

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 7 CFR Part 800

RIN 0580-AB15

#### Inspection and Weighing of Grain in Combined and Single Lots

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

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Agriculture's (USDA), Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to revise the regulations that cover the official grain inspection and weighing service procedures that GIPSA's Federal Grain Inspection Service (FGIS) performs under the authority of the United States Grain Standards Act (USGSA), as amended. Specifically, GIPSA proposes to update the regulations issued under the USGSA pertaining to grain exported in large reusable containers typically loaded onto export ships. GIPSA proposes to add new definitions of composite and average grades, limit the number of such containers that could be averaged or combined to form a single lot, restrict the inspection and weighing of such container lots to the official service provider's area of responsibility, specify a 60-day retention period for file samples representing such container lots, and make consistent the weighing certification procedures for container lots with those for inspection certification procedures. GIPSA believes that these proposed revisions would enhance the integrity of the Federal grain export certification process and the uniformity of USDA-certified export grain shipped in large reusable containers as to grade, thus facilitating the marketing of all U.S. grain shipped for export.

**DATES:** Comments must be received on or before September 16, 2011.

**ADDRESSES:** You may submit comments by any of the following methods:

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

- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., room 2542-S, Washington, DC 20250-3642.

- *E-mail:* Comments to comments.gipsa@usda.gov.

- *Fax:* (202) 690-2173.

All comments will become a matter of public record and should be identified as "Containerized Grain Proposed Rule Comments," making reference to the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection on <http://www.regulations.gov> and in the above office during regular business hours (7 CFR 1.27(b)). Please call GIPSA at (202) 720-7486 to make an appointment to read the comments.

#### FOR FURTHER INFORMATION CONTACT:

Robert Lijewski, Director, USDA, GIPSA, Field Management Division, 1400 Independence Avenue, SW., Room 2409-S, Washington, DC 20250-3630, phone (202) 720-0224.

#### SUPPLEMENTARY INFORMATION:

##### Background

The United States Grain Standards Act (USGSA) (7 U.S.C. 71-87k), as amended, provides an official inspection system that facilitates the marketing of grain in domestic and international markets. The Secretary of Agriculture (Secretary) is authorized by the USGSA to establish standards of kind, class, quality, and condition for various grains and to establish standards or procedures for accurate weighing and weight certification and controls, including safeguards over equipment calibration and maintenance, for grain shipped in interstate or foreign commerce. Additionally, the Secretary can amend or revoke these standards or procedures as needed in order to adjust to current industry needs and practices. Under authority delegated by the Secretary, GIPSA is authorized to establish and maintain regulations that cover the inspection and weighing of grain under the USGSA.

Grain exported in large reusable containers has grown exponentially in the past 5 years to levels that GIPSA believes have far exceeded grain industry expectations. Increased exports

of containerized grain have, in turn, increased the demand for USDA grain inspection services provided by FGIS and its official grain export service providers. While the overall market share for U.S. export grain shipped in large reusable containers has grown rapidly, USGSA regulations (7 CFR 800) for export grain shipments have focused primarily on the inspection and grading of grain exported in shiplots, unit trains, and lash barges—not on grain exported in multiple large reusable containers that are considered collectively as a single lot.

The last amendments to the USGSA regulations occurred in 1980 (45 FR 15810) when grain was not typically exported in large reusable containers but was exported after being loaded in bulk onto ships, unit trains, and lash barges. In recent years, however, demand has increased for grain that is exported in large reusable containers, which enables buyers and sellers to negotiate contract terms that specify the exact quantity and quality of grain to be delivered. Typically, the industry uses large reusable containers that may be 20 feet or 40 feet in length, 8'0" or 8'6" in width, and 8'6" or 9'6" in height to transport bulk or sacked grain. Large reusable containers are usually a metal truck/trailer body that can be detached from the chassis for loading into a vessel, a railcar, or stacked in a container depot. Sales contracts usually cover multiple container parcels known as "bookings" (*i.e.*, grain in multiple large reusable containers that may be from different sources but are sold under a single sales contract and a single certificate) that are shipped to multiple end users, but collectively are considered a single lot. Unless exempted from official inspection and weighing requirements, a sales contract must stipulate that the overall quality in a booking meets an official USDA grade standard. Accordingly, export grain sellers often request that GIPSA combine inspection results from the individual containers and issue one official inspection certificate for the booking.

