

**PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)**

1. The authority citation for 7 CFR part 54 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

2. Section 54.27 is amended by:

A. Removing in paragraph (a), “\$64” and adding “\$71” in its place, removing “\$70” and adding “\$78” in its place, and removing “\$110” and adding “\$122” in its place.

B. Removing in paragraph (b), “\$55” and adding “\$61” in its place, removing “\$70” and adding “\$78” in its place, and removing “\$110” and adding “\$122” in its place.

Dated: March 23, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE**

**Grain Inspection, Packers and Stockyards Administration**

**7 CFR Parts 800 and 810**

**RIN 0580–AA91**

**United States Standards for Sorghum**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) proposes to revise the United States Standards for Sorghum to amend the definitions of the classes Sorghum, White sorghum, and Tannin sorghum, and to amend the definition of nongrain sorghum. The proposal also recommends amendments to the grade limits for broken kernels and foreign material (BNFM), and the subfactor foreign material (FM). Additionally, GIPSA proposes to insert a total count limit for other material into the standards and will revise the method of certifying test weight (TW). GIPSA further proposes to change the inspection plan tolerances for BNFM and FM. These proposed changes will help to facilitate the marketing of sorghum.

**DATES:** Comments must be received on or before May 30, 2006.

**ADDRESSES:** We invite you to submit comments on this proposed 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 Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647, Washington, DC 20250–3604.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**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:**

Patrick McCluskey, telephone (202) 720–4684 at GIPSA, USDA, Room 2429 North/South Building, 1400 Independence Avenue, SW., Washington, DC, 20250–3630; Fax Number (202) 720–1015.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

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

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act (USGSA) 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 proposed 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 proposed 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 and evaluate alternatives that would accomplish the objectives of the rule without unduly

burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action.

GIPSA has determined that this proposed 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 USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA and delegated states at 54 export elevators (including four floating elevators). 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. Most users of the official inspection and weighing services, and these entities that perform these services, do not meet the regulations for small entities. Further, the regulations are applied equally to all entities. In addition to GIPSA, there are 58 official agencies that perform official services under the United States Grain Standards Act, and most of these entities do not meet the requirements for small entities. GIPSA is proposing to amend the sorghum standards to amend the definitions of the classes Sorghum, White sorghum, and Tannin sorghum, and to amend the definition of nongrain sorghum. The proposal also recommends amendments to the grade limits of BNFM, to the grade limits of FM, and the associated inspection plan tolerances. GIPSA further proposes to insert a total count limit for other material into the sorghum standards and will revise the method of certifying TW. These proposed changes will help to facilitate the marketing of sorghum.

The U.S. sorghum industry, including producers (approximately 40,000 (USDA–2002 Census of Agriculture)), handlers, processors, and merchandisers are the primary users of the U.S. Standards for Sorghum and utilize the official standards as a common trading language to market grain sorghum. 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 92 registrants who account for practically 100 percent of U.S. sorghum exports, which for fiscal year (FY) 2004 totaled approximately 2,926,726 metric tons (MT). While most of the 92 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 the Office of Management and Budget (OMB) Number 0580-0013. No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, no further OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

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

Grain sorghum (*Sorghum bicolor* (L.) Moench, trivially: milo, sorghum) is a cereal crop of African origin, whose kernels are used in both human and animal food, as well as industrial products. In the sorghum standards, sorghum is defined as "Grain that, before the removal of dockage, consists of 50 percent or more of whole kernels of sorghum (*Sorghum bicolor* (L.) Moench) excluding nongrain sorghum and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act." Grain sorghum usage as animal feed is seen primarily in the United States and Mexico, while sorghum use in human food is global: porridge, flatbread, and beer in Africa; Maotai (distilled spirits) in China/Taiwan; flatbread in the Asian sub-continent; wheat flour replacement for Celiac disease patients. Industrial uses of grain sorghum include ethanol production for fuel.

In the United States, grain sorghum production has decreased dramatically, dropping from over 18 million planted acres in 1983 to an estimated 7 million acres in 2005 (USDA-NASS estimate June 30, 2005). These acres have been largely replaced with corn and cotton. The majority of grain sorghum is produced in the southern Great Plains of the United States. Kansas and Texas collectively accounted for 69 percent

and 76 percent of production for the harvests of 2003 and 2004 respectively, while Nebraska accounted for an additional 8 percent of production in each year (USDA-NASS). For both the 2002/2003 and 2003/2004 marketing years, the leading importers of United States sorghum were Mexico, Japan, Israel, and the European Union.

