

**Subpart J—[Reserved]****Title XIII—Business Credit and Assistance; Chapter I—Small Business Administration****PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS**

■ 2. The authority citation for part 134 continues to read as follows:

**Authority:** 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(l), 656(i), and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

**§ 134.102 [Amended]**

■ 3. Section 134.102(p) of subpart B is amended by removing “part 145 of this chapter” and adding “2 CFR parts 180 and 2700” in its place.

**PART 145—[REMOVED]**

■ 4. Under the authority of 15 U.S.C. 634, 13 CFR part 145 is removed.

Dated: July 12, 2007.

Steven C. Preston,  
Administrator.

[FR Doc. E7-14035 Filed 7-19-07; 8:45 am]

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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:** Final rule.

**SUMMARY:** We are revising 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. We are amending the grade limits for broken kernels and foreign material (BNFM), and the subfactor foreign material (FM). Additionally, we are inserting a total count limit for other material into the standards and revising the method of certifying test weight (TW). Further, we are changing the inspection plan tolerances for BNFM and FM. These changes will help facilitate the marketing of sorghum.

**DATES:** *Effective Date:* June 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Patrick McCluskey at GIPSA, USDA, Suite 180 STOP 1404, 6501 Beacon Drive, Kansas City, MO, 64133;

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**SUPPLEMENTARY INFORMATION:****Background**

The United States Grain Standards Act (USGSA) authorizes the Secretary of Agriculture to establish official standards of kind and class, quality and condition for sorghum and other grains (7 U.S.C. 76). The United States Standards for Grain serve as the starting point to define grain quality in the marketplace. The United States Standards for Sorghum are in the regulations at 7 CFR 810.1401-810.1405.

On September 24, 2003, GIPSA was asked by the National Sorghum Producers (NSP, formerly National Grain Sorghum Producers) to initiate a review of the sorghum standards. Accordingly, in the December 17, 2003 **Federal Register** (68 FR 70201), through an Advance Notice of Proposed Rulemaking (ANPR) we requested views and comments on the sorghum standards. We received 35 comments to the ANPR. In the March 29, 2006 **Federal Register** (71 FR 15633-15639) we invited comments to our proposed rule identifying changes to the United States Standards for Sorghum to:

(1) Delete the reference to tannin content from definitions of Sorghum, Tannin sorghum and White sorghum, and define these classes based on the presence or absence of a pigmented testa (subcoat);

(2) Revise the definition of nongrain sorghum by deleting sorghum-sudangrass hybrids, sorgrass, and adding language referencing seeds of Sorghum bicolor (L.) Moench that appear atypical of grain sorghum;

(3) Reduce the grading limits for broken kernels and foreign material (BNFM) and the subfactor foreign material (FM);

(4) Insert a total count limit of 10 for other material used to determine sample grade factors;

(5) Report the certification of sorghum test weight in tenths of a pound per bushel; and

(6) Revise the sorghum breakpoints and associated grade limits for U.S. Nos. 1, 2, 3, and 4 BNFM and FM.

**Comment Review**

We received 11 comments expressing a variety of views during the 60 day comment period for the proposed rule. We received comments from sorghum producers, producer and other industry organizations, grain handlers, and a sorghum researcher.

Overall, the comments supported all or a significant portion of the changes.

A few commenters opposed specific portions of the changes. Some commenters requested additional changes beyond the scope of the proposed rule: Deleting the separate reference to FM but retaining the standard for total BNFM in the sorghum standard; deleting the reference to other grains from the definition of Damaged Kernels and Heat-damaged Kernels; and standardizing feed grain standards. We will consider these comments for future work on the standards.

**Sorghum Class Definitions**

We proposed removing the reference to tannin content from definitions of Sorghum, Tannin sorghum and White sorghum, and define these classes based on the presence or absence of a pigmented testa (subcoat). We received nine comments on the proposal to remove the word tannin from the class definitions of Sorghum, Tannin sorghum, and White sorghum. Eight commenters directly supported the proposal as written and the other commenter did not oppose the proposal as written. No comments were received opposing the proposal. Of the supporting comments, most used identical language to state that defining sorghum based on the lack of a pigmented testa (subcoat) addressed the concerns of sorghum marketing organizations. Accordingly, we are amending the sorghum standards to remove the reference to tannin content from definitions of Sorghum, Tannin sorghum and White sorghum, and define these classes based on the presence or absence of a pigmented testa (subcoat), as set forth in the proposal.

