

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 7 CFR Part 800

RIN 0580-AA87

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

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending regulations under the United States Grain Standards Act (USGSA) to waive the mandatory inspection and weighing requirements of the Act for high quality specialty grains exported in containers. GIPSA is establishing this waiver to facilitate the marketing of high quality specialty grains exported in containers. This action is consistent with the objectives of the USGSA. This action will facilitate the continuing development of the high quality specialty export market. This waiver will be in effect for a maximum of 5 years, and if after this time period GIPSA determines that this waiver continues to advance the objectives of the USGSA, GIPSA will consider making this waiver permanent.

**DATES:** Effective April 29, 2005; comments received by June 27, 2005 will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection and recordkeeping requirements burden must be received by June 27, 2005.

**ADDRESSES:** We invite you to submit comments on this interim final rule. You may submit comments by any of the following methods:

- *E-Mail:* Send comments via electronic mail to [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov).
- *Mail:* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604.
- *Fax:* Send comments by facsimile transmission to (202) 690-2755.
- *Hand Deliver or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604.
- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

• Please send comments regarding the information collection and recordkeeping requirements via electronic mail to:

*OIRA.Submission@OMB.EOP.GOV* and to GIPSA at: [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov).

*Instructions:* All comments should make reference to the date and page number of this issue of the **Federal Register**.

*Read Comments:* All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** John Sharpe, Director, Compliance Division, at his e-mail address:

[John.R.Sharpe@usda.gov](mailto:John.R.Sharpe@usda.gov) or telephone him at (202) 720-8262.

#### SUPPLEMENTARY INFORMATION:

##### Background

The USGSA authorizes the Department 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 section 7 CFR part 800.18 of the regulations. 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, for exporters and individual elevator operators shipping less than 15,000 metric tons during the current and preceding calendar year, and when services is not available or in emergency situations.

This interim final rule provides a waiver for high quality specialty grains exported in containers.

Transactions involving high quality specialty grains are typically made between dedicated buyers and sellers who have ongoing business relationships and fully understand each other's specific needs and capabilities. Containerization allows the producer or processor to extend control of the product from the field to customer, rather than fields to local terminal elevators or export port elevators where commingling can occur.

The high quality specialty grain market has evolved for the past years as U.S. shippers have catered to the specific needs of buyers around the world. Frequently, sales are for small volumes of grain meeting strict commercial contract specifications for quality, production, handling, and packaging. Seller and buyers in this specialty market typically refer to these grains as "food quality" grain. The contractual specifications may require a single or limited number of seed varieties; may require production in accordance with specific agronomic practices; may specify certain harvesting and handling practices; may require cleaning and sorting of the grain to remove most foreign material and immature or damaged seeds; and frequently call for some degree of identity preservation from point of origin to final buyer. The quality management processes employed by participants of the high quality specialty grain market far exceed those practiced by the typical commodity grain market where commingling and blending of different quality grains is an inherent part of the marketing process. In return, the market value of these high quality specialty grains is substantially higher than commodity grain.

Traditionally, shippers of high quality specialty grain in containers handled less than 15,000 metric tons of grain annually and thereby, were exempt from mandatory inspection and weighing in accordance with Section 800.18(b) of the regulations under the USGSA. However, as the high quality specialty grain market has grown volumes have begun to exceed the 15,000 metric ton waiver threshold requiring shippers to have their high quality specialty grains inspected and weighed in accordance with the Act. 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 bulk commodity exports. Furthermore, the contract quality specifications for the high quality specialty grains far exceed the Official United States Standards for Grain applied during the mandatory inspection and weighing process. GIPSA is therefore waiving high quality specialty grain exported in containers from the mandatory export inspection and weighing requirements. Accordingly, this action will promote the marketing of grain of high quality and will not impair the objectives of the USGSA.

