

must be cleaned by removing any soil and plant debris that may be present.

(i) All conveyances and mechanized harvesting equipment used for storing and handling wheat, durum wheat, or triticale that tested positive for Karnal bunt based on bunted kernels.

(ii) All grain storage and handling equipment used to store or handle seed that has tested spore positive or grain that has tested bunted-kernel positive.

(iii) All seed-conditioning equipment used to store or handle seed that has tested spore-positive.

(2) Articles listed in paragraphs (d)(1)(i) and (d)(1)(ii) of this section will require disinfection in addition to cleaning prior to entry into the United States if an inspector or an official of the plant protection organization of the country of origin determines that disinfection is necessary to prevent the spread of Karnal bunt. Disinfection is required for all seed conditioning equipment covered under paragraph (d)(1)(iii) prior to entry into the United States.

(3) Items that require disinfection prior to entry into the United States must be disinfected by one of the methods specified in paragraphs (d)(3)(i) through (d)(3)(iii) of this section, unless a particular treatment is designated by an inspector or by an official of the plant protection organization of the country of origin:

(i) Wetting all surfaces to the point of runoff with a 1.5 percent sodium hypochlorite solution and letting stand for 15 minutes, then thoroughly washing down all surfaces after 15 minutes to minimize corrosion;

(ii) Applying steam to all surfaces until the point of runoff, and so that a temperature of 170 °F is reached at the point of contact; or

(iii) Cleaning with a solution of hot water and detergent, applied under pressure of at least 30 pounds per square inch, at a minimum temperature of 170 °F.

(Approved by the Office of Management and Budget under control number 0579-0240.)

Done in Washington, DC, this 14th day of February 2005.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 05-3141 Filed 2-17-05; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 7 CFR Parts 810

RIN 580-AA86

#### United States Standards for Wheat

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

**ACTION:** Final rule.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the United States Standards for Wheat. GIPSA is amending the grain standards to change the definition of contrasting classes in Hard Red Winter wheat and Hard Red Spring wheat such that Hard White wheat is not a contrasting class but is considered as wheat of other classes. GIPSA also is amending the grain standards by adding the sample size used to determine sample grade factors, because the standards should transmit this information. These actions are necessary to ensure market-relevant standards and grades and facilitate the marketing of grain.

**EFFECTIVE DATE:** May 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Patrick McCluskey at GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250-3604; Telephone (202) 720-4684; faxed to (202) 720-7883.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

##### Executive Order 12988

Executive Order 12988, Civil Justice Reform, instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. The final rule was reviewed under this Executive Order and no additional related information has been obtained since then. This final rule is not intended to have a retroactive effect. The United States Grain Standards Act provides in Section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies, unless they present any irreconcilable conflict with this rule. There are no

administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this final rule.

#### Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) requires agencies to consider the economic impact of each rule on small entities. GIPSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. Under the provisions of the United States Grain Standards Act, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA at 33 export facilities. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration. GIPSA is amending the grain standards to change the definition of contrasting classes in Hard Red Winter wheat and Hard Red Spring wheat such that Hard White wheat is not a contrasting class but is considered as wheat of other classes. GIPSA also is amending the grain standards by adding the sample size used to determine sample grade factors, because the standards should transmit this information. The two changes made to the wheat standards in this final rule are needed to ensure market-relevant standards and grades. Further, the regulations are applied equally to all entities.

The U.S. wheat industry, including producers (approximately 240,000), handlers (approximately 6,800 domestic elevators), traders (approximately 200 active wheat futures traders), processors (approximately 184 flour mills), merchandisers, and exporters, are the primary users of the U.S. Standards for Wheat and utilize the official standards as a common trading language to market wheat. We assume that some of the entities may be small. Further, the United States Grain Standards Act (USGSA) (7 U.S.C. 87f-1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the

preceding or current calendar year. At present, there are 90 registrants who account for practically 100 percent of U.S. wheat exports, which for fiscal year (FY) 2002 totaled approximately 24,073,138 metric tons (MT). While most of the 90 registrants are large businesses, we assume that some may be small.

#### Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the existing information collection requirements are approved under OMB Number 0580-0013. No additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, or OMB's implementing regulation at 5 CFR part 1320.

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

#### Background

GIPSA established the class Hard White wheat on May 1, 1990. In the Final Rule (54 FR 48735), GIPSA stated "that classification by varietal kernel characteristics rather than vitreousness of the kernel is practicable at this time for HWW (sic) and SWW (sic) since only a few hard endosperm white \* \* \* varieties are being produced. GIPSA recognizes that if more hard endosperm varieties are released into the marketplace in the future, the classification system may become less practical." GIPSA further stated "\* \* \* if clear quality or market distinctions develop \* \* \* it would consider subclasses at a future date". At that time, a minimum visual color line was established, which was subsequently replaced with a new color line in 1999 (Program Bulletin 99-8). In 2001, environmental conditions caused a darker visual appearance in some varieties of hard white, resulting in a GIPSA decision to suspend the color line for classification purposes (Program Notice 01-06). Under Program Notice 01-06, "All Hard White wheat varieties are considered Hard White wheat regardless of color."

On June 4, 2003, GIPSA proposed in the **Federal Register**, (68 FR 33408) to amend the standards for wheat to create subclasses in the class hard white. GIPSA proposed the subclass names of Hard White wheat and Hard Amber

White wheat, for wheat meeting and exceeding (darker than) the interpretive color line, respectively. Further, GIPSA proposed changing the definition of Contrasting Classes for Hard Red Winter wheat and Hard Red Spring wheat such that Hard White wheat is not a contrasting class in these two red wheat classes. Further, due to inquiries about the portion size used to determine Maximum Count Limits of Other Material, GIPSA proposed amending the standard to transmit this information.

#### Comment Review

GIPSA published the proposed rule in the **Federal Register** on June 4, 2003 (68 FR 33408) with a 60-day comment period ending August 4, 2003. GIPSA received four comments during the comment period. One comment was submitted on behalf of the Hard White Wheat Working Group and the Hard White Wheat Advisory Committee (an aggregated wheat industry group comprised of wheat boards, committees, or commissions of the top ten Hard White wheat producing states; large grain merchandisers; not for profit wheat industry groups; and a private wheat breeding company). One comment each was received from the Kansas Wheat Commission, one wheat producer cooperative, and one individual wheat producer.

On the basis of the comments received and other available information, GIPSA is implementing two of the proposed changes to the wheat standards. The following paragraphs address comments received regarding the proposed changes.

##### 1. Subclass Designation

GIPSA received four comments (one aggregated industry comment in support and three comments in opposition) on the proposal to establish subclasses. The aggregated wheat industry comment supported subclasses. This commenter did note that the proposal concerning adding a subclass to the Hard White wheat class was met with a spirited discussion, both pro and con. The commenter (1) supported the establishment of a subclass within the Hard White Wheat class; (2) recommended changing the subclass names to Bright Hard White Wheat for all hard white wheat that is equal to or lighter than the interpretive color line and Hard White Wheat for all hard white wheat that is darker than the interpretive color line, and continue the use of an interpretive color line and (3) recommended the use of an objective test to determine color line rather than a subjective approach.

One comment opposed to establishment of subclasses in Hard White wheat was received from the Kansas Wheat Commission which represents producers responsible for production of more than 50 percent of all Hard White wheat grown in the United States. The comment stated that since Hard White wheat is moving in the marketplace under the current method of grading, establishing a subclass would create a perception that wheat does not meet the established color line is of lower quality, resulting in discounts to producers. The commenter stated that establishing a subclass would create supply problems in Hard White wheat and also objected to the word "Amber" in the subclass name.

Another opposing commenter felt that because the color differences are environmentally induced, and occur sporadically, grain producers and marketers would be damaged by subclasses, vis-a-vis not having product available to sell to the markets they had worked to develop. Another comment opposing the proposed rule predicted "marketing disruption and chaos resulting in economic loss to American wheat producers is the inevitable result whenever Mother Nature gives us a darker colored crop if these arbitrary rule changes are allowed to become law".

Taking into account the lack of consensus among stakeholders, GIPSA believes that creating subclasses in Hard White wheat would not be in the best interest of the industry. There is no market need at this time. Based on the comments received and other available information, GIPSA will not establish subclasses in Hard White wheat. GIPSA will, however, maintain the Hard White wheat color line and, as currently done, continue to certify, upon request, that the sample color exceeds or is lighter than the color line. This provides additional information about sample color to satisfy those customers for whom color is important.

##### 2. Contrasting Classes

GIPSA proposed changing the definition of Contrasting Classes for Hard Red Winter wheat and Hard Red Spring wheat such that Hard White wheat is not a contrasting class in these two red wheat classes. One comment was received from the aggregated industry group in support of the proposal. No comment was received opposing the proposal. Therefore as set forth in the proposal, GIPSA is amending the grain standards to change the definition of contrasting classes in Hard Red Winter wheat and Hard Red

Spring wheat such that Hard White wheat is not a contrasting class but is considered as wheat of other classes. The grade limit will remain unchanged. For kernel identification, Hard White wheat kernels would be determined by visual assessment and would include the dark colored, amber, white wheat kernels, per the Grain Inspection Handbook, Book II, Chapter 13, Section 13.26. In the case where samples challenge the normal visual inspection process, the alkali test would be utilized to determine kernel color (FGIS-Program Notice 01-07).

3. Sample Size

GIPSA proposed to amend the wheat standard to specify the amount of wheat upon which sample grade factor determinations are made. No comment was received either supporting or opposing the proposal. Earlier versions of the standard contained this information and GIPSA believes the standard should transmit this

information. Therefore, as set forth in the proposal, GIPSA will amend the wheat standards to include this information.

Final Action

On the basis of these comments and other available information, GIPSA has decided to revise the wheat standards as proposed with the exception of establishing subclasses in Hard White wheat. This final rule is effective on May 1, 2006, the beginning of the 2006 wheat harvest, and will facilitate domestic and export marketing of wheat.

List of Subjects in 7 CFR Part 810

Export, grain.  
 n For reasons set out in the preamble, 7 CFR Part 810 is amended as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

n 1. The authority citation for Part 810 continues to read as follows:

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

n 2. Section 810.2202 is amended by revising paragraph (b) (1) to read as follows:

810.2202 Definition of other terms.

\* \* \* \* \*  
 (b) \* \* \*

(1) Durum wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.

\* \* \* \* \*

n 3. Section 810.2204 is amended by revising paragraph (a) to read as follows:

§ 810.2204 Grades and grade requirements for wheat.

(a) Grades and grade requirements for all classes of wheat, except Mixed wheat.

GRADES AND GRADE REQUIREMENTS

Grading factors	Grades U.S. Nos.				
	1	2	3	4	5
<b>Minimum pound limits of:</b>					
Test weight per bushel:					
Hard Red Spring wheat or White Club wheat .....	58.0	57.0	55.0	53.0	50.0
All other classes and subclasses .....	60.0	58.0	56.0	54.0	51.0
<b>Maximum percent limits of:</b>					
Defects:					
Damaged kernels:					
Heat (part of total) .....	0.2	0.2	0.5	1.0	3.0
Total .....	2.0	4.0	7.0	10.0	15.0
Foreign material .....	0.4	0.7	1.3	3.0	5.0
Shrunken and broken kernels .....	3.0	5.0	8.0	12.0	20.0
Total <sup>1</sup> .....	3.0	5.0	8.0	12.0	20.0
Wheat of other classes: <sup>2</sup>					
Contrasting classes .....	1.0	2.0	3.0	10.0	10.0
Total <sup>3</sup> .....	3.0	5.0	10.0	10.0	10.0
Stones .....	0.1	0.1	0.1	0.1	0.1
<b>Maximum count limits of:</b>					
Other material in one kilogram:					
Animal filth .....	1	1	1	1	1
Castor beans .....	1	1	1	1	1
Crotalaria seeds .....	2	2	2	2	2
Glass .....	0	0	0	0	0
Stones .....	3	3	3	3	3
Unknown foreign substances .....	3	3	3	3	3
Total <sup>4</sup> .....	4	4	4	4	4
Insect-damaged kernels in 100 grams .....	31	31	31	31	31

U.S. Sample grade is Wheat that:

GRADES AND GRADE REQUIREMENTS—Continued

Grading factors	Grades U.S. Nos.				
	1	2	3	4	5

- (a) Does not meet the requirements for U.S. Nos. 1, 2, 3, 4, or 5;
- (b) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or
- (c) Is heating or of distinctly low quality.

<sup>1</sup> Includes damaged kernels (total), foreign material, shrunken and broken kernels.  
<sup>2</sup> Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.  
<sup>3</sup> Includes contrasting classes.  
<sup>4</sup> Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, or unknown foreign substance.

\* \* \* \* \*

Dated: February 15, 2005.

**David R. Shipman,**  
*Deputy Administrator, Grain Inspection,  
 Packers and Stockyards Administration.*  
 [FR Doc. 05-3140 Filed 2-17-05; 8:45 am]  
 BILLING CODE 3410-EN-P

**DEPARTMENT OF TRANSPORTATION  
 Federal Aviation Administration**

**14 CFR Parts 13 and 14**

**Rules of Practice in FAA Civil Penalty  
 Actions**

**AGENCY:** Federal Aviation  
 Administration (FAA), DOT.  
**ACTION:** Final rule; technical  
 amendment.

**SUMMARY:** The FAA is amending the procedural regulations governing the assessment of civil penalties against persons other than individuals acting as pilots, flight engineers, mechanics or repairmen. The rules establish a clear separation of functions between those agency employees who prosecute civil penalty actions and those who advise the Administrator, acting as FAA decisionmaker, about appeals of decisions by Department of Transportation (DOT) administrative law judges (ALJs). Recent organizational changes in the Office of the Chief Counsel necessitate updating these regulations so they accurately reflect the Office's current structure and division of functions. We are also amending the rules to provide the FAA Civil Penalty Hearing Docket's new address, new instructions on filing of documents, and information about the availability of documents and FAA decisions via the Internet. We are amending the procedural rule governing appeals from initial decisions regarding applications for fees under the Equal Access to Justice Act (EAJA) to reinsert language that was inadvertently omitted during a previous revision.

**DATES:** This rule is effective on February 18, 2005.

**FOR FURTHER INFORMATION CONTACT:**  
 Vicki Leemon, Office of the Chief Counsel, Adjudication Branch, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202/385-8227.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Administrator may impose a civil penalty against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman, after notice and an opportunity for a hearing on the record, for violations cited in 49 U.S.C. 46301(d)(2) or 47531. 49 U.S.C. 46301(d)(7)(A) and 47531. These violations, in general, involve aviation safety issues. Also, under 49 U.S.C. 5123 and 49 CFR 1.47(k), the Administrator may, after notice and an opportunity for a hearing, assess a civil penalty against any person who knowingly violates the Federal hazardous materials transportation law, 49 U.S.C. chapter 51, or any of its implementing regulations.

The rules governing proceedings in these civil penalty cases are set forth in 14 CFR 13.16 and 14 CFR part 13, subpart G. Briefly, under these rules, these proceedings are conducted "in-house" as follows: (1) An "agency attorney" prosecutes a civil penalty case (14 CFR 13.203(a)); (2) a DOT ALJ conducts the hearing and issues an initial decision (14 CFR 13.205); and (3) the Administrator, acting as the FAA decisionmaker, issues a decision resolving any appeal from an initial decision (14 CFR 13.233).

To ensure that this process operates fairly and in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 554(d), the FAA has issued rules requiring a separation of the functions performed by (1) "agency attorneys," who prosecute civil penalty actions, and (2) attorneys who advise the Administrator on appeals from initial decisions. Separating these functions insulates the Administrator from any advice or influence by an FAA

employee engaged in the investigation or prosecution of civil penalty actions. It also insulates the prosecutors from possible influence by the advisers to the Administrator on appeals.

**Changes in Position Titles in the  
 Separation of Functions Rules**

On March 3, 2004, the FAA published Notice 1100.290, announcing the creation of two Deputy Chief Counsel positions: the Deputy Chief Counsel for Policy and Adjudication, and the Deputy Chief Counsel for Operations. As a result, it is no longer accurate to refer only to the "Deputy Chief Counsel" in the rules that provide for the separation of functions in the Chief Counsel's Office, 14 CFR 13.202 (Definition of agency attorney) and 13.203.

To describe accurately the current division of functions within the Chief Counsel's Office, we are revising the rules to add: (1) The Deputy Chief Counsel for Operations to the list of attorneys who prosecute civil penalty actions as specified in 14 CFR 13.202's definition of "agency attorney," and (2) the Deputy Chief Counsel for Policy and Adjudication to 14 CFR 13.203(c)'s list of lawyers who advise the Administrator regarding the resolution of appeals. We are also revising 14 CFR 13.202 to add the Deputy Chief Counsel for Policy and Adjudication to the list of attorneys who may not prosecute civil penalty actions.

Under the current organization of the Chief Counsel's Office, the Deputy Chief Counsel for Policy and Adjudication supervises the Assistant Chief Counsel for Regulations. The Assistant Chief Counsel for Regulations and members of her staff occasionally provide advice to agency attorneys, but are otherwise uninvolved in prosecuting civil penalty cases. The Deputy Chief Counsel for Policy and Adjudication does not and will not supervise the Assistant Chief Counsel for Regulations or any member of her staff in connection with providing advice to an agency attorney engaged in the prosecution of any civil penalty case. The Assistant Chief Counsel for