**Nongrain Sorghum Definition**

We proposed changing the definition of nongrain sorghum by (1) removing sorgrass and sorghum-sudangrass hybrids by (2) adding the words “seeds of Sorghum bicolor (L.) Moench that appear atypical of grain sorghum.” No commenters opposed or supported the proposal as written. Sorghum-sudangrass hybrids (botanically, Sorghum bicolor (L.) Moench), despite being grown as a forage crop, can either produce kernels which appear typical of grain sorghum or kernels that appear atypical of grain sorghum. We continue to believe that there is no reason to count kernels which appear typical of grain sorghum as nongrain sorghum, and this proposed change is made final herein.

Comments were received supporting the removal of sweet sorghum (sorgo) from the definition of nongrain sorghum because botanically, sweet sorghum is Sorghum bicolor (L.) Moench, as is grain

sorghum and sorghum-sudangrass hybrid. We discussed removing sweet sorghum (sorgo) from the definition of nongrain sorghum in the proposed rule but did not propose it as a change to the standards, taking into account comments received as a result of the ANPR. Sweet sorghum plants can produce kernels that appear either typical or atypical of grain sorghum. Using the same rationale applied to sorghum-sudangrass hybrids, we believe there is no reason to count sweet sorghum kernels which appear typical of grain sorghum as nongrain sorghum. Further, the additional wording "and seeds of *Sorghum bicolor* (L.) Moench that appear atypical of grain sorghum" will allow sweet sorghum kernels which appear atypical of grain sorghum to be counted as nongrain sorghum. Therefore, based on the comments received, we will delete sweet sorghum (sorgo) from the definition of nongrain sorghum.

Finally, comments noted that producers appear to be restricted from receiving any program support from USDA because of the continuing classification of sweet sorghum as a nongrain. However, market conditions drive standards development and amendment, not eligibility for program support from USDA. Nonetheless, the definition of nongrain sorghum will be changed, but not because of this comment.

#### **BNFM and FM Grade Limits**

We proposed reducing the grade limits for BNFM and the subfactor FM. Comments noted that proposed revisions to the limits for BNFM and the subfactor FM would make it very difficult to achieve U.S. Number 1. We carefully considered the technical constraints and concerns raised as a result of this proposed change. Currently, U.S. Number 2 is the common trading standard and our analysis showed virtually no difference in the percentage of sorghum receiving the Number 2 grade (BNFM: 100.0 percent versus 99.8 percent; FM: 99.9 percent versus 95.8 percent) as a result of reducing the grade limits. We believe there will be no aggregate negative impact on the export sorghum market. Likewise, we believe changes to the sorghum standards must serve to improve market efficiency and encourage the production and delivery of high quality sorghum. Therefore, we are making no changes based on this comment.

#### **Total Other Material Count**

We proposed limiting the total number of pieces of other material upon

which sample grade factor determinations are made. Eight comments were received supporting the proposal specifically or by inference. No comments were received opposing the proposal. Sorghum is used as a food grain in much of the world, thus the sample grade limit for sorghum should be consistent with the sample grade limits for other grains used as food. Accordingly, we are amending the sorghum standards to include a maximum count limit of 10 for the total of other material used to determine sample grade factors.

#### **Test Weight Certification**

We proposed revising the certification of sorghum test weight from TW from whole and half pounds, with a fraction of a half pound disregarded, to certification in tenths of a pound. One comment was received in support of the proposal, and no comments were received opposing the proposal as written. Accordingly, as set forth in the proposal, we are amending the grain standards to revise the certification of sorghum test weight.

#### **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 (BP), are used to determine acceptable quality. The revisions to the sorghum standards require revisions to some breakpoints. Accordingly, we are revising Table 15 of section 800.86(c)(2) to reflect the corresponding changes in the established inspection plan tolerances. The grade limits (GL) for sorghum are also revised in Table 15.