#### Description of Proposed Revisions

GIPSA and grain buyers expect grain in one booking to be of overall uniform quality. To guarantee that quality is maintained for grain exported in large reusable containers, GIPSA believes that

the USGSA regulations pertaining to grain exported in such containers must be revised to ensure that sellers ship the exact quantity and quality of grain specified in the sales contracts (unless otherwise stated, or “if applicable”) that are currently required for grain loaded onto ships, unit trains, and lash barges. Therefore, GIPSA proposes to revise the USGSA regulations by adding new definitions of composite and average grades, establishing procedures for grain shipped in multiple large reusable containers that would be certified on one certificate; limit the number of such containers that could be averaged or combined into a single lot; restrict the inspection and weighing of such container lots to the official service provider’s area of responsibility, whether a designated state, delegated state, or private agency; and specify a 60-day retention period for file samples representing large reusable container lots so that such containers would be in line with the current retention schedule of short voyage export ships and barges.

In § 800.0 of the regulations, GIPSA proposes adding definitions for the terms “average grade” and “composite grade” to address methods of combining multiple samples to achieve a single grade. This is necessary to issue the USDA inspection certificate for the single lot.

Sections 800.84 and 800.85 would be amended to require the applicant to provide written instructions, otherwise known as a load order, to official personnel that reflect contract requirements, if applicable, for quality and quantity for carriers graded on a composite or average grade basis and to limit the number of large reusable containers that may be averaged or combined to comprise a single lot. Under existing procedures, a single inspection certificate can be issued for hundreds of individual large reusable containers of grain. When large numbers of large reusable containers loaded with grain are combined into a single lot, however, GIPSA has found that the bookings may not be uniform with respect to overall quality. GIPSA has observed over time, however, that limiting the maximum number of individual units to 20 large reusable containers, 5 railcars, or 15 trucks that may be combined to form an average grade analysis for a single lot increases the likelihood that a shipment of grain is more uniform in quality and meets buyers’ expectations. Our proposal would also require that grain in any single lot be loaded in a reasonably continuous operation (§ 800.0(b)(85)) to ensure that the quality of the grain in large reusable containers does not

diminish over time. This proposed change would align the regulations regarding export grain loaded in large reusable containers with those regulations for grain loaded onto ships, unit trains, and lash barges. GIPSA believes that creating a reasonably continuous loading requirement for large reusable containers that is the same for ships, unit trains, and lash barges would promote the marketing of export grain by establishing a more equitable playing field among grain buyers and sellers.

In addition to ensuring that bookings (groupings of large reusable containers in a contract) are uniform in overall quality, the proposed revisions to the regulations would also require that all lots are loaded in a reasonably continuous operation (§ 800.0(b)(85)), that the loaded grain is maintained in good condition, that weighing in combined lots is performed in accordance with USGSA regulations, and that all large reusable containers of USDA-certified grain for export are uniform in quality, adhere to contract specifications, if applicable, as reflected in the load order, and meet customers’ expectations. GIPSA believes that establishing regulations for grain exported in large reusable containers that parallel the continuous loading operation of inspection and loading procedures for grain exported in shiplots, unit trains, and lash barges would enhance the enforcement of the USGSA and ensure that U.S. grain shipped in all carriers adheres to contract specifications, if applicable. USGSA regulations currently define the term “carrier” as a truck, trailer, truck/trailer(s) combination, railroad car, barge, ship, or other container used to transport bulk or sacked grain, which includes large reusable containers.

Section 800.97(c)(1) would be revised to add the term “container” in order to make clear that the basic requirement would be that one official certificate must be issued for the weighing of each large reusable container, truck, trailer, truck/trailer combination, railroad car, barge, or similarly sized carrier. Additional regulatory text would limit the number of carriers on a weight certificate at a single location and would specify that weighing take place in a reasonably continuous operation. This would align the weight certification procedures with the inspection certification procedures as there would be a reasonably continuous operation procedure for both the inspection and weighing of all carriers.

Section 800.98(b) would be revised to remove the requirement that grain in each single lot be weighed at the same

location, and include a new provision that would allow grain weighed at multiple locations to be certified as a combined lot in a single booking. Weighing performed at each individual location is still required to be completed in a reasonably continuous operation that parallels the current inspection procedures. This new provision would enable foreign buyers to purchase grain shipped in multiple large reusable containers under one sales contract by allowing U.S. grain exporters to weigh grain for a combined lot at different locations within an official agency’s designated/delegated area. Official agencies are State or local government agencies, or persons, designated/delegated by GIPSA to perform official inspection and/or weighing services under the USGSA. The limitation of weighing and certifying grain in combined lots at one location would be eliminated to promote the marketability of grain by allowing large reusable containers from several loading facilities to be included on one weight certificate. As a result, more than one elevator or loading location may exist on a combined lot weight certificate since weighing would be permitted at multiple locations.

