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## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 7 CFR Part 800

RIN 0580-AB18

#### Export Inspection and Weighing Waiver for High Quality Specialty Grain Transported in Containers

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

**ACTION:** Final rule.

**SUMMARY:** The United States Department of Agriculture's (USDA), Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations issued under the United States Grain Standards Act (USGSA) to make permanent a waiver due to expire on July 31, 2012, for high quality specialty grain exported in containers from the mandatory inspection and weighing requirements of the USGSA. GIPSA also has determined that making the export inspection and weighing waiver permanent will advance the objectives of the USGSA.

**DATES:** Effective August 29, 2011.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. O'Connor, Director, Quality Assurance & Compliance Division, at his e-mail address: [Thomas.C.Oconnor@usda.gov](mailto:Thomas.C.Oconnor@usda.gov) or by telephone at (202) 720-8262.

#### SUPPLEMENTARY INFORMATION:

##### Background

The USGSA (7 U.S.C. 71-87k) authorizes USDA to waive the mandatory inspection and weighing requirements of the USGSA in circumstances when the objectives of the USGSA would not be impaired. Current waivers from the official inspection and Class X weighing requirements for export grain appear in

§ 800.18 (7 CFR 800.18) of the regulations issued under the USGSA. These waivers are provided for grain exported for seeding purposes, grain shipped in bond, grain exported by rail or truck to Canada or Mexico, grain not sold by grade, exporters and individual elevator operators shipping less than 15,000 metric tons during the current and preceding calendar years, and when services are not available or in emergency situations.

High quality specialty grain is defined as grain in which all factors exceed the grade limits for U.S. No. 1 grain, except for the factor test weight, or grain designated as "organic" as defined in § 205.2 (7 CFR 205.2) of the regulations issued under the Organic Food Productions Act of 1990, as amended (OFPA) (7 U.S.C. 6501-6522). Typically, shippers of high quality specialty grain exported in containers are small entities that up until recently handled less than 15,000 metric tons of grain annually and were exempt from mandatory inspection and weighing requirements in accordance with § 800.18(b) of the USGSA regulations. As the high quality specialty grain market has expanded, the volume of this specialty product has begun to exceed the 15,000 metric ton waiver threshold, making such grain subject to mandatory inspection and weighing under the USGSA.

GIPSA has found that transactions involving high quality specialty grain typically are made between dedicated buyers and sellers who have ongoing business relationships and fully understand each other's specific needs and capabilities. Typically, sales are for grain that meets strict commercial contract specifications for quality, production, handling, and packaging. GIPSA believes that mandating official inspection and weighing services for this specialty market adds an unnecessary cost. The cost of official inspection and weighing for these specialty operations is approximately \$1.80 per metric ton compared to an average \$0.34 per metric ton for traditional grain exports.

On December 13, 2005, GIPSA published in the **Federal Register** a final rule (70 FR 73556) establishing a 5-year waiver for high quality specialty grain exported in containers in order to relieve the burden of grain exporters having to obtain and pay for mandatory official inspection and weighing

services for this emerging niche market. On July 19, 2010, GIPSA published in the **Federal Register** an interim rule that extended the waiver until July 31, 2012, and proposed making the waiver permanent. Based on the comments discussed below, this final rule makes permanent the waiver for high quality specialty grain exported in containers.

Since establishing the waiver in 2005, GIPSA has required that exporters of high quality specialty grain in containers maintain, submit upon request, and make available documentation that fully and correctly discloses their transactions. GIPSA has used this documentation to determine if the high quality specialty grain waiver continues to advance the objectives of the USGSA and to ensure that exporters of high quality specialty grain comply with the waiver provisions: (1) That all factors exceed the grade limits for U.S. No. 1 grain, except for the factor test weight, or (2) Specify "organic" as defined by the regulations issued under the OFPA. Under this final rule, GIPSA will continue to collect information from exporters of high quality specialty grain in containers in order to ensure the integrity of the high quality specialty grain program. GIPSA will also require exporters to maintain records generated during their normal course of business that pertain to these shipments and make these documents available to GIPSA upon request for review or copying purposes. These records must be maintained for a period of 3 years. Accordingly, organizations exporting high quality specialty grain will continue to be required to notify GIPSA of their actions for registration purposes in accordance with the USGSA. Moreover, nothing in this permanent waiver will prevent buyers and sellers of high quality specialty grain exported in containers from requesting and receiving official inspection and weighing services should they desire such services.

Since the waiver was implemented, GIPSA has reviewed documentation provided by exporters of high quality specialty grain and has determined that the documentation provided by exporters complied with the waiver provisions. By making this waiver permanent, GIPSA believes that this final rule will provide regulatory relief to a small evolving sector of the grain

industry, while continuing to advance the objectives of the USGSA.

#### Discussion of Comments and Final Action

On July 19, 2010, GIPSA published an interim rule (75 FR 41693) that extended for 2 years, or until July 31, 2012, and also proposed making the waiver permanent for high quality specialty grain exported in containers that was established from a final rule on December 13, 2005 (70 FR 73556). The interim rule invited interested parties to comment on making this waiver for high quality specialty grain exported in containers permanent. GIPSA received two comments, which are discussed below:

One comment supported the issuance of the interim rule to extend through July 31, 2012, the waiver from mandatory inspection and weighing requirements for high quality specialty grain exported in containers to eliminate uncertainty that otherwise might have occurred. The commenter also supported making the waiver permanent and urged GIPSA to not propose major changes to the mandatory inspection and weighing requirements of the USGSA that would adversely affect the marketing system or current priorities and operations of the agency. Because this commenter agreed that the waiver be made permanent, we are making no changes to this final rule based on the comment.

