

Overview of Proposed Changes and Final Amendments to U.S. Grain Standards Act

Proposed Revisions to U.S. Grain Standards Act (USGSA) to Comply with Agricultural Reauthorization Act of 2015	NGFA/NAEGA Comments on Proposed Changes to USGSA	Final Language in Amendments to USGSA
<p>Require GIPSA to approve all requests for waivers of official inspection and weighing requirements for export grain in “emergencies or other circumstances which would not impair the objectives of the [USGSA]” (Sec. 800.18)</p>	<p style="text-align: center;"><u>Definition of Emergency</u></p> <p>NGFA and NAEGA opposed GIPSA’s proposed definition of the term “emergency,” as including “a situation outside the control of the Service (i.e., GIPSA) or a delegated State that prevents the prompt issuance of official certificates....”</p> <p>This definition was not included in the Reauthorization Act. Nor did Congress state that emergency waivers to which this term is applied were to be made conditional in any way on whether the situation was or was not “outside the control of GIPSA or a delegated State.”</p> <p><i>Original GIPSA proposal</i> - “Any situation outside of the control of the Service or a delegated State that prevents prompt issuance of certificates in accordance with Sec. 800.160(c).”</p> <p><i>NGFA/NAEGA Proposal</i> - “Any situation that prevents prompt issuance of certificates, in accordance with Sec. 800.160(c).”</p>	<p style="text-align: center;"><u>Definition of Emergency</u></p> <p>GIPSA did not agree with the NGFA/NAEGA comments that the agency does not have the authority to define term through the rulemaking process. GIPSA finds it important to define term to prevent further confusion. Modified original proposal to describe “situations outside of the control of the applicant for service.”</p> <p><i>Emergency</i> – A situation that is outside the control of the applicant that prevents official inspection or weighing services within 24 hours of the scheduled service time.</p>

	<p style="text-align: center;"><u>Definition of Waiver</u></p> <p>NGFA and NAEGA strongly opposed the wording of Sections 800.18(b)(7)(A) and 800.18(b)(7)(B) because the proposed language deviates from the statutory language of the Reauthorization Act and would inappropriately limit the waiver of official inspection or weighing certificates only to “emergency” situations.</p> <p>Recommended that the section be rewritten to be consistent with the statute and allow for waivers also to be issued if doing so “will not impair the objectives of the act” and the buyer and seller agree – regardless of whether an “emergency” exists.</p>	<p style="text-align: center;"><u>Definition of Waiver</u></p> <p>In addition to NGFA and NAEGA, National Farmers Union stated that if grain is allowed to ship without certification of quality or quantity, then waivers impair objectives of the USGSA and should not be granted in non-emergency situations. GIPSA agrees with NFU that waivers run counter to certifying grain.</p> <p>Further, provided parties reach mutual agreement and provide notice to GIPSA, the amended USGSA requires GIPSA to consider what other circumstances for waivers would not impair the objectives of the USGSA.</p> <p>After further consideration, GIPSA determined that linking waivers to certification does not cover situations where no service is provided. Thus, GIPSA withdrew proposed sections from 800.18(b)(7)(B) and 800.18(b)(7)(C) from the final rule and is not adding a new blanket category of waivers for situations in which the buyer and seller agree to waive official inspection or Class X weighing.</p>
<p>Adjust fees annually to maintain a three- to six-month operating reserve for inspection and supervision services (Sec. 800.71);</p>	<ul style="list-style-type: none"> • NGFA and NAEGA recommend that the trigger to adjust the operating reserve should be the midpoint of the three- to six-month range, which is 4.5 months. 	<ul style="list-style-type: none"> • GIPSA agreed with the recommendation of setting the trigger of adjusting the fees at the midpoint of 4.5 months.

