

(2) For quality and condition inspection and/or condition only inspection of products in quantities of 50 or less packages unloaded from the same conveyance:

- (i) \$43 for each individual product.
- (ii) \$14 for each additional lot of any of the same product.
- (b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:
 - (1) For each package inspected according to the following rates:
 - (i) 1.1 cent per package weighing less than 15 pounds;
 - (ii) 2.2 cents per package weighing 15 to 29 pounds; and,
 - (iii) 3.3 cents per package weighing 30 or more pounds.
 - (2) \$14 for each additional lot of any of the same product.
 - (3) A minimum charge of \$86 for each product inspected.

(c) When performing inspections of products from sea containers unloaded directly from sea transportation or when palletized products unloaded directly from sea transportation are not offered for inspection at dockside, the carlot fees in § 51.38(a) shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in the preceding paragraphs, including weight-only and freezing-only inspections, fees for inspection shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of \$43 an hour: *Provided, That:*

- (1) Charges for time shall be rounded to the nearest half hour;
- (2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections; and
- (3) When weight certification is provided in addition to quality and/or condition inspection, a one-hour charge shall be added to the carlot fee.

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during

periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of \$21.50 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: December 11, 1997

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 810

United States Standards for Rye

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

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) proposes to revise the United States Standards for Rye to certificate dockage to the nearest tenth of a percent. The current method of dockage certification rounds the actual dockage percentage down to the nearest whole percent. This method may result in understating the level of dockage up to 0.99 percent on the certificate. Certification of dockage to the nearest tenth of a percent is more precise than the current method and should enhance the marketability of U.S. Rye traded in the domestic and export markets. This change would also require the establishment of new inspection tolerances or breakpoints, as appropriate.

DATES: Comments must be submitted on or before February 17, 1998.

ADDRESSES: Written comments must be submitted to George Wollam, GIPSA, USDA, Room 0623-S, Stop 3649, Washington, D.C., 20250-3649; FAX (202) 720-4628; or E-mail gwollam@fgisdc.usda.gov.

All comments received will be made available for public inspection at Room 0623 South Building, 1400 Independence Avenue, SW, Washington, D.C., during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720-0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

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 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 an irreconcilable conflict with this proposed 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

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 (5 U.S.C. 601 *et seq.*), because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. Further, the regulations are applied equally to all entities.

The rye industry, including producers, handlers, exporters and processors, are the primary users of the U.S. Standards for Rye and utilize the official standards as a common trading language to market rye.

The rye industry in the United States is regional in nature, concentrated primarily in the upper midwest area. There are an estimated 10 processors of rye, utilizing a crop produced on approximately 355,000 acres in the United States. The average annual production of rye for the period 1988 through 1997 was 10,045,000 bushels. No rye has been officially inspected for export from the United States for several years.

The current method of dockage certification rounds the actual dockage percentage down to the nearest whole percent. This method may result in understating the level of dockage up to 0.99 percent on the certificate. Certification of dockage to the nearest tenth of a percent is more precise than the current method and should enhance the marketability of U.S. Rye traded in the domestic and potentially, the export markets. The potential benefits of revising the dockage certification procedure to report rye dockage to the nearest tenth of a percent include a more accurate description of the raw grain and the potential to improve pricing efficiency within the market. Certification to the nearest tenth of a percent would be more precise. A corresponding change would be made to the inspection tolerances or breakpoints, as appropriate.

Further, we understand that the rye industry already trades on dockage reported in tenths of a percent. Small entities, therefore, should experience no significant economic impact from these proposed changes.

Background

Certification of Dockage in Rye

Dockage consists primarily of dust, chaff, small weed seeds, very small pieces of broken rye, and coarse grains larger than rye. Domestic handlers and millers usually remove dockage during grain cleaning and may use it as animal feed. Foreign buyers use dockage in a variety of ways. Some use the dockage in animal feed, others mill the dockage with the rye, and some remove and discard the dockage.

In the current Official United States Standards for Grain (7 CFR part 810), the percentage of rye dockage is certified by rounding down to the nearest 1.0 percent (7 CFR 810.104 (b)). For example, for 0.0 to 0.99 percent, no dockage is reported on the certificate, 1.00 to 1.99 percent is reported as 1.0 percent dockage, 2.00 to 2.99 is reported as 2.0 percent dockage, and so forth. A domestic handler/processor has questioned the adequacy of the current dockage certification method asserting that the actual dockage is almost always understated. Further, the handler/processor suggested that the current U.S. Standards for Rye are not relevant, as the domestic rye industry trades on a dockage basis expressed in tenths of a percent and not whole percents.

Therefore, GIPSA is seeking industry comment for changing the current

reporting and certification procedure to the nearest tenth percent on official inspection certificates to more accurately and precisely state dockage content in rye. Further, this action should also promote pricing efficiency.

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 change requires the establishment of a new breakpoint that reflects the greater accuracy to which rye dockage is proposed to be calculated and reported.

Therefore, GIPSA proposes to change the current breakpoint for rye dockage which is listed in Table 14 of section 800.86(c)(2). Specifically, GIPSA proposes to change the breakpoint from 0.32 to 0.2.

Proposed Action

GIPSA proposes to revise § 800.86, Inspection of shiplot, unit train, and lash barge grain in single lots, paragraph (c)(2) Table 14, by changing the breakpoint for dockage in rye from 0.32 to 0.2.

GIPSA also proposes to amend the Official United States Standards for Grain, Subpart A—General Provisions, § 810.104, Percentages, by revising paragraph (b) Recording. This change would require rye dockage to be determined and reported in whole and tenths of a percent to the nearest tenth of a percent.

Comments, including data, views, and arguments are solicited from interested persons. Pursuant to Section 4(b)(1) of the United States Grain Standards Act, 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 judgement 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, Exports, Grains.

7 CFR Part 810

Exports, Grains.

For reasons set out in the preamble, 7 CFR part 800 and 7 CFR part 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. Section 800.86(c)(2) is amended by revising the entry for "Dockage" in Table 14 to read as follows:

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

* * * * *

(c) * * *

(2) * * *

TABLE 14.—BREAKPOINTS (BP) FOR RYE SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Break-point
* * * * *		
Dockage ..	As specified by contract or load order grade.	0.2
* * * * *		

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

3. 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.*)

4. Section 810.104 is amended by revising the first three sentences of paragraph (b) to read as follows:

§ 810.104 Percentages.

* * * * *

(b) *Recording.* The percentage of dockage in flaxseed and sorghum is reported in whole percent with fractions of a percent being disregarded. Dockage in barley and triticale is reported in whole and half percent with a fraction less than one-half percent being disregarded. Dockage in wheat and rye is reported in whole and tenth percents to the nearest tenth percent. * * *

Dated: December 10, 1997.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

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