High quality specialty grain for the purposes of this waiver is grain sold under contract terms that (1) specify quality better than the grade limits for U.S. No. 1 grain, or (2) specify "organic" as defined by the regulations 7 CFR part 205 under the Organic Foods Production Act of 1990, as amended. The following are examples of what GIPSA would consider to be high quality specialty grains: Corn with broken corn limits of 0.5 percent or less; post-harvest, pesticide-free corn; and organically grown soybeans. The following would not meet GIPSA's definition of high quality specialty grain: U.S. No. 2 or better Yellow soybeans grown in a particular geographic area; U.S. No. 2 or better Soft White wheat with maximum 10.5 percent protein and minimum Falling Number of 300 seconds; and non-genetically modified corn.

This waiver will not prevent the buyer or seller from requesting and receiving official inspection and weighing service should they desire such services. Moreover, this waiver will be in effect for a maximum of 5 years and if after this time period GIPSA determines that this waiver continues to advance the objectives of the USGSA, GIPSA will consider making this waiver permanent. GIPSA will monitor this waiver of official inspection and weighing requirements; however, if at any time, GIPSA determines that this waiver is not consistent with the objectives of the Act, GIPSA will remove this waiver.

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** because: (1) The relieving of 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 (2) this rule provides a 60-day opportunity for comment; and all written comments timely received will be considered prior to finalization of the rule.

#### **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. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those that employ fewer than 500 employees. This action would effectively eliminate the cost impact on small businesses that would otherwise have to pay for onsite inspection and weighing.

In addition, pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), GIPSA has considered the economic impact of this interim final rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities because it is an elimination of burden. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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 posed this situation to its Advisory Committee on November 16, 2004. GIPSA's Advisory Committee is composed of members representing producers, handlers, processors, and exporters. The Advisory Committee resolved that GIPSA should continue to enforce the mandatory export inspection and weighing requirements for commodity grains and establish a waiver for high quality specialty grains exported in containers. GIPSA believes that 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.

Various methods were considered to address the challenges facing U.S. high quality specialty grain producers, marketers, processors, and handlers exporting via containers from global competition. GIPSA looked at requiring relaxed inspection and weighing requirements for these grains and decided that they would still place an

undue burden on these types of shipments.

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

This rule poses minimal additional cost to exporters as explained below in the Paperwork Reduction Act section of this rule. However, this rule eliminates the cost of the mandatory export inspection and weighing requirements for high quality specialty grain exported in containers. GIPSA estimates this cost to be at \$1.80 per metric ton of grain exported and GIPSA believes that the benefits of this rule outweighs the cost.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this rule announces that GIPSA has requested emergency approval for a new information collection request that waives high quality specialty grain exported in containers from the mandatory inspection and weighing requirements outlined in the United States Grain Standards Act. The emergency clearance is necessary because insufficient time is available to follow normal clearance procedures. OMB has approved this emergency information collection request under OMB Control No. 0580-0022.

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

*Title:* Export Inspection and Weighing Waiver for High Quality Specialty Grains Transported in Containers.

*OMB Number:* 0580-0022.

*Type of Request:* New.

*Abstract:* GIPSA is amending regulations under the United States Grain Standards Act (USGSA) to waive the mandatory inspection and weighing requirements for high quality specialty grains exported in containers. GIPSA is establishing this waiver to facilitate the marketing of high quality specialty grains exported in containers. This action is consistent with the objectives of the USGSA and will facilitate the continuing development of the high quality specialty export market.

Traditionally, shippers of high quality specialty grain in containers handled less than 15,000 metric tons of grain

annually and thereby, were exempt from mandatory inspection and weighing in accordance with Section 800.18(b) of the regulations under the USGSA. However, as the high quality specialty grain market has grown volumes have begun to exceed the 15,000 metric ton threshold requiring shippers to have their high quality specialty grains inspected and weighed in accordance with the USGSA.

