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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580-AA55

Official/Unofficial Weighing Service

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

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the General Regulations under the United States Grain Standards Act, as amended (USGSA), to allow official agencies to provide both official and unofficial weighing within their assigned area of responsibility, but not on the same mode of conveyance at the same facility. This will provide agencies with more flexibility in providing the weighing services needed by the grain industry. Currently, agencies designated by GIPSA to provide official weighing services cannot provide similar unofficial services.

EFFECTIVE DATE: August 28, 1998.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purpose 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 USGSA 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.

Effect on Small Entities

James R. Baker, Administrator, GIPSA, has determined that this 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.). This rule will allow official agencies to provide both official and unofficial weighing services within their assigned area of responsibility, but not on the same mode of conveyance at the same facility. Currently, official agencies designated to provide official weighing services cannot provide similar unofficial services. There are

presently 62 agencies designated by GIPSA. Of the 62 agencies, 15 are designated to perform official weighing services; 7 of the 15 are State agencies. The remaining 47 official agencies could provide unofficial weighing services.

Nine official agencies have been allowed by GIPSA to perform both official weighing and unofficial weighing in addition to providing official inspection services. Most of these agencies would be considered small entities under Small Business Administration criteria. Agencies designated to provide official services will be afforded more flexibility in delivering the weighing services needed by the domestic grain market. Existing official agencies not designated to perform official weighing services can continue to provide unofficial weighing services. While the extent to which official agencies will choose to provide unofficial services is difficult to quantify and may depend upon many variables, it is believed that this rule will have a beneficial effect on these agencies and the grain industry as a whole.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements in Part 800 have been approved previously by OMB and assigned OMB No. 0580-0013.

Background

On March 30, 1998, GIPSA published a proposed rule in the Federal Register (60 FR 15104) which would allow official agencies to provide both official and unofficial weighing within their assigned area of responsibility, but not on the same mode of conveyance at the same facility.

Prior to the March 30, 1998, proposal, a direct final rule was published on August 2, 1995 (60 FR 39242), which notified the public of amendments to those regulations that prohibit official agencies from providing official weighing service when they provide similar unofficial service. GIPSA had planned to allow agencies to do both official and unofficial weighing within their assigned areas, but not at the same facility. Two written adverse comments in response to the direct final rule were received. One commenter noted that GIPSA did not allow official agencies designated to perform both official weighing services and unofficial weighing because of possible confusion between the two; that the proposed rule was an attempt by a Federal agency to be in direct competition with the private sector; and questioned whether there was a lack of supervising agencies in the weighing area. The other commenter also disagreed that there was a decrease in the availability of unofficial weighing supervision services and expressed concern regarding intrusion by a Federal agency into the private sector.

Initially, GIPSA did not allow agencies to provide both types of service because confusion might result on the part of the grain industry and the official agencies themselves as to which type of service an official agency was providing. GIPSA reevaluated this policy as it applies to weighing and evaluated the case-by-case situations where it has been allowed and found that confusion has not been a factor when GIPSA has separated official and unofficial weighing by not allowing agencies to provide both types of service at the same facility. The requirements for performing official weighing are easily distinguishable from unofficial weighing. Official weighing requires that: (1) Scales be tested by GIPSA; (2) designated agencies follow GIPSA-prescribed procedures to maintain proper operation and accurate

weighing; and (3) designated agencies issue GIPSA-approved official grain weight certificates certifying the accuracy of weighing. Since official and unofficial weighing services have distinct requirements, designated agencies should have little problem in maintaining the separation of official and unofficial weighing, as long as it is not on the same mode of conveyance. In addition, GIPSA oversight conducted by the field offices and appropriate headquarters units should be able to detect any problems arising from the change. This action merely allows the users to choose what service they may need at any given time.

Although GIPSA, for the above reasons, disagreed with the adverse comments received as a result of the direct final rule, the direct final rule was inadvertently not withdrawn prior to its effective date as required by the direct final rule process. Consequently, a final rule was published (60 FR 65236) on December 19, 1995, which reinstated the regulations that were in effect prior to the effective date of the direct final rule.

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Designated agencies are agencies granted authority under the USGSA to provide official inspection service, or Class X or Class Y weighing services or both, at locations other than export port locations. Most (88 percent) of these agencies are designated for inspection services only. The reason is that before 1976, most grain inspection agencies were already providing weighing as an additional service to grain inspection. These agencies were affiliated with and supervised by the then existing weighing and inspection bureaus under the direction of the Association of American Railroads, local grain exchanges, boards of trade, and various State programs. After the 1976 amendment to the USGSA, weighing performed by the grain inspection agencies became unofficial weighing. Most agencies continued their unofficial weighing and applied for inspection designations only.

However, since 1976, many inspection and weighing bureaus, boards of trade, and the Association of American Railroads have ceased providing supervision of the unofficial weighing services. Unofficial weighing services are currently still available from a variety of industry sources, including many of the agencies already designated by GIPSA for inspection services only.

However, we believe that there is a need for more access to Class X or Class Y weighing services. If allowed to provide both types of service, many more agencies who are now designated for inspection only could also provide official weighing service. Generally, designated agencies can provide Class X and Class Y weighing at a lower cost than GIPSA field offices due to their proximity to the grain facilities. Since 1991, after receiving official weighing requests in several areas, GIPSA's Administrator (under Sec. 800.2 of the regulations) has experimentally allowed designated official agencies to provide both official and unofficial weighing.

Comment Review

GIPSA received one comment in response to its proposal in the March 30, 1998 Federal Register (60 FR 15104) to allow official agencies to provide both official and unofficial weighing within their assigned area of responsibility, but not on the same mode of conveyance at the same facility. The commenter, a national association representing grain, feed and processing companies, supports the proposed change to allow official and unofficial weighing within their assigned areas but not on the same mode of conveyance at the same facility. The commenter believed that providing both types of service would not lead to

confusion in the marketplace because: (1) official agencies should have little difficulty distinguishing between official and unofficial weighing, and (2) GIPSA oversight conducted by the field offices and appropriate headquarters units should be able to detect any problems arising from the change.

It is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 533) because: (1) Implementation could be beneficial to the agencies and the grain industry as a whole; (2) the effective date will allow the agencies to be able to provide this service to their customers at the beginning of any local harvest seasons.

Final Action

FGIS is amending the regulations to allow the official agencies to provide official and unofficial weighing services in their assigned areas of responsibility, but not on the same mode of conveyance at the same location. This will allow the official agencies the flexibility in delivering the weighing services needed by the domestic grain market.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Conflict of interests, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR Part 800 is 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 800.76(a) is revised to read as follows:

Sec. 800.76 Prohibited services; restricted services.

(a) Prohibited services. No agency shall perform any inspection function or provide any inspection service on the basis of unofficial standards, procedures, factors, or criteria if the agency is designated or authorized to perform the service or provide the service on an official basis under the Act. No agency shall perform official and unofficial weighing on the same mode of conveyance at the same facility.

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3. Section 800.186(c)(3) introductory text is revised to read as follows:

Sec. 800.186 Standards of conduct.

* * * * *

(c) * * *

(3) Except as provided in Sec. 800.76(a), engage in any outside (unofficial) work or activity that:

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4. Section 800.196(g)(6)(ii) is revised to read as follows:

Sec. 800.196 Designations.

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(g)* * *

(6)* * *

(ii) Unofficial activities. Except as provided in Sec. 800.76(a), the agency or personnel employed by the agency shall not perform any unofficial service that is the same as the official services covered by the designation.

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Dated: August 20, 1998.

James R. Baker,
Administrator.

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