- NGFA and NAEGA agreed with GIPSA proposal for all Schedule A fees to decrease or increase 2 percent for each \$1 million the operating reserve exceeds or falls below the trigger, but disagreed with FGIS’s proposal for a 5 percent cap on the maximum annual change in Schedule A fees, and urge that such a cap be eliminated for Schedule A fees.
- NGFA and NAEGA recommended a suspension of the \$0.011 per metric ton fee (Schedule B fee) that is collected on domestic U.S. grain shipments inspected and/or weighed until the operating reserve for the Supervision of Official Agencies Program account reaches 4.5 months of average monthly expense based on the previous fiscal year’s expense. A suspension of the fees collected for rice inspection was also recommended until the operating reserve for the Rice Inspection Program account reaches 4.5 months of average monthly expense.
- NGFA and NAEGA believe that Schedule A fees need to be reviewed annually to reflect changing conditions, and urge GIPSA to be as transparent as possible in rebalancing the Schedule A fees, consult the fee schedules of official agencies for reasonableness, and seek public input during the review process. Also urged GIPSA to consistently publish its financial data and annual report for the ended fiscal year by the start of the following calendar year.

- GIPSA disagreed with the suggestion that there be no limit and believes that a yearly limit on fee increases and decreases is necessary to provide a more stable fee.
- GIPSA suspended the fee for supervision of official agency inspection and weighing with a notice in the June 28, 2016 edition of the *Federal Register*. The recommendation for changes to fees for rice and commodity inspections falls outside the scope of this rulemaking.
- GIPSA believes a complete review of fees every year would impose unnecessary time and money costs that would exceed any potential gain to stakeholders. GIPSA will continue to review Schedule A fees approximately every 5 years.

	<ul style="list-style-type: none"> • NGFA and NAEGA urge GIPSA to review its administrative costs and make reductions. We also recommend that GIPSA perform an extensive review of its expenses annually and aggressively pursue ways to bring its costs for inspection and weighing services in line with those of official agencies. 	<ul style="list-style-type: none"> • GIPSA currently takes measures to reduce costs whenever possible. This includes recently taking advantage of employee attrition by not filling positions after retirement. GIPSA already publishes extensive financial data in reports to Congress and will continue to publish financial information on their Web page.
<p>Require delegated States to notify GIPSA of any intent to temporarily discontinue official inspection or weighing services at least 72 hours in advance, except in the case of a major disaster (Sec. 800.195);</p>	<ul style="list-style-type: none"> • NGFA and NAEGA urged that the proposed rule be amended to require that the delegated State also provide 72-hour advance notice to affected users of official inspection and weighing services if such service is to be discontinued, identical to the timeframe that applies to notification of service disruption to the Secretary. This would provide a chance for affected export port locations and their customers to make alternative arrangements to preserve the flow of U.S. exports, address logistical problems and potentially lessen the economic harm to U.S. agricultural producers that has resulted in the past from such official service disruptions. • Also recommended that language in the statute requiring 24-hour notification to Congress by the Secretary be included in the regulation. 	<ul style="list-style-type: none"> • GIPSA declined to add 72 hour advance notice language since the Reauthorization Act only requires delegated states to notify GIPSA of any intent to discontinue service, while requiring GIPSA to “immediately take such actions as are necessary to address the disruption and resume inspections or weighings.” • GIPSA also declined to include language regarding its requirement to notify Congress since it is already required by the USGSA and inclusion in the regulation is unnecessary.

Require delegated States to submit to a GIPSA review of their delegation every five years to certify that they comply with the requirements for delegation under the USGSA (Sec. 800.195);

- NGFA and NAEGA urged that the review of delegated State Agencies begin no later than Sep. 30, 2016, and that this be stipulated in the final rule.
- Also suggested that FGIS confirm in the final rule that all costs associated with the certification process for Delegated states will come from funds appropriated to the agency, and not through revenue generated from users of official services.

- GIPSA intends to conduct the first review prior to September 30, 2016 and will conduct reviews of each state before certain revisions of the USGSA expire on October 1, 2020.
- GIPSA finds the inclusion of language in the regulations concerning the funding of delegated review through appropriated funds to be unnecessary.