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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is adopting as final an interim rule that amended the requirement that agencies provide a copy of the MSPB appeal form when the agency issues a decision notice to an employee on a matter that is appealable to MSPB.

DATES: Effective July 22, 2013.

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419; phone: (202) 653–7200; fax: (202) 653–7130; or email: *mspb@mspb.gov*.

SUPPLEMENTARY INFORMATION: On April 11, 2013, the Board published an interim final rule amending 5 CFR 1201.21(c). 78 FR 21517. Prior to publication of this interim rule, this regulation required that, when a federal agency issues a decision notice to an employee on a matter that is appealable to MSPB, the federal agency must provide the employee with ''[a] copy of the MSPB appeal form . . . .'' The interim rule amended this regulation to allow federal agencies to provide employees ''[a] copy, or access to a copy, of the MSPB appeal form . . . .''

The Board received no comments in response to the interim rule. Therefore, the Board has determined to adopt the interim rule as final without change.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure.

William D. Spencer,
Clerk of the Board.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 5 CFR 1201.21(c), which was published at 78 FR 21517, on April 11, 2013, is adopted as a final rule without change.

[FR Doc. 2013–17508 Filed 7–19–13; 8:45 am]
BILLING CODE 7400–01–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 580–AB15

Inspection and Weighing of Grain in Combined and Single Lots

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

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA), Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations that cover the official grain inspection and weighing service procedures that GIPSA's Federal Grain Inspection Service (FGIS) performs under the authority of the United States Grain Standards Act (USGSA), as amended. Specifically, GIPSA is amending the regulations issued under the USGSA pertaining to grain exported in large reusable containers typically loaded onto export ships. In this final rule, GIPSA will add new definitions for ''composite'' and ''average'' grades, limit the number of containers that may be averaged or combined to form a single lot, restrict the inspection and weighing of container lots to the official service provider's area of responsibility, specify a 60-day retention period for file samples representing such container lots, make consistent the weighing certification procedures for container lots with those for inspection certification procedures, and make other miscellaneous changes. GIPSA believes that these revisions will help facilitate the marketing of U.S. grain shipped for export.

DATES: Effective September 20, 2013.

FOR FURTHER INFORMATION CONTACT: Robert Lijewski, Director, USDA, GIPSA, Field Management Division, 1400 Independence Avenue SW., Room 2409–S, Washington, DC 20250–3630, phone (202) 720–0224.

SUPPLEMENTARY INFORMATION:

Background

The United States Grain Standards Act (USGSA) (7 U.S.C. 71–87k), as amended, provides an official inspection system that facilitates the marketing of grain in domestic and international markets. The Secretary of Agriculture (Secretary) is authorized by the USGSA to establish standards of kind, class, quality, and condition for various grains and to establish standards or procedures for accurate weighing and weight certification and controls, including safeguards over equipment calibration and maintenance, for grain shipped in interstate or foreign commerce. Additionally, the Secretary can amend or revoke these standards or procedures as needed in order to adjust to current industry needs and practices. Under authority delegated by the Secretary, GIPSA is authorized to establish and maintain regulations that cover the inspection and weighing of grain under the USGSA.

Grain exported in large reusable containers has grown considerably in the past 5 years to levels that GIPSA believes have far exceeded grain industry expectations. Increased exports of containerized grain have, in turn, increased the demand for USDA grain inspection services provided by FGIS and its official grain export service providers. While the overall market share for U.S. export grain shipped in large reusable containers has grown rapidly, USGSA regulations (7 CFR part 800) for export grain shipments have focused primarily on the inspection and grading of grain exported in shiplots, unit trains, and lash barges—not on grain exported in multiple large reusable containers that are considered collectively as a single lot.

The last amendments to these sections of the USGSA regulations occurred in 1980 (45 FR 15810) when grain was not typically exported in large reusable containers but was exported in ships,

unit trains, and lash barges. In recent years, however, demand has increased for grain that is exported in large reusable containers, which enables buyers and sellers to negotiate contract terms that specify the exact quantity and quality of grain to be delivered. Typically, the industry uses large reusable containers that may be 20 feet or 40 feet in length, 8′0″ or 8′6″ in width, and 8′6″ or 9′6″ in height to transport bulk or sacked grain. Large reusable containers are usually a metal truck/trailer body that can be detached from the chassis for loading into a vessel, a railcar, or stacked in a container depot. Sales contracts usually cover multiple container parcels known as ''bookings'' (*i.e.,* grain in multiple large reusable containers that may be from different sources but are sold under a single sales contract and a single certificate) that are shipped to multiple end users, but collectively are considered a single lot. Unless exempted from official inspection and weighing requirements, a sales contract must stipulate that the overall quality in a booking meets an official USDA grade standard. Accordingly, export grain sellers often request that GIPSA combine inspection results from the individual containers and issue one official inspection certificate for the booking.

In the July 18, 2011 **Federal Register** (76 FR 42067), GIPSA requested comments to a proposed rule which proposed amendments to the regulations. GIPSA received comments from 10 stakeholders during the 60-day comment period, which fall into four general categories.

Discussion of Comments and Final Action

Commenters urged GIPSA to establish a larger maximum single lot size greater than the proposed size of 20 large reusable containers for average grade analysis or composite grade analysis. Four commenters urged GIPSA to establish a single lot size of 50 large reusable containers, while two commenters requested GIPSA to establish a single lot size of 60 large reusable containers. GIPSA also received three comments requesting that a maximum single lot size of 1,500 metric tons be adopted. Commenters also stated that the proposed regulations were disadvantageous to the shipper because they would increase delivery time as well as costs and make it more difficult to meet the contract grade. GIPSA considers 20 large reusable containers as equivalent in volume to the other types of land carriers (*e.g.* five railcars and 15 trucks) currently combined or averaged to achieve a single grade according to written instructions. Further, GIPSA believes that a maximum of 20 large reusable containers would ensure quality and uniformity within each single lot of grain that is inspected. Therefore, GIPSA is making no change to the final rule based on the above comments.

GIPSA received comments from ten commenters representing a broad cross section of grain exporters and the containerized shipping industry regarding the proposed reasonably continuous loading requirement. GIPSA did not receive any comments from international importers of containerized grain shipments in response to the proposed rule. Five commenters questioned the selection of 88 hours and suggested a longer limitation, two commenters stated that the market should and does control the timeliness of loading, two commenters requested clarification of the proposed rule, and one commenter said the rule would impose excessive costs and make it more difficult for shippers to meet contracted quality requirements.

The proposed requirement that the loading of grain in single lots be done in a reasonably continuous operation imposes a limit of 88 hours on the amount of down time that can occur while a lot is being loaded. The term ''reasonably continuous operation ''is defined in current regulations (7 CFR 800.0). The applicability of 88 hours of down time follows established time limits already in the USGSA regulations for shiplots, unit trains, and lash barges. This final rule allows for breaks in loading the lot at the particular location for up to 88 hours. Furthermore, this requirement does not state that all containers in a lot must be loaded in the 88-hour time frame, but only stipulates that the loading of the lot must be reasonably continuous, with no consecutive break in loading to exceed 88-hours.

Five commenters suggested that GIPSA allow for a longer period of inactivity, ranging from 5 to 7 days. The commenters cited the inconsistent nature of the container shipping business, and the difficulty to obtain empty containers to load and the equipment to load them. GIPSA believes that applying a reasonably continuous loading requirement to containers will help to maintain overall quality and uniformity throughout the lot.

Commenters also mentioned that the marketplace demands currently in place mandate that containers be loaded as quickly as possible. The 88-hour requirement as proposed promotes the overall uniform quality in the official system by aligning single lot container shipments with existing regulations for ships, unit trains, and lash barges, where there are also market-driven forces to incentivize timely loading of grain shipments. GIPSA believes that imposing a reasonably continuous loading requirement will not place an undue burden on exporters as reflected in the current regulations for ships, unit trains, and lash barges, and will enhance the quality of grain shipped in large reusable containers. Therefore, GIPSA will make no change to the final rule based on the above comments.

GIPSA proposed restricting the inspection and weighing of large reusable container lots to the official service provider's area of responsibility. Two commenters stated that the requirement of having grain inspected, weighed, and certified in a particular geographic area by a single official service provider is too restrictive. Three commenters stated this would hurt smaller exporters as they would be prevented from drawing containers from different areas to make up a booking.

