

Rules and Regulations

Federal Register

Vol. 57, No. 240

Monday, December 14, 1992

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate from the Assistant Secretary for Science and Education to the Administrator of the Extension Service, the authority to administer a grant program to upgrade agricultural and food science facilities at 1890 land-grant colleges pursuant to 7 U.S.C. 3222b and to establish and administer the development and utilization of an agricultural communications network pursuant to 7 U.S.C. 5926.

EFFECTIVE DATE: December 14, 1992.

FOR FURTHER INFORMATION CONTACT: Marcus F. Gross, Jr., Office of the General Counsel, United States Department of Agriculture, Washington, DC, (202) 720-4076.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be effective less than 30 days after publication in the Federal Register.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12291 and 12278. This action is not a rule as defined by Pub. L. No. 96-354, the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*) and thus is exempt from its provisions.

List of Subjects in 7 CFR Part 2 -

Authority delegations (Government agencies)

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

2. Section 2.108 is amended by adding new paragraphs (a)(57) and (a)(58) to read as follows:

§ 2.108 Administrator, Extension Service.

(a) Delegations.

(57) Administer grants to 1890 land-grant colleges, including Tuskegee University, to upgrade agricultural and food sciences facilities which are used for research, extension, and resident instruction (7 U.S.C. 3222b).

(58) Establish and administer a program for the development and utilization of an agricultural communications network (7 U.S.C. 5926).

Dated: December 8, 1992.

Duane C. Acker,
Assistant Secretary for Science and Education.

[FR Doc. 92-30291 Filed 12-11-92; 8:45 am]

BILLING CODE 3410-01-M

Federal Grain Inspection Service

7 CFR Parts 800 and 810

RIN 0580-AA15

United States Standards for Wheat

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the United States Standards for Wheat to (1) remove the description Red Durum wheat from the definition of Unclassed

wheat; (2) reduce the U.S. Sample grade criteria for stones from eight or more to four or more and reduce the U.S. Sample grade aggregate weight criteria for stones from more than 0.2 percent by weight to more than 0.1 percent by weight; (3) reduce the U.S. Sample grade criteria for pieces of glass from two or more to one or more (zero tolerance); (4) establish a cumulative total criteria for factors which may cause U.S. Sample grade; (5) reduce the limit for ergot from 0.30 percent to 0.05 percent by weight; (6) reduce the minimum criteria for the special grade light smutty wheat from more than 14 smut balls to more than 5 smut balls; and (7) reduce the grading limits for foreign material in grades 1, 2, and 3. FGIS is also revising inspection plan tolerances for wheat based on the final action. This action is the result of the periodic review by FGIS of the United States Standards for Wheat.

EFFECTIVE DATE: May 1, 1993.

FOR FURTHER INFORMATION CONTACT:

George Wollam, Federal Grain Inspection Service, USDA, room 0632 South Building, P.O. Box 96454, Washington, DC 20090-6454; telephone (202) 720-0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action is classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have 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 final rule will not preempt any state or local laws, 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.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, determined this final rule does not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements contained in this rule are approved by OMB and assigned OMB No. 0580-0013.

Background

On July 1, 1991, FGIS proposed in the *Federal Register* (56 FR 29907) to revise the U.S. Standards for Wheat by (1) removing the description Red Durum wheat from the definition of Unclassed wheat; (2) reducing the U.S. Sample grade criteria for stones from eight or more to four or more and eliminating the U.S. Sample grade aggregate weight criteria for stones; (3) reducing the U.S. Sample grade criteria for pieces of glass from two or more to one or more (zero tolerance); (4) establishing a cumulative total criteria for factors which may cause U.S. Sample grade; (5) reducing the limit for ergot from 0.30 percent to 0.05 percent by weight; (6) reducing the minimum criteria for the special grade light smutty wheat from more than 14 smut balls to more than 2 smut balls; and (7) reducing the grading limits for foreign material in grades 1, 2, and 3. FGIS further proposed to revise inspection plan tolerances for wheat based on the proposed changes.

Comment Review

During the 60-day comment period ending August 30, 1991, FGIS received a total of 28 comments from the various segments of the wheat industry including producers, end-users, grain handlers, foreign buyers, promotional associations, and a State agriculture department. The majority of the commentors addressed the specific issues included in the proposed action. Two commentors representing grain handlers expressed general opposition to all of the proposed changes without providing specific reasons for their

opposition. The following paragraphs address comments received regarding the proposed changes.

Red Durum Wheat

Eighteen commentors supported or generally supported the proposal to remove Red Durum wheat from the definition of Unclassed wheat while eight commentors had no comment on the issue. Since no opposing reasons were presented in the comments received, FGIS is removing Red Durum wheat from the definition of Unclassed wheat as proposed.

Stones

Ten commentors supported or generally supported, ten commentors suggested modifications, three commentors opposed, and three commentors had no comments to the proposal to reduce the U.S. Sample grade criteria for stones from 8 or more stones to 4 or more stones and to eliminate the aggregate weight criteria.

The three commentors opposing the proposed changes represented the California wheat industry. Their comments indicated stones are inherently present in dwarf wheat varieties grown in California. They further indicated the proposed revision would unnecessarily penalize the value of the wheat and may encourage the production of lesser end-use quality wheat which exhibits better agronomic traits to avoid stones during harvest.

FGIS reviewed and evaluated this concern and concluded that the majority of wheat grown in California is of dwarf varieties; however, California wheat samples rarely contain stones. Generally, dirt clods and sand are found in semi-dwarf wheat when combines are run too close to the ground. The larger dirt clods and fine sand particles are removed as dockage during the inspection process. Further, small dirt clods remaining in the dockage-free wheat are not considered stones for grading purposes.

A review of California wheat samples selected by FGIS for monitoring inspection accuracy support this conclusion. The database used for the evaluation represents a random selection of wheat samples inspected in California from 1989 to 1991. Of the 1,520 samples in the database, 1,374 samples (90.4 percent) reported a determination for stones. Of the 1,374 samples reporting stone information, 22 samples (1.6 percent) exceeded the proposed limit of 4 or more stones and 8 samples (0.6 percent) exceeded the current limit of 8 or more stones. Consequently, revising the stone limits

in wheat will not significantly affect the numerical grade of California wheat.

Ten commentors representing producers and grain handlers suggested modifications to the proposed action on stones. One of the ten commentors suggested replacing the count limit with an aggregate weight limit. The commentor indicated this action would ensure objectivity of and accuracy in inspection. The other nine commentors, suggesting a modification to the proposal, support the proposed action to reduce the stone count limit but recommended not eliminating the aggregate weight provision. Instead of completely eliminating the aggregate weight provision, some commentors suggested revising the U.S. Sample grade aggregate weight criteria from more than 0.2 percent by weight to more than 0.1 percent by weight. They also recommended determining U.S. Sample grade due to stones on a combination count and weight basis in comparison to the established separate count or weight basis. These commentors concluded that the maintenance of the aggregate weight provision ensures appropriate grading of grain in circumstances in which the presence of small stones is not a quality concern.

