(2) Pursuant to the direction of a public agency because of the detection of other residues of chemicals or toxic substances residues, or contamination from nuclear radiation or fallout in such whole milk by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency.

(l) *Affected manufacturer* means a person who manufactures dairy products which are removed from the commercial market pursuant to the direction of a public agency because of the detection of pesticide residue in such dairy products by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency.

* * * * *

(o) *Application period* means any period during which an affected farmer's whole milk is removed from the commercial market pursuant to direction of a public agency for a reason specified in paragraph (k) of this section and for which application for payment is made.

* * * * *

Signed in Washington, DC, on April 11, 1996.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 96–9460 Filed 4–25–96; 8:45 am]

BILLING CODE 3410–05–P

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 810

RIN 0580–AA14

United States Standards for Barley

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

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the United States Standards for Barley to: modify the classification system of barley to better reflect current marketing practices by establishing two classes, Malting barley and Barley; revise procedures to permit applicants the option of requesting either the malting standards or barley standards for malting types; revise the standards for Two-rowed Malting barley by removing the ''U.S. No 1 Choice'' grade designation; amend the definition for suitable malting type to include other malting varieties used by private malting and brewing companies; revise the dockage certification procedure by reporting results in half and whole percent with a fraction less than one-half percent being disregarded; amend the definition of thins to require the use of a single sieve (5/64 × 3/4 slotted-hole) only in the class Barley; and eliminate the numerical grade restriction for badly stained and materially weathered from the standards. In addition, GIPSA is amending the breakpoint for dockage and establishing new breakpoints for malting barley to conform with standard changes.

The objective of these revisions is to ensure that the barley standards are serving their intended purpose to facilitate the marketing of barley.

EFFECTIVE DATE: June 1, 1996.

FOR FURTHER INFORMATION CONTACT: George Wollam, USDA, GIPSA, Room 0623, South Building, P. O. Box 96454, Washington, D.C. 20090–6454; telephone (202) 720–0292; FAX (202) 720–4628.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

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 (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 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

James R. Baker, Administrator, 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.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. Further, the regulations are applied equally to all entities.

Information Collection Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained in the rule to be amended have been previously approved by the Office of Management and Budget under control number 0580–0013.

Background

During December 1991, the Federal Grain Inspection Service (FGIS), which is now part of GIPSA, distributed a discussion paper concerning the U.S. Standards for Barley. This paper addressed several issues relating to the standards and served as a starting point for discussions with producers, processors, trade associations, maltsters, handlers, and merchandisers to better understand their views on changes needed to improve existing standards. FGIS received positive feedback. In addition, FGIS reviewed the barley discussion paper with the FGIS Advisory Committee and the Grain Quality Workshops and considered ideas received during the normal course of business, recommendations from internal management and program review, and various other sources.

In the March 22, 1995, Federal Register (60 FR 15075), GIPSA published a proposal to revise the U.S. Standards for Barley by: (1) Modifying the classification system of barley to better reflect current marketing practices by establishing two classes, Malting barley and Barley; (2) revising procedures to permit applicants the option of requesting either the malting standards or barley standards for malting types; (3) revising the standards for Two-rowed Malting barley by removing the ''U.S. No 1 Choice'' grade designation and combining the grading factors and limits for two- and six-rowed malting types onto a single grade chart; (4) amending the definition for suitable malting type to include other proprietary malting varieties used by private malting and brewing companies; (5) revising the dockage certification procedure by reporting results in half and whole percent with a fraction less than one-half percent being disregarded; (6) amending the definition of thins to require the use of a single sieve (5⁄64×3⁄4 slotted-hole) only in the proposed class Barley and remove the grading limits from the standards; however, the level of thins will continue to be reported on the inspection certificate; (7) revising the standards by removing the grading limits for damaged kernels, heat-damaged kernels, and foreign material in the proposed class Barley; and (8) eliminating the numerical grade restriction for badly stained and materially weathered from the standards. GIPSA further proposed to

amend the inspection plan tolerances based on these changes.

Comment Review

During the 60-day comment period, GIPSA received ten comments: two from grain handling associations, five from barley producer organizations, one from a malting barley trade association, one from a cattle feeding company, and one from a State Department of Agriculture.

On the basis of these comments and other available information, GIPSA has decided to revise the barley standards as proposed, with the following exceptions: (1) Combining the grading factors and limits for two- and six-rowed malting types into one grading chart; (2) removing the grading limits for thins in the class Barley; (3) removing the grading limits for damaged kernels, heat-damaged kernels, and foreign material in the class Barley; (4) applying the current damaged kernels grade limits in Six-rowed Malting barley to Two-rowed Malting barley; (5) applying the present limits for injured-by-mold and mold damage in Two-rowed Malting barley to Six-rowed Malting barley; and (6) applying the current grade limits for other grains and wild oats to both Six- and Two-rowed Malting barley.

Rather than combining the grading factors and limits for two- and six-rowed malting types into one grading chart, GIPSA decided to maintain a separate grading chart for the two-rowed malting type and the six-rowed malting type because of their different grade limits and grading factors. Also, GIPSA decided to retain the grading limits for thins, damaged kernels, heat-damaged kernels, and foreign material in the class Barley. In addition, GIPSA will continue to apply the current grade limits in Six-rowed Malting barley for damaged kernels and other grains only to Six-rowed Malting barley and continue to apply the present grade limits in Two-rowed Malting barley for injured-by-mold, mold damage, and wild oats only to Two-rowed Malting barley.

Barley Classification

GIPSA proposed to amend the barley classification system in section 7 CFR 810.202, paragraph (c), to better reflect current marketing practices by establishing two classes of barley, specifically, Malting barley and Barley. The class Malting barley is divided into three subclasses: Six-rowed Malting barley, Six-rowed Blue Malting barley, and Two-rowed Malting barley. The class Barley is divided into three subclasses: Six-rowed barley, Two-rowed barley, and Barley. GIPSA believes this new classification system will assist in simplifying the barley standards and facilitate the domestic and export marketing of barley.

The present barley classification system is based on kernel physical characteristics. Barley is divided into three classes: Six-rowed barley, Two-rowed barley, and Barley. The class Six-rowed barley is divided into three subclasses: Six-rowed Malting barley, Six-rowed Blue Malting barley, and Six-rowed barley. The class Two-rowed barley is divided into two subclasses: Two-rowed Malting barley and Two-rowed barley. The class Barley has no subclasses.

This classification system does not reflect current marketing practices. That is, barley produced in the United States is used primarily as livestock feed or for malting. Consequently, the barley classing system should be structured in a manner consistent with current trading practices.

All comments received were supportive of the new classification system.

Based on this information, comments received, and other available information, GIPSA is amending the barley classification system in current section 7 CFR 810.202, paragraph (c), by establishing two classes of barley, Malting barley and Barley. The class Malting barley is divided into three subclasses: Six-rowed Malting barley, Six-rowed Blue Malting barley, and Two-rowed Malting barley. The class Barley is divided into three subclasses: Six-rowed barley, Two-rowed barley, and Barley.

Applying the Malting Standards

GIPSA proposed to amend the subclass definitions for Six- and Two-rowed barley in current section 7 CFR 810.202, paragraphs (c)(1)(iii) and (c)(2)(ii), by deleting the reference to Malting barley. This change is needed to provide applicants the option of requesting either the malting standards or the barley standards for malting types.

The present standards require official personnel initially to apply the Malting barley requirements and assign grades covered in section 7 CFR 810.206 only if the sample fails to meet the malting criteria. This requirement is based on the subclass definitions for Six- and Two-rowed barley. The subclass definitions for Six- and Two-rowed barley state, in part, that barley not meeting the applicable subclass requirement for malting shall be graded using the 7 CFR 810.206 grade chart.

Initially applying the malting standard requirements hampers inspection efficiency and may create market disruptions for malting varieties used for other purposes. Labeling barley as malting when it is being marketed for another use causes confusion and could lead to unnecessary marketing complications.

All comments received were supportive of this revision.

Based on this information, comments received and other available information, GIPSA is amending the subclass definitions for Six- and Two-rowed barley in section 7 CFR 810.202, paragraphs (c)(1)(iii) and (c)(2)(ii), by deleting the reference to Malting barley to provide the inspection system greater flexibility in meeting the market needs. This change will also bring existing standards more in line with today's marketing practices for Malting barley.

U.S. No 1 Choice Grade Designation

GIPSA proposed to revise section 7 CFR 810.205 by removing the ''U.S. No 1 Choice'' grade designation from the grading chart and retain the factors and limits concerning the Choice grade as U.S. No 1 and redesignating the factors and limits for U.S. Nos. 1, 2, and 3 as U.S. Nos. 2, 3, and 4, respectively. This revision was sought to bring more consistency between the standards for Two- and Six-rowed Malting barley.

The current Two-rowed Malting barley standard includes a ''U.S. No 1 Choice'' grade designation. The Six-rowed Malting barley standard does not include a similar grade. The differences between ''U.S. No 1 Choice'' Two-rowed Malting barley and U.S. No. 1 Two-rowed Malting barley are reflected in the test weight, skinned and broken kernels, and the thin barley grade limits. GIPSA believes that the factors and limits for the ''U.S. No 1 Choice'' grade designation are important to producers, maltsters, and brewers. Furthermore, GIPSA believes that the quality requirements in the standards for Six- and Two-rowed Malting barley should be more consistent to eliminate confusion in the marketplace and to provide more meaningful information to our customers.

All commentors agreed with GIPSA's proposal.

Based on this information, comments received and other available information, GIPSA is removing the ''U.S. No 1 Choice'' grade designation from section 800.86(c)(2) Table-2 and section 7 CFR 810.205 for Two-rowed Malting barley. Furthermore, GIPSA is retaining the factors and limits for the ''U.S. No 1 Choice'' grade as the U.S. No. 1 grade and redesignating the factors and limits for U.S. Nos. 1, 2, and 3 as U.S. Nos. 2, 3, and 4 for the Two-rowed Malting barley, respectively.

Malting Barley Grading Charts

GIPSA proposed to revise the grade requirements in section 7 CFR 810.204 and 810.205 by: (1) Combining the factors and limits for Two- and Six-rowed Malting barley into a single grade chart; (2) establishing four numerical grades for all Malting barley; (3) establishing common foreign material grade limits for all Malting barley; (4) establishing separate grade limits for test weight, suitable malting types, sound barley, skinned and broken kernels, and thin barley for two- and six-rowed malting types; (5) applying the current damaged kernels grade limits in Six-rowed Malting barley to Two-rowed Malting barley and establishing a new 5.0 percent damaged kernels limit to correspond with the proposed four grade categories; (6) applying the present limits for mold damage and injured-by-mold in Two-rowed Malting barley to Six-rowed Malting barley; and (7) applying the current grade limits for other grains and wild oats to both Six- and Two-rowed Malting barley.

In the present standards, separate grade charts exist for two- and six-rowed malting types. Additionally, the factor requirements differ based on the barley subclass. For example, the current standards impose limits for other grains, wild oats, mold damage, and injured-by-mold, but not consistently for all malting types. These differences reflect the traditional variances between the production areas and markets dealing with Six- and Two-rowed Malting barley. In proposing changes to the standards, GIPSA believed that the malting standards should be revised to more consistently apply factor requirements between Two- and Six-rowed barley. GIPSA also believed that the proposed revisions to combine sections 7 CFR 810.204 and 810.205 simplify the malting standards and make them more user friendly.

Supporters stated that combining the factors and grade limits for Six- and Two-rowed Malting barley into one chart will make the malting barley standards more user friendly, make the standards more compatible between the Two-rowed and Six-rowed Malting types, and reduce potential confusion of foreign purchasers.

Several organizations representing producers, handlers, and maltsters opposed applying the present limits for mold damage and damaged-by-mold in Two-rowed Malting barley to Six-rowed malting types and applying the current grade limits for other grains and wild oats to both Six- and Two-rowed Malting types.

With regard to applying the present limits for mold damage and injured-by-mold in Two-rowed Malting barley to Six-rowed Malting barley, the North Dakota Barley Council (NDBC) stated that applying the present limits for mold damage and damaged-by-mold in Two-rowed Malting barley to Six-rowed Malting barley is restrictive and causes market disruption because weather conditions frequently cause mold damage and damaged-by-mold injury. They also stated that under this proposal a significant portion of Midwestern crop would not receive malting barley grades. Furthermore, the NDBC stated that Midwestern Six-rowed Malting barley is frequently purchased in excess of the proposed limits. Further, other comments received shared similar views.

Upon review of this issue and because of the expressed concern of potential market disruption, GIPSA has decided not to adopt this revision. Consequently, GIPSA will maintain the current limits for injured-by-mold and mold damage for Two- and Six-rowed Malting barley.

In regard to applying current grade limits for other grains and wild oats to both Six- and Two-rowed malting types, the current malting standards impose grade limits for other grains and wild oats but not consistently for Two- and Six-rowed Malting barley. These differences reflect the traditional variances between the production areas and markets dealing with Six- and Two-rowed Malting barley. In proposing to apply current grade limits for other grains and wild oats to both Six- and Two-rowed Malting types, GIPSA believed that the malting standards should be revised to more consistently apply factor requirements between Two- and Six-rowed Malting types.

GIPSA received no support for this proposed action. A commentor opposing this proposal stated that while the proposal adds more uniformity to the grading standards, it fails to consider the impact on domestic and export markets.

Applying uniform grade limits for other grains and wild oats to both six- and two-rowed malting types may impact negatively on domestic and/or export markets. Therefore, GIPSA has decided not to adopt this proposal. Consequently, GIPSA will continue to apply the current grade limits for other grains to six-rowed malting type only and the current grade limits for wild oats to two-rowed malting type only.

In its comment, the NDBC recommended to aggregate wild oats, other grains, and foreign materials into one category. They stated —foreign buyers perceive other grains, wild oats, and foreign material as non-barley material in Malting barley.— Furthermore, the NDBC proposed different grade limits for two- and six-rowed malting types as follows:

Grade	Six-rowed (percent)	Two-rowed (percent)
U.S. No. 1	3.0	1.5
U.S. No. 2	4.0	2.0
U.S. No. 3	6.0	3.0
U.S. No. 4	8.0	5.0

NDBC believes that this change would more accurately describe non-barley material in Malting barley and facilitate marketing in export channels.

GIPSA believes that this recommendation warrants further evaluation and has decided more discussions are needed before proposing such a change. Meanwhile, GIPSA will continue to use the current factors and limits as applicable.

In proposing to combine the grade charts for two- and six-rowed malting types, GIPSA believed that adopting the same grading factors would simplify the malting standards and promote uniformity between Two- and Six-rowed Malting barley. However, the proposal to apply the same grading factors to all malting barley were not adopted. A single grade chart containing different factors and grade limits for two- and six-rowed malting types would be hard to read or understand. Therefore, GIPSA has decided not to combine the grade charts for two- and six-rowed malting types because common grading factors and limits were not established. Consequently, GIPSA will maintain a separate grading chart for the Two-rowed Malting barley and the Six-rowed Malting barley because of their different grade limits and grading factors.

GIPSA received no opposition to establishing four numerical grades for malting barley; separate grade limits for test weight; percent suitable malting types, sound barley, skinned and broken kernels, and thin barley for two- and six-rowed malting types; or establishing common foreign material grade limits for all Malting barley.

Based on information and suggestions received from individuals using these grade charts, comments received, and other available information, GIPSA will: (1) Maintain separate grading charts for two- and six-rowed malting types; (2) establish four numerical grades for all Malting barley; (3) apply the current grade limits for damaged kernels and other grains to Six-rowed Malting barley only; (4) apply the present limits for wild oats, injured-by-mold, and mold

damage to Two-rowed Malting barley only; (5) apply the proposed foreign material grade limits to two- and six-rowed malting types; and (6) for six-rowed malting types adopt the proposed grade limits for test weight, sound barley, damaged kernels, skinned and broken kernels, and thin barley.

Suitable Malting Type

GIPSA proposed to amend the definition of suitable malting type in current section 7 CFR 810.202, paragraph (t), to expand the list of approved malting varieties. The proposed definition will include other malting types used by various maltsters and brewers.

Current standards require a specified level of suitable malting type before the Malting barley designation is assigned. The American Malting Barley Association (AMBA) identifies which malting varieties are considered suitable. The AMBA revises its list of approved malting types annually by adding new varieties and deleting outdated ones. However, many malting varieties removed from the AMBA list continue to be produced, marketed, and processed. Under the current malting standards, a variety that meets all quality requirements for malting but is not included on the AMBA list could not be classified as Malting barley. Furthermore, several breweries are actively involved in the development and production of malting barley types to meet various end-use specifications. Often, these varietal types are not tested and approved by AMBA, although such varieties meet all quality requirements of the brewery. This revision will permit official inspection personnel to apply the malting grade designation to any of these malting varieties. Also, it will bring existing standards more in line with today's processing practices of the malting and brewing industries.

All comments received were supportive of the proposal to revise the definition of suitable malting type to include varieties recommended by AMBA and other malting types.

Based on this information, comments received, and other available information, GIPSA is revising the suitable malting type definition in current section 7 CFR 810.202, paragraph (t), to include varieties recommended by AMBA and other malting types.

Dockage

GIPSA proposed to revise the dockage certification procedure in section 7 CFR 810.104, paragraph (b), by reporting results in half and whole percent with a fraction less than one-half percent being disregarded.

Dockage in barley consists of dust, chaff, small weed seed, very small pieces of broken barley, and coarse grains larger than barley. Present standards certify dockage in whole percents with fractions of a percent being disregarded. GIPSA believes that this method of reporting often understates dockage levels. GIPSA also believes that reporting dockage in half and whole percent provides a more accurate description of non-barley material, by that, enabling handlers and end-users to decide quality, storability, and end-product yield. Also, providing actual dockage percentage in the remarks section of the certificate is currently available upon request.

One commentor supporting this change stated that much of the commercial trade is done in tenth of percent increments. However, GIPSA believes that the proposed change best reflects market needs at this time. Accordingly, no further changes to this provision are needed. Applicants interested in receiving dockage information in tenth of percent increments may receive it upon request.

Based on this information, comments received, and other available information, GIPSA is revising the dockage certification procedure in section 7 CFR 810.104, paragraph (b), to report dockage in barley in half and whole percent with a fraction less than one-half percent being disregarded.

Thin Barley

GIPSA proposed to revise the sieve requirement for determining thin barley in current section 7 CFR 810.202, paragraph (u), by requiring the use of a single sieve (5/64 × 3/4 slotted-hole), in determining thins in the class Barley. GIPSA also proposed to amend section 7 CFR 800.162 to delete the factor thins and its corresponding grade limits for the class Barley and require that the level of thins be reported on each certificate representing an inspection for grade. This procedure is similar to the certification procedure for moisture, which provides the marketplace with the flexibility to establish more meaningful quality limits for thins based on the specific needs of end-users.