The United States Standards for Sorghum were established December 1, 1924, and have been amended or revised numerous times since then, most recently in 1993. In August 1998, GIPSA conducted a review of the sorghum standards (63 FR 43641). No changes to the standards were proposed as a result of that action. On September 24, 2003, GIPSA was asked by the National Sorghum Producers (previously known as the National Grain Sorghum Producers) to initiate a review of the sorghum standards. Accordingly, on December 17, 2003, GIPSA published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** (68 FR 70201) requesting views and comments on the sorghum standards.

GIPSA received 35 comments to the ANPR from sorghum market participants including producers, sorghum market development groups, and exporters. After the ANPR comment period ended, there were further discussions with the industry, including a recommendation to reduce the test weight minimum for U.S. No. 1 sorghum from 57 to 56 pounds per bushel. Considering the comments to the ANPR, and other available information, several specific issues emerged in connection with revising the sorghum standards. The issues are (1) sorghum class definitions, (2) nongrain sorghum definition, (3) structure and grade limits in BNF, FM, and Damaged Kernels Total (DKT), (4) definitions of heat damaged kernels and damaged kernels, (5) TW certification and (6) other material count limits.

Based on comments received and other available information, GIPSA has decided to propose amendments to the United States Standards for Sorghum to help facilitate the marketing of sorghum.

#### 1. Sorghum Class Definitions

Sorghum has four classes: Sorghum, Tannin sorghum, White sorghum, and Mixed sorghum. The definition of three of the classes, Sorghum, Tannin sorghum, and White sorghum, refer to tannin level in a qualitative manner (*i.e.*, as being either low or high in tannin content). Numerous commenters specifically cited the phrase "low in tannin content" in the class definition of Sorghum and White sorghum,

maintaining that references to tannin content do not reflect current science and understanding of sorghum genetics and impart a negative connotation with regard to sorghum quality, which hampers market development. These commenters stated that nearly all sorghum hybrids grown for grain do not contain tannins, stating that over the last approximately 30 years, the understanding of tannin genetics deepened such that sorghum breeders produced varieties essentially devoid of tannins. GIPSA was asked to define Sorghum and White sorghum based on the absence of tannin compounds.

Tannins are considered both nutritional and anti-nutritional, depending on the concentration and target organism. Some level of tannin ingestion can impede weight gain in animals, by making certain amino acids metabolically unavailable and inhibiting the activity of certain enzymes. Alternately, tannins have antioxidant properties, so may be of economic interest.

A manuscript published in "*Phytochemistry*" reported that 99 percent of U.S. sorghum hybrids are tannin-free. Tannins are phenolic compounds which derive from the presence of a pigmented testa layer (a.k.a. 'subcoat'), controlled by two genes known as B1 and B2. When both of these genes are dominant, the caryopsis (kernel) develops a pigmented testa. The testa, located between the aluerone cells and endocarp cells, derives from layers of cells in close proximity which have collapsed, forming one layer several cells thick. Because of sorghum hybrid improvement programs, the genes for a pigmented testa are recessive in almost all commercial grain sorghum hybrids, thus, a pigmented testa does not form.

GIPSA considers the term "absence of tannin compounds" to have a precise meaning, *i.e.*, containing zero tannin content. The industry claim of "essentially devoid of tannins" anticipates the possibility of a small amount of tannin, thus GIPSA does not consider "tannin free" acceptable for defining the classes of sorghum. However, GIPSA will propose to amend the definitions of Sorghum, Tannin sorghum, and White sorghum based on the absence or presence of a pigmented testa.

#### 2. Nongrain Sorghum Definition

Nongrain sorghum is defined as "Seeds of broomcorn, Johnson-grass, *Sorghum alnum* Parodi, sorghum-sudangrass hybrids, sorggrass, sudangrass, and sweet sorghum (*sorgo*)". The relevance of nongrain

sorghum is that it counts as foreign material. GIPSA received comments regarding the definition of nongrain sorghum, specifically asking GIPSA to remove certain sorghum species named as nongrain sorghum, specifically, sorgrass, sorghum-sudangrass hybrids, and sweet sorghum (*sorgo*). A commenter stated that sorgrass is nearly extinct in the United States, thus is no longer relevant to the sorghum production situation. GIPSA believes this has merit and proposes to remove sorgrass from the definition of nongrain sorghum. Although GIPSA is proposing to remove sorgrass from the definition of nongrain sorghum, it would function as foreign material if discovered in a sample.

The same commenter also stated that sweet sorghum was grown in such small quantity as to be non-problematic with regard to commingling with grain sorghum. In further discussions, sweet sorghum producers (who grow this crop for molasses production) expressed an opposite opinion. They recommended against removing sweet sorghum from the definition of nongrain sorghum, because they want it well understood that their crop is nongrain sorghum. As a result, GIPSA will not remove sweet sorghum from the definition of nongrain sorghum.

