Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 810

[Docket No. FGIS–2003–001]

United States Standards for Wheat.

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

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), proposes to revise the United States Standards for Wheat to amend the definition of the class Hard White wheat to insert subclasses. The proposed rule would also change the definition of Contrasting Classes for Hard Red Winter wheat and Hard Red Spring wheat. Additionally, the rule will insert language into the wheat standard to specify the sample size used to determine sample grade factors. These changes would further help to facilitate the marketing of wheat.

DATES: Comments must be received on or before August 4, 2003.

ADDRESSES: Written comments must be submitted to Tess Butler at GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604; faxed to (202) 690–2755; or E-mailed to *comments.gipsa@usda.gov*. Please indicate your comment refers to Docket No. FGIS–2003–001, United States Standards for Wheat.

All comments received are available for public inspection at Room 1652, South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey, telephone (202) 720–4684 at GIPSA, USDA, STOP 3630, 1400 Independence Avenue, SW., Washington, DC, 20250–3630; Fax Number (202) 720–1015.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in Section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present any irreconcilable conflict with this rule. There are no administrative procedures, which must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Regulatory Flexibility Act Certification

GIPSA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Under the provisions of the United States Grain Standards Act, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA at 33 export facilities. 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. Further, the regulations are applied equally to all entities. The U.S. wheat industry, including producers (approximately 240,000), handlers (approximately 6,800 domestic elevators), traders (approximately 200 active wheat futures traders), processors (approximately 184 flour mills), merchandisers and exporters are the primary users of the U.S. Standards for Wheat and utilize the official standards as a common trading language to market wheat. We assume that some of the entities may be small. Further, the United States Grain Standards Act (USGSA) (7 U.S.C. 87f–1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage 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 90 registrants who account for practically 100 percent of U.S. wheat exports, which for fiscal year (FY) 2002 totaled approximately 24,073,138 metric tons (MT). While most of the 90 registrants are large businesses, we assume that some may be small.

Background

GIPSA established the class Hard White wheat on May 1, 1990. In the Final Rule (54 FR 48735), FGIS stated ''that classification by varietal kernel characteristics rather than vitreousness of the kernel is practicable at this time for HWW and SWW since only a few hard endosperm white white (sic) varieties are being produced. FGIS recognizes that if more hard endosperm varieties are released into the marketplace in the future, the classification system may become less practical.'' FGIS further stated ''* * * if clear quality or market distinctions develop * * * it would consider subclasses at a future date''.

At that time, a minimum visual color line was established based on the variety *Klasic*, which was produced in California. GIPSA abandoned the *Klasic* color line in 1994, and in 1995 GIPSA issued Program Bulletin 95–15 which in part stated that GIPSA would class all hard endosperm white wheat as hard white. Due to pending release of a hard white variety which closely resembled hard red spring, GIPSA, with industry input and support, established a new color line in 1999 (Program Bulletin 99–8).

In 2001, environmental conditions caused a significant increase in the vitreous kernel content, hence darker visual appearance in some varieties of hard white, resulting in a GIPSA decision to suspend the color line for classification purposes (Program Notice 01–06). The rationale for abandoning the color line was that color had not been an issue in hard white, as grain handlers efficiently segregated it from

red wheat. Producers received premiums for hard white where it was appropriate and processors used the hard white primarily without incident. In addition to the 2001 environmental effect on color, the Hard White wheat market has been impacted by the introduction of many new varieties released by both public and private breeding programs. GIPSA proposes to amend the U.S. Standards for Wheat to better reflect the current and future needs of the Hard White wheat market.

The specific issues for consideration in this rule are (1) designation of subclasses in the class hard white, and (2) amending the definition of Contrasting Classes in hard red wheat classes. While proposing to amend the standards due to Hard White Wheat issues, GIPSA will also propose to include language in the standards which states the amount of wheat within which sample grade factors are determined. This action is proposed to help clarify the application of the standards for U.S. Sample Grade factors.

1. Subclass Designation

Under Program Notice 01–06, ''All hard white wheat varieties are considered hard white wheat regardless of color.'' A common conception is that the domestic milling industry will accept any hard white regardless of seed coat color. This may or may not be true depending on which milling company is being interviewed. Discussions with some U.S. millers led to the conclusion that some millers do consider seed coat color when making purchase and processing decisions. Some milling companies do not yet process much Hard White wheat, thus have few concerns about bran color, and feel if darker Hard White wheat processes well and has acceptable protein content, there is no perceived problem due to bran color.

Depending on the target flour product and the miller's flour extraction goal, the darker colors can present processing challenges. For some high extraction rate flours, darker seed coat color anticipated darker flour color hence final product color problems, requiring millers to add additional bleaching agents and/or cut flour streams in order to meet final product specifications. These processes add additional production costs.