Section 800.81(d) restricts original and reinspection services performed by official personnel to specific areas of responsibility as defined by the Secretary. This final rule will permit the shipper to combine up to 20 large reusable containers in a single lot from different locations within the official service provider's area of responsibility. Furthermore, this is consistent with the current designation requirements applicable to official service providers that perform inspection and weighing services on unit trains and lash barges and therefore should not adversely affect small entities. Additional single lots comprised of a maximum of 20 large reusable containers of the same grade from other official service providers' territories will be permitted to be combined together on a single certificate using combined lot procedures outlined in § 800.85 of the regulations. GIPSA believes the use of combined lot procedures will help to ensure the overall quality and uniformity of the booking. Accordingly, GIPSA is making no change to the final rule based on the above comments.

One comment was received on GIPSA's proposed 60-day retention period for file samples representing large reusable container lots. The commenter proposed a 90-day file sample retention period due to potential extended transit times of export containers. GIPSA believes that establishing a minimum file sample retention period of 60 days is reasonable and consistent with current written instructions for export containers.

Furthermore, § 800.152(c) provides for special retention periods. No other comments were received regarding the other amendments to the table at § 800.152(b). Accordingly, GIPSA is making no change to the final rule based on this comment.

Finally, GIPSA received no comments regarding its proposed addition of definitions for the terms ''composite grade'' and ''average grade'' in § 800.0 of the USGSA regulations. Additionally, GIPSA received no comments regarding the proposed change of the word ''shall'' to ''must'', and ''certificated'' to ''certified'', or other miscellaneous changes made throughout part 800. Therefore, GIPSA will amend 7 CFR part 800 as proposed.

Executive Order 12866 and Regulatory Flexibility Act

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

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), GIPSA has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Under the provisions of the USGSA, grain exported from the U.S., unless exempted, must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA at 47 export facilities and by delegated States at 17 facilities, and seven facilities for U.S. grain transshipped through Canadian ports. 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 (SBA). Furthermore, the USGSA (7 U.S.C. 87f–1) and regulations issued under the USGSA are applied equally to all entities. The USGSA requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those persons who handle, weigh, or transport grain for sale in foreign commerce must also register. Section 800.30 of the USGSA regulations (7 CFR 800.30) defines a foreign commerce grain business as any person who regularly engages 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 113 registered grain exporters. While most of the 113 registrants are large businesses, we believe that some may be small.

The SBA defines small businesses by their North American Industry Classification System Codes (NAICS).[1] The SBA defines small grain exporters in its regulations (13 CFR 121.201) as entities having less than $7,000,000 in average annual receipts (NAICS code 115114). Small grain exporters that export less than 15,000 metric tons per year are exempt from the mandatory inspection and weighing requirements under § 800.18 of the USGSA regulations (7 CFR 800.18). This ''waiver'' was established to provide economic relief to small grain exporter businesses from inspection and weighing requirements without impairing the objectives of the USGSA.

This final rule will revise the regulations regarding procedures for official export grain inspection and weighing services performed under the authority of the USGSA. The final rule will also amend the USGSA regulations for grain shipped in large reusable containers for export; add new definitions for ''composite'' and ''average'' grades for grain in multiple large reusable containers certified on one certificate; limit the number of large reusable containers that would be averaged or combined in a single lot; restrict the inspection and weighing of large reusable container lots to the official service provider's area of responsibility to align large reusable containers with other shipments of grain; specify a 60-day retention period for file samples representing large reusable container lots; and align weighing certification procedures for large reusable container lots with those for inspection certification procedures.

There will be no additional reporting or record keeping requirements imposed upon either large or small entities as a result of this final rule. GIPSA has not identified any other Federal rules which may duplicate, overlap or conflict with this proposed rule. Given the forgoing discussion, GIPSA has therefore determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the RFA.

Executive Order 12988

This final rule was reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The USGSA provides in section 87g (7 U.S.C. 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 will not preempt any State or local laws, or regulations, or policies unless they present an 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.

Executive Order 13175

This final rule was reviewed with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This rule will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the information collection and recordkeeping requirements in Part 800 were approved by Office of Management and Budget under Control No. 0580–0013 on October 23, 2011, and expire October 31, 2014.

E-Government Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, exports, grains, reporting and recordkeeping requirements.

For the reasons set out in the preamble, GIPSA will amend 7 CFR part 800 as follows:

PART 800—GENERAL REGULATIONS

■ 1. The authority citation for part 800 would continue to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 2. Amend § 800.0(b) by removing the numerical paragraph designations (1) through (107) and adding in alphabetical order, definitions for ''average grade'' and ''composite grade'' to read as follows:

§ 800.0 Meaning of terms.

* * * * *

(b) * * *

Average grade. Multiple carrier units or sublots that are graded individually then averaged to form a single lot inspection.

* * * * *

[1] See: *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

Composite grade. Multiple samples obtained from the same type of carriers (*e.g.,* trucklots, containers) that are combined into one sample for grade to form a single lot inspection.

* * * * *

■ 3. Amend § 800.84 by revising paragraphs (a), (b)(1) and (2), and paragraph (c) introductory text to read as follows:

§ 800.84 Inspection of grain in land carriers, containers, and barges in single lots.

(a) *General.* The inspection of bulk or sacked grain loaded or unloaded from any carrier or container, except shiplot grain, must be conducted in accordance with the provision in this section and procedures prescribed in the instructions. Applicant must provide written instructions to official personnel, reflecting contract requirements for quality and quantity for the inspection of multiple carriers graded on a composite grade or average grade basis.

(b) * * *

(1) *Single grade.* When grain in a carrier(s) is/are offered for inspection as one lot and the grain is found to be uniform in condition, the grain must be sampled, inspected, graded, and certified as one lot. For the purpose of this paragraph, condition only includes the factors heating and odor.

(i) *Composite grade.* Grain loaded in multiple carriers offered for inspection may be combined into a single sample for grade analysis and certified as a single lot, *provided that* the grain in each individual carrier is inspected and found uniform in respect to odor, condition, and insect infestation, and sampling is performed at the individual loading location in a reasonably continuous operation. The maximum number of individual units that may be combined to form a composite grade analysis is 20 containers, 5 railcars, or 15 trucks. Composite analysis must be restricted to carriers inspected within the official service provider's area of responsibility.

(ii) *Average grade.* Grain loaded in multiple carriers offered for inspection may be graded individually, then averaged for certification as a single lot, *provided that:* the grain in each individual carrier is inspected and graded as an individual unit; the grain is found to be uniform in respect to odor, condition, and insect infestation; and sampling is performed at the individual loading location in a reasonably continuous operation. The maximum number of individual units that may be combined to form an average grade analysis is 20 containers, 5 railcars, or 15 trucks. Average grade analysis is restricted to carriers inspected within the official service provider's area of responsibility.

(2) *Multiple grade.* When grain in a carrier is offered for inspection as one lot and the grain is found to be not uniform in condition because portions of the grain are heating or have an odor, the grain in each portion will be sampled, inspected, and graded separately; but the results must be shown on one certificate. The certificate must show the approximate quantity or weight of each portion, the location of each portion in the carrier or container, and the grade of the grain in each portion. The requirements of this section are not applicable when an applicant requests that the grade of the entire carrier be based on a determination of heating or odor when only a portion of the carrier is found to be heating or have an odor.

* * * * *

(c) *One certificate per carrier: exceptions.* Except as provided in this paragraph, one official certificate must be issued for the inspection of the grain in each truck, trailer, truck/trailer(s) combination, container, railcar, barge, or similarly-sized carrier, or composite/average grade analysis on multiple carrier units. The requirements of this paragraph are not applicable:

* * * * *

■ 4. Amend § 800.85 by revising paragraphs (b)(1), (c)(1) and (2), and (h)(4) and (5) to read as follows:

§ 800.85 Inspection of grain in combined lots.

* * * * *

(b) * * *

(1) For inspection during loading, unloading, or at rest. Applications for official inspection of grain as a combined lot must:

(i) Be filed in accordance with § 800.116;

(ii) Show the estimated quantity of grain that is to be certified as one lot;

(iii) Show the contract grade, and if applicable; other inspection criteria required by the contract; and

(iv) Identify each carrier into which grain is being loaded or from which grain is being unloaded.

* * * * *

(c) * * *

(1) *Inspection during loading, or unloading, or at rest.* Grain in two or more land carriers or barges that are to be officially inspected as a combined lot, must be sampled in a reasonably continuous operation. Representative samples must be obtained from the grain in each individual carrier and inspected in accordance with procedures as prescribed in the instructions.