New requirements would be added in § 800.152 related to the retention of file samples from containers, short voyage ships, and barges. The table currently in this section would be amended to include a column for “Other” to clarify that the file retention requirements apply to situations involving bins, tanks, and submitted samples since bins, tanks, and submitted samples do not fall under the “in,” “out,” or “export” categories.

### Alternatives Considered

We considered continuing using the current inspection procedures for all grain exported in large reusable containers. GIPSA believes, however, that a limitless amount of large reusable containers combined into a single lot would increase sampling variability due to the infinite sample size.

GIPSA also considered mandating that each individual large reusable container be inspected and certified. Doing so, however, would unnecessarily burden U.S. grain exporters and USDA’s official inspection system with increased labor and equipment costs, and would affect the timeliness of certificate issuance.

GIPSA believes that the proposed revisions to the USGSA regulations would continue to promote the orderly marketing of U.S. grain. The proposed revisions were carefully designed to ensure the integrity of the USDA

certificate and foster consumer confidence in U.S. grain.

#### Executive Order 12866 and Regulatory Flexibility Act

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

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), GIPSA has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Under the provisions of the USGSA, grain exported from the U.S., unless exempted, must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA at 47 export facilities and by delegated States at 17 facilities, and seven facilities for U.S. grain transshipped through Canadian ports. 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 (SBA). Furthermore, these regulations are applied equally to all entities. The 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 persons who handle, weigh, or transport grain for sale in foreign commerce must also register. Section 800.30 of the USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as any person who regularly engages 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 113 registrants registered to export grain. While most of the 113 registrants are large businesses, we believe that some are small.

The SBA defines small businesses by their North American Industry Classification System Codes (NAICS).<sup>1</sup> The SBA defines small grain exporters in its regulations (13 CFR 121.201) as entities having less than \$7,000,000 in average annual receipts (NAICS code 115114). Small grain exporters that export less than 15,000 metric tons per year are exempt from the mandatory inspection and weighing requirements

under § 800.18 of the USGSA regulations (7 CFR 800.18). This “waiver” was established to provide economic relief to small grain exporter businesses from inspection and weighing requirements without impairing the objectives of the USGSA.

This proposed rule would revise the regulations regarding procedures for official export grain inspection and weighing services performed under the authority of the USGSA. The proposed rule would also amend the USGSA regulations for grain shipped in large reusable containers for export, add new definitions for composite and average grades for grain in multiple large reusable containers certified on one certificate, limit the number of large reusable containers that would be averaged or combined in a single lot, restrict the inspection and weighing of large reusable container lots to the official service provider’s area of responsibility to align large reusable containers with other shipments of grain; specify a 60-day retention period for file samples representing large reusable container lots; and align weighing certification procedures for large reusable container lots with those for inspection certification procedures.

There would be no additional reporting or record keeping requirements imposed upon small entities as a result of this proposed rule. GIPSA has not identified any other Federal rules which may duplicate, overlap or conflict with this proposed rule. Given the forgoing discussion, GIPSA has therefore determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined in the RFA.

We welcome comments on the cost of compliance with this proposed rule, and particularly on the impact of this proposed rule on small businesses. We also welcome comments on any alternatives to the proposed rule that may achieve the same purpose with less cost or burden.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The USGSA provides in section 87g (7 U.S.C. 87g) that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this rule would not preempt any State or local laws, or regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative

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

#### Executive Order 13175

This proposed rule has been reviewed with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This rule would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

#### Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the information collection and recordkeeping requirements in Part 800 have been approved by Office of Management and Budget under Control No. 0580–0013.

#### E-Government Compliance

GIPSA is 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.

#### List of Subjects in 7 CFR Part 800

Administrative practice and procedure, exports, grains, reporting and recordkeeping requirements.

For the reasons set out in the preamble, GIPSA proposes to amend 7 CFR Part 800 as follows:

#### PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

**Authority:** 7 U.S.C. 71–87k.

2. Amend § 800.0(b) by removing the numerical paragraph designations (1) through (107) and adding definitions for “average grade” and “composite grade” in alphabetical order to read as follows:

#### § 800.0 Meaning of terms.

\* \* \* \* \*

(b) \* \* \*

*Average grade.* Multiple carrier units or sublots that are graded individually then averaged to form a single lot inspection.