Historically, the wheat standards established stones as a U.S. Sample grade factor based on count alone. FGIS published a final rule on June 30, 1987 (52 FR 24414), which included weight criteria for stones independent of the count limit. Because the determination of stones is based on a dockage-free sample, excessively large and small stones are removed from the sample prior to the determination of stones. Therefore, the U.S. Sample grade determination is based on stones which are similar to the size of wheat kernels. It could take in excess of 7 to 10 stones to surpass the 0.1 percent aggregate weight limit. Consequently, reducing the count limit to 4 or more stones in combination with a weight limit in excess of 0.1 percent is viewed as not consistent with the proposed action. For these reasons, FGIS will not establish combination count and weight criteria for stones. FGIS will, however, establish a separate aggregate weight criteria for any number of stones in excess of 0.1 percent by weight.

One grain handler supporting the proposed change recommended a change to the basis of determination. Stones in wheat are determined on a dockage-free sample basis. This commentor indicated it is better to make the determination for stones on a sample before the removal of dockage because, unlike wheat for flour milling, feed wheat is generally not cleaned

prior to entering the feed mill. Therefore, the presence of any stones could cause damage to feed rolls and pellet disks.

Comments received in response to the advance notice of proposed rulemaking (54 FR 48752) and to the proposed rule (56 FR 29907) do not indicate a need to revise the basis of determination for stones in wheat. FGIS does not believe any changes to the basis of determination is needed at this time because wheat is primarily produced as a food grain, and the standards reflect normal cleaning prior to processing. Additionally, any changes to the basis of determination for stones could result in unknown economic impacts to producers and grain handlers because inspection data are not available to determine the frequency distribution of stones removed as dockage.

Based on the comments received and available information, FGIS is revising U.S. Sample grade criteria for stones in wheat from 8 or more stones or any number of stones which have an aggregate weight in excess of 0.2 percent by weight to 4 or more stones or any number of stones which have an aggregate weight in excess of 0.1 percent by weight.

Glass

Twenty-three commentors supported or generally supported and five had no comments to the proposal to reduce the Sample grade tolerance from two or more pieces of glass to one or more. Since no opposing reasons were presented in the comments received, FGIS is revising U.S. Sample grade criteria for glass in wheat from two or more pieces of glass to one or more (zero tolerance).

Cumulative Sample Grade Factors

Seventeen commentors supported or generally supported, three commentors suggested modifications, one commentor opposed, and five commentors had no comments to the proposal to establish a cumulative total criteria for factors which may cause U.S. Sample grade.

The one commentor opposing the proposed action represented producers from Virginia. They stated:

We do not agree with this proposal as we understand it. We are not in favor of any existing class totals being equal to the cumulative total which by itself would cause a U.S. sample grade.

The three commentors suggesting modifications to the proposed changes represented the California wheat industry. Their comments indicated they support the concept for a total limit of suspected harmful and toxic

substances; however, they stated that stones are not harmful or toxic and should not be included in this category. Stones are infrequently found in California wheat. Additionally, other harmful and toxic substances included in this category are infrequently found as well.

The National Association of Wheat Growers commented that this category is an important new addition which addresses the value of total defects on the end-use value. Based upon the comments received and available information, FGIS plans to establish the cumulative total Sample grade criteria as proposed.

Ergot

Fourteen commentors supported or generally supported, five commentors suggested modifications, and seven commentors had no comments to the proposal to reduce the limit for ergot from 0.30 percent to 0.05 percent by weight.

The five commentors suggesting modifications to the proposed action represented a foreign buyer, Idaho wheat producers, and grain handlers. The Japanese Food Agency, a foreign buyer of U.S. wheat, suggested establishing a 0.00 percent limit for ergot to match their existing regulations. Idaho wheat producers commented that they support the reduced ergot limits if a 3-year phase-in period is implemented. They suggested limits at 0.20, 0.10, and 0.05 for the first, second, and third years, respectively. Three grain handler comments indicated they do not oppose the reduction to 0.05 percent; however, they were surprised at the magnitude of reduction and urged FGIS to review the matter further to determine if a less drastic reduction would suffice.

FGIS has reviewed this issue further. Ergot, caused by a fungus and favored by wet, cool weather, occurs in wheat, rye, triticale, barley, and oats. Normally, the frequency of ergot on wheat is low, but is of a constant concern. Ergot can be avoided by planting seed free from sclerotia, crop rotation, deep soil tillage, and clean cultivation. Ergot does not get into food supplies if the infected wheat is commercially processed to remove impurities (1, 2).

Based on the comments received and available information, FGIS believes the proposed limit of 0.05 percent is reasonable and necessary.

Light Smutty Wheat

Thirteen commentors supported or generally supported, five commentors suggested modifications, and eight commentors had no comments to the

proposal to reduce the criteria for the special grade light smutty wheat from more than 14 smut balls to more than 2 smut balls.

The Idaho Wheat Commission commented that they support an effort to maintain a more reliable certification process throughout the market. They suggested a phase-in period beginning at more than 5 smut balls and decreasing to more than 2 as proposed. The Idaho Grain Producers Association expressed a similar concern. Grain handlers indicated they do not oppose the reduction in the number of smut balls from 14 to 2. However, similar to their comments to ergot, they were surprised at the magnitude of reduction and urged FGIS to review the matter further to determine if a less drastic reduction would suffice.

FGIS included this proposed action in response to an Idaho grain handler who indicated the handling of wheat containing less than 14 smut balls potentially could grade light smutty due to odor when the smut balls break apart and disappear during handling. The need for reliable and repeatable certification results prompted FGIS to seek comments on the issue.

The comments received indicate the need for a change in the minimum limit of smut balls in a sample. Based on comments received and on available information, FGIS has determined to accept the Idaho wheat industry comments and revise the proposed action to establish the minimum smut ball criteria for light smutty wheat at more than 5 smut balls in 250 grams as a reasonable alternative to the proposed 2 smut ball limit. FGIS, however, will not implement a phase-in period but will evaluate the need to reduce the criteria further as part of future periodic reviews of the standards.

Foreign Material

Thirteen commentors supported or generally supported, eleven commentors opposed, two commentors suggested modifications, and one commentor had no comments to the proposal to reduce the grading limits for foreign material in grades 1, 2, and 3 from 0.5, 1.0, and 2.0 to 0.4, 0.7, and 1.3, respectively.

Grain handlers opposed the proposed action citing three reasons for their position. First, they indicated the market already supplies low foreign material wheat; therefore, changes in the standards as an incentive to maintain low foreign material is not needed. Second, they indicated there is no practical cleaning system to efficiently lower foreign material levels. Third, they indicated the proposal is premature in view of the current study undertaken

by the USDA Economic Research Service regarding the costs and benefits associated with improvements in the cleanliness of wheat.

Producers are supportive of the proposed action. Their comments indicate they support changes to improve the reputation of U.S. grain as a quality product while balancing the cost impact upon farmers.

The two comments received regarding modifications of the proposed rule generally supported the concept of reducing foreign material limits. One commentator suggested reducing the limits for U.S. Nos. 2 and 3 because these grades are commonly traded; however, they did not think it was necessary to reduce limits for U.S. No. 1 and would oppose that action.

