

Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604, or fax to (202) 690-2755. Comments may also be sent by e-mail to: [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov). All comments received will be made available for public inspection at the above address during business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

**Executive Order 12988**

This 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 rule will not preempt any State or local laws, regulations, or policies unless they present 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.

**Regulatory Flexibility Act Certification**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it has been determined that this rule will not have a significant economic impact on a substantial number of small entities. GIPSA has determined that most users of the official weighing service and those entities that perform these services do not meet the requirements for small entities. This rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States. GIPSA estimates approximately 9,500 off-farm storage facilities and 57 export elevators in the United States could receive official weighing services by GIPSA, delegated States, or designated agencies. GIPSA also estimates this rule affects 18 scale manufacturing and 39 scale service companies who provide weighing equipment and service to these elevators and storage facilities. Twelve GIPSA field offices, 2 Federal/State offices, 7 GIPSA suboffices, 7 delegated States,

and 11 designated agencies provide official weighing service. Under provisions of the Act, it is not mandatory for non-export grain to be officially weighed except for waterborne carriers into export port locations. Further, most users of the official weighing services and those entities that perform these services do not meet the requirements for small entities. Even though some users could be considered small entities, this rule only updates regulatory requirements and makes GIPSA weighing guidelines more like State weights and measures organizations' laws and regulations who automatically adopt Handbook 44 on a yearly basis. Updating these requirements will help manufacturers of weighing equipment and grain elevators avoid making, installing, and maintaining equipment to meet two sets of design and performance requirements for commercial and official weighing to meet old specifications and new. No additional cost or burden is expected to result from this action.

**Information Collection and Recordkeeping Requirements**

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements in Part 802 have been approved previously by OMB and assigned OMB No. 0580-0013.

**Background**

Part 802 of the regulations, Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems (7 CFR 802.0-802.1), sets forth certain procedures, specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services. This review of the regulations includes a determination of continued need for and consequences of the regulations. An objective of the review is to ensure that the regulations are consistent with FGIS policy and authority and are up-to-date. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. FGIS, therefore, will incorporate the 2002 edition of Handbook 44 by reference into Part 802 of the regulations, in order to update the regulations, and continues to adopt all of the requirements of NIST Handbook 105-1 "Specifications and Tolerances for Reference Standards and Field

Standard Weights and Measures," 1990 edition.

Effective August 18, 1995, FGIS incorporated by reference into Part 802 of the regulations most provisions in NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1994 edition (Handbook 44) (60 FR 31907). Those provisions in Handbook 44 that obviously did not pertain to FGIS services were not incorporated by reference. The provisions that were not incorporated are listed in section 802.0(b) of the regulations.

We are publishing this rule without a prior proposal because we regularly update this portion of the regulations and view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 90 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 90 days following its publication.

**Direct Final Action**

In 1995, FGIS incorporated by reference the 1994 edition of Handbook 44. FGIS will continue to adopt this edition by reference in section 802.0(a) of the regulations.

The 1994 edition of Handbook 44 has been changed annually by NIST as new items are adopted, deleted, or revised by the National Conference on Weights and Measures. Many of these changes were for clarity. Further, most State weights and measures organizations automatically adopt each new edition of Handbook 44 and Handbook 105-1. FGIS will revise section 802.0(a) by incorporating by reference the 2002