Sorghum-sudangrass hybrids (botanically, *Sorghum bicolor* (L.) Moench) are grown for forage, are very unlikely to be harvested for grain due to plant height, and may or may not produce kernels which appear (and function) like grain sorghum. Depending on the genetics, some kernels appear to meet the criteria for grain sorghum and should be graded as such, while others exhibit characteristics of forage type kernels (with respect to kernel morphology, tannin presence (hence, a pigmented testa) and glume adherence), thus should be counted as nongrain sorghum. If GIPSA removes sorghum-sudangrass hybrids from the definition of nongrain sorghum, all sorghum-sudangrass hybrids would be classified as grain sorghum, including those kernels having forage-type characteristics (and potentially containing a pigmented testa and/or some level of tannin). Kernels of sorghum-sudangrass hybrids which exhibit morphological traits consistent with grain sorghum should not be excluded from the definition of grain sorghum. Accordingly, GIPSA believes the definition of nongrain sorghum should be revised such that only kernels of sorghum-sudangrass hybrids with an appearance atypical of grain sorghum, meaning kernels which are morphologically consistent with those

from a forage-type plant, should be considered nongrain sorghum.

### 3. Structure and Grade Limits in Broken Kernels and Foreign Material, Foreign Material and Damaged Kernels Total

GIPSA received comments expressing opposing viewpoints, regarding DKT, BNFM, and FM. Some comments favored loosening grade limits for BNFM and dropping FM as a subfactor. Others favored tightening the grade limits for DKT and BNFM, such that the aggregate of these factors would be equivalent to the aggregate of the DKT and Broken Corn and Foreign Material (BCFM) grade limits in the U.S. Standards for Corn.

FM was added as a subfactor of BNFM in the most recent amendment of the sorghum standards (effective date June 1, 1993; 57 FR 58967), based on the Grain Quality Improvement Act of 1986 (Pub. L. 99-641, Title III; 7 U.S.C. 76) and a recommendation of the Grain Quality Workshop. Prior to 1993, FM could have been 100 percent of the BNFM content. Inspection data for exports from 2002-2005 indicate an FM average of 1.1 percent, lower than the grade limit of 1.5 percent for U.S. No. 1 sorghum.

Analysis of official export inspection data for sorghum from 2002-2005 indicated an overall BNFM average of 3.9 percent (lower than the BNFM grade limit of 4.0 percent for U.S. No. 1 sorghum) thus averaging U.S. No. 1 sorghum, based on BNFM. Official inspection data for export yellow corn during the same period indicated an overall BCFM average of 2.8 percent (over the BCFM grade limit of 2.0 percent U.S. No. 1 corn) thus averaging U.S. No. 2 Yellow Corn, based on BCFM. Sorghum received a higher average grade than corn during the period covered by the data, based on the factors BNFM and BCFM.

Tightening the BNFM grade limits to match the tighter BCFM grade limits for corn would result in grade deflation. Using the export inspection data cited above, more than ninety percent of the sorghum grading U.S. No. 2 or better under the current BNFM grade limits, would receive a grade of U.S. No. 3 or 4, if the corn BCFM grade limits were utilized.

GIPSA examined export inspection data for the period 2001 through 2004 (the last three year period for which this data is available), to determine the rate at which sorghum failed to meet inspection loading plan requirements, based on the factor BNFM. BNFM exceeded inspection loading plan requirements for BNFM at a 0.4 percent rate, whereas corn failed to meet

inspection loading plan requirements for BCFM at a 3.0 percent rate. Accordingly, the BNFM grade limits in the sorghum standards are not overly restrictive. Moreover, the grade limits for BNFM and FM can be tightened somewhat without causing grade deflation.

A review of the Agency's official grain inspection data has shown that the average BNFM and FM values are within the U.S. No. 1 grade limits. GIPSA concludes that the grade limits for BNFM and FM should be revised to better reflect the quality of sorghum moving through the marketplace, *i.e.*, tighter grade limits would better reflect sorghum quality in the market place.

In Table 1, GIPSA data show that sorghum moving through the U.S. marketing system on truck, rail and barge, and export, have average BNFM and FM levels which are within the U.S. No. 1 grade limits. Table 2 shows the cumulative distribution of sorghum at grades 1, 2, 3, and 4 for different shipment modes, for the factors BNFM and FM. Virtually all sorghum moving in the marketplace receives a grade of U.S. No. 2 or better regardless of where in the value chain the sorghum is inspected.

Based on a review of the comments, GIPSA data, and other available information, GIPSA is proposing to reduce the BNFM and FM grade limits. GIPSA proposes to reduce the BNFM grades limits for U.S. Nos. 1, 2, 3, and 4 from 4.0, 7.0, 10.0, and 13.0 percent to 3.0, 6.0, 8.0, and 10.0 percent, respectively. For FM, GIPSA proposes to reduce the grade limits for U.S. Nos. 1, 2, 3, and 4 from 1.5, 2.5, 3.5, and 4.5 percent to 1.0, 2.0, 3.0, and 4.0, respectively. Table 3 shows the effect of this change on the cumulative distribution of sorghum available at grades 1 through 4. There will be minimal impact throughout the marketing system for grades 2, 3 and 4. GIPSA projects that some sorghum currently grading U.S. No.1 will receive a grade of U.S. No.2 under the proposed BNFM and FM grade limits. Because virtually all sorghum inspected will continue to receive a grade of U.S. No. 1 or 2, there will be minimal impact on the amount of sorghum available for trade at the common market standard, *i.e.*, U.S. No. 2 or better. GIPSA believes these changes will better reflect, and improve, the quality of sorghum moving through the marketplace.

The grade limit for DKT in sorghum is presently tighter at U.S. No. 1 than for corn (2.0 percent vs. 3.0 percent respectively) and equal at U.S. No. 2 (5.0 percent). For the period 2002 through 2005, the average of DKT in

export sorghum was 1.6 percent (compared to the U.S. No. 1 grade limit of 2.0 percent). Based on DKT, one hundred percent of the sorghum

inspected at export received a grade of U.S. No. 2 during the period. Accordingly, the DKT grade limits in the sorghum standards are not overly

restrictive, and GIPSA will not propose changes to the grade limits for DKT.

TABLE 1.—FACTOR AVERAGE (%) BY SHIPMENT TYPE

| Shipment type                 | BNFM | FM  |
|-------------------------------|------|-----|
| Truck <sup>1</sup> .....      | 3.3  | 1.2 |
| Rail <sup>2</sup> .....       | 3.4  | 1.1 |
| Barge <sup>3</sup> .....      | 3.9  | 1.5 |
| ALL EXPORT <sup>4</sup> ..... | 3.9  | 1.1 |
| No. 1 Grade Limit (%) .....   | 4.0  | 1.5 |

<sup>1</sup> National Quality Database, Truck Data (Officially Sampled), 10/02–8/05.

<sup>2</sup> National Quality Database InterMarket Program Rail Data, (Officially Sampled, Domestic/Export), 10/02–8/05.

<sup>3</sup> National Quality Database InterMarket Program Barge Data (Officially Sampled, Origin), 10/02–8/05.

<sup>4</sup> FGIS Export Grain Inspection System (Vessel Only), 10/02–8/05.

TABLE 2.—CUMULATIVE PERCENT AT GRADES, BY FACTOR AND SHIPMENT TYPE

| U.S. grade                    | BNFM |       |       |       | FM   |       |       |       |
|-------------------------------|------|-------|-------|-------|------|-------|-------|-------|
|                               | #1   | #2    | #3    | #4    | #1   | #2    | #3    | #4    |
| Shipment Type:                |      |       |       |       |      |       |       |       |
| Truck .....                   | 73.6 | 94.2  | 98.3  | 99.6  | 77.2 | 88.6  | 92.9  | 96.2  |
| Rail <sup>1</sup> .....       | 80.6 | 99.2  | 99.9  | 100.0 | 85.0 | 97.1  | 98.9  | 99.5  |
| Barge <sup>2</sup> .....      | 66.9 | 95.0  | 99.1  | 100.0 | 68.3 | 89.2  | 95.1  | 98.2  |
| ALL EXPORT <sup>3</sup> ..... | 61.7 | 100.0 | 100.0 | 100.0 | 79.3 | 99.9  | 100.0 | 100.0 |
| Columbia River .....          | 63.3 | 100.0 | 100.0 | 100.0 | 93.2 | 100.0 | 100.0 | 100.0 |
| Mississippi River .....       | 41.1 | 100.0 | 100.0 | 100.0 | 65.3 | 99.6  | 100.0 | 100.0 |
| North Texas .....             | 71.9 | 100.0 | 100.0 | 100.0 | 90.7 | 100.0 | 100.0 | 100.0 |
| South Texas .....             | 96.3 | 100.0 | 100.0 | 100.0 | 94.7 | 100.0 | 100.0 | 100.0 |
| Puget Sound .....             | 76.3 | 100.0 | 100.0 | 100.0 | 79.0 | 100.0 | 100.0 | 100.0 |

<sup>1</sup> National Quality Database, Truck Data (Officially Sampled), 10/02–8/05.

<sup>2</sup> National Quality Database InterMarket Program Rail Data, (Officially Sampled, Domestic/Export), 10/02–8/05.

