

3. Revise § 752.402 (b) to read as follows:

**§ 752.402 Definitions.**

(a) \* \* \*

(b) *Current continuous employment* means a period of employment or service immediately preceding an adverse action without a break in Federal civilian employment of a workday.

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**DEPARTMENT OF AGRICULTURE**

**Grain Inspection, Packers and Stockyards Administration**

**7 CFR Part 810**

**RIN 0580-AA96**

**Request for Public Comment on the United States Standards for Soybeans**

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** We are initiating a review of the United States Standards for Soybeans to determine their effectiveness and responsiveness to current grain industry needs. Numerous changes have occurred in the breeding and production practices of soybeans as well as in the technology used to harvest, process, and test soybeans, and in the marketing practices of soybeans. As a result, soybean producer groups have asked us to initiate a review of the soybean standards. In order to ensure that the standards and subsequent grading practices remain relevant, we invite interested persons to submit comments and supporting information to assist in the evaluation of current standards and grading practices for soybeans and in the development of any recommendations for change.

**DATES:** We will consider comments that we receive by July 2, 2007.

**ADDRESSES:** We invite you to submit comments on this advance notice of proposed rulemaking. You may submit comments by any of the following methods:

• *E-Mail:* Send comments via electronic mail to [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov).

• *Mail:* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604.

• *Fax:* Send comments by facsimile transmission to: (202) 690-2755.

• *Hand Delivery or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604.

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

• *Instructions:* All comments should make reference to the date and page number of this issue of the **Federal Register**.

• *Read Comments:* All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Rebecca Riese at GIPSA, USDA, 1400 Independence Avenue, SW., Washington, DC 20250-3630; Telephone (202) 720-4116; Fax Number (202) 720-7883; e-mail [Rebecca.A.Riese@usda.gov](mailto:Rebecca.A.Riese@usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

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

We established the U.S. soybean standards on November 20, 1940, under the authority of the United States Grain Standards Act (7 U.S.C. 76). To further facilitate the marketing of U.S. soybeans, we revised the standards in 1994 and 2006. The 2006 revision becomes effective September 1, 2007.

In 1994, we revised the reporting requirements of splits (broken soybeans where more than one fourth of the soybean removed and that are not damaged), reduced the U.S. Sample Grade criteria for stones and glass, established a special grade Purple Mottled or Stained, eliminated the grade limitation on materially weathered soybeans, clarified references to Mixed soybeans, and established a cumulative total for U.S. Sample Grade factors. In 2006, we published a Final Rule (71 FR 52403-52406), to be effective September 1, 2007, that changes the minimum test weight per bushel (TW) from a grade determining factor to an informational factor. Various factors are identified for soybeans and are used to determine the level of the grade of the shipment of soybeans. TW will continue to be measured, but no longer used to determine grade; it will be provided as additional information on the certificate unless the applicant for inspection service for the soybeans indicates that the information is not needed. As an informational factor TW may continue to be of interest and specified in contracts for soybean shipments.

The standards serve as the fundamental starting point to define U.S. soybean quality in the global marketplace. They include definitions, the basic principles governing application of standards, such as the type of sample used for a particular quality analysis, grades and grade requirements, and special grades and special grade requirements, such as for Garlicky soybeans and Purple Mottled or Stained soybeans. Official procedures for how the various grading factors are determined are provided in the Grain Inspection Handbook, Book II, Chapter 10, "Soybeans." Official procedures may be viewed and printed from the GIPSA Web site at: <http://archive.gipsa.usda.gov/reference-library/handbooks/grain-insp/grbook2/soybean.pdf>. Also included are standardized procedures for additional soybean quality attributes not used to determine grade, such as oil and protein content. Together, the grading and testing standards allow buyers and sellers to communicate quality requirements for trade, compare soybean quality using equivalent forms of measurement, and assist in the establishment of price.

GIPSA's grading and inspection services, as provided through a network of federal, state, and private laboratories, determine the quality and condition of soybeans. These determinations are performed in accordance with applicable standards using approved methodologies, and can be applied at any point in the marketing chain. The current testing technology for quality attributes, such as oil and protein content, is rapid and reliable, yielding consistent results. In addition, GIPSA issues certificates describing the quality and condition of the graded soybeans that are accepted as evidence in all Federal courts. U.S. soybean standards, and the affiliated grading and testing services offered by GIPSA, verify that the seller's commodity meets specified requirements, and that customers receive the quality they expect.

Over time, numerous changes have occurred in the breeding and production practices of soybeans as well as in the technology used to harvest, process, and test soybeans, and in the marketing practices of soybeans. In this rapidly evolving market, we need to ensure that the U.S. soybean standards and associated grading procedures remain relevant. Therefore, we are issuing this advance notice of proposed rulemaking to invite comments from all interested persons for input and suggestions for

amendments to the soybean standards and associated grading procedures so that the standards remain applicable and best facilitate the marketing of U.S. soybeans. We are requesting comments, supporting data, and other information in response to questions on the following topics, as well as about all aspects of the soybean standards and inspection procedures. This information may be viewed and printed from the GIPSA Web site at: <http://archive.gipsa.usda.gov/reference-library/handbooks/grain-insp/grbook2/soybean.pdf>.

### Foreign Material

The soybean standards currently define foreign material (FM) as: "All matter that passes through an 8/64 round-hole sieve and all matter other than soybeans remaining in the sieved sample after sieving according to procedures prescribed in FGIS instructions."

When separating FM (impurities) from soybeans, inspectors follow a process that entails using a combined mechanical (sieve) and manual separation procedure. Specifically, inspectors first handpick the 1,000 to 1,050-gram soybean sample for coarse foreign material (e.g., whole kernels of corn, cockleburs, sticks, and pods). Next, inspectors cut down the sample (free of coarse FM) to a portion of 125 grams. Using an approved shaker or hand sieve, the inspector sieves the sample with an 8/64" round-hole sieve. The inspector must handpick the material other than soybeans from the material remaining on top of the sieve and add it to the material that passed through the sieve (fine FM).

It is important to note that when inspectors see soybean pods in the sample, they remove the soybeans from the pods and only the pod is considered as foreign material. Further, soybean hulls which remain on top of the sieve are not considered FM; whereas small broken pieces of soybeans, which pass through the sieve, are considered as FM.

Finally, inspectors calculate the total amount of FM by adding the percentage of coarse FM to the percentage of fine FM. (This procedure may be viewed and printed from the GIPSA Web site at: <http://archive.gipsa.usda.gov/reference-library/handbooks/grain-insp/grbook2/soybean.pdf>.)

The following is a series of questions about the FM definition and procedure:

1. Is the definition of FM, as provided in the soybean standards, still sufficient for current marketing practices?
2. How does our method for separating FM from soybeans compare to the commercial cleaning process?

Please provide as much detail as possible as to how FM is determined in the market or for the segment of the market that you represent.

3. In order to provide a better representation of actual market value of soybeans, should we consider developing and adopting a fully-automated process to better reflect commercial cleaning capabilities? Please elaborate on the type of equipment (and sieves, if applicable) necessary for using such a procedure for separating FM from soybeans.

4. Do small broken pieces of soybeans have processing value? Should the procedure be amended so that broken are not considered as FM?

5. Do processors have a method for removing soybeans from the pod? If not, should the procedure be amended so that pods, with or without soybeans in them, will be considered as FM?

6. In light of changes in the production practices of soybeans brought about by various technological developments, farm programs, and other factors, should the grading limits for FM be amended? What should the new grade limits be? Please provide a rationale for any changes, and if possible, project the quantifiable costs and benefits for the U.S. soybean market if the grade limits were amended.

### Damage

According to our current inspection procedures, inspectors cross section soybeans and pieces of soybeans that are immature and have a thin, flat, wrinkled, or wafer-like appearance to determine if there is "meat" in the kernel. If there is "meat" in the kernel and the "meat" is not otherwise damaged, the inspector considers the soybean to be sound.

7. Do wafered kernels (wafers) containing minimal amounts of "meat" have processing value? If not, or if the value is appreciably reduced, should the procedure be amended so that wafers, to include soybeans with minimal amounts of meat, are considered damaged for inspection and grading purposes?

### Other Factors

In the Official Inspection and Weighing System, we currently offer analyses or determinations for a number of official criteria factors for soybeans.

8. Are there other factors for which we should offer analyses/determinations that would provide better or more complete information to facilitate the marketing and/or processing of soybeans?

9. Since oil and protein content are considered to be the true determinants

of value for soybean processing, should analysis of oil and protein content be mandatory, nongrade-determining factors that would be determined and reported on all official certificates for grade?

10. Are there certain aspects about the oil and protein content that would provide more meaningful information? For example, should we offer not only protein content, but also the amino acid profile of the protein?

11. Considering the rapid growth in biodiesel production, would the information exchange between sellers and buyers of soybeans be facilitated if standardized tests existed for attributes, such as fatty acids?

a. Please list the specific attributes.

b. Should we have a role in standardizing tests for the attributes listed? Should we assist only in the standardization of the tests (e.g., develop reference methods or improve existing reference methods) or should we make tests for these attributes available throughout the official system?

GIPSA has been working with life science companies in the pursuit of a standardized, rapid test for the determination of linolenic acid content in soybeans. Acres currently devoted to production of low linolenic acid soybean varieties are lower than previously anticipated. In 2006, these acres totaled approximately 750,000 out of the 72 million total planted soybean acres, less than 1 percent. However, seed distributors project acres devoted to production of low linolenic acid soybean varieties in 2007 to triple.

12. Should GIPSA continue to pursue a standardized, rapid test for the determination of linolenic acid content and, if so, why?

### Visual Reference Images

In the determination of the grading factor total damage, inspectors look for a number of types of damage, including badly ground-damaged, badly weathered-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, stinkbug-stung, or otherwise materially damaged.

13. Are these the right types of damage, and are visual reference images/interpretive lines that are currently used to determine the various types of damages reflective of the level of quality desired in the marketplace? (Visual reference images/interpretive lines may be viewed on the GIPSA Web site at: <http://www.gipsa.usda.gov/GIPSA/webapp?area=home&subject=grpi&topic=sq-isd-soybeans>.)

Inspectors also rely on visual reference images to determine whether

a sample meets the general appearance criteria for the special grade designation "Purple Mottled or Stained."

14. In consideration of the fact that the overall appearance of the product is an important consideration for some customers, should we create other general appearance images? What appearance factors are of greatest interest? (Visual reference images/general appearance factors may be viewed on the GIPSA Web site at: <http://www.gipsa.usda.gov/GIPSA/webapp?area=home&subject=grpi&topic=sq-isd>.)

#### Basis of Determination

As provided in 9 CFR 810.1603, Basis of determination, "each determination of class, heat-damaged kernels, damaged kernels, splits, and soybeans of other colors is made on the basis of the grain when free from foreign material. Inspectors make other determinations not specifically provided for under the general provisions on the basis of the grain as a whole." For example, inspectors determine moisture content on the sample as a whole.

15. What basis of determination is used in the marketplace for the various factors? Why does the marketplace use that basis?

16. Would there be any positive or detrimental consequences if we were to determine all factors on the basis of a sample when free from foreign matter?

#### Food Grade Soybeans

17. Should we establish a separate standard, for example, U.S. Standards for Food Grade Soybeans or a separate grade level, class, or special grade within the existing soybeans standards for food-grade soybeans? Please provide as much detail as possible as to:

a. Explain why.

b. What would a new standard look like or what would the grade limits be for a new grade level?

We are committed to provide market-relevant soybean standards. We welcome your comments on these issues as well as any comments or suggestions on changes to the soybean standards and grading procedures.

**Authority:** 7 U.S.C. 71–87.

**James E. Link,**

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

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 929

[Docket No. AMS–FV–07–0034; FV07–929–1]

#### **Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Continuance Referendum**

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

**ACTION:** Referendum order.

**SUMMARY:** This document directs that a continuance referendum be conducted among eligible growers of cranberries in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York to determine whether they favor continuance of the marketing order regulating the handling of cranberries grown in the production area.

**DATES:** The referendum will be conducted from May 17 through May 31, 2007. To vote in this referendum, growers must have been engaged in producing cranberries within the production area during the period September 1, 2005, through August 31, 2006.

**ADDRESSES:** Copies of the marketing order may be obtained from USDA, Washington, DC Marketing Field Office, 4700 River Road, Unit 155, Riverdale, Maryland 20737, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237.

#### **FOR FURTHER INFORMATION CONTACT:**

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734–5243, Fax: (301) 734–5275; or e-mail at: [Kenneth.Johnson@usda.gov](mailto:Kenneth.Johnson@usda.gov) or [Patricia.Petrella@usda.gov](mailto:Patricia.Petrella@usda.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to Marketing Order No. 929 (7 CFR part 929), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7

U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted during the period May 17 through May 31, 2007, among eligible cranberry growers in the production area. Only growers that were engaged in the production of cranberries in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York during the period of September 1, 2005, through August 31, 2006, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The USDA would not consider termination of the order if more than 50 percent of the growers who vote in the referendum and growers of more than 50 percent of the volume of cranberries represented in the referendum favor continuance of their program.

In evaluating the merits of continuance versus termination, the USDA will not only consider the results of the continuance referendum. The USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, processors, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581–0189, OMB Generic Fruit Crops. It has been estimated that it will take an average of 20 minutes for each of the approximately 1,100 producers of cranberries in the production area to cast a ballot. Participation is voluntary. Ballots postmarked after May 31, 2007, will be marked invalid and not included in the vote tabulation.

Kenneth G. Johnson, Patricia A. Petrella and Dawana Clark of the Washington, DC Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of USDA to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With