Another commentator strongly supported the position of reducing foreign material grade limits and suggested lowering the limits to 0.3, 0.5, and 1.0 for U.S. Nos. 1, 2, and 3 instead of the proposed limits of 0.4, 0.7, and 1.3.

In response to the opposing views, FGIS evaluated the situation and reached the following conclusions. Producers initiated discussions to reduce foreign material limits in wheat. Foreign material is composed of non-wheat material which is similar in size, shape, and density of wheat kernels. This material originates at the farm level and usually consists of rye, sorghum, and various weed seeds. Consequently, any economic impact as a result of revisions to foreign material limits will affect the producer. The FGIS-proposed limits complement current agronomic practices. As a result, the proposed limits should virtually have no economic impact on producer revenues due to foreign material discounts imposed by the grain industry.

Based on the above discussion and comments and other available information, FGIS is reducing the grading limits for foreign material in grades 1, 2, and 3 as proposed from 0.5, 1.0, and 2.0 to 0.4, 0.7, and 1.3, respectively.

Grade Chart Format and Authority Citation

FGIS proposed to revise the grade chart format in § 810.2204(a), Grades and grade requirements for all classes of wheat, except Mixed wheat, to improve the readability of the grade chart. Also, FGIS proposed to revise the authority citation for part 810. No comments were received regarding this action. Therefore, FGIS is revising the grade chart format and the authority citation as proposed with minor modifications for clarity.

Inspection Plan Tolerances

Five commentators supported or generally supported, one commentator opposed, one commentator suggested modifications, and eighteen commentators had no comments to the proposal to revise the breakpoints for ergoty wheat from 0.19 to 0.03 and for light smutty wheat from 6 to 2. FGIS also proposed to revise the foreign material breakpoint for U.S. No. 3 from 0.5 to 0.4. In addition, FGIS proposed to revise the breakpoint for wheat dockage from 0.20 to 0.2.

The Japanese Food Agency opposed the proposal to revise the breakpoint for wheat dockage because they were concerned that the change may lead to inferior quality wheat. An association representing grain handlers commented that the proposed 0.03 breakpoint for ergot was unreasonable and operationally impractical. They further commented that they recognize that some reduction in the ergot breakpoint is appropriate to accommodate the lower grade of 0.05 percent but did not suggest an alternative to the proposed breakpoint.

FGIS evaluated these comments and concluded that revising the dockage breakpoint from 0.20 to 0.2 will not affect the level of dockage found in wheat. This revision promotes uniform recording procedures for factors certified to the nearest tenth percentage point. FGIS also concluded that the proposed 0.03 ergot breakpoint sufficiently assures ergot levels within the 0.05 percentage point limit. This proposed limit provides the exporter with an operating range which allows a tolerance of up to 60 percent from the 0.05 percentage point limit. FGIS further believes that a 0.03 ergot breakpoint will not affect the loading efficiency of export elevators since ergot is seldom found in wheat.

Based on the comments received and issues discussed, FGIS will revise the breakpoints for ergoty wheat from 0.19 to 0.03, for the U.S. No. 3 foreign material limit from 0.5 to 0.4, and for wheat dockage from 0.20 to 0.2. FGIS is also revising the breakpoint for light smutty wheat from 6 to 3 as a result of the revised special grade limit established at more than 5 smut balls.

Miscellaneous Comments

Some commentators provided views and opinions on matters other than the specific proposed actions. These comments addressed establishing weight limits instead of count limits for U.S. Sample grade criteria, establishing grade limits for insect-damaged kernels, reducing grade limits for shrunken and

broken kernels, and reporting sprout damage on the inspection certificate if it is equal to or greater than 1.0 percent. FGIS evaluated these concerns and is providing a general discussion for each.

One commentator, representing grain handlers, recommended expressing all U.S. Sample grade tolerances as a percentage of the sample weight rather than by a count. The comment suggested this change would ensure consistency of the grade determinations by replacing qualitative judgment with quantitative analysis. To address this comment, FGIS reviewed historical files regarding the establishment of U.S. Sample grade criteria which are based on a count. The criteria include animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substances. These U.S. Sample grade factors were included in the wheat standards as noted in the November 1, 1968, final rule (33 FR 16065) and were effective January 31, 1969. On April 27, 1976, the Federal Register published proposed revisions to the wheat standards (41 FR 17553). One proposed action included revising the definition of U.S. Sample grade to coincide with defect action levels established by the Food and Drug Administration (FDA). FDA action levels for commonly recognized harmful or toxic substances are established on a count basis. The June 29, 1976, final rule (41 FR 26670) implemented these revisions effective May 1, 1977.

FGIS believes uniformity of standards between Federal agencies is very important in order to prevent confusion and disruption within the grain marketing system. Therefore, the current method of reporting U.S. Sample grade factors on a count basis is appropriate since it best reflects the action levels established by FDA.

One commentator, representing the flour milling industry, recommended establishing grade limits for insect-damaged kernels, reducing grade limits for shrunken and broken kernels, and reporting sprout damage on the inspection certificate if it is equal to or greater than 1.0 percent.

The commentator recommended establishing separate grade limits for insect-damaged kernels because, in the commentator's opinion, the current U.S. Sample grade criteria of 32 or more kernels in a 100-gram sample does not reflect current market practice. The commentator indicated purchasing specifications typically reject any wheat containing 5 to 7 insect-damaged kernels. For these reasons, the commentator suggested the following grade limits based on either a count or a percentage basis.

RECOMMENDED GRADE LIMITS FOR INSECT-DAMAGED KERNELS

Grade	Number of Kernels	Maximum percent limit
1	8	0.2
2	6	.2
3	16	.5
4	32	1.0
5	32	1.0

FGIS does not believe it is appropriate to establish separate grade limits for insect-damaged kernels for the following reasons. General research determined that the interrelationships between FDA defect action levels for insect-damaged kernels in wheat and FDA defect action levels in flour found little correlation between insect-damaged kernel levels and insect fragments in flour. The research concluded that the flour miller cannot rely on the percent or the number of insect-damaged kernels in wheat as a predictor of the number of insect fragments found in the subsequent flour. The research further demonstrated the correlation between the number of insect-damaged kernels and corresponding weight is questionable. Although some research indicates 32 insect-damaged kernels per 100 grams of wheat is comparable to approximately 1 percent damage; other research indicates it could take as much as 101 insect-damaged kernels to obtain approximately 1.1 percent damage (3). Furthermore, insect-damaged kernels as it correlates to insect fragments in flour is a concern only to domestic flour mills. Export contracts do not include similar requirements.

Although FGIS did not propose and is not establishing separate grade limits for insect-damaged kernels, flour millers may request the certification of the actual number of insect-damaged kernels found in a sample. This information should assist the miller in determining if a wheat lot meets the acceptance level established in the purchase specification.