In addition to the domestic millers' position, marketing of Hard White wheat to export customers must be considered. Currently there is interest in Hard White wheat from international customers. Many of these customers view Australian wheat as the benchmark of seed coat color. The major Asia-Pacific customers of U.S. wheat may not have an incentive to purchase Hard White wheat if they view the seed coat color as a detriment. Despite assigning the reason for darker color in 2001 to vitreous kernel content, a high percentage of which is perceived to be a benefit in milling (*e.g.* dark northern spring and hard amber durum), these customers may be hesitant to buy dark Hard White wheat because it may not meet their processing needs. Other international customers may have cultural considerations impacting purchase decisions: red wheat is viewed as appropriate for feeding animals while white wheat is viewed as appropriate for human food. The annual effect of environment cannot be predicted, thus making it impossible to say whether hard white from a given future harvest will be vitreous or not, whether bran coat will be light or dark, and which varieties will be more susceptible to environmental influences and genetic x environmental interactions. One way to facilitate marketing of hard white is to create subclasses which delineate a particular desirable quality factor.

Subclasses tend to highlight positive quality factors. In the case of Hard Red Spring and Durum wheat, subclasses based on vitreous kernel content convey quality factors which are considered indicative of improved *performance, vis-á-vis* milling yield, and premiums are often paid to sellers for these improved performance factors. To delineate the desirable nature of Hard White wheat including both lighter and darker kernels, the subclass approach could be used for Hard White wheat.

For Hard White wheat, the proposed subclass names are Hard White wheat and Hard Amber White wheat, for wheat meeting and exceeding (darker than) the interpretive color line, respectively. These names descriptively reflect the appearance of the kernel color in the overall sample. The naming of the subclasses maintains the convention utilized for Soft White wheat, which includes the subclass Soft White Wheat.

2. Contrasting Classes

Contrasting classes and wheat of other classes are ''grade determining'' factors. Contrasting classes in wheat essentially means the presence of wheat of opposite color commingled with the dominant class, thus white wheat is contrasting in red wheat and red wheat is contrasting in white wheat. A special case is Durum wheat, which is contrasting in all other market classes except Unclassed wheat, and all other classes are contrasting in Durum wheat. Wheat of other classes essentially means wheat of the same color but of different endosperm texture or growth habit, thus soft red winter and hard red spring are both wheat of other classes in the market class Hard Red Winter wheat.

Grade limits for contrasting classes are substantially tighter than the grade limits for wheat of other classes (2.0 percent vs. 5.0 percent, respectively, at U.S. #2). The tighter grade limit for contrasting classes is due to the perception that quality is compromised by the appearance of a contrasting class and the potential effect on flour color and end product color. In the case of durum wheat, the reasons are the difference in milling behavior of durum, the color of flour from durum and the need to make primarily semolina from Durum wheat.

Commingling of hard white and hard red wheat is problematic depending on which class is dominant. The presence of red wheat in white wheat may degrade the visual appearance of the lot and may raise quality concerns. Since Hard White wheat is a relatively new class, it is important to keep its quality as high as possible in order to expand its marketability, both domestically and internationally.

While flour functionality is not compromised, flour color and enzymatic browning problems may result when these classes are commingled. For some domestic millers, and most millers overseas, flour color is more critical than flour ash. For example, millers selling flour for Asian noodle manufacturing would be highly critical of the presence of red wheat in white wheat, as final product color would be jeopardized. These millers typically grind Australian wheat, which has only white seed coats. While this currently applies primarily to non-U.S. millers, noodles are growing in popularity globally and will likely become an opportunity for U.S. millers in the future.

In the second case, red wheat contains the enzyme polyphenol oxidase (PPO) which when activated, causes the color of a raw noodle to become darker—a serious defect in noodle making. White wheat has much lower PPO than red wheat, therefore causes negligible color change in raw noodles. Minimizing the amount of red wheat in white wheat cargoes is one way to improve the performance of Hard White wheat.

The presence of white wheat in red wheat is perceived by most as different from the presence of red wheat in white wheat. It is useful to examine the situation for classing wheat, especially contrasting classes in hard red. The current practice is to select only distinct white and lightly colored kernels as contrasting. Darker kernels are left in

the sample and count as red wheat kernels.

Most flour milling companies have little to no concern over the amount of Hard White wheat in a lot of hard red wheat. For these millers, there would be no reason to consider hard white as a contrasting class in hard red wheat. The proposed rule would change the definition of Contrasting Classes for Hard Red Winter wheat and Hard Red Spring wheat such that Hard White wheat is not a contrasting class in these two red wheat classes.