\* \* \* \* \*

*Composite grade.* Multiple samples obtained from the same type of carriers (e.g., trucklots, containers) that are combined into one sample for grade to form a single lot inspection.

\* \* \* \* \*

3. Amend § 800.84 by revising paragraphs (a), (b)(1), (b)(2) and the introductory text of paragraph (c) to read as follows:

<sup>1</sup> See: [http://www.sba.gov/idc/groups/public/documents/sba\\_homepage/serv\\_std\\_tablepdf.pdf](http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_std_tablepdf.pdf).

**§ 800.84 Inspection of grain in land carriers, containers, and barges in single lots.**

(a) *General.* The inspection of bulk or sacked grain loaded or unloaded from any carrier or container, except shiplot grain, must be conducted in accordance with the provision in this section and procedures prescribed in the instructions. Applicant must provide written instructions to official personnel, reflecting contract requirements for quality and quantity for the inspection of multiple carriers graded on a composite grade or average grade basis.

(b) \* \* \*

(1) *Single grade.* When grain in a carrier(s) is/are offered for inspection as one lot and the grain is found to be uniform in condition, the grain must be sampled, inspected, graded, and certified as one lot. For the purpose of this paragraph, condition only includes the factors heating and odor.

(i) *Composite grade.* Grain loaded in multiple carriers offered for inspection may be combined into a single sample for grade analysis and certified as a single lot, *provided that* the grain in each individual carrier is inspected and found uniform in respect to odor, condition, and insect infestation, and sampling is performed at the individual loading location in a reasonably continuous operation. The maximum number of individual units that may be combined to form a composite grade analysis is 20 containers, 5 railcars, or 15 trucks. Composite analysis must be restricted to carriers inspected within the official service provider's area of responsibility.

(ii) *Average grade.* Grain loaded in multiple carriers offered for inspection may be graded individually, then averaged for certification as a single lot, *provided that:* the grain in each individual carrier is inspected and graded as an individual unit; the grain is found to be uniform in respect to odor, condition, and insect infestation; and sampling is performed at the individual loading location in a reasonably continuous operation. The maximum number of individual units that may be combined to form an average grade analysis is 20 containers, 5 railcars, or 15 trucks. Average grade analysis is restricted to carriers inspected within the official service provider's area of responsibility.

(2) *Multiple grade.* When grain in a carrier is offered for inspection as one lot and the grain is found to be not uniform in condition because portions of the grain are heating or have an odor, the grain in each portion will be sampled, inspected, and graded

separately; but the results must be shown on one certificate. The certificate must show the approximate quantity or weight of each portion, the location of each portion in the carrier or container, and the grade of the grain in each portion. The requirements of this section are not applicable when an applicant requests that the grade of the entire carrier be based on a determination of heating or odor when only a portion of the carrier is found to be heating or have an odor.

\* \* \* \* \*

(c) *One certificate per carrier: exceptions.* Except as provided in this paragraph, one official certificate must be issued for the inspection of the grain in each truck, trailer, truck/trailer(s) combination, container, railcar, barge, or similarly-sized carrier, or composite/average grade analysis on multiple carrier units. The requirements of this paragraph are not applicable:

\* \* \* \* \*

4. Amend § 800.85 by revising paragraphs (b)(1), (c)(1), (c)(2), (h)(4), and (h)(5) to read as follows:

**§ 800.85 Inspection of grain in combined lots.**

\* \* \* \* \*

(b) \* \* \*

(1) *For inspection during loading, unloading, or at rest.* Applications for official inspection of grain as a combined lot must:

(i) Be filed in accordance with § 800.116;

(ii) Show the estimated quantity of grain that is to be certified as one lot;

(iii) Show the contract grade, and if applicable; other inspection criteria required by the contract; and

(iv) Identify each carrier into which grain is being loaded or from which grain is being unloaded.

\* \* \* \* \*

(c) \* \* \*

(1) *Inspection during loading, or unloading, or at rest.* Grain in two or more land carriers or barges that are to be officially inspected as a combined lot, must be sampled in a reasonably continuous operation. Representative samples must be obtained from the grain in each individual carrier and inspected in accordance with procedures as prescribed in the instructions.

