

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 Parts 810

[Docket No. FGIS-2003-001]

United States Standards for Wheat.

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

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), proposes to revise the United States Standards for Wheat to amend the definition of the class Hard White wheat to insert subclasses. The proposed rule would also change the definition of Contrasting Classes for Hard Red Winter wheat and Hard Red Spring wheat. Additionally, the rule will insert language into the wheat standard to specify the sample size used to determine sample grade factors. These changes would further help to facilitate the marketing of wheat.

DATES: Comments must be received on or before August 4, 2003.

ADDRESSES: Written comments must be submitted to Tess Butler at GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250-3604; faxed to (202) 690-2755; or E-mailed to comments.gipsa@usda.gov. Please indicate your comment refers to Docket No. FGIS-2003-001, United States Standards for Wheat.

All comments received are available for public inspection at Room 1652, South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey, telephone (202) 720-4684 at GIPSA, USDA, STOP 3630, 1400 Independence Avenue, SW., Washington, DC, 20250-3630; Fax Number (202) 720-1015.

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 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

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.*). Under the provisions of the United States Grain Standards Act, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA at 33 export facilities. 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. Further, the regulations are applied equally to all entities. The U.S. wheat industry, including producers (approximately 240,000), handlers (approximately 6,800 domestic elevators), traders (approximately 200 active wheat futures traders), processors (approximately 184 flour mills), merchandisers and exporters are the primary users of the U.S. Standards for Wheat and utilize the official standards as a common trading language to market wheat. 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 90 registrants who account for practically 100 percent of U.S. wheat exports, which for fiscal year (FY) 2002 totaled approximately 24,073,138 metric tons (MT). While most of the 90 registrants are large businesses, we assume that some may be small.

Background

GIPSA established the class Hard White wheat on May 1, 1990. In the Final Rule (54 FR 48735), FGIS stated "that classification by varietal kernel characteristics rather than vitreousness of the kernel is practicable at this time for HWW and SSW since only a few hard endosperm white white (sic) varieties are being produced. FGIS recognizes that if more hard endosperm varieties are released into the marketplace in the future, the classification system may become less practical." FGIS further stated "* * * if clear quality or market distinctions develop * * * it would consider subclasses at a future date".

At that time, a minimum visual color line was established based on the variety *Klasic*, which was produced in California. GIPSA abandoned the *Klasic* color line in 1994, and in 1995 GIPSA issued Program Bulletin 95-15 which in part stated that GIPSA would class all hard endosperm white wheat as hard white. Due to pending release of a hard white variety which closely resembled hard red spring, GIPSA, with industry input and support, established a new color line in 1999 (Program Bulletin 99-8).

In 2001, environmental conditions caused a significant increase in the vitreous kernel content, hence darker visual appearance in some varieties of hard white, resulting in a GIPSA decision to suspend the color line for classification purposes (Program Notice 01-06). The rationale for abandoning the color line was that color had not been an issue in hard white, as grain handlers efficiently segregated it from