The following tables illustrate the current and proposed changes for contrasting classes.

TABLE I (CURRENT)

Minor class	Primary class						
	DU	HRS	HRW	SRW	HW	SWH	UNCL
DU		CCL	CCL	CCL	CCL	CCL	WOCL
HRS	CCL		WOCL	WOCL	CCL	CCL	WOCL
HRW	CCL	WOCL		WOCL	CCL	CCL	WOCL
SRW	CCL	WOCL	WOCL		CCL	CCL	WOCL
HW	CCL	CCL	CCL	WOCL		WOCL	WOCL
SWH	CCL	CCL	CCL	WOCL	WOCL		WOCL
UNCL	CCL	CCL	CCL	CCL	CCL	CCL	

CCL: Contrasting class.
WOCL: Wheat of other Classes.

TABLE II (PROPOSED)

Minor class	Primary Class						
	DU	HRS	HRW	SRW	HW	SWH	UNCL
DU		CCL	CCL	CCL	CCL	CCL	WOCL
HRS	CCL		WOCL	WOCL	CCL	CCL	WOCL
HRW	CCL	WOCL		WOCL	CCL	CCL	WOCL
SRW	CCL	WOCL	WOCL		CCL	CCL	WOCL
HW	CCL	WOCL	WOCL	WOCL		WOCL	WOCL
SWH	CCL	CCL	CCL	WOCL	WOCL		WOCL
UNCL	CCL	CCL	CCL	CCL	CCL	CCL	

CCL: Contrasting class.
WOCL: Wheat of other Classes.

3. Sample Size for Sample Grade Factors

GIPSA has received inquiries about the portion size of wheat used to determine Maximum Count Limits of Other Material such as stones, crotalaria seeds, glass, etc., these being Sample Grade factors. In the Official United States Standards for Grain (7 CFR part 810), subparts for certain grains define this portion size. The procedures in the Grain Inspection Handbook—Book II specify the portion size upon which the determination of Other Materials is made on wheat. This proposed change is needed because the standards should transmit this information. Thus GIPSA proposes to amend subpart M to define this amount.

Proposed GIPSA Action

GIPSA is issuing this proposed rule to invite comments and suggestions from all interested persons on how GIPSA can further enhance and best facilitate the marketing of Hard White wheat by inserting subclasses. In addition, the proposed rule would also change the definition of contrasting classes for Hard Red Winter wheat and Hard Red Spring wheat, and specify the sample size used to determine sample grade factors.

Subclass Designation

GIPSA is proposing to establish subclasses in Hard White wheat called Hard White wheat and Hard Amber White wheat. Further, GIPSA will use the existing interpretive color line as the benchmark for determining subclass, whereby wheat darker than the interpretive color line will be classed as Hard Amber White wheat.

To accomplish this, GIPSA proposes to revise § 810.2202(a)(5) to read: ''Hard White wheat. All hard endosperm white wheat varieties. This class is divided into the following two subclasses:

(i) Hard White wheat. Wheat which is lighter than or equivalent in color to the interpretive color line photograph.

(ii) Hard Amber White wheat. Wheat which is darker than the interpretive color line photograph.''

Contrasting Classes

GIPSA is proposing to amend the grain standards to change the definition of contrasting classes in Hard Red Winter wheat and Hard Red Spring wheat such that Hard White wheat and

its subclasses are not contrasting classes but are considered as wheat of other classes. The grade limit will remain unchanged. For kernel identification, Hard White wheat kernels would be determined by visual assessment and would include the dark colored, amber, white wheat kernels, per the Grain Inspection Handbook, Book II, Chapter 13, Section 13.26. In the case where samples challenge the normal visual inspection process, the alkali test would be utilized to determine kernel color (FGIS-Program Notice 01–07).

GIPSA proposes to revise § 810.2202(b)(1) *Contrasting Classes* to read: ''Durum wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.''.

Sample Size

GIPSA is proposing to amend the grain standards for wheat to specify the amount of wheat upon which sample grade factor determinations are made. GIPSA proposes to amend § 810.2204 *Grade and grade requirements of wheat* to read: ''Other material in one kilogram:'' under the sub-heading ''Maximum count limits of:''.

Comments, including data, views, and other information are solicited from interested persons. Pursuant to section 4(b)(1) of the United States Grain Standards Act, as amended (7 U.S.C. 76(b)(1)), upon request, such information concerning changes to the standards may be presented orally in an informal manner. Also, pursuant to this section, 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 Secretary, the public health, interest, or safety require that they become effective sooner.

List of Subjects in 7 CFR Part 810

Export, Grain.