(2) *Recertification.* Grain that has been officially inspected and certified as two or more single, composite, or average quality lots may be recertified as a combined lot provided that:

(i) The grain in each lot was sampled in a reasonably continuous operation;

(ii) The original inspection certificates issued for the single, composite, or

average quality lots have been surrendered to official personnel;

(iii) Representative file samples of the single, composite, or average quality lots are available;

(iv) The grain in the single, composite, or average quality lots is of the same grade or better grade and quality than as specified in the written instructions provided by the shipper;

(v) Official personnel who performed the inspection service for the single, composite, or average quality lots and the official personnel who are to recertify the grain as a combined lot must determine that the samples used as a basis for the inspection of the grain in the single, composite, or average quality lots were representative at the time of sampling and have not changed in quality or condition; and

(vi) The quality or condition of the grain meets uniformity requirements established by the Service for official inspection of grain in combined lots.

\* \* \* \* \*

(h) \* \* \*

(4) *Combined-lot certification; general.* Each official certificate for a combined-lot inspection service must show the identification for the "combined lot" or, at the request of the applicant, the identification of each carrier in the combined lot. If the identification of each carrier is not shown, the statement "Carrier identification available on the official work record" must be shown on the inspection certificate in the space provided for remarks. The identification and any seal information for the carriers may be shown in the Remarks section on the reverse side of the inspection certificate, provided that the statement "See reverse side" is shown on the face of the certificate in the space provided for remarks, or on an additional page.

(5) *Recertification.* If a request for a combined-lot inspection service is filed after the grain has been officially inspected and certified as single, composite, or average quality lots, the combined-lot inspection certificate must show, in addition to the requirements of paragraph (h)(4) of this section the following:

(i) The date of inspection of the grain in the combined lot (if the single, composite, or average quality lots were inspected on different dates, the latest of the dates must be shown);

(ii) A serial number other than the serial numbers of the official inspection certificates that are to be superseded;

(iii) The location of the grain, if at rest, or the name(s) of the elevator(s) from which or into which the grain in the combined lot was loaded or unloaded;

(iv) A statement showing the approximate quantity of grain in the combined lot;

(v) A completed statement showing the identification of any superseded certificates; and

(vi) If at the time of issuing the combined-lot inspection certificate the superseded certificates are not in the custody of the official personnel, a statement indicating that the superseded certificates have not been surrendered must be clearly shown in the space provided for remarks. If the superseded certificates are in the custody of official personnel, the superseded certificates must be clearly marked "Void."

\* \* \* \* \*

5. Amend § 800.97 by revising paragraphs (b)(1) and (c)(1) to read as follows:

**§ 800.97 Weighing grain in containers, land carriers, barges, and shiplots.**

\* \* \* \* \*

(b) \* \* \*

(1) *General.* If grain in a carrier is offered for inspection or weighing service as one lot, the grain must be weighed at the individual weighing location in a reasonably continuous operation and certified as one lot. The identification of the carrier(s) must be recorded on the scale tape or ticket and the weight certificate.

\* \* \* \* \*

(c) *Certification of trucklots, containerlots, carlots, and bargelots.* (1) *Basic requirement.* One official certificate must be issued for the weighing of the grain in each container, truck, trailer, truck/trailer(s) combination, railroad car, barge, or similarly sized carrier. This requirement is not applicable to multiple grain

carriers weighed as a single lot or combined lot under § 800.98.

\* \* \* \* \*

6. Amend § 800.98 by revising paragraphs (b)(1), (b)(2), and (c)(2) to read as follows:

**§ 800.98 Weighing grain in combined lots.**

\* \* \* \* \*

(b) \* \* \*

(1) *Single lot weighing.* Single lots of grain that are to be weighed as a combined lot may be weighed at multiple locations, provided that the lots are contained in the same type of carrier and weighing is performed at each individual location in a reasonably continuous operation. The grain loaded into or unloaded from each carrier must be weighed in accordance with procedures prescribed in the instructions. In the case of sacked grain, a representative weight sample must be obtained from the grain in each carrier unless otherwise specified in the instructions.

(2) *Recertification.* Grain that has been weighed and certified as two or more single lots may be recertified as a combined lot, provided that the original weight certificates issued for the single lots have been or will be surrendered to the appropriate agency or field office, and the official personnel who performed the weighing service for the single lots and the official personnel who are to recertify the grain as a combined lot determine that the weight of the grain in the lots has not since changed, and in the case of sacked grain, that the weight samples used as a basis for weighing the single lots were representative at the time of the weighing.