To ensure that exporters of high quality specialty grains comply with this waiver, GIPSA is asking these exporters to maintain records generated during their normal course of business that pertain to these shipments and make these documents available to the GIPSA upon request, for review or copying purposes. GIPSA is not requiring exporters of high quality specialty grains to complete or submit new Federal government record(s), form(s), or report(s). GIPSA is requesting exporters to maintain and make available documentation that fully and correctly disclose transactions concerning high quality specialty grain exported in containers. These records shall be maintained for a period of 3 years. This information collection requirement in this request is essential to ensure that exporters who ship high quality specialty grain in containers comply with the waiver.

The Paperwork Reduction Act requires the Agency to measure recordkeeping burden. Under this interim final rule, exporters must maintain records generated during the normal course of business. Experience has shown that the U.S. grain industry maintains grain contracts which specify quality parameters agreed to by buyers and sellers of grain. GIPSA believes that grain contracts would provide sufficient information to determine if exporters of high quality specialty grain are complying with the waiver. GIPSA made estimates regarding the number of entities who would likely export high quality specialty grain. Because GIPSA has no basis to determine the number of prospective exporters of high quality specialty grain, GIPSA drew upon its oversight experience of the U.S. grain industry and believes that the overall estimates presented in this interim final rule are accurate. GIPSA estimates that approximately 80 organizations will export high quality specialty grain in containers. GIPSA estimates that the time required for each exporter to maintain and make available contractual information in a manner consistent with this rule is an average of 5-hours per year at \$5.50 per hour for a total annual burden of \$27.50 per exporter. Assuming that the estimated 80

exporters of high quality specialty grain in containers provide GIPSA's this contractual information, the total annual burden is estimated to be \$2,200.

#### (1) Grain Contracts

*Estimate of Burden:* Public burden for maintaining contract information is estimated to average 5.0 hours per exporter.

*Respondents:* Exporters of high quality specialty grain in containers.

*Estimated Number of Respondents:* 80.

*Estimated Number of Respondents per Request:* 1.

*Estimated Total Burden on Respondents:* 400 hours.

*Estimated Total Cost:* \$2,200.

Comments are invited on: (1) Whether maintaining and providing contractual information is necessary to ensure compliance with the waiver; (2) The accuracy of the Agency's burden estimates for respondents to maintain and provide contractual information including the validity of the methodology and assumptions used; and (3) Ways to minimize burden of maintaining and providing contractual information on those respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Please send comments regarding the information collection and recordkeeping requirements via electronic mail to:

*OIRA.Submission@OMB.EOP.GOV.* In addition, please send GIPSA comments regarding the information collection and recordkeeping requirements to: *comments.gipsa@usda.gov.*

#### 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. This interim final rule has been reviewed under this Executive Order. This interim 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 interim final rule will not preempt any State or local laws, regulations, or policies unless they present 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 final rule.

#### Action

To provide waivers from official inspection and Class X weighing for exporters of high quality specialty grains shipped in containers, GIPSA, under the United States Grain Standards Act, is:

1. Revising section 800.0 to include a definition of high quality specialty grains.

2. Revising section 800.18 to include a new paragraph (b)(8) to exempt high quality specialty grain shipped in containers from mandatory export inspection and weighing requirements.

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

■ 2. Section 800.0 is amended as follows:

■ a. Paragraphs (b)(44) through (106) are redesignated as (b)(45) through (107), respectively.

■ b. New paragraph (b)(44) is added to read as follows:

#### § 800.0 Meaning of terms.

\* \* \* \* \*

(b) \* \* \*

(44) High Quality Specialty Grain. Grain sold under contract terms that specify quality better than the grade limits for U.S. No. 1 grain, or specify "organic" as defined by 7 CFR Part 205. This definition expires July 31, 2010.

\* \* \* \* \*

■ 3. Section 800.18 is amended by adding a new paragraph (b)(8) 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 shall be made available to the Service upon request, for review or copying. These records shall be maintained for a

period of 3 years. This waiver expires July 31, 2010.