#### **Effective Date**

As specified in the USGSA (7 U.S.C. 76(b)), amendments to the standards cannot become effective less than one calendar year after public notification, unless in the judgment of the Secretary, the public health, interest, or safety require that they become effective sooner. In accordance with that section of the Act, it is determined that it is in the public interest to have this final rule effective on June 1, 2008, in order to coincide with the start of the 2008 sorghum harvest, and to facilitate domestic and export marketing of sorghum.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This action 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.

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.

We are amending the grain standards to change the definition of sorghum classes by deleting references to tannin and adding language referencing the presence or absence of a pigmented testa. We are amending the definition of nongrain sorghum by removing sorghum-sudangrass hybrids, sorgrass, and sweet sorghum (sorgo), and adding language referencing seeds of *Sorghum bicolor* (L.) Moench that appear atypical of grain sorghum. We are amending the grade and grade requirements for sorghum by reducing the grading limits for broken kernels and foreign material (BNFM) and the subfactor foreign material (FM), and inserting a total count limit of 10 for other material used to determine sample grade factors. We are amending the grain standards to report the certification of test weight in tenths of a pound. The changes made to the sorghum standards in this final rule are needed to ensure market-relevant standards and grades and facilitate the marketing of grain.

Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. The regulations and standards are applied equally to all entities.

We provide mandatory inspection and weighing services at 33 export elevators (including four floating elevators). All of these facilities are owned by multinational corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration.

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.

In addition to GIPSA, there are 55 official agencies that perform official services under the USGSA. Most users of the official inspection and weighing services, and the entities that perform these services, do not meet the regulations for small entities.

The USGSA (7 U.S.C. 87f-1) requires the registration of all persons engaged in the business of buying, handling,

weighing, or transporting grain for sale in foreign commerce. 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) 2005 totaled approximately 3,138,580 metric tons (MT). While most of the 89 registrants are large businesses, we assume some may be small.

GIPSA 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.

**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.

**E-Government Compliance**

We are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**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 USGSA. 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.

**List of Subjects**

7 CFR Part 800

Administrative practice and procedure, Conflict of interests, Exports, Freedom of information, Grains, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 810

Exports, Grains.

■ For reasons set out in the preamble, 7 CFR parts 800 and 810 are amended as follows:

**PART 800—GENERAL REGULATIONS**

■ 1. Revise the authority citation for part 800 to read as follows:

**Authority:** 7 U.S.C. 71-87k.

■ 2. In § 800.86(c)(2), revise table 15 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 that is distinctly discolored shall be graded not higher than U.S. No. 3.

\* \* \* \* \*

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

■ 3. Revise the authority citation for part 810 to read as follows:

**Authority:** 7 U.S.C. 71-87k.

■ 4. In § 810.102, revise paragraph (d) to read as follows:

**§ 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.

\* \* \* \* \*

■ 5. In § 810.1402, revise 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 almum* Parodi, and sudangrass; and

seeds of *Sorghum bicolor* (L.) Moench that appear atypical of grain sorghum.

\* \* \* \* \*

■ 6. Revise § 810.1404 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
<b>Minimum pound limits of</b>				
Test weight per bushel .....	57.0	55.0	53.0	51.0
<b>Maximum percent limits of</b>				
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
<b>Maximum count limits of</b>				
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, or 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.

David R. Shipman,  
Acting Administrator, Grain Inspection,  
Packers and Stockyards Administration.  
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**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 171**

**Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC**

*CFR Correction*

In Title 10 of the Code of Federal Regulations, Parts 51 to 199, revised as of January 1, 2007, in § 171.16, on page

742, paragraph (e) is reinstated to read as follows:

**§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.**

\* \* \* \* \*

(e) The activities comprising the surcharge are as follows:

- (1) LLW disposal generic activities;
- (2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses (e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; decommissioning activities for unlicensed sites; and activities for unregistered general licensees); and
- (3) Activities not currently assessed licensing and inspection fees under 10 CFR part 170 based on existing law or

Commission policy (e.g., reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*)

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