<sup>3</sup> National Quality Database InterMarket Program Barge Data (Officially Sampled, Origin), 10/02–8/05.

TABLE 3.—EFFECT OF CHANGING GRADE LIMITS ON CUMULATIVE DISTRIBUTION OF SORGHUM BY GRADE

| FACTOR: BNFM                  | #1           |               | #2           |               | #3            |               | #4            |                |
|-------------------------------|--------------|---------------|--------------|---------------|---------------|---------------|---------------|----------------|
|                               | Current 4.0% | Proposed 3.0% | Current 7.0% | Proposed 6.0% | Current 10.0% | Proposed 8.0% | Current 13.0% | Proposed 10/0% |
| Shipment Type:                |              |               |              |               |               |               |               |                |
| Truck .....                   | 73.6         | 56.9          | 94.2         | 89.6          | 98.3          | 95.9          | 99.6          | 98.3           |
| Rail <sup>1</sup> .....       | 80.6         | 41.9          | 99.2         | 98.1          | 99.9          | 99.6          | 100.0         | 99.9           |
| Barge <sup>2</sup> .....      | 66.9         | 31.3          | 95.0         | 91.3          | 99.1          | 97.2          | 100.0         | 99.1           |
| LL EXPORT <sup>3</sup> .....  | 61.7         | 9.7           | 100.0        | 99.8          | 100.0         | 100.0         | 100.0         | 100.0          |
| Columbia River .....          | 63.3         | 20.4          | 100.0        | 100.0         | 100.0         | 100.0         | 100.0         | 100.0          |
| Mississippi River .....       | 41.1         | 4.5           | 100.0        | 99.5          | 100.0         | 100.0         | 100.0         | 100.0          |
| North Texas .....             | 71.9         | 11.0          | 100.0        | 100.0         | 100.0         | 100.0         | 100.0         | 100.0          |
| South Texas .....             | 96.3         | 13.9          | 100.0        | 100.0         | 100.0         | 100.0         | 100.0         | 100.0          |
| Puget Sound .....             | 76.3         | 32.5          | 100.0        | 100.0         | 100.0         | 100.0         | 100.0         | 100.0          |
| FACTOR: FM                    | #1           |               | #2           |               | #3            |               | #4            |                |
|                               | Current 1.5% | Proposed 1.0% | Current 2.5% | Proposed 2.0% | Current 3.5%  | Proposed 3.0% | Current 4.5%  | Proposed 4.0%  |
| Shipment Type:                |              |               |              |               |               |               |               |                |
| Truck .....                   | 77.2         | 69.0          | 88.6         | 84.8          | 92.9          | 91.5          | 96.2          | 95.2           |
| Rail <sup>1</sup> .....       | 85.0         | 62.6          | 97.1         | 93.4          | 98.9          | 98.0          | 99.5          | 99.3           |
| Barge <sup>2</sup> .....      | 68.3         | 41.8          | 89.2         | 81.8          | 95.1          | 92.3          | 98.2          | 96.6           |
| ALL EXPORT <sup>3</sup> ..... | 79.3         | 44.6          | 99.9         | 95.8          | 100.0         | 100.0         | 100.0         | 100.0          |
| Columbia River .....          | 93.2         | 64.2          | 100.0        | 100.0         | 100.0         | 100.0         | 100.0         | 100.0          |
| Mississippi River .....       | 65.3         | 38.8          | 99.6         | 91.5          | 100.0         | 100.0         | 100.0         | 100.0          |
| North Texas .....             | 90.7         | 37.8          | 100.0        | 100.0         | 100.0         | 100.0         | 100.0         | 100.0          |
| South Texas .....             | 94.7         | 78.1          | 100.0        | 97.2          | 100.0         | 100.0         | 100.0         | 100.0          |
| Puget Sound .....             | 79.0         | 40.6          | 100.0        | 100.0         | 100.0         | 100.0         | 100.0         | 100.0          |

<sup>1</sup> National Quality Database, Truck Data (Officially Sampled), 10/02–8/05.

<sup>2</sup> National Quality Database InterMarket Program Rail Data, (Officially Sampled, Domestic/Export), 10/02–8/05.

<sup>3</sup> National Quality Database InterMarket Program Barge Data (Officially Sampled, Origin), 10/02–8/05.

#### 4. Definition of Heat Damaged Kernels and Damaged Kernels

GIPSA received a comment recommending deleting the reference to 'other grains' from the definitions of damaged kernels and heat-damaged kernels to better reflect levels of damage in sorghum kernels. The definition of damaged kernels is: kernels, pieces of sorghum kernels, and other grains that are badly ground damaged, badly weather damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged. The definition of heat-damaged kernels is: kernels, pieces of sorghum kernels, and other grains that are materially discolored and damaged by heat.

Before promulgation of the sorghum standards, addition of damaged, or otherwise out-of-condition grains to sorghum, was not an uncommon practice. In order to limit how much damaged grain was added, 'other grains' was added to the definitions of damaged kernels and heat-damaged kernels in a 1934 amendment of the sorghum standards. 'Other grains' was also included in the grading factor 'Broken kernels, foreign material, and other grains' until 1993, when GIPSA amended the sorghum standards, changing that grading factor to 'Broken kernels and foreign material', and added the subfactor, 'Foreign material', with maximum limits under BNFm for each grade. Separating and identifying the individual components of 'Broken kernels, foreign material, and other grains' was required by the Grain Quality Improvement Act of 1986, which also prohibited the blending of "different kinds of grain except when such blending will result in grain being designated as Mixed grain \* \* \*".

Section 74(b)(3)(D) of the USGSA states " \* \* \* that official United States standards for grain shall \* \* \* provide the framework necessary for markets to establish grain quality improvement incentives." Official inspection data (previously cited) for DKT (which includes damaged other grains) shows the average DKT in export sorghum was 1.6 percent for the period 2002–2005 (within the U.S. No. 1 grade limit of 2.0 percent). This low value suggests that the system is working and further, that the grain handling industry is acting in accordance with the policy of the Congress. Removing 'other grains' from the definitions of damaged kernels and heat damaged kernels could provide disincentives to improving sorghum

quality. Accordingly, GIPSA will not propose to remove the reference to 'other grains' from the definitions of damaged kernels and heat-damaged kernels.

#### 5. Test Weight Certification

In further discussions within the industry, a request was made to lower the test weight grade limit for U.S. No. 1 sorghum from 57 to 56 pounds per bushel. National inspection data show the average TW for the period 2001 through 2004 was well above 57.0 lb/bu. Sorghum market developers have a goal of promoting the high quality of their commodity. GIPSA believes that lowering the TW grade limit would not be consistent with the goal of promoting high quality sorghum, because lower test weight values imply lower quality. Sorghum users have indicated that TW and moisture content are the primary quality factors upon which discounts are based. Therefore, given the importance of TW to users, and the fact that the average TW is usually higher than the current U.S. No. 1 grade limit, GIPSA will not propose to lower the test weight grade limit.

However, GIPSA believes it is appropriate to revise the certification for TW from whole and half pounds, with a fraction of a half pound disregarded, to certification in tenths of a pound, in order to bring TW reporting for sorghum in line with reporting requirements for other factors, such as foreign material and damaged kernels total, in the U.S. Standards for Sorghum. The U.S. Standards for Corn was amended in 1995 to make a similar change (60 FR 61194).

#### 6. Other Material Count Limits

GIPSA received a comment to the ANPR expressing concern over the lack of a maximum count limit on other materials allowed before sorghum would be considered U.S. Sample Grade, as well as the format in which maximum count limits of other material are presented in the standard. Although most of the grains do not have a total limit, wheat and soybeans do have maximum count limits of other materials. In sorghum, 30 pieces of other material are theoretically allowed before becoming U.S. Sample Grade, whereas in wheat and soybeans, totals of 4 and 10, respectively, are permitted before becoming U.S. Sample grade. Since sorghum is used as a food grain in much of the world, these factors should be consistent with other grains used for food. GIPSA proposes to include a total

(combined) maximum count limit of 10 for other material.

The format of the maximum count limits table is the most recent version GIPSA used in revisions of the standards for wheat, soybean and canola and is the format GIPSA will use on future revisions of the standards. Therefore, to maintain consistency with the format to be used in future revisions, GIPSA will not propose a change in the format of the table presenting maximum count limits of other material.

#### Inspection Plan Tolerances

Shiplots, unit trains, and lash barge lots are inspected with a statistically based inspection plan. Inspection tolerances, commonly referred to as Breakpoints, are used to determine acceptable quality. The proposed changes to the sorghum standards require revisions to some breakpoints. Therefore, GIPSA proposes to change the current grade limits and breakpoints for sorghum BNFm and FM which are listed in Table 15 of section 800.86(c)(2).

GIPSA proposes to change the BNFm breakpoints for U.S. Nos. 1, 2, 3, and 4 from 0.3, 0.4, 0.5, and 0.6 to 0.5, 0.6, 0.7, and 0.8, respectively. GIPSA proposes to change the FM breakpoints for U.S. Nos. 1, 2, 3, and 4 from 0.3, 0.4, 0.5, and 0.6 to 0.4, 0.5, 0.6, and 0.7, respectively.

#### Reference

Awika, J. M. and Rooney, L. W. 2004. "Phytochemistry". Vol. 65, pps. 1199–1221.

#### Proposed GIPSA Action

GIPSA is issuing this proposed rule to invite comments and suggestions from all interested persons on how GIPSA can further enhance and best facilitate the marketing of sorghum.

GIPSA proposes to revise § 800.86, Inspection of shiplot, unit train and lash barge grain in single lots, paragraph (c) (2) Table 15 by revising the breakpoints and associated grade limits for U.S. Nos. 1, 2, 3 and 4 BNFm and FM.

GIPSA proposes to revise § 810.102 *Definition of other terms* by revising subparagraph (d), TW per bushel. It is proposed that TW in sorghum be reported to the nearest tenth of a pound per bushel.

GIPSA proposes to revise § 810.1402 *Definition of other terms* by revising subparagraph (c) (1)–(3), to remove tannin content from the definitions of Sorghum, Tannin sorghum, and White sorghum, respectively.

GIPSA proposes to revise § 810.1402 *Definition of other terms* by revising

subparagraph (h) to remove sorgrass from the definition of nongrain sorghum, and to replace sorghum-sudangrass hybrids with "seeds of Sorghum bicolor (L.) Moench that appear atypical of grain sorghum".

GIPSA also proposes to revise § 810.1404 *Grade and grade requirements for sorghum* to reduce the grading limits for BNFM to 3.0, 6.0, 8.0, and 10.0 percent for U.S. Nos. 1, 2, 3, and 4, respectively. GIPSA further proposes to reduce the grading limits for FM to 1.0, 2.0, 3.0, and 4.0 percent for U.S. Nos. 1, 2, 3, and 4, respectively. GIPSA also proposes to revise § 810.1404; to add: "Total:" and the number 10 under 'Maximum count limits of'; and a footnote numbered 3.

Comments, including data, views, and arguments are solicited from interested persons. Pursuant to Section 4(b)(1) of the USGSA, as amended (7 U.S.C. 76(b)(1)), upon request, such information concerning changes to the standards may be presented orally in an informal manner. Also, pursuant to this section, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless, in the judgment of the Secretary, the public health, interest, or safety require that they become effective sooner.

**List of Subjects**

7 CFR Part 800

Administrative practice and procedure, Grain.

7 CFR Part 810

Export, Grain.

For reasons set out in the preamble, 7 CFR parts 800 and 810 are proposed to be 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. In § 800.86(c)(2), table 15 is revised to read as follows:

**§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.**

\* \* \* \* \*  
(c) \* \* \*  
(2) \* \* \*

TABLE 15.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SORGHUM

| Grade                         | Minimum test weight per bushel (pounds) |      | Maximum limits of—     |     |                 |     |                                     |     |                            |     |
|-------------------------------|---|------|------------------------|-----|-----------------|-----|-------------------------------------|-----|----------------------------|-----|
|                               |   |      | Damaged kernels        |     |                 |     | Broken kernels and foreign material |     |                            |     |
|                               |   |      | Heat-damaged (percent) |     | Total (percent) |     | Total (percent)                     |     | Foreign material (percent) |     |
| GL                            | BP                                      | GL   | BP                     | GL  | BP              | GL  | BP                                  | GL  | BP                         |     |
| U.S. No. 1 .....              | 57.0                                    | −0.4 | 0.2                    | 0.1 | 2.0             | 1.1 | 3.0                                 | 0.5 | 1.0                        | 0.4 |
| U.S. No. 2 .....              | 55.0                                    | −0.4 | 0.5                    | 0.4 | 5.0             | 1.8 | 6.0                                 | 0.6 | 2.0                        | 0.5 |
| U.S. No. 3 <sup>1</sup> ..... | 53.0                                    | −0.4 | 1.0                    | 0.5 | 10.0            | 2.3 | 8.0                                 | 0.7 | 3.0                        | 0.6 |
| U.S. No. 4 .....              | 51.0                                    | −0.4 | 3.0                    | 0.8 | 15.0            | 2.8 | 10.0                                | 0.8 | 4.0                        | 0.7 |

<sup>1</sup> Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

\* \* \* \* \*

**PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN**

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.*)

2. Section 810.102 is amended by revising paragraph (d) to read as follows:

**§ 810.1402 810.102 Definition of other terms.**

\* \* \* \* \*

(d) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inches) as determined using an approved device according to procedures prescribed in FGIS instructions. Test weight per bushel in the standards for corn, mixed grain, oats, sorghum, and soybeans is determined on the original sample. Test weight per bushel in the standards for barley, flaxseed, rye, sunflower seed,

triticale, and wheat is determined after mechanically cleaning the original sample. Test weight per bushel is recorded to the nearest tenth pound for corn, rye, sorghum, soybeans, triticale, and wheat. Test weight per bushel for all other grains, if applicable, is recorded in whole and half pounds with a fraction of a half pound disregarded. Test weight per bushel is not an official factor for canola.