\* \* \* \* \*

(c) \* \* \*

(2) *Recertification.* If a request for a combined-lot Class X or Class Y

weighing service is filed after the grain in the single lots has been weighed and certified, the combined-lot weighing certificate must show the following:

(i) The date of weighing the grain in the combined lot (if the single lots were weighed on different dates, the latest dates must be shown);

(ii) A serial number, other than the serial numbers of the weight certificates that are to be superseded;

(iii) The name of the elevator(s) from which or into which the grain in the combined lot was loaded or unloaded;

(iv) A statement showing the weight of the grain in the combined lot;

(v) A completed statement showing the identification of any superseded certificate as follows: "This combined-lot certificate supersedes certificate Nos. \_\_\_\_\_, dated \_\_\_\_\_; and

(vi) If at any time of issuing the combined-lot weight certificate, the superseded certificates are not in the custody of the agency or field office, the statement "The superseded certificates identified herein have not been surrendered" must be shown clearly in the space provided for remarks beneath the statement identifying the superseded certificates. If the superseded certificates are in the custody of the agency or field office, the superseded certificates must be clearly marked "Void."

\* \* \* \* \*

7. Amend § 800.152 by revising paragraph (b) to read as follows:

**§ 800.152 Maintenance and retention of file samples.**

\* \* \* \* \*

(b) *Minimum retention period.* Upon request by an agency and with the approval of the Service, specified file samples or classes of file samples may be retained for shorter periods of time.

Carrier	In	Out	Export	Other
(1) Trucks .....	3	5	30	.....
(2) Railcars .....	5	10	30	.....
(3) Ships & Barges .....	5	25	90	.....
(4) Ships and Barges (short voyage—5 days or less) .....	5	25	60	.....
(5) Containers .....	5	60	60	.....
(6) Bins & Tanks .....	.....	.....	.....	3
(7) Submitted Samples .....	.....	.....	.....	3

\* \* \* \* \*

**J. Dudley Butler,**

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

[FR Doc. 2011-17994 Filed 7-15-11; 8:45 am]

**BILLING CODE 3410-KD-P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 930**

[Doc. No. AMS-FV-11-0047; FV11-930-1 PR]

**Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Suspension of Order Regulations Regarding Random Row Diversion**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on changes to the grower diversion regulations prescribed under the marketing order for tart cherries (order). The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin and is administered locally by the Cherry Industry Administrative Board (Board). This rule would suspend indefinitely the regulations establishing random row as a method of grower diversion. With growers consistently choosing other diversion methods which offer more flexibility and fewer potential problems, the Board recommended this suspension to bring grower diversion requirements in line with current industry practices.

**DATES:** Comments must be received by July 28, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Jennie M. Varela, Marketing Specialist,

or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: [Jennie.Varela@ams.usda.gov](mailto:Jennie.Varela@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Laurel.May@ams.usda.gov](mailto:Laurel.May@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on changes to the grower diversion regulations prescribed under the order. This rule would suspend indefinitely the regulations establishing random row as a method of grower diversion. With growers consistently choosing other

diversion methods which offer more flexibility and fewer potential problems, the Board recommended this suspension to bring grower diversion requirements in line with current industry practices. The Board unanimously recommended this action at a meeting on March 24, 2011.

Section 930.58 of the order provides authority for voluntary grower diversion. Under volume regulation, growers can divert all or a portion of their cherries which otherwise, upon delivery to a handler, would be subject to regulation. Section 930.158 prescribes the rules and regulations for grower diversion, including the procedures and deadline dates for applying for diversion and the types of diversion available to growers. Currently, there are four types of grower diversion: Random row, whole block, partial block, and in-orchard tank. This rule would suspend portions of § 930.158 that provide random row as an option under grower diversion.

The order contains volume control provisions that allow the industry to address fluctuations in production from season to season, helping to stabilize supplies and prices. When volume control is in effect, free and restricted percentages are established. Handlers can meet their restricted percentage obligation by placing cherries in inventory reserve, diverting cherries themselves, or redeeming grower diversion certificates.

Under voluntary grower diversion, growers can divert cherries from production in exchange for Board issued grower diversion certificates stating the quantity diverted. Growers can then present these certificates to handlers who may redeem them as a method of complying with their restricted percentage obligation under volume regulation. By diverting cherries from production, growers can avoid the costs of harvesting and transporting fruit, reduce the supply, and mitigate the downward pressure on prices that result from oversupply.

Following the promulgation of the order in 1996, the Board recommended regulations outlining two grower diversion options for the 1997 crop year, whole block and random row (63 FR 20019). Under whole block diversion, growers select entire orchard blocks to be left unharvested. With random row diversion, the Board randomly selects