The same commentor recommended reducing grade limits for shrunken and broken kernels. The commentor indicated small and shriveled kernels greatly affect the milling quality of wheat. Although quantitative effects of shrunken and broken kernels on milling quality were not provided with the comment, the commentor suggested the following grade limits:

RECOMMENDED GRADE LIMITS FOR SHRUNKEN AND BROKEN KERNELS

Grade	Maximum percent limits	
	Current	Suggested
1	3.0	1.0
2	5.0	3.0

RECOMMENDED GRADE LIMITS FOR SHRUNKEN AND BROKEN KERNELS—Continued

Grade	Maximum percent limits	
	Current	Suggested
3	8.0	5.0
4	12.0	8.0
5	20.0	12.0

FGIS has requested the Agricultural Research Service to develop a practical test to predict milling yield and/or performance. FGIS believes the development implementation of a highly-correlated objective test to predict milling performance addresses the commentor's concern and is in the best interest of the wheat industry. Therefore, FGIS is addressing this commentor's concerns through research and welcomes any available information regarding the effects of shrunken and broken kernels on milling yield to assist in the development of a test.

Another concern expressed by this commentor involved reporting the percentage of sprout damage on the inspection certificate. The commentor indicated the presence of sprout damage is detrimental to the wheat's end use for some products. The commentor suggested reporting the actual percentage of sprout damage on the inspection certificate whenever the sprout damage level is equal to or greater than 1.0 percent. This 1.0 percent reporting threshold was recommended to reduce an unnecessary reporting burden to the inspection system while providing the milling industry with important quality information.

FGIS agrees that sprout damage could affect the end-use value of wheat. This is demonstrated by some purchase specifications which restrict the maximum allowable levels to 0.0, 0.2, and 0.5 percentage points. The national inspection system, however, already provides certification procedures for reporting the actual levels of sprout damage, as well as other types of damage, in wheat. Due to the vastly different needs of end users, FGIS has determined it is best to provide this information on a request basis and not as a mandatory reporting requirement. Certifying this additional information upon request provides for an efficient and cost-effective inspection service which meets the demands of every end user. Therefore, FGIS does not plan to revise the sprout damage reporting provision as suggested by the comment.

Final Action

On the basis of these comments and other available information, FGIS has decided to enact the changes as

proposed with the exception of the elimination of the aggregate weight criteria for stones and the minimum criteria for smut balls for light smutty wheat. Rather than eliminating the aggregate weight criteria as proposed, FGIS has decided to reduce the aggregate weight criteria for stones from more than 0.2 percent by weight to more than 0.1 percent by weight. FGIS has also decided to revise the light smutty wheat criteria for smut balls from more than 2 smut balls as proposed to more than 5 smut balls.

Pursuant to section 4(b)(1) of the United States Grain Standards Act (7 U.S.C. 76(b)(1)), no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgement of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to that section of the Act, it has been determined that in the public interest the revisions become effective May 1, 1993, to coincide with the beginning of the 1993 crop year. These changes will facilitate domestic and export marketing of grain.

References

- (1) Wiese, M.V., Compendium of Wheat Diseases, 1977.
- (2) Christensen, C.A., and R.A. Meronuck, Quality Maintenance in Stored Grains & Seeds, 1986.
- (3) Wingfield, J., and J. Pedersen, Insect Fragment Levels in Flour Milled from Selected Commercial Wheat Blends, prepared for the Millers' National Federation, August, 1984.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Grain.

7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR parts 800 and 810 are 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 800.86(c)(2), Tables 23 and 24 are revised to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 23.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR WHEAT

Grade	Minimum limits of—		Maximum limits of—															
	Test weight per bushel		Damaged kernels		Foreign material (per-cent)	Shrunken and broken kernels (per-cent)	Defects ³ (percent)	Wheat of other classes ⁴										
	Hard red spring wheat or white club wheat ¹ (pounds)	All other classes and subclasses (pounds)	Heat-damaged kernels (per-cent)	Total ² (per-cent)				Contrasting classes (percent)	Total ⁵ (per-cent)									
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP								
U.S. No. 1	58.0	-0.3	60.0	-0.3	0.2	0.2	2.0	1.0	0.4	0.2	3.0	0.3	3.0	0.7	1.0	0.7	3.0	1.8
U.S. No. 2	57.0	-0.3	58.0	-0.3	0.2	0.2	4.0	1.5	0.7	0.3	5.0	0.4	5.0	0.9	2.0	1.0	5.0	2.1
U.S. No. 3	55.0	-0.3	56.0	-0.3	0.5	0.3	7.0	1.9	1.3	0.4	8.0	0.5	8.0	1.2	3.0	1.3	10.0	2.9
U.S. No. 4	53.0	-0.3	54.0	-0.3	1.0	0.4	10.0	2.3	3.0	0.8	12.0	0.6	12.0	1.4	10.0	2.3	10.0	2.9
U.S. No. 5	50.0	-0.3	51.0	-0.3	3.0	0.7	15.0	2.7	5.0	0.7	20.0	0.7	20.0	1.5	10.0	2.3	10.0	2.9

¹ These requirements also apply when Hard Red Spring or White Club wheat predominate in a sample of Mixed wheat.² Includes heat-damaged kernels.³ Defects include damaged kernels (total), foreign material, and shrunken and broken kernels. The sum of these factors may not exceed the limit for defects for each numerical grade.⁴ Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.⁵ Includes contrasting classes.

TABLE 24.—BREAKPOINTS FOR WHEAT SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Moisture	As specified by contract or load order grade.	0.3
Garlicky	More than 2 bulbils per 1,000 grams.	1½
Light smutty	More than 5 smut balls per 250 grams.	3
Smutty	More than 30 smut balls per 250 grams.	10
Infested	Same as in § 810.107	0
Ergoty	More than 0.05%	0.03
Treated	Same as in § 810.2204	0
Dockage	As specified by contract or load order grade.	0.2
Protein	As specified by contract or load order grade.	0.5
Class and Subclass		
Hard red spring:		
DNS	75% or more DHV	-5.0
NS	25% or more DHV but less than 75% DHV.	-5.0
Dunum:		
HADU	75% or more HVAC	-5.0
ADU	60% or more HVAC but less than 75% of HVAC.	-5.0

TABLE 24.—BREAKPOINTS FOR WHEAT SPECIAL GRADES AND FACTORS—Continued

Special grade or factor	Grade limit	Breakpoint
Soft white:		
SWH	Not more than 10% white club wheat.	2.0
WHCB	Not more than 10% of other soft white wheat.	2.0
WWH	More than 10% WHCB and more than 10% of other soft white wheat.	-3.0

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

3. The authority citation for part 810 continues to read as follows:

Authority: Public Law 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Subpart M—United States Standards for Wheat

4. Section 810.2202(a)(7) is revised to read as follows:

§ 810.2202 Definition of other terms.

(a) * * *

(7) *Unclassed wheat.* Any variety of wheat that is not classifiable under other criteria provided in the wheat standards. There are no subclasses in this class. This class includes any wheat which is other than red or white in color.

* * * * *

5. Section 810.2204(a) is revised to read as follows:

§ 810.2204 Grades and grade requirements.

(a) Grades and grade requirements for all classes of wheat, except Mixed wheat.

Grading Factors

Grades U.S. Nos.

