intention. Notification may be faxed or sent regular mail. The notice should include the exporter's or elevator operator's name, address, and telephone number; if a facility, its name, address, and telephone number; and a statement providing the previous year's export volume and the current calendar year's expected volume for each facility.
 - (b) Keep complete and accurate records of export grain shipments and make the records available to FGIS upon request.
 - (c) Have all lots of grain requiring official inspection and/or official weighing inspected or weighed according to the USGSA.
- (4) Approval. When the above qualifications and conditions are met, the exemption will automatically apply and approval from FGIS is not required.
- (5) Termination. All exemptions terminate at the end of the calendar year (December 31) or when the individual facility's export volume exceeds 15,000 metric tons.

- (6) CP Responsibility. CP must:
 - (a) Maintain an exemption listing and periodically request copies of exporter's or elevator operator's records for review.
 - (b) Inform the field office of the name and address of the exporter or elevator operator intending to export under the exemption.
 - (c) Inform the exporter or elevator operator that CP received the exemption notification.

- (7) Field Office Responsibility. The field office must:
 - (a) Review the exporter's or elevator operator's records for compliance periodically.
 - (b) Maintain an awareness of facilities operating under exemptions in the field office circuit.
 - (c) Report to the Director, Compliance Division, all suspected violations of USGSA exemption provisions according to FGIS Directive 9070.6 (10/05/00), "Reporting Violations of the U.S. Grain Standards Act and the Agricultural Marketing Act of 1946." Suspected violations may be reported via the GIPSA Violations Hotline 1-800-998-FGIS (3447 toll free) or by FAX to (202) 690-2755.

- b. Grain Exported for Seeding Purposes. Section 800.18(b)(2) of the regulations under the USGSA exempts grain exported for seeding purposes from inspection and weighing requirements provided that:
 - (1) The grain is sold or consigned for sale and invoiced as seed;
 - (2) The grain is identified as seed for seeding purposes on the Shipper's Export Declaration; and
 - (3) Copies of the sales contract, invoice, bill of lading, and shipping documents are available, upon request, by FGIS for review or copying purposes.

- (4) When the above conditions are met, the exemption will automatically apply. The exporter does not have to notify or obtain approval from FGIS.
- c. Grain Shipped in Bond. Section 800.18(b)(3) of the regulations under the USGSA exempts grain shipped in bond from a foreign country through the United States from the official inspection and weighing requirements. The shipper does not have to notify or obtain approval from FGIS.
- d. Grain Shipped by Rail or Truck to Canada or Mexico. Section 800.18(b)(4) of the regulations under the USGSA exempts grain shipped by rail or truck from the United States to Canada or Mexico from the official inspection and weighing requirements. The exporter does not have to notify or obtain approval from FGIS.
- e. High Quality Specialty Grain Exported in Containers. Section 800.18(b) (8) of the regulations under the USGSA states that official inspection and weighing requirements do not apply to high quality specialty grain exported in containers. High Quality Specialty Grain is defined as grain sold under contract terms that specify quality better than 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 definition expires July 31, 2010.
- (1) Conditions. Exporters and individual elevator operators planning to export high quality specialty grain in containers under this exemption must agree to the following conditions. They must:
- (a) Keep complete and accurate records of shipments of high quality specialty grain exported in containers for a period of 3 years and make the records available to FGIS upon request for review or copying purposes.
- (b) Be required to notify FGIS of their actions for registration purposes in accordance with the USGSA.

Nothing in this exemption will prevent buyers and sellers from requesting and receiving official inspection and weighing services should they desire such services.

This exemption will be in effect for a maximum of 5 years (expires July 31, 2010), and if after this time period FGIS determines that this exemption continues to advance the objectives of the USGSA, FGIS will consider making this exemption permanent.

- (2) CP Responsibility. CP must:
- (a) Maintain an exemption listing and periodically request copies of exporter's or elevator operator's records for review.

- (b) Inform the field office of the name and address of the exporter or elevator operator intending to export under the exemption.
- (3) Field Office Responsibility. The field office must:
 - (a) Periodically review the exporter's or elevator operator's records for compliance with USGSA requirements.
 - (b) Maintain an awareness of facilities operating under exemptions in the field office circuit.
 - (c) Report to the Director, Compliance Division, all suspected violations of USGSA exemption provisions according to FGIS Directive 9070.6 (10/05/00), "Reporting Violations of the U.S. Grain Standards Act and the Agricultural Marketing Act of 1946." Suspected violations may be reported via the GIPSA Violations Hotline 1-800-998-FGIS (3447 toll free) or by FAX to (202) 690-2755.

5. WAIVERS

- a. Grain Not Sold by Grade. Section 800.18(b)(5) of the regulations under the USGSA waives the mandatory requirement for official inspection provided the following conditions are met:
 - (1) Conditions for Waiver.
 - (a) The export grain shipment is not sold, offered, or consigned for sale by grade or subclass. Section 800.55 of the regulations states "An official grade designation contains any of the following: The term "U.S.," the numerals 1 through 5, the term "Sample grade," or the name of a subclass or a special grade of grain specified in the Official United States Standards for Grain."
 - (b) The contract makes no reference to a factor analysis; e.g., minimum test weight, moisture, foreign material, protein analysis, etc., to be performed by official or nonofficial personnel (see attachment 1).
 - (c) The parties mutually agree in the contract that the shipment is not to be officially inspected or sold by grade.

- (d) An English written "copy" of the sales contract, or pertinent sections, is furnished to the appropriate field office before the loading of the grain. The contract must be signed by both buyer and seller (or agent) and the names, titles, and addresses of all signatories included.
- (e) Container marking or other sales-related documents must not describe grain by grade or condition.

This waiver does not apply to the official weighing requirements.

- (2) Requesting Party's Responsibility. The requesting party must submit Form FGIS-941, "Request for Waiver of Inspection," with a copy of the contract or pertinent sections of the contract whereby the parties (buyer and seller) mutually agree that official inspection is not required because the grain shipment is not sold, offered, or consigned for sale by grade, grade factors, or subclass. A statement to this effect must be included in the contract. Copies of form FGIS-941 may be obtained from the area field office manager.
 - (3) Field Office Manager's Responsibility. If the above conditions are met and all required documents are supplied, the field office manager approves the official inspection waiver and sends copies of the documentation to the Office of the Director, FM. When the request is denied, the field office manager forwards copies of all documentation showing the reason for denial to the Office of the Director, FMD, for information and brings attention to any unusual conditions or documentation.
- b. Services Not Available. Section 800.18(b)(6) of the regulations under the USGSA waives the official inspection or weighing requirements when FGIS determines that official personnel will not be available within a 24-hour period to perform the needed services. This determination will be made after the field office, in coordination with the Office of the Director, FMD, has made an effort to furnish the service.
- (1) Conditions for the Waiver.
 - (a) FGIS determines that official personnel will not be available within a 24-hour period to perform the needed services.

- (b) The buyer and seller of the grain are notified that the grain will not be officially inspected or weighed.
- (2) Procedures for Approving the Waiver.
 - (a) When a required official service cannot be provided within 24 hours, the field office manager will inform the applicant that she/he may wait until FGIS personnel are available or that the applicant may request a waiver from the official inspection and weighing requirements.
 - (b) A request may be verbal but must be confirmed in writing.
 - (c) Upon receipt of a request, the field office manager will approve or deny the waiver and inform the applicant.
 - (d) The field office manager will send copies of correspondence regarding the waiver to the Office of the Director, FMD.
- c. Emergency Waiver. Section 800.18(b)(7) of the regulations under the USGSA provides the Administrator with the authority to waive the official inspection and weighing requirements if an emergency or other condition exists that precludes the official inspection or weighing of the grain and that granting a waiver would not impair the objectives of the USGSA.

The following procedures will be used for emergency waivers:

- (1) An exporter or elevator operator may telephone an emergency waiver request to the Office of the Director, FMD. The request must be confirmed in writing. Field offices or agencies will refer requests to the Office of the Director, FMD. The Director's Office will provide all available information to the Administrator.
- (2) The Administrator will approve or deny the waiver and, if approved, specify conditions to the waiver.
- (3) The Office of the Director, FMD, will transmit the Administrator's decision to the field office manager and exporter or elevator operator via telephone and provide written confirmation (via Fax or regular mail). FMD will maintain copies of all correspondence.

d. Waivers of Regulations. Section 800.2 of the regulations under the USGSA provides that the Administrator may, in specific cases, waive for limited periods any provision of the regulations to permit experimentation or testing of new procedures, equipment, or handling techniques to facilitate improvement, provided that the waiver conform with the objectives of the Act. The Administrator may delegate this authority to other appropriate FGIS officers or employees.

- (1) Reasonably Continuous Operation (88-Hour). Section 800.86(c)(1) of the regulations under the USGSA requires loading in a "reasonably continuous operation." Reasonably continuous operation is defined as a loading or unloading operation in one specific location which does not include inactive intervals in excess of 88 consecutive hours. Field office managers are delegated the authority to waive the requirement when requested by the applicant, provided that granting this waiver will not result in the issuance of an erroneous inspection or weight certificate.

Field office managers should use their familiarity with the facility in question and their evaluation of the circumstances surrounding the request for extension to determine whether to grant the request.

Maintain all requests for waivers with the other work records concerning the lot.

- (2) Stowage Examination Waivers. Section 800.75(f)(2) of the regulations under the USGSA and FGIS instructions require stowage examinations of carriers when export and domestic grain shipments are officially sampled and inspected, or weighed, at the time of loading. However, due to trade requests and safety considerations, FGIS established the following stowage examination waiver requirements for all domestic shipments.
 - (a) Applicants for inspection and all interested persons must submit written statements attesting that a stowage exam is not needed and why it is not needed.
 - (b) Official certificates must show the statement "Stowage area not examined."

- (3) Other Regulations. The Administrator is authorized to waive other regulations. For other waivers of regulations, the following procedures are used:
- (a) Requests will be made to the Office of the Director, FMD.
 - (b) The Office of the Director will present the request with all available information to the Administrator.
 - (c) The Administrator will approve or deny the waiver and, if approved, specify conditions of the waiver.
 - (d) The Office of the Director will transmit the Administrator's decision and maintain a file of all pertinent correspondence regarding the waiver.

/s/ John C. Giler

John C. Giler, Acting Director
Field Management Division

Attachments

REQUESTS FOR WAIVER OF INSPECTION
DESCRIPTIONS ON CONTRACTS

ACCEPTABLE

Class or Kind

NOT ACCEPTABLE

Grade, Special Grade, Subclass, or
indications of a factor analysis

EXAMPLES

Wheat
Hard Red Spring Wheat
Hard or Soft White Wheat
Yellow Corn
Sorghum
Brown or Yellow Sorghum

Dark Northern Spring Wheat
Hard Amber Durum Wheat
U.S. No. 2 Corn
U.S. No. 3 Yellow Soybeans
Six-Rowed Malting Barley

Seller to provide Aflatoxin
Certificate

Requirements for: Moisture,
Foreign Material, Protein,
Minimum Test Weight, etc.

U.S. DEPARTMENT OF AGRICULTURE
 GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION
 FEDERAL GRAIN INSPECTION SERVICE

REQUEST FOR WAIVER OF INSPECTION

TO:

FROM:

We hereby request a waiver of inspection for the lot identified below. (An English written copy of the contract is attached.)

Name of Agency		Contract No.
Location of Loading		Destination
Approximate Date of Loading	Kind of Grain	Quantity of Grain to be loaded
Container Marking		
(Date)		(Name and Signature)
		(Title)
FOR USDA USE ONLY		Quantity of Grain Loaded
<input type="checkbox"/> WAIVER APPROVED <input type="checkbox"/> WAIVER DENIED FOR THE FOLLOWING REASON(S):		
(Date)		(Name and Signature)
		FIELD OFFICE MANAGER
		(Title)