\* \* \* \* \*

3. Section 810.1402 is amended by revising paragraphs (c)(1) through (c)(3) and (h) to read as follows:

**§ 810.1402 Definition of other terms.**

\* \* \* \* \*

(c) \* \* \*

(1) *Sorghum.* Sorghum which lacks a pigmented testa (subcoat) and contains less than 98.0 percent White sorghum and not more than 3.0 percent Tannin sorghum. The pericarp color of this class may appear white, yellow, red, pink, orange or bronze.

(2) *Tannin sorghum.* Sorghum which has a pigmented testa (subcoat) and contains not more than 10 percent of kernels without a pigmented testa.

(3) *White sorghum.* Sorghum which lacks a pigmented testa (subcoat) and contains not less than 98.0 percent kernels with a white pericarp, and contains not more than 2.0 percent of sorghum of other classes. This class includes sorghum containing spots that, singly or in combination, cover 25.0 percent or less of the kernel.

\* \* \* \* \*

(h) *Nongrain sorghum.* Seeds of broomcorn, Johnson-grass, Sorghum alnum Parodi, sudangrass, and sweet sorghum (sorgo); and seeds of Sorghum bicolor (L.) Moench that appear atypical of grain sorghum.

\* \* \* \* \*

4. Section 810.1404 is revised to read as follows:

**§ 810.1404 Grades and grade requirements for sorghum.**

| Grading factors                        | Grades U.S. Nos. <sup>1</sup> |      |      |      |
|--|-------------------------------|------|------|------|
|  | 1                             | 2    | 3    | 4    |
| Minimum pound limits of                |                               |      |      |      |
| Test weight per bushel .....           | 57.0                          | 55.0 | 53.0 | 51.0 |
| Maximum percent limits of              |                               |      |      |      |
| Damaged kernels:                       |                               |      |      |      |
| Heat (part of total) .....             | 0.2                           | 0.5  | 1.0  | 3.0  |
| Total .....                            | 2.0                           | 5.0  | 10.0 | 15.0 |
| Broken kernels and foreign material:   |                               |      |      |      |
| Foreign material (part of total) ..... | 1.0                           | 2.0  | 3.0  | 4.0  |
| Total .....                            | 3.0                           | 6.0  | 8.0  | 10.0 |
| Maximum count limits of                |                               |      |      |      |
| Other material:                        |                               |      |      |      |
| Animal filth .....                     | 9                             | 9    | 9    | 9    |
| Castor beans .....                     | 1                             | 1    | 1    | 1    |
| Crotalaria seeds .....                 | 2                             | 2    | 2    | 2    |
| Glass .....                            | 1                             | 1    | 1    | 1    |
| Stones <sup>2</sup> .....              | 7                             | 7    | 7    | 7    |
| Unknown foreign substance .....        | 3                             | 3    | 3    | 3    |
| Cockleburrs .....                      | 7                             | 7    | 7    | 7    |
| Total <sup>3</sup> .....               | 10                            | 10   | 10   | 10   |

U.S. Sample grade is sorghum that:

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

<sup>1</sup> Sorghum which is distinctly discolored shall not grade higher than U.S. No. 3.

<sup>2</sup> Aggregate weight of stones must also exceed 0.2 percent of the sample weight.

<sup>3</sup> Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, unknown foreign substance or cockleburrs.

**James E. Link,**

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 06-2968 Filed 3-28-06; 8:45 am]

BILLING CODE 3410-EN-P

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 7 CFR Parts 800 and 810

RIN 0580-AA90

#### United States Standards for Soybeans

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

**ACTION:** Proposed rule.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) proposes to revise the United States Standards for Soybeans to change the minimum test weight per bushel from a grade determining factor to an informational factor. Even though an informational factor, test weight per bushel will be reported on official certificates unless requested otherwise. GIPSA also proposes to change the

reporting requirements for test weight per bushel in soybeans from whole and half pounds with a fraction of a half pound disregarded to reporting to the nearest tenth of a pound. Additionally, GIPSA proposes to clarify the reporting requirements for test weight in canola. These changes would further help to ensure market-relevant standards and grades and to clarify reporting requirements.

**DATES:** Comments must be received on or before May 30, 2006.

**ADDRESSES:** We invite you to submit comments on this proposed 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 Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647, Washington, DC 20250-3604.

• Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**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:** Marianne Plaus, telephone (202) 690-3460 at GIPSA, USDA, ROOM 2429, 1400 Independence Avenue, SW., Washington, DC, 20250-2429; Fax Number (202) 720-1015.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect.