

BY ELECTRONIC MAIL

April 25, 2016

Mr. Randall Jones
Deputy Administrator
Grain Inspection, Packers and Stockyards Administration
U.S. Department of Agriculture
1400 Independence Avenue, S.W., Room 1643-S
Washington, D.C. 20250-3604

**Re: Support of Statement Submitted by the NGFA and NAEGA on Notice of
Proposed Rulemaking to Revise Existing Regulations in the U.S. Grain Standards
Act, 81 Fed. Reg. 3970 (January 25, 2016)**

The undersigned organizations are pleased to submit these comments on the Grain Inspection, Packers and Stockyards Administration (GIPSA) proposed rule to revise existing regulations and add new regulations under the U.S. Grain Standards Act (USGSA), in order to comply with changes made to the USGSA by the Agriculture Reauthorizations Act of 2015 (Reauthorization Act) that was signed into law by President Obama on Sept. 30, 2015.

Our associations' memberships encompass all sectors of the value chain, including: grain and oilseed producers; grain handlers, feed manufacturers, grain processors and millers; exporters; and other end-users.

Further, each of our organizations' members are dependent upon GIPSA and its delegated State agencies providing and performing state-of-the-art, market-responsive official inspection and weighing services in an efficient, cost-effective and reliable manner. As such, we worked together to bring about fundamental reforms of GIPSA's operations as part of the Reauthorization Act, with our principal objective being to build in safeguards to ensure that the kind of disruptions in export shipments resulting from the intermittent withdrawal of official services that occurred during 2013-14 at the Port of Vancouver, Washington, never recur.

In this regard, we wish to notify GIPSA that we support and align ourselves with the extensive comments submitted on this rulemaking, by the National Grain and Feed Association (NGFA) and the North American Export Grain Association (NAEGA), and incorporate those comments by reference.

Several of these amendments made to the USGSA by Congress under the Reauthorization Act represent the most significant changes to the statute in nearly 20 years, and will have a significant effect on U.S. exports that are valued at more than \$50 billion annually. These issues include: 1) calculation and adjustment of fees to maintain a three- to six-month operating reserve for inspection and weighing services; 2) well as new definitions and clarification of provisions in

existing requirements; and 3) the addition of an important new section to the statute that would require delegated states to notify GIPSA if they plan to temporarily discontinue Official service, and mandates that the Secretary waive the official inspection requirement if such waivers “in emergency or other circumstances that would not impair the objectives” of the Act “whenever the parties to a contract for such shipment mutually agree....”

We support the proposed changes to the GIPSA-proposed rules recommended by NGFA and NAEGA concerning the statutory changes made under the Reauthorization Act that affect GIPSA’s regulations under Part 800, and amplify below upon the recommendations affecting Sections 800.18, 800.71 and 800.195, respectively, designed to further improve GIPSA’s ability to provide consistent, reliable and cost-effective official inspection and weighing services.

Definition of Emergency and Request for Waivers, Section 800.18

As stated at the outset, the goal of our organizations is to ensure that official inspections are performed in an reliable, consistent and uninterrupted manner.

We join NGFA and NAEGA in opposing GIPSA’s proposed definition of the term “emergency,” which does not reflect the Reauthorization Act’s waiver-authority language – in that it does not incorporate the “*or other circumstances*” phrase specifically included in the statute. In fact, we believe GIPSA’s proposed definition of emergency as being “a situation **outside the control of GIPSA or a delegated State** that prevents the prompt issuance of certificates” [*Emphasis added*] is overly narrow and could be misused by the agency to avoid its obligation to perform official inspections under just the sort of situation that occurred in the Pacific Northwest in 2013-14.

Instead, we join NGFA and NAEGA in recommending that GIPSA modify the definition to read: “Any situation that prevents prompt issuance of certificates, in accordance with Sec. 800.160(c).”

We do not believe GIPSA should be allowed to determine what is inside or outside of its control under the mandatory waiver provision in Section 800.18, as no such limitation was imposed under the Reauthorization Act. In fact, “emergency” was not defined in the Reauthorization Act. Nor did the statute make the issuance of a waiver conditional in any way on whether a given circumstance was or was “outside the control of GIPSA or a delegated State.” As such, we oppose the wording of Section 800.18(b)(7)(B) that deviates from the statutory language and would limit the waiver of official inspection or weighing certificates only to “emergency” situations. Instead, this section should 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 – which hues to the statutory language.

Export Tonnage Fees: Five-Year Rolling Average and 3 to 6 Month Operating Reserve

The Reauthorization Act requires two actions by the Secretary of Agriculture with respect to fees for official inspection and weighing. One action is that all fees related to official inspection and weighing services must be adjusted at least annually to maintain a 3 to 6 month operating

reserve. The other is that the export tonnage fees for official inspection and weighing must be based on the rolling 5-year average of export tonnage volumes. In its proposed rule, the Federal Grain Inspection Service (FGIS) would implement the two fee actions on a calendar year basis beginning January 1, 2017. In addition, FGIS would adjust Schedule A and Schedule B fees periodically, taking into account other Schedule A fee adjustments that may have occurred to maintain a 3 to 6 month reserve.

With respect to the operating reserve requirement for inspection and weighing services, we recommend that the trigger to adjust the operating reserve should be the midpoint of the 3 to 6 month range, which is 4.5 months. Thus, the targeted reserve would be 4.5 months of average operating expense based on the previous fiscal year's operating expense. We concur with FGIS's 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 disagrees with FGIS's proposal for a 5 percent cap on the maximum annual change in Schedule A fees. We propose no cap be placed on the amount that Schedule A fees can change and we estimate an uncapped approach would result in a reduction of 10 percent or more for FY 2017 Schedule A fees.

In addition, we recommend 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. Once the reserve target of 4.5 months is reached, we advise FGIS to assess a fee that closely aligns with its expenses to supervise the official agencies. A suspension of the fees collected for rice inspection is also recommended until the operating reserve for the Rice Inspection Program account reaches 4.5 months of average monthly expense based on the previous fiscal year's expense. Once the reserve target of 4.5 months is reached, we propose that FGIS assess fees that closely align with its expenses to administer the Rice Inspection Program. A targeted operating reserve of 4.5 months of average monthly expense based on the previous fiscal year's expense is advised for the Commodities Inspection Program account.

Further, we believe Schedule A fees need to be reviewed annually to reflect changing conditions and we request GIPSA 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. Data transparency and reporting reliability are critical and we strongly urge FGIS to consistently publish its financial data and annual report for the ended fiscal year by the beginning of the calendar year.

We concur with GIPSA's proposed approach to the national and local tonnage fees and we believe the proposed tonnage fee calculations will result in predictable tonnage rates that will accurately reflect and gradually adjust to changing national and local tonnage volumes. Since the tonnage fee rates would be directly impacted by FGIS's national and field office administrative costs, FGIS administrative cost reductions are encouraged and it is recommended that FGIS perform an extensive review of its expenses annually. In addition, we estimate that the cost of FGIS inspection and weighing service is severely higher (40 percent higher) than the cost of using similar services provided by the official agencies and thus recommends that FGIS seek ways to bring its costs for inspection and weighing services in line with those of official agencies.

72 Hour Advance Notice of Discontinuation of Official Services

We concur with NGFA and NAEGA's recommendation that GIPSA add language to its final rule to provide that export port locations are notified if official service is to be discontinued by delegated Official agencies 72 hours in advance of the discontinuation of such service, just as they are required to notify to the Secretary. Further, language in the Reauthorization Act regarding 24-hour notification to the Secretary also should be included in the regulation.

Delegated States Submit to GIPSA Review Every 5 Years

We recommend that FGIS confirm that all costs associated with the certification process for delegated states will come from funds appropriated to the agency. In addition, language should be included in the proposed rule to confirm the delegation rulemaking process for the five states that currently hold such designation will begin prior to September 30, 2016.

Conclusion

For these and additional reasons cited by the NGFA and NAEGA in their joint comments, we urge GIPSA to incorporate the aforementioned recommendations to further improve GIPSA's ability to provide reliable and cost-effective official inspection services.

Sincerely,

California Grain and Feed Association
California Warehouse Association
Georgia Grain and Feed Association
Grain and Feed Association of Illinois
Michigan Agri-Business Association
Minnesota Grain and Feed Association
National Oilseed Processors Association
Nebraska Grain and Feed Association
North Dakota Grain Dealers Association
Ohio AgriBusiness Association
Oklahoma Grain and Feed Association
Rocky Mountain Agribusiness Association
South Dakota Grain and Feed Association
U.S. Grains Council
Wisconsin Agri-Business Association