Present standards define thin barley as Six-rowed barley which passes through a 5/64 × 3/4 slotted-hole sieve or Two-rowed barley which passes through a 5.5/64 × 3/4 slotted-hole sieve. In addition, for the class Barley, which consists of a mixture of Six- and Two-rowed barley, thin barley is barley passing through the 5/64 × 3/4 slotted-hole sieve. Under this requirement, the factor thins in the standards is a measurement of kernel size more than an indicator of overall quality in barley.

All commentors were supportive of GIPSA's proposal to use one standard sieve size (5/64 × 3/5 slotted-hole) to determine thins for the class Barley.

Several commentors opposed the removal of thins as a grade determining factor stating: (1) Thins are one of the most important grading factors, particularly in livestock feed and export markets; (2) there is correlation between barley quality and the level of thins because a high level of thins can cause problems in rolling barley and it will affect the nutritive value of barley; (3) the end-users rely on the official grading system to determine the level of thins and corresponding numerical grade; (4) if the end-users contract for a certain grade of barley, they currently can be assured of a specified maximum percentage of thin kernels; (5) most of the barley sold into the feed market is traded on the basis of thins; (6) they feared the potential for increased blending, which may lower the overall quality; and (7) they stated that FGIS failed to consider the impacts on export markets.

GIPSA recognizes that thin barley is a factor used by the industry to determine market value. Also, that the end-user is in the best position to determine the appropriate level of thins when arriving at the market value of the grain. Therefore, GIPSA has decided not to remove the grade limits for thins in the class barley because there appears to be a market need to preserve these limits based on comments received. Consequently, the factor ''thins'' will continue to be a grade determining factor in the class Barley.

Based on this information, comments received, and other available information, GIPSA is revising current section 7 CFR 810.202, paragraph (u), to require the use of the 5/64 × 3/4 slotted-whole sieve for thin barley determination in the class Barley.

Sound Barley

GIPSA proposed to revise section 7 CFR 810.206 by removing the factors and limits for damaged kernels, heat-damaged kernels, and foreign material in the class Barley. In proposing this revision, GIPSA believed that the standards would rely on the factor ''sound barley'' to relate the overall amount of damaged kernels, heat-damaged kernels, and foreign material. In addition, applicants interested in the percentage and composition of damaged kernels, heat-damaged kernels, and foreign material may request this

information be reported on the inspection certificate.

Supporters of this change stated that relying on the factor ''sound barley'' to determine quality is favorable, providing other information concerning non-barley material and damaged kernels is available to interested parties.

Opponents of this proposed change stated: Eliminating the factors and grade limits for damaged kernels, heat-damaged kernels, and foreign material and relying on sound barley to relate the overall amount of damage and non-barley materials will be an incentive to add non-barley material to barley shipments; while the domestic market likely would quickly adapt to this change, the export market will be at a serious disadvantage; and U.S. competitors have much more stringent quality parameters, and any retrenchment from the current grading system would cause further concerns by overseas customers and cause reduction in U.S. exports.

Upon further review of this issue and in view of the comments and concerns, GIPSA believes that removing the grade limits for damaged kernels, heat-damaged kernels, and foreign material in the class Barley and relying on sound barley to relate the overall amount of damage and non-barley may not reflect domestic and/or export markets need. Therefore, GIPSA has decided to retain the factors and limits for damaged kernels, heat-damaged kernels, and foreign material in the class Barley as grade determining factors because there appears to be a market need to maintain these factors and their grade limits as grade determining factors.

Based on this information, comments received, and other available information, GIPSA has decided not to revise section 7 CFR 810.206 of the standards. Consequently, the grade limits for damaged kernels, heat-damaged kernels, and foreign material in the class Barley will continue to be grade determining factors.

Badly Stained or Materially Weathered Barley

GIPSA proposed to eliminate the grade limitation for barley that is badly stained or materially weathered from section 7 CFR 810.206. GIPSA also proposed to remove the definition for stained barley from 7 CFR 810.202 (s).

The determination of badly stained or materially weathered barley is seldom made because this condition is generally reflected in other grading factors including sound barley. Presently, barley that is badly stained or materially weathered is graded not higher than U.S. No. 4.

Commentors did not oppose GIPSA's proposal to remove the badly stained or materially weathered criterion from the standards.

Based on this information, comments received, and other available information, GIPSA has decided to amend section 7 CFR 810–206 by eliminating the grade limitation for badly stained or materially weathered.

Miscellaneous Changes

GIPSA proposed to revise the format of the grade charts in the standards for Malting barley and Barley. These proposed revisions were intended to improve the readability of the grading tables. Based on information and suggestions received from individuals using these grading charts, GIPSA has decided not to adopt the proposed format. Consequently, the present format of the grading charts in the standards for Malting barley and Barley will not be changed.