David R. Shipman,

*Acting Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 05-8519 Filed 4-27-05; 8:45 am]

BILLING CODE 3410-EN-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2004-19891; Directorate Identifier 2004-NM-136-AD; Amendment 39-14006; AD 2005-05-17]

RIN 2120-AA64

#### **Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes Modified in Accordance With Supplemental Type Certificate (STC) ST00127BO**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; correction.

**SUMMARY:** The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on March 14, 2005 (70 FR 12401). The error resulted in specifying a non-existing part number. This AD applies to Boeing Model 737-300, -400, and -500 series airplanes modified in accordance with STC ST00127BO. This AD requires installation of bonding straps to the safe side harnesses of the digital transient suppression device of the fuel quantity indicating system.

**DATES:** Effective April 18, 2005.

**ADDRESSES:** The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Washington, DC. This docket number is FAA-2004-19891; the directorate identifier for this docket is 2004-NM-136-AD.

**FOR FURTHER INFORMATION CONTACT:**

Richard Spencer, Aerospace Engineer, Boston Aircraft Certification Office, ANE-150, FAA, Engine and Propeller Directorate, 12 New England Executive

Park, Burlington, Massachusetts 01803; telephone (781) 238-7184; fax (781) 238-7170.

**SUPPLEMENTARY INFORMATION:** On March 2, 2005, the FAA issued AD 2005-05-17, amendment 39-14006 (70 FR 12401, March 14, 2005), for Boeing Model 737-300, -400, and -500 series airplanes modified in accordance with Supplemental Type Certificate (STC) ST00127BO. The AD requires installation of bonding straps to the safe side harnesses of the digital transient suppression device of the fuel quantity indicating system.

As published, paragraph (g) of the AD specifies that, "As of the effective date of this AD, no person may install a safe side harness, Part Number 50357-01XX, on any airplane, unless that safe side harness has been modified in accordance with Goodrich Service Bulletin 737-300766-28-2, Revision 2, dated July 28, 2004." We have determined that 50357-01XX is not an existing part number, and that the correct part number is 50367-01XX.

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains April 18, 2005.

#### **§ 39.13 [Corrected]**

In the **Federal Register** of March 14, 2005, on page 12402, in the first column, paragraph (g) of AD 2005-05-17 is corrected to read as follows:

\* \* \* \* \*

(g) As of the effective date of this AD, no person may install a safe side harness, Part Number 50367-01XX, on any airplane, unless that safe side harness has been modified in accordance with Goodrich Service Bulletin 737-300766-28-2, Revision 2, dated July 28, 2004.

\* \* \* \* \*

Issued in Renton, Washington, on April 19, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05-8402 Filed 4-27-05; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001-NM-293-AD; Amendment 39-14072; AD 2005-09-04]

RIN 2120-AA64

#### **Airworthiness Directives; McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), MD-88, and MD-90-30 airplanes. The existing AD currently requires repetitive inspections to detect cracking of the main landing gear (MLG) shock strut pistons, and replacement of a cracked piston with a new or serviceable part. This amendment removes certain airplanes but requires that the existing inspections, and corrective actions if necessary, be accomplished on additional MLG shock strut pistons. This amendment also requires replacing the MLG shock strut pistons with new improved parts, which would terminate the repetitive inspections. The actions specified by this AD are intended to prevent fatigue cracking of the MLG pistons, which could result in failure of the pistons and consequent damage to the airplane structure or injury to airplane occupants. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 2, 2005.

The incorporation by reference of Boeing Alert Service Bulletin MD80-32A308, Revision 04, dated June 12, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of June 2, 2005.

The incorporation by reference of Boeing Service Bulletin MD80-32-309, Revision 01, dated April 25, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 20, 2002 (67 FR 34823, May 16, 2002).

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD80-32A308, dated March 5, 1998; and McDonnell Douglas Alert Service Bulletin MD80-32A308, Revision 01, dated May 12, 1998; as listed in the regulations; was approved