1 2 3 4 5

Minimum pound limits of:

Test weight per bushel:					
Hard Red Spring wheat or White Club wheat	58.0	57.0	55.0	53.0	50.0
All other classes and subclasses	60.0	58.0	56.0	54.0	51.0

Maximum percent limits of:

Defects:					
Damaged kernels:					
Heat (part of total)	0.2	0.2	0.5	1.0	3.0
Total	2.0	4.0	7.0	10.0	15.0
Foreign material	0.4	0.7	1.3	3.0	5.0
Shrunken and broken kernels	3.0	5.0	8.0	12.0	20.0

Grading Factors	Grades U.S. Nos.				
	1	2	3	4	5
Total ¹	3.0	5.0	8.0	12.0	20.0
Wheat of other classes: ²					
Contrasting classes	1.0	2.0	3.0	10.0	10.0
Total ³	3.0	5.0	10.0	10.0	10.0
Stones	0.1	0.1	0.1	0.1	0.1

Maximum count limits of:

Other material:					
Animal filth	1	1	1	1	1
Castor beans	1	1	1	1	1
Crotalaria seeds	2	2	2	2	2
Glass	0	0	0	0	0
Stones	3	3	3	3	3
Unknown foreign substance	3	3	3	3	3
Total ⁴	4	4	4	4	4
Insect-damaged kernels:					
In 100 grams	31	31	31	31	31

U.S. Sample grade is Wheat that:

- (a) does not meet the requirements for U.S. Nos. 1, 2, 3, 4, or 5; or
 (b) has a musty, sour or commercially objectionable foreign odor (except smut or garlic odor); or
 (c) is heating or of distinctly low quality.

¹ Includes damaged kernels (total), foreign material, shrunken and broken kernels.² Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.³ Includes contrasting classes.⁴ Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substance.

6. Section 810.2205 paragraphs (a) and (c) are revised to read as follows:

§ 810.2205 Special grades and special grade requirements.

(a) *Ergot wheat*. Wheat that contains more than 0.05 percent of ergot.

(c) *Light smutty wheat*. Wheat that has an unmistakable odor of smut, or which contains, in a 250-gram portion, smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 5 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

Dated: November 3, 1992.

John C. Foltz,
 Administrator.

[FR Doc. 92-30198 Filed 12-11-92; 8:45 am]

BILLING CODE 3410-EN-M

7 CFR Parts 800 and 810

RIN 0580-AA10

United States Standards for Sorghum

AGENCY: Federal Grain Inspection
 Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the United States Standards for Sorghum to (1) reduce the maximum "broken kernels and foreign material" (BNFM) limits for U.S. No. 2 sorghum by 1 percent and

U.S. Nos. 3 and 4 sorghum by 2 percent; (2) establish grade limits for foreign material; (3) reduce the amount of Brown sorghum allowed in Yellow sorghum from 10.0 percent to 3.0 percent; (4) modify the classification terminology for the classes Yellow and Brown sorghum; and (5) revise the definitions for all classes of sorghum. FGIS is also revising inspection plan tolerances for sorghum based on these changes.

EFFECTIVE DATE: June 1, 1993.

FOR FURTHER INFORMATION CONTACT:
 George Wollam, FGIS, USDA, room
 0632 South Building, P.O. Box 96454,
 Washington, DC 20090-6454.
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 720-4628.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have 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 final rule will not preempt any State or local laws, 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.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements contained in this rule have been approved by OMB and assigned OMB No. 0580-0013.

Effective Date

Pursuant to section 4(b)(1) of the United States Grain Standards Act (7 U.S.C. 76(b)(1)), no standards established or amendments or revocations of standards are to become

effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to that section of the Act, it has been determined that in the public interest these amendments become effective less than one calendar year after promulgation. Accordingly, this final rule will be effective on June 1, 1993, in order to be in effect for the 1993 crop year. These changes will facilitate domestic and export marketing of sorghum.

Final Action

On April 2, 1991, FGIS proposed in the *Federal Register* (56 FR 13420) to revise the U.S. Standards for Sorghum by (1) separating the grading factor "broken kernels, foreign material, and other grains" (BNFM) into two factors "broken kernels" (BN) and "foreign material" (FM); (2) reducing the amount of Brown sorghum allowed in Yellow sorghum; (3) modifying the classification terminology for the classes Yellow and Brown sorghum; (4) revising the definitions for all classes of sorghum; and (5) requiring dockage to be reported to the nearest tenth percent rather than whole percents with fractions disregarded.

During the 60 day comment period ending June 3, 1991, FGIS received a total of 29 comments from the various segments of the sorghum industry including producers, end-users, handlers, academicians, and official inspection agencies.

On the basis of these comments and other available information, FGIS has decided to enact the changes as proposed with the exception of the dockage and BNFM proposal.

FGIS is investigating alternative options regarding dockage determination, reporting, and certification and will solicit public comment at a later date. Meanwhile, FGIS will continue to report dockage to the whole percent and disregard any fraction.

Rather than separating BNFM into BN and FM and establishing separate limits for each, FGIS has decided to establish grade limits for FM as a subfactor of BNFM and retain BNFM as a grade determining factor for sorghum.

BN and FM

FGIS proposed to separate the grading factor BNFM into two factors, BN and FM and reduce the combined limits for BN and FM in grades 2, 3, and 4. Twenty-three commentators supported or generally supported and six opposed the proposed action.

Supporters of the proposal are encouraged by the fact that sorghum customers will know precisely how much foreign material they are receiving, thereby dispelling the perception some buyers have that BNFM is predominately or exclusively FM. They also believe the proposed action will promote the marketing of cleaner, more consistent quality sorghum and will provide more complete information regarding the end-use value of the sorghum. Supporters further believe the combination of more consistent quality sorghum and greater end-use value information will encourage domestic and foreign buyers to consider sorghum in their grain buying decisions.

Opponents are concerned that the proposal would disadvantage certain geographical locations and inflict significant economic losses on producers and handlers without improving the Nation's competitive position in the world market. They explained that many sorghum handling facilities are not equipped to clean sorghum and if enacted, the proposal could force facilities to retrofit existing operations to meet the separate BN and FM grade limits. Furthermore, they contended that dealing with two separate factors rather than one combined factor could inhibit handling efficiency. Opponents conclude that the cost of retrofitting and the reduced operational efficiency far exceed the benefits that may result from establishing separate BN and FM grading limits. Several commentators added that the market has not demonstrated any contractual interest in receiving separate BN and FM information or limiting the amounts of BN and FM currently being delivered. In fact, some handlers and merchants believe that enacting the proposal would result in a greater market demand for U.S. No. 3 sorghum and considerably less demand for U.S. No. 2 because price governs sales more so than quality.

While a consensus of the sorghum handlers oppose the idea of separating BN and FM, they do not necessarily oppose a reduction in the amount of BNFM permitted in the different numerical grades. One trade association commenting on the proposal believes the industry can economically support some tightening of the BNFM levels, but questions the rationale for such a reduction by stating that "lower limits should be based upon market demand and we don't believe that has been clearly established."

The current sorghum standards permit a wide range of BNFM in each grade. For example, the difference

between the current U.S. No. 2 BNFM limit and that of U.S. No. 3 is 4 percentage points. Consequently, a buyer may receive one shipment of U.S. No. 2 sorghum containing only 4.1 percent BNFM and in the next shipment receive as much as 8 percent BNFM. This inconsistency in BNFM levels complicates end-use processing and represents a significant difference in product value.