Inspection Plan Tolerances

Shiplots, unit trains, and lash barge lots are inspected by a statistically based inspection plan (55 FR 24030, June 13, 1990). Inspection tolerances, commonly referred to as breakpoints, are used to determine acceptable quality. GIPSA proposed to amend the breakpoint for dockage from 0.47 to 0.23 percent. GIPSA also proposed to establish breakpoints conforming to the proposed changes to the barley standards.

GIPSA received no opposition to amending or establishing breakpoints as included in the proposal.

Based on this information, comments received, and other available information, GIPSA is revising section 800.86, Table 4, by changing the dockage breakpoint to 0.23 percent. GIPSA is also adopting breakpoints for the changes to the malting barley standards.

Final Action

On the basis of these comments and other available information, GIPSA has decided to revise the barley standards as proposed, with the following exceptions: (1) Combining the grading factors and limits for two- and six-rowed malting types into one grade chart; (2) removing the grading limits for thins in the class Barley; (3) removing the grading limits for damaged kernels, heat-damaged kernels, and foreign material in the class Barley; (4) applying the current damaged kernels grade limits in Six-rowed Malting barley to Two-rowed Malting barley; (5) applying the present limits for mold damage and injured-by-mold in Two-rowed Malting barley to Six-rowed Malting barley; and (6) applying the current grade limits for other grains and wild oats to both Six- and Two-rowed Malting barley.

Rather than combining the grading factors and limits for two- and six-rowed malting types into one grading chart, GIPSA decided to maintain a separate grading chart for the two-rowed malting type and the six-rowed malting type because of their different grade limits and grading factors. Also, GIPSA decided to retain the grading limits for thins, damaged kernels, heat-damaged kernels, and foreign material in the class Barley. In addition, GIPSA will continue to apply the current grade limits in Six-rowed Malting barley for damaged kernels and other grains only to Six-rowed Malting barley and continue to apply the present limits in Two-rowed Malting barley for injured-by-mold, wild oats, and mold damage only to Two-rowed Malting barley.

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 the revision becomes effective June 1, 1996. This effective date will coincide with the beginning of the 1996 crop year and facilitate domestic and export marketing of barley.

List of Subjects in 7 CFR Parts 800 and 810

Administrative practice and procedure, Export, Grain.

For reasons set forth in the preamble, 7 CFR Part 800 and 7 CFR Part 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 1, 2, 3, and 4 are revised to read as follows:

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

* * * * *

(2) * * *

TABLE 1—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SIX-ROWED MALTING BARLEY AND SIX-ROWED BLUE MALTING BARLEY

Grade	Minimum limits of—						Maximum limits of—									
	Test weight per bushel (pounds)		Suitable malting types (percent)		Sound barley (percent) [1]		Damaged kernels (percent)		Foreign material (percent)		Other grains (percent)		Skinned and broken kernels (percent)		Thin barley (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	47.0	−0.5	95.0	−1.3	97.0	−1.0	2.0	0.8	0.5	0.1	2.0	0.8	4.0	1.1	7.0	0.6
U.S. No. 2	45.0	−0.5	95.0	−1.3	94.0	−1.4	3.0	0.9	1.0	0.4	3.0	0.9	6.0	1.4	10.0	0.9
U.S. No. 3	43.0	−0.5	95.0	−1.3	90.0	−1.6	4.0	1.1	2.0	0.5	5.0	1.3	8.0	1.5	15.0	0.9
U.S. No. 4	43.0	−0.5	95.0	−1.3	87.0	−1.9	5.0	1.3	3.0	0.6	5.0	1.3	10.0	1.6	15.0	0.9

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

TABLE 2—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR TWO-ROWED MALTING BARLEY

Grade	Minimum limits of—						Maximum limits of—							
	Test weight per bushel (pounds)		Suitable malting types (percent)		Sound barley [1] (percent)		Wild oats (percent)		Foreign material (percent)		Skinned and broken kernels (percent)		Thin barley (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	50.0	−0.5	97.0	−1.0	98.0	−0.8	1.0	0.6	0.5	0.1	5.0	1.3	5.0	0.4
U.S. No. 2	48.0	−0.5	97.0	−1.0	98.0	−0.8	1.0	0.6	1.0	0.4	7.0	1.3	7.0	0.5
U.S. No. 3	48.0	−0.5	95.0	−1.3	96.0	−1.1	2.0	0.8	2.0	0.5	10.0	1.8	10.0	0.9
U.S. No. 4	48.0	−0.5	95.0	−1.3	93.0	−1.1	3.0	0.9	3.0	0.6	10.0	1.8	10.0	0.9

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

Note: Malting barley shall not be infested in accordance with § 810.107(b) and shall not contain any special grades as defined in § 810.206. Six- and two-rowed barley varieties not meeting the above requirements shall be graded in accordance with standards established for the class Barley.

Grade	Minimum limits of—				Maximum limits of—									
	Test weight per bushel (pounds)		Sound barley (percent)		Damaged kernels [1] (percent)		Heat damaged kernels (percent)		Foreign material (percent)		Broken kernels (percent)		Thin barley (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	47.0	−0.5	97.0	−1.1	2.0	0.8	0.2	0.1	1.0	0.4	4.0	1.0	10.0	0.9
U.S. No. 2	45.0	−0.5	94.0	−1.4	4.0	1.0	0.3	0.1	2.0	0.4	8.0	1.5	15.0	0.9
U.S. No. 3	43.0	−0.5	90.0	−1.6	6.0	1.4	0.5	0.2	3.0	0.5	12.0	1.8	25.0	1.3
U.S. No. 4	40.0	−0.5	85.0	−2.2	8.0	1.5	1.0	0.5	4.0	0.5	18.0	1.8	35.0	1.9
U.S. No. 5	36.0	−0.5	75.0	−2.2	10.0	1.8	3.0	0.6	5.0	0.6	28.0	2.4	75.0	2.3

[1] Includes heat-damaged kernels. Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels.

TABLE 4–BREAKPOINTS FOR BARLEY SPECIAL GRADES AND FACTORS

Special grade or factor	Grade or range limit	Breakpoint
Dockage	As specified by contract or load order.	0.23

* * * * *

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.).

4.–5. Subpart A, section 810.104, paragraph (b), is amended by revising the first and second sentences to read as follows:

Subpart A—General Provisions

* * * * *

§ 810.104 Percentages.

* * * * *

(b) *Recording.* The percentage of dockage in flaxseed, rye, and sorghum is reported in whole percent with fractions of a percent being disregarded. Dockage in barley and triticale is reported in whole and half percent with a fraction less than one-half percent being disregarded. * * *

* * * * *

6. Subpart B, section 810.202, paragraph (c), is revised and paragraph (s), Stained barley, is removed. Paragraph (t), Suitable malting type, is revised and redesignated as (s). Paragraph (u), Thin barley, is revised and redesignated as (t). Paragraph (v), Wild oats, is redesignated as (u) to read as follows:

Subpart B—U.S. Standards for Barley

* * * * *

§ 810.202 Definition of other terms.

* * * * *

(c) *Classes.* There are two classes of barley: Malting barley and Barley.

(1) *Malting barley.* Barley of a six-rowed or two-rowed malting type. The class Malting barley is divided into the following three subclasses:

(i) *Six-rowed Malting barley.* Barley that has a minimum of 95.0 percent of a six-rowed suitable malting type that has 90.0 percent or more of kernels with white aleurone layers that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, and 0.1 percent heat-damaged kernels. Six-rowed Malting barley shall not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(ii) *Six-rowed Blue Malting barley.* Barley that has a minimum of 95.0 percent of a six-rowed suitable malting type that has 90.0 percent or more of kernels with blue aleurone layers that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, and 0.1 percent heat-damaged kernels. Six-rowed Blue Malting barley shall not be infested,

blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(iii) *Two-rowed Malting barley*. Barley that has a minimum of 95.0 percent of a two-rowed suitable malting type that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, 0.1 percent heat-damaged kernels, 1.9 percent injured-by-mold kernels, and 0.4 percent mold-damaged kernels. Two-rowed Malting barley shall not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(2) *Barley*. Any barley of a six-rowed or two-rowed type. The class Barley is divided into the following three subclasses:

(i) *Six-rowed barley*. Any Six-rowed barley that contains not more than 10.0 percent of two-rowed varieties.

(ii) *Two-rowed barley*. Any Two-rowed barley with white hulls that contains not more than 10.0 percent of six-rowed varieties.

(iii) *Barley*. Any barley that does not meet the requirements for the subclasses Six-rowed barley or Two-rowed barley.

* * * * *

(s) *Suitable malting type*. Varieties of malting barley that are recommended by the American Malting Barley Association and other malting type(s) used by the malting and brewing industry. The varieties are listed in GIPSAs instructions.

(t) *Thin barley*. Thin barley shall be defined for the appropriate class as follows:

(1) *Malting barley*. Six-rowed Malting barley that passes through a 5/64 × 3/4 slotted-hole sieve and Two-rowed Malting barley which passes through a 5.5/64 × 3/4 slotted-hole sieve in accordance with procedures prescribed in GIPSAs instructions.

(2) *Barley*. Six-rowed barley, Two-rowed barley, or Barley that passes through a 5/64 × 3/4 slotted-hole sieve in accordance with procedures prescribed in GIPSAs instructions.

* * * * *

7. Section 810.204 is revised to read as follows:

§ 810.204 Grades and Grade Requirements for Six-rowed Malting barley and Six-rowed Blue Malting barley.

Grade	Minimum limits of—			Maximum limits of—				
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley [1] (percent)	Damaged kernels [1] (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 1	47.0	95.0	97.0	2.0	0.5	2.0	4.0	7.0
U.S. No. 2	45.0	95.0	94.0	3.0	1.0	3.0	6.0	10.0
U.S. No. 3	43.0	95.0	90.0	4.0	2.0	5.0	8.0	15.0
U.S. No. 4	43.0	95.0	87.0	5.0	3.0	5.0	10.0	15.0

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

Notes: Malting barley shall not be infested in accordance with § 810.107(b) and shall not contain any special grades as defined in § 810.206. Six-rowed Malting barley and Six-rowed Blue Malting barley varieties not meeting the requirements of this section shall be graded in accordance with standards established for the class Barley.

8. Section 810.205 is revised to read as follows:

§ 810.205 Grades and Grade Requirements for Two-rowed Malting barley.

Grade	Minimum limits of—			Maximum limits of—			
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley [1] (percent)	Wild oats (percent)	Foreign material (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 1	50.0	97.0	98.0	1.0	0.5	5.0	5.0
U.S. No. 2	48.0	97.0	98.0	1.0	1.0	7.0	7.0
U.S. No. 3	48.0	95.0	96.0	2.0	2.0	10.0	10.0
U.S. No. 4	48.0	95.0	93.0	3.0	3.0	10.0	10.0

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

Note: Malting barley shall not be infested in accordance with § 810.107(b) and shall not contain any special grades as defined in § 810.206. Two-rowed Malting barley varieties not meeting the requirements of this section shall be graded in accordance with standards established for the class Barley.

9. Section 810.206 is revised to read as follows:

§ 810.206 Grades and Grade Requirements for Barley.

Grade	Minimum limits of—		Maximum Limits of—				
	Test weight per bushel (pounds)	Sound barley (percent)	Damaged kernels [1] (percent)	Heat damaged kernels (percent)	Foreign material (percent)	Broken kernels (percent)	Thin barley (percent)
U.S. No. 1	47.0	97.0	2.0	0.2	1.0	4.0	10.0
U.S. No. 2	45.0	94.0	4.0	0.3	2.0	8.0	15.0
U.S. No. 3	43.0	90.0	6.0	0.5	3.0	12.0	25.0
U.S. No. 4	40.0	85.0	8.0	1.0	4.0	18.0	35.0

Grade	Minimum limits of—		Maximum Limits of—				
	Test weight per bushel (pounds)	Sound barley (percent)	Damaged kernels [1] (percent)	Heat damaged kernels (percent)	Foreign material (percent)	Broken kernels (percent)	Thin barley (percent)
U.S. No. 5	36.0	75.0	10.0	3.0	5.0	28.0	75.0

U.S. Sample Grade:
U.S. Sample grade shall be barley that:
(a) Does not meet the requirements for the grades 1, 2, 3, 4, or 5; or
(b) Contains 8 or more stones or any number of stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more caster beans (*Ricinus communis* L.), 4 or more particles of unknown foreign substance(s) or commonly recognized harmful or toxic substance(s), 8 or more cocklebur (*Xanthium* spp.) or similar seeds singly or in combination, 10 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1⅛ to 1¼ quarts of barley; or
(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or
(d) Is heating or otherwise of distinctly low quality.
[1] Includes heat-damaged kernels. Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels.

Dated: April 8, 1996.

James R. Baker,

Administrator.

[FR Doc. 96–10305 Filed 4–25–96; 8:45 am]

BILLING CODE 3410–EN–P

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

RIN 0570–AA11

Business and Industrial Loan Program—Audit Requirements

AGENCIES: Rural Housing Services, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is amending the regulations for the Business and Industry (B&I) Loan Program. The action clarifies the requirements for annual financial statements and establishes thresholds for determining which borrowers will be required to provide audited statements.

EFFECTIVE DATE: April 26, 1996.

FOR FURTHER INFORMATION CONTACT: Richard T. Bonnet, Commercial Loan Specialist, Rural Business-Cooperative Service, USDA, Ag Box 3221, Washington DC 20250–3221, Telephone (202) 720–1804.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.768, and is subject to intergovernmental consultation in accordance with Executive Order 12372, and as stated in FmHA Instruction 1940–J, ''Intergovernmental Review of Farmers Home Administration Programs and Activities.''

Environmental Impact Statement

This action has been reviewed in accordance with 7 CFR Part 1940, Subpart G, ''Environmental Program.'' The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Civil Justice

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the agency at 7 CFR Part 1900 Subpart B or those regulations published by the Department of Agriculture to implement the provisions of the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0029. This final rule does not impose any new information collection requirements from those approved by OMB.

Background

This regulatory package is an Agency initiative to enhance the program by reducing the financial burden on small business borrowers of obtaining annual audits of their financial statements. The existing regulations require annual audited financial statements from all borrowers, except those with loans that have been paid down to no more than $100,000 and to no more than two-thirds of the original balance and have