(2) *Recertification.* Grain that has been officially inspected and certified as two or more single, composite, or average quality lots may be recertified as a combined lot provided that:

(i) The grain in each lot was sampled in a reasonably continuous operation;

(ii) The original inspection certificates issued for the single, composite, or average quality lots have been surrendered to official personnel;

(iii) Representative file samples of the single, composite, or average quality lots are available;

(iv) The grain in the single, composite, or average quality lots is of the same grade or better grade and quality than as specified in the written instructions provided by the shipper;

(v) Official personnel who performed the inspection service for the single, composite, or average quality lots and the official personnel who are to recertify the grain as a combined lot must determine that the samples used as a basis for the inspection of the grain in the single, composite, or average quality lots were representative at the time of sampling and have not changed in quality or condition; and

(vi) The quality or condition of the grain meets uniformity requirements established by the Service for official inspection of grain in combined lots.

* * * * *

(h) * * *

(4) *Combined-lot certification; general.* Each official certificate for a combined-lot inspection service must show the identification for the ''combined lot'' or, at the request of the applicant, the identification of each carrier in the combined lot. If the identification of each carrier is not shown, the statement ''Carrier identification available on the official work record'' must be shown on the inspection certificate in the space provided for remarks. The identification and any seal information for the carriers may be shown in the Remarks section on the reverse side of the inspection certificate, provided that the statement ''See reverse side'' is shown on the face of the certificate in the space provided for remarks, or on an additional page.

(5) *Recertification.* If a request for a combined-lot inspection service is filed after the grain has been officially inspected and certified as single, composite, or average quality lots, the combined-lot inspection certificate must show, in addition to the requirements of paragraph (h)(4) of this section the following:

(i) The date of inspection of the grain in the combined lot (if the single,

composite, or average quality lots were inspected on different dates, the latest of the dates must be shown);

(ii) A serial number other than the serial numbers of the official inspection certificates that are to be superseded;

(iii) The location of the grain, if at rest, or the name(s) of the elevator(s) from which or into which the grain in the combined lot was loaded or unloaded;

(iv) A statement showing the approximate quantity of grain in the combined lot;

(v) A completed statement showing the identification of any superseded certificates; and

(vi) If at the time of issuing the combined-lot inspection certificate the superseded certificates are not in the custody of the official personnel, a statement indicating that the superseded certificates have not been surrendered must be clearly shown in the space provided for remarks. If the superseded certificates are in the custody of official personnel, the superseded certificates must be clearly marked ''Void.''

* * * * *

■ 5. Amend § 800.97 by revising paragraphs (b)(1) and (c)(1) to read as follows:

§ 800.97 Weighing grain in containers, land carriers, barges, and shiplots.

* * * * *

(b) * * *

(1) *General.* If grain in a carrier is offered for inspection or weighing service as one lot, the grain must be weighed at the individual weighing location in a reasonably continuous operation and certified as one lot. The identification of the carrier(s) must be recorded on the scale tape or ticket and the weight certificate.

* * * * *

(c) * * *

(1) *Basic requirement.* One official certificate must be issued for the weighing of the grain in each container, truck, trailer, truck/trailer(s) combination, railroad car, barge, or similarly sized carrier. This requirement is not applicable to multiple grain carriers weighed as a single lot or combined lot under § 800.98.

* * * * *

■ 6. Amend § 800.98 by revising paragraphs (b)(1) and (2) and (c)(2) to read as follows:

§ 800.98 Weighing grain in combined lots.

* * * * *

(b) * * *

(1) *Single lot weighing.* (i) Single lots of grain that are to be weighed as a combined lot may be weighed at multiple locations, provided that:

(A) The lots are contained in the same type of carrier; and

(B) Weighing is performed at each individual location in a reasonably continuous operation.

(ii) The grain loaded into or unloaded from each carrier must be weighed in accordance with procedures prescribed in the instructions. In the case of sacked grain, a representative weight sample must be obtained from the grain in each carrier unless otherwise specified in the instructions.

(2) *Recertification.* Grain that has been weighed and certified as two or more single lots may be recertified as a combined lot, provided that the original weight certificates issued for the single lots have been or will be surrendered to the appropriate agency or field office, and the official personnel who performed the weighing service for the single lots and the official personnel who are to recertify the grain as a combined lot determine that the weight of the grain in the lots has not since changed, and in the case of sacked grain, that the weight samples used as a basis for weighing the single lots were representative at the time of the weighing.

* * * * *

(c) * * *

(2) *Recertification.* If a request for a combined-lot Class X or Class Y weighing service is filed after the grain in the single lots has been weighed and certified, the combined-lot weighing certificate must show the following:

(i) The date of weighing the grain in the combined lot (if the single lots were weighed on different dates, the latest dates must be shown);

(ii) A serial number, other than the serial numbers of the weight certificates that are to be superseded;

(iii) The name of the elevator(s) from which or into which the grain in the combined lot was loaded or unloaded;

(iv) A statement showing the weight of the grain in the combined lot;

(v) A completed statement showing the identification of any superseded certificate as follows: ''This combined-lot certificate supersedes certificate Nos. _____, dated _____; and

(vi) If at any time of issuing the combined-lot weight certificate, the superseded certificates are not in the custody of the agency or field office, the statement ''The superseded certificates identified herein have not been surrendered'' must be shown clearly in the space provided for remarks beneath the statement identifying the superseded certificates. If the superseded certificates are in the custody of the agency or field office, the superseded certificates must be clearly marked ''Void.''

* * * * *

■ 7. Amend § 800.152 by revising paragraph (b) to read as follows:

§ 800.152 Maintenance and retention of file samples.

* * * * *

(b) *Minimum retention period.* Upon request by an agency and with the approval of the Service, specified file samples or classes of file samples may be retained for shorter periods of time.

Carrier	In	Out	Export	Other
(1) Trucks	3	5	30	.....
(2) Railcars	5	10	30	.....
(3) Ships & Barges	5	25	90	.....
(4) Ships and Barges (short voyage—5 days or less)	5	25	60	.....
(5) Containers	5	60	60	.....
(6) Bins & Tanks	.....	.....	.....	3
(7) Submitted Samples	.....	.....	.....	3

* * * * *

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2013–17452 Filed 7–19–13; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 920 and 944

[Doc. No. AMS–FV–13–0032; FV13–920–1 IR]

Kiwifruit Grown in California and Imported Kiwifruit; Relaxation of Minimum Grade Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule relaxes the minimum grade requirement under the marketing order for kiwifruit grown in California (order), and for kiwifruit imported into the United States that are shipped to the fresh market, by increasing the tolerance of kiwifruit which is ''badly misshapen'' from 7 percent to 16 percent. The order is administered locally by the Kiwifruit Administrative Committee (Committee). This change is intended to facilitate the packing of fruit to meet the minimum grade requirement of ''KAC No. 1'', and reduce costs associated with re-sorting and repacking this grade of fruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: July 25, 2013; comments received by September 20, 2013 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kathie M. Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Kathie.Notoro@ams.usda.gov* or *Martin.Engeler@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the terms of the marketing order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, pack, and container requirements. Current requirements include specifications that such shipments be at least Size 45, grade at least KAC No. 1 quality, and contain a minimum of 6.2 percent soluble solids.

This rule relaxes the minimum grade requirement under the definition for KAC No. 1 kiwifruit quality by increasing the tolerance for ''badly misshapen'' fruit from 7 percent to 16 percent. The Committee unanimously recommended these changes at a meeting on March 27, 2013.

Section 920.52 of the order provides, in part, the authority to regulate the handling of kiwifruit and specifically, in paragraph (a)(1), the Secretary may limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of kiwifruit grown in the production area.

Section 920.302 establishes regulations regarding grade, size, pack, and container regulations. Paragraph (a)(1) specifies that the minimum grade be at least KAC No.1 quality and paragraph (b) defines that the term KAC No. 1 quality means kiwifruit that meets the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340) except that the kiwifruit shall be ''not badly misshapen,'' and a tolerance of 7 percent is provided for kiwifruit that is ''badly misshapen,'' and except that all varieties of kiwifruit are exempt from the ''tightly packed'' standard as defined in § 51.2338(a) of the U.S. Standards for Grades of Kiwifruit. The terms fairly uniform in size and diameter mean the same as defined in the U.S. Standards for Grades of Kiwifruit.

At its meeting, the Committee recommended revising paragraph (b) of 920.302 to increase the tolerance for ''badly misshapen'' fruit from 7 percent to 16 percent. ''Badly misshapen fruit'' is defined in the United States