During a 1989 grain sorghum research and utilization conference in Lubbock, Texas, end-users representing the feed, food, and industrial sectors of the sorghum industry expressed their concern over the levels and inconsistency of BNFM in sorghum. In the steam flaking process, high levels of BNFM interfere with the intact kernel's ability to absorb water. Broken kernel and foreign material absorb moisture at a faster rate which limits the amount of available moisture and impacts on the overall processing performance. In addition, processors and end-users are concerned because BNFM is a better media for mold, which could lead to mycotoxin production.

In reaching a final decision regarding BNFM, FGIS carefully considered the technical constraints and marketing concerns of the grain handlers and merchants. As stated earlier, those opposing separate BN and FM limits stated such action could threaten the efficiency with which the United States handles and markets sorghum and conceivably shift the quality preference of sorghum customers. FGIS believes changes to the sorghum standards must serve to improve market efficiency and encourage the production and delivery of high quality sorghum. FGIS' decision to retain BNFM as a grading factor and add a subfactor limit for FM should achieve these objectives.

BNFM will remain as a grade determining factor in sorghum with the limits for U.S. Nos. 2, 3, and 4 sorghum reduced to 7, 10, and 13 percent, respectively. The BNFM limit for U.S. No. 1 sorghum will remain at 4 percent. The corresponding FM fractions for grades 1 through 4 are established at 1.5, 2.5, 3.5, and 4.5 percent, respectively.

This new FM standard limits the amount of FM in BNFM for U.S. No. 2 sorghum to 35.7 percent; whereas, prior to this change, 100 percent of the BNFM could have been FM. Such a restriction is also comparable to the standards of other major sorghum exporters. Argentina, for instance, whose export standard is comparable to the current U.S. No. 2 BNFM standard, allows up to 5 percent BN and 3 percent FM. Therefore, 37.5 percent of the combined BNFM may be FM. Similarly, certain

Australian standards allow up to 50 percent of the BNFM to be FM.

The final decision to make FM a subfactor of BNFM rather than a separate factor alters the projected market impact discussed in the proposal. FGIS had estimated that the proposed rule to establish separate limits for BN and FM would have resulted in 77.4 rather than 100 percent of the export lots and 73.6 rather than 94.4 percent of the domestic lots receiving the U.S. No. 2 or better grade designation. These estimates were based on BNFM inspection data collected between 1987 and 1989 and assumed no immediate market reaction to lower actual BN and FM levels. FGIS's decision to place a restriction only on the levels of FM in the combined BNFM factor lessens the estimated market impact.

FGIS estimates this final rule will result in 91.4 and 87.6 percent of the export and domestic sorghum lots, respectively, continuing to receive the U.S. No. 2 or better grade designation. This compares with a current level of 99.9 and 95.7 percent for export and domestic sorghum lots, respectively. These new estimates are based on available inspection data collected between 1987 and 1991 and again assumes no immediate market reaction to lower actual BN and FM level.

It is impractical to speculate specific market reaction to the revised BNFM limits. If the market views these changes as positive, market changes could occur to create incentives for lower BNFM sorghum. That is, a market environment would evolve with greater price discrimination between low and high BNFM sorghum. If the new limits do not serve as an incentive to improve market efficiencies, the market will, through contractual arrangements, find a BNFM level that optimizes market performance. The revised limits are new parameters for describing sorghum quality which will serve as an incentive for members of the sorghum market at all levels to examine their operational and marketing practices and revise them as deemed necessary to improve market efficiency.

Based on comments received regarding the BNFM proposal and other available information, FGIS is revising the sorghum standards to:

- (1) Reduce the BNFM limits for grades 2, 3, and 4; and
- (2) Include FM as a subfactor with maximum limits under BNFM for each grade.

FGIS is taking this action to better reflect sorghum quality in the standards, to encourage the delivery of high quality sorghum, and to discourage the addition

of foreign material and other grains to sorghum.

Dockage

To more accurately and precisely report dockage in sorghum, FGIS proposed the reporting of dockage to the nearest tenth percent, rather than whole percents with fractions being disregarded.

FGIS received mixed opinions regarding this proposal. In general, producers and academicians supported efforts to provide further quality information to the market. In contrast, the grain handlers and merchants were generally opposed to reporting dockage in tenths of a percent because it "could introduce a new variable in merchandising that would raise questions for our export customers * * *." In fact, several opponents directly or indirectly suggested that the term "dockage" be deleted from the sorghum standards and that the material currently defined as dockage be included in FM.

Based on available sorghum inspection data, dockage is not reported in 97 percent of the domestic sorghum lots and 99.9 percent of the export lots because it does not exceed 1 percent. Therefore, reporting dockage on each certificate may indeed prompt merchandisers to reevaluate the way in which sorghum is marketed. Furthermore, the two major export competitors, Argentina and Australia, do not make any distinction between BNFM and dockage.

However, FGIS has decided to investigate alternative options regarding dockage with a possible proposal for action at a later date. Therefore, no change is being made to the dockage procedures. Dockage will continue to be reported as a whole percent with any fraction of a percent disregarded.

Brown Sorghum Limits

FGIS proposed to reduce the amount of Brown sorghum allowed in Yellow sorghum from 10.0 percent to 3.0 percent. Twenty-six commentators supported the proposed action and two commentators did not have an opinion and one commentator felt the reduction was too dramatic stating that "any time you make a 70% adjustment, you either question the old standard or the new standard."

Yellow sorghum is generally considered to have approximately 95 percent of the nutritional value of corn (1, 2). However, the nutritional value of Brown (high-tannin) sorghum does not compare favorably to that of Yellow sorghum. Feeding trials have demonstrated that Brown sorghum can

cause as much as a 30-percent reduction in feed efficiency when compared to Yellow sorghum, depending on the class of livestock being fed, the method of feeding, and other variables (1). Research has shown that the nutritional impact of feeding Brown sorghum depends on the level of tannin in the grain and the percent of the diet it comprises (3). At the present time, however, due to the variability of the tannin content among Brown sorghum varieties, it is impractical to assess the level which would effect feed efficiency. The intent of the proposed reduction of Brown sorghum limits is to assure U.S. sorghum customers of its relatively high nutritional value.

Brown sorghum accounts for approximately 2 percent of the total U.S. sorghum production. The potential for combining Brown sorghum with Yellow sorghum at unacceptable levels has hindered U.S. sorghum promotional efforts according to the Grain Sorghum Promotion Federation (GSPF), the market development entity of the National Grain Sorghum Producers Association (NGSPA). They indicate livestock feeders that have witnessed the animals' poor performance when fed the sorghum mixtures have become prejudiced against sorghum in general.

Although FGIS cannot establish the limit based on quantitative evidence regarding the effects on nutritional value, FGIS, believes that limiting the amount of Brown sorghum in Yellow sorghum to 3 percent will improve a buyer's confidence in the quality of U.S. sorghum by providing reasonable assurances to domestic and foreign customers that the sorghum will have approximately 95 percent the nutritional value of corn in livestock feed. Consequently, FGIS is amending the sorghum standards to reduce the amount of Brown sorghum allowed in Yellow sorghum, from 10.0 percent to 3.0 percent.