For reasons set out in the preamble 7 CFR Part 810 is proposed to be amended as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

1. 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.*)

2. Section 810.2202 is amended by revising paragraphs (a)(5) and (b)(1) to read as follows:

§ 810.2202 Definition of other terms.

* * * * *

(5) *Hard White wheat.* All hard endosperm white wheat varieties. This class is divided into the following two subclasses:

(i) *Hard White wheat.* Wheat which is lighter than or equivalent in color to the interpretive color line photograph.

(ii) *Hard Amber White wheat.* Wheat which is darker than the interpretive color line photograph.

* * * * *

(b) * * *

(1) Durum wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.

* * * * *

3. Section 810.2204(a) is revised as follows:

Grades and Grade Requirements

§ 810.2204 Grades and grade requirements for wheat.

(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
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 in one kilogram:					
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 substances	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

Grading factors	Grades U.S. Nos.				
	1	2	3	4	5
(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, or unknown foreign substance.

* * * * *

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–13772 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–EN–U

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245–AE76

Small Business Size Regulations; Small Business Innovation Research Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to revise its small business size regulations to allow a small business that is owned and controlled by another business concern to be eligible for funding agreements under the SBA's Small Business Innovation Research (SBIR) Program. The proposed rule does not change the size standard requiring that an eligible small business concern, with its affiliates, have no more than 500 employees. The rule proposes to modify the small business eligibility requirements so that the SBIR awardee must meet one of the two following additional criteria: It must be a for-profit business concern that is at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States (as the regulations currently requires); or it must be a for-profit business concern that is 100% owned and controlled by another for-profit business concern that is itself at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States.

DATES: Comments must be received on or before July 7, 2003. Upon request, the SBA will make all public comments available.

ADDRESSES: Address written comments to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 Third Street, SW., Washington, DC 20416. You may submit comments via email to *sizestandards@sba.gov,* or via facsimile at (202) 205–6390. You may also submit comments electronically to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618, or Maurice Swinton, Assistant Administrator for Technology, at (202) 401–6365. You may also email questions to *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

The Small Business Innovation Development Act of 1982 (SBIDA) (Pub. L. 97–219) established the SBIR Program. This document can be found at *http://thomas.loc.gov/bss/d097/d097laws.html.* According to its legislative history, SBIDA was enacted to increase the rate of productivity in the United States by increasing technological innovations, especially those innovations of small concerns. In addition, the SBIR Program was created to increase the efficiency of federally funded research and development (R&D) by providing a long-needed mechanism to enable agency personnel to tap the resources of small, innovative firms; to facilitate the conversion of federally funded research results into commercially viable products and services; and to increase the share of the Federal R&D budget awarded to small businesses.

The SBA's Small Business Size Regulations establish small business eligibility criteria for receiving awards under the SBIR Program (13 CFR 121.701–121.703). Section 121.702(a) states that to be eligible to compete for award of an SBIR funding agreement, a business concern must ''(b)e at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; * * *.'' A concern may not receive an SBIR award if it is more than 50% owned and controlled by another business concern, such as a corporation or partnership, even if that concern is at least 51% owned and controlled by citizens of, or permanent resident aliens in, the United States.

SBIR Program managers at participating agencies will often receive a proposal from a concern that is owned by another concern. The concern's size, together with its parent company, will often be below the 500 employee small business size standard for an award, while its parent is at least 51% owned and controlled by one or more U.S. citizens or permanent resident aliens. However, because it is more than 50% owned by this other concern, it is ineligible for an SBIR award. Consequently, potential SBIR awards go unawarded because there may be no other meritorious and feasible proposals from qualified concerns, and the innovations of otherwise eligible small business concerns go unfunded.

The SBA believes that when Congress established the SBIR Program and when the SBA initially wrote its regulations to comply with SBIDA, there were few if any small businesses wholly owned by other entities interested in participating in the program. SBIDA did not preclude the SBA from including them in the program with its original regulations, which it could have done had it been aware that they existed as potential participants.

The SBA's experience over the last several years has led it to believe that it should reconsider its policy on this eligibility restriction. The SBA is particularly concerned about the anomalous situation that occurs under the current regulations. A parent company with a wholly owned subsidiary can compete as an eligible small business for SBIR funding, but its wholly subsidiary cannot compete in its own name. The SBA believes this is an unnecessary restriction which results in either a wholly owned subsidiary not competing or having to compete through the parent company (which it would not otherwise do).

The SBA's Proposals

Without modifying the size standard requiring that a concern, together with its affiliates, may have no more than 500 employees, the SBA proposes to revise § 121.702 to allow an SBIR funding awardee to be either: