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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

[Docket Number FGIS 2003-003]

RIN 0580-AA76

Exceptions to Geographic Areas for Official Agencies Under the USGSA

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Final rule.

SUMMARY: This rule revises regulations issued under the United States Grain Standards Act (USGSA) to establish criteria to allow more than one designated official agency to inspect or weigh grain within a single geographic area. The rule will enhance the orderly marketing of grain by providing segments of the grain industry with more cost-effective and responsive official grain inspection and weighing services without undermining the integrity of the official system.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Porter, Director, Compliance Division at (202) 720-8262.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Executive Order 12988, Regulatory Flexibility Act, and the Paperwork Reduction Act

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The U.S. Grain Standards Act (USGSA) (7 U.S.C. 71 *et seq.*) provides in § 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, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of Grain Inspection, Packers and Stockyards Administration (GIPSA) has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA conducted a 6-year voluntary pilot program. The pilot program permitted more than one official agency to operate in the same geographic area. There are 58 official agencies (15 States and 43 private agencies) designated under the USGSA. Thirty-six agencies (7 States and 29 private agencies) or 61 percent participated in the pilot program. All 43 private agencies are classified as business services, and all are "small business entities" under the guidelines of the Small Business Administration (SBA). The SBA does not classify States as small or large business entities. Volumes were down for state agencies. Of the 43 private agencies, 29 or 67 percent participated in the pilot program. Fourteen of the 29 saw an increase in service requests and 15 saw a decrease in service requests due to the greater flexibility provided by the pilot program. All increases and decreases in service requests represented inspections of railcars or barges. A 5-year average of official railcar and barge inspections is about 850,000 railcars per year, and about 28,000 barges per year. Less than 2 percent of the total number of railcars and less than 3 percent of the total number of barges were inspected under the pilot program by designated official agencies.

The customers (grain elevators) of the official agencies that requested service under the pilot program represented a mix of both large and small entities as defined for the grain industry by the SBA. GIPSA expects that this would remain the case. Approximately 70

percent of the 128 grain elevators that participated in the pilot program were small entities under the SBA guidelines, and accounted for 82 percent of the service volume for railcars. The 128 elevators that participated in the pilot program represent less than two percent of the estimated 9,695 off-farm storage facilities in the United States that could receive official inspection services.

Fifty-six percent of the volume of railcar inspection services during the pilot program was performed at grain elevators that had not used official services for more than a year. GIPSA believes that the pilot program has enhanced the orderly marketing of grain by providing grain elevators with improved services without undermining the integrity of the USGSA and the official system. At the same time, there has been no significant economic impact on small entity official agencies or grain elevators.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in part 800 have been previously approved by the Office of Management and Budget under control number 0580-0013. There would be no additional reporting or recordkeeping requirements imposed by this action. The request to GIPSA for approval can be done by telephone. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this rule.

Background

In 1976, the USGSA specified exclusive geographic boundaries for each designated entity performing official inspections. In later years, some grain firms reported delays in getting service due to the distance from the inspection laboratories serving them. Others had difficulty getting service during harvest or other peak demand periods. In April 1993, the General Accounting Office released a study, entitled "Grain Inspection Industry Views on the Decline in Official Inspections and Inspection Costs," which questioned maintaining exclusivity of boundaries.

On November 1, 1995, GIPSA, under the authority of the 1993 Amendments to the USGSA, initiated a pilot program to study the effect of permitting more than one designated agency to inspect or weigh grain in a single geographic area. GIPSA concluded, based on information