Class and Definition Terms

FGIS proposed to modify the classification terminology for the class Yellow and Brown sorghum to more clearly discriminate between the two classes. In addition, FGIS proposed to revise the definition for all classes of sorghum. Twenty-five commentators either supported or generally supported and four were silent on these issues.

The current classification system based on the visual appearance (color) of the kernel is confusing. The pericarp (seedcoat) colors of one class can also be observed in the other, with the exception of the brown pericarp. Only Brown sorghum has a brown pericarp, but, it is sometimes difficult to

distinguish the brown pericarps of the Brown sorghum varieties from the reddish-brown pericarps common to many Yellow sorghum varieties. A better distinction between the two classes is the presence of a pigmented testa (subcoat). The testa, which contains condensed tannins, is only present in Brown sorghum. It is the condensed tannins which are believed to be responsible for the nutritional effects associated with feeding Brown sorghum (1, 2). Consequently, to more distinctly define and isolate the two classes, FGIS is changing the class Brown sorghum to Tannin sorghum and revising the corresponding definition to include the words "pigmented testa" and "tannin."

The class Yellow sorghum, which includes more reddish-colored kernels than yellow colored kernels, creates some confusion in the marketplace. Due to the array of colors found in this class and the fact that the majority of the sorghum grown in the United States falls into this classification, FGIS is changing the class Yellow sorghum to Sorghum. Further, to communicate the fact that sorghum varieties within this class do not have a pigmented testa layer or the correspondingly high tannin levels, FGIS is revising the definition to reflect this information. It is important to note that although sorghum varieties without testa layers do not contain condensed tannins, the analytical methods employed for tannin analyses routinely report low-tannin levels due to the presence and measurement of other nontannin phenols (1). For this

reason, definitions for the nontannin sorghum classes include a statement that they are low in tannin content.

While FGIS is retaining the classification terminology for White and Mixed sorghum, the definitions for these classes are being revised to coincide with the classification changes and revisions discussed above.

Inspection Plan Tolerances

Grain sorghum lots are inspected by a statistically based inspection plan. Inspection tolerances, commonly referred to as breakpoints (BP), are used to determine acceptable quality. As a result of the sorghum standards changes discussed above, some of the established breakpoints for sorghum require adjustment. Consequently, FGIS is revising section 800.86 (c)(2) of the regulations, tables 15 and 16, to reflect the corresponding changes/additions in the established inspection plan tolerances. The grade limits (GL) and BP for sorghum and the BP for sorghum special grades and factors are also revised.

Grade Chart Format

FGIS is revising the grade chart format in section 810.1404, Grades and grade requirements for sorghum, to improve the readability of the grade chart. In addition, section (b) of section 810.1404 is being revised and incorporated into the grade chart.

References

- (1) Hahn, D.H., L.W. Rooney and C.F. Earp. Tannins and Phenols of Sorghum. Cereal Food World, 29:776-779, 1984.

(2) Rooney, L.W., M.E. Blakely, F.R. Miller, and D.T. Rosenow, 1980. Factors Affecting the Polyphenols of Sorghum and Their Development and Location in the Sorghum Kernel. Pages 25-35 in Proceedings, Symposium on Polyphenols in Cereals and Legumes, 36th Annual Meeting of the Institute of Food Technologists, St. Louis, Missouri.

(3) Fuller, H.L., Potter, D.K., and Brown, A.R. 1966. The Feeding Value of Grain Sorghums In Relation to Their Tannin Content. Univ. of Georgia, College of Agric. Exp.Stn. Bull., N.S. 176. 14pp.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Grain.

7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR Parts 800 and 810 are 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 800.86(c)(2), tables 15 and 16 are revised to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 15.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SORGHUM

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—							
			Damaged kernels				Broken kernels and foreign material			
			Heat-damaged (percent)		Total (percent)		Total (percent)		Foreign material (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	57.0	-0.4	0.2	0.1	2.0	1.1	4.0	0.3	1.5	0.3
U.S. No. 2	55.0	-0.4	0.5	0.4	5.0	1.8	7.0	0.4	2.5	0.4
U.S. No. 3 ¹	53.0	-0.4	1.0	0.5	10.0	2.3	10.0	0.5	3.5	0.5
U.S. No. 4	51.0	-0.4	3.0	0.8	15.0	2.8	13.0	0.6	4.5	0.6

¹ Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

TABLE 16.—BREAKPOINTS FOR SORGHUM SPECIAL GRADES AND FACTORS

Special grade or factors	Grade limit	Breakpoint
Class Tannin Sorghum	Not less than 90.0%	-1.9
White	Not less than 97.0%	-1.0
Smutty	Not less than 98.0%	-0.9
Infested	20 or more in 100 grams	8
	Same as in § 810.107	0

TABLE 16.—BREAKPOINTS FOR SORGHUM SPECIAL GRADES AND FACTORS—Continued

Special grade or factors	Grade limit	Breakpoint
Dockage	0.99% and above	0.32
Moisture	As specified by contract or load order grade.	0.5

* * * * *

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

3. The authority citation for Part 810 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Subpart I—United States Standards for Sorghum

4. In § 810.1402, paragraph (i) is removed, paragraphs (j) and (k) are redesignated (i) and (j) and republished, and paragraphs (b) and (c) are revised to read as follows:

§ 810.1402 Definitions of other terms.

* * * * *

(b) *Broken kernels and foreign material.* The combination of broken kernels and foreign material as defined in paragraph (a) and (f) of this section.

(c) *Classes.* There are four classes of sorghum: Sorghum, Tannin sorghum, White sorghum, and Mixed sorghum.

(1) *Sorghum.* Sorghum which is low in tannin content due to the absence of a pigmented testa (subcoat) and contains less than 98.0 percent White sorghum and not more than 3.0 percent Tannin sorghum. The pericarp color of this class may appear white, yellow, pink, orange, red, or bronze.

(2) *Tannin sorghum.* Sorghum which is high in tannin content due to the presence of a pigmented testa (subcoat) and contains not more than 10.0 percent non-Tannin sorghum. The pericarp

color of this class is usually brown but may also be white, yellow, pink, orange, red, or bronze.

(3) *White sorghum.* Sorghum which is low in tannin content due to the absence of a pigmented testa (subcoat) and contains not more than 2.0 percent sorghum of other classes. The pericarp color of this class is white or translucent and includes sorghum containing spots that, singly or in combination, cover 25.0 percent or less of the kernel.

(4) *Mixed sorghum.* Sorghum which does not meet the requirements for any of the classes Sorghum, Tannin sorghum, or White sorghum.

* * * * *

(i) *Pericarp.* The pericarp is the outer layers of the sorghum grain and is fused to the seedcoat.

(j) *Sieves.*

(1) *1.98 mm (5/64 (0.0781) inches) triangular-hole sieve.* A metal sieve 0.81 mm (0.032 inches) thick with equilateral triangular perforations the inscribed circles of which are 1.98 mm (0.0781 inches) in diameter.

(2) *0.99 mm (2 1/2 /64 (0.0391) inches) round-hole sieve.* A metal sieve 0.81 mm (0.032 inch) thick with round

holes 0.99 mm (0.0391 inches) in diameter.

5. Section 810.1403 is revised to read as follows:

§ 810.1403 Basis of Determination.

Each determination of broken kernels and foreign material is made on the basis of the grain when free from dockage. Each determination of class, damaged kernels, heat-damaged kernels, and stones is made on the basis of the grain when free from dockage and that portion of the broken kernels, and foreign material that will pass through a 1.98 mm (5/64 inches) triangular-hole sieve. Other determinations not specifically provided for in the general provisions are made on the basis of the grain as a whole except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage, broken kernels, and foreign material removed by the 1.98 mm (5/64 inches) triangular-hole sieve.

6. Section 810.1404 is revised to read as follows:

§ 810.1404 Grades and grade requirements for sorghum.

Grading factors	Grades U.S. Nos. ¹			
	1	2	3	4
Minimum pound limits of:				
Test weight per bushel	57.0	55.0	53.0	51.0
Maximum percent limits of:				
Damaged kernels:				
Heat (part of total)	0.2	0.5	1.0	3.0
Total	2.0	5.0	10.0	15.0
Broken kernels and foreign material:				
Foreign material (part of total)	1.5	2.5	3.5	4.5
Total	4.0	7.0	10.0	13.0
Maximum count limits of:				
Other material:				
Animal filth	9	9	9	9
Castor beans	1	1	1	1
Crotalaria seeds	2	2	2	2
Glass	1	1	1	1
Stones ²	7	7	7	7
Unknown foreign substance	3	3	3	3
Cocklebur	7	7	7	7

U.S. Sample grade is Sorghum that:

- (a) Does not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or
 (b) Has a musty, sour or commercially objectionable foreign odor (except smut odor); or
 (c) Is badly weathered, heating or distinctly low quality.

¹ Sorghum which is distinctly discolored shall not grade higher than U.S. No. 3.

² Aggregate weight of stones must also exceed 0.2 percent of sample weight.

Dated: November 3, 1992.

John C. Foltz,
Administrator.

[FR Doc. 92-30200 Filed 12-11-92; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 92-25]

Receivership

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is removing its receivership regulation. The OCC presently makes an "insolvency" determination when placing a national bank into receivership. Effective December 19, 1992, statutory changes provide the OCC with new, additional grounds for appointing a receiver for a national bank. With these statutory changes, the OCC will no longer be required to make an "insolvency" determination; and the receivership regulation will no longer be necessary.

EFFECTIVE DATE: December 19, 1992.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The OCC has the authority to appoint a receiver for a national bank, under 12 U.S.C. 191, whenever the OCC becomes satisfied of its insolvency, after due examination of its affairs. Because insolvency is not defined in the statute, and to clarify the basis under which the OCC could appoint a receiver for a national bank, the OCC promulgated 12 CFR 5.49 (receivership regulation). This regulation defines two possible insolvency tests the OCC may consider in determining whether to appoint a receiver for a national bank. The receivership regulation defines a "net worth insolvency" test and a "liquidity insolvency" test. The receivership regulation notes that the OCC may also use alternate methods to determine whether a national bank is insolvent.

Effective December 19, 1992, 12 U.S.C. 191 is amended by section 133 of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Stat. 2236

(December 19, 1991) (FDICIA). Section 133 of FDICIA provides the OCC, and the other Federal banking agencies, with uniform grounds for appointing either a conservator or a receiver. The grounds as specified in 12 U.S.C. 1821(c)(5) are:

(A) The institution's assets are less than the institution's obligations to its creditors and others, including members of the institution [for a mutual institution].

(B) Substantial dissipation of assets or earnings due to—

(i) any violation of any statute or regulation; or

(ii) any unsafe or unsound practice.

(C) An unsafe or unsound condition to transact business.

(D) Any willful violation of a cease and desist order which has become final.

(E) Any concealment of the institution's books, papers, records, or assets, or any refusal to submit the institution's books, papers, records, or affairs for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

(F) The institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.

(G) The institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in 12 U.S.C. 1831o(b)) without Federal assistance.

(H) Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

(i) Cause insolvency or substantial dissipation of assets or earnings;

(ii) Weaken the institution's condition; or

(iii) Otherwise seriously prejudice the interests of the institution's depositors or the deposit insurance fund.

(I) The institution, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) The institution ceases to be an insured institution.

(K) The institution is "undercapitalized"¹ and—

(i) has no reasonable prospect for becoming adequately capitalized (as defined);

(ii) fails to become adequately capitalized when required to do so under 12 U.S.C. 1831o(f)(2)(A);

(iii) fails to submit a capital restoration plan acceptable to the

appropriate agency within the time prescribed under 12 U.S.C.

1831o(e)(2)(D); or

(iv) materially fails to implement a capital restoration plan submitted and accepted under 12 U.S.C. 1831o(e)(2).

(L) The institution—

(i) is "critically undercapitalized;"² or

(ii) otherwise has substantially insufficient capital. 12 U.S.C. 203(a) and 1821(c)(5).³

Some of these grounds are similar to, and have the same effect as, the net worth test and the liquidity test in the regulation. However, the amendment to 12 U.S.C. 191 makes the regulation unnecessary.

Administrative Procedure Act

The OCC is adopting this rulemaking as a final rule effective December 19, 1992. The OCC finds, pursuant to 5 U.S.C. 553(b)(B), that notice and public comment procedure is unnecessary and contrary to the public interest. The OCC finds that the public interest is best served through removing the receivership regulation at the same time that the new grounds for appointing a receiver for a national bank become effective. This simultaneous effective date will assure the least possible confusion regarding the basis under which a national bank may be placed into receivership and will avoid any unnecessary delays in permitting the OCC to take appropriate actions for the protection of depositors of a national bank. Because the changes to the grounds for appointing a receiver for a national bank are based on statutory amendments, and not merely changes in OCC policy on determining when to appoint a receiver, public comment on the grounds for appointment of a receiver is unnecessary and contrary to the public interest. Accordingly, the OCC finds that this decision is exempt from the notice and comment provisions

² "Critically undercapitalized" means the national bank fails to meet any of the critical capital levels to be set by the OCC under 12 U.S.C. 1831o(b)(1)(E) and (c)(3)(A), as amended by section 131 of FDICIA. See 57 FR 44866, 44891 *et seq.* (September 29, 1992), to be codified at 12 CFR part 6, subpart A. For critically undercapitalized national banks, the OCC must generally appoint a receiver within 90 days, appoint a conservator within 90 days with the concurrence of the Federal Deposit Insurance Corporation (FDIC), or take other action which the OCC determines, with the concurrence of the FDIC, would better achieve the goal of increased capitalization at such bank, under 12 U.S.C. 1831o(g)(3), as amended by section 131 of FDICIA.

³ The OCC may not appoint a conservator for a national bank under the last two grounds without the FDIC's consent, unless the OCC has given the FDIC 48 hours notice of the intention and the grounds therefor. 12 U.S.C. 1821(c)(11).

¹ "Undercapitalized" means the institution fails to meet any of the minimum required capital ratios established under 12 U.S.C. 1831o(b)(1)(C), as amended by section 131 of FDICIA.