The second commenter did not support GIPSA making permanent the current waiver for high quality specialty grain exported in containers from the mandatory inspection and weighing requirements and urged GIPSA to extend the waiver for an additional year and review the quality assurance options for rail shipments to Mexico and the impact of this rule change on overseas container shipments. GIPSA does not believe that this rule will impact rail shipments to Mexico or have an adverse impact on overseas container shipments. GIPSA established the waiver to facilitate the marketing of high quality specialty grain by eliminating the burden of obtaining mandatory inspection and weighing requirements for organic and other types of high quality specialty grain. Since the waiver was implemented in 2005, GIPSA has collected data from exporters of high quality specialty grain that verifies that exporters of high quality specialty grain have complied with the waiver provisions and that a permanent waiver will continue to advance the objectives of the USGSA. Moreover, nothing in this final rule will prevent buyers and sellers of high quality specialty grain from

requesting and receiving official inspection and weighing services should they desire such services. Therefore, GIPSA is making no change to the final rule based on the comment.

#### Executive Order 12866 and Effect on Small Entities

This final rule has been determined not to be significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule would provide regulatory relief to both large and small businesses. The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS).<sup>1</sup> The SBA defines small grain exporters in its regulations (13 CFR 121.201) as entities having less than \$7,000,000 in average annual receipts (NAICS code 115114). Small grain exporters that export less than 15,000 metric tons per year are exempt from the mandatory inspection and weighing requirements under § 800.18 of the USGSA regulations (7 CFR 800.18). GIPSA believes that making permanent this waiver would effectively eliminate the cost impact on small grain exporters that would otherwise have to pay for GIPSA's onsite inspection and weighing services without impairing the objectives of the USGSA.

The growing market for high quality specialty grain exported in containers has caused shippers of high quality specialty grain to exceed the 15,000 metric ton waiver threshold for export inspection and weighing. GIPSA has consulted with its Grain Inspection Advisory Committee (Advisory Committee) on this issue. GIPSA's Advisory Committee is composed of members representing grain producers, handlers, processors, and exporters. The Advisory Committee has advocated that GIPSA make permanent the waiver for high quality specialty grain exported in containers from the mandatory inspection and weighing requirements of the USGSA. GIPSA agrees with the Advisory Committee that granting a permanent waiver is consistent with the intent of the USGSA and will allow this market to continue to grow.

This final rule will continue to allow exporters of high quality specialty grain shipped in containers to ship high quality specialty grain without the cost burden of mandatory inspection and weighing, while allowing them to request GIPSA inspection and weighing services when desired. Relieving this

cost burden will continue to allow the grain industry to grow and equitably compete with global competitors.

Therefore, pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612), GIPSA has considered the economic impact of this final rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The USGSA provides in section 87g (7 U.S.C. 87g) that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this final rule would not preempt any State or local laws, or 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 final rule.

#### Executive Order 13175

This final rule has been reviewed with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This rule will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

#### Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the information collection and recordkeeping included in this final rule were approved by the Office of Management and Budget under Control No. 0580–0022, and will expire on May 31, 2012. This information collection continues to be necessary in order for GIPSA to ensure that exporters of high quality specialty grain shipped in containers comply with the waiver provisions contained in § 800.18 (7 CFR 800.18) of the regulations issued under the USGSA.

#### E-Government Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

<sup>1</sup> See: [http://www.sba.gov/idc/groups/public/documents/sba\\_homepage/serv\\_sstd\\_tablepdf.pdf](http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf).

**List of Subjects in 7 CFR Part 800**

Administrative practice and procedure, Export, Grain.

For reasons set out in the preamble, 7 CFR part 800 is amended as follows:

**PART 800—GENERAL PROVISIONS**

- 1. The authority citation for Part 800 continues to read as follows:

**Authority:** 7 U.S.C. 71–87k.

- 2. In § 800.0, paragraph (b)(44) is revised to read as follows:

**§ 800.0 Meaning of terms.**

\* \* \* \* \*

(b) \* \* \*

(44) *High quality specialty grain.*

Grain sold under contract terms that specify all factors exceed the grade limits for U.S. No. 1 grain, except for the factor test weight, or specify “organic” as defined by 7 CFR part 205.

\* \* \* \* \*

- 3. In § 800.18, paragraph (b)(8) is revised to read as follows:

**§ 800.18 Waivers of the official inspection and Class X weighing requirements.**

\* \* \* \* \*

(b) \* \* \*

(8) *High quality specialty grain shipped in containers.* Official inspection and weighing requirements do not apply to high quality specialty grain exported in containers. Records generated during the normal course of business that pertain to these shipments must be made available to the Service upon request, for review or copying. These records must be maintained for a period of 3 years.

**J. Dudley Butler,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

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**BILLING CODE 3410-KD-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 23**

[Docket No. CE312; Special Conditions No. 23–252–SC]

**Special Conditions: Cessna Aircraft Company, Model LC40–550FG, LC41–550FG, and LC42–550FG; AmSafe Inflatable Three-Point Restraint Safety Belt With an Integrated Airbag Device**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the installation of an inflatable three-point restraint safety belt with an integrated airbag device at the pilot, co-pilot and passenger seats on the Cessna Aircraft Company airplane models LC40–550FG, LC41–550FG, and LC42–550FG. These airplanes, as modified by the installation of these inflatable safety belts, will have novel and unusual design features associated with the upper-torso restraint portions of the three-point safety belts, which contain an integrated airbag device. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is July 21, 2011.

We must receive your comments on or before August 29, 2011.

**ADDRESSES:** Mail two copies of your comments to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE312, 901 Locust, Room 506, Kansas City, Missouri 64106. You may deliver two copies to the Regional Counsel at the above address. Mark your comments: Docket No. CE312. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Stegeman, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4140, fax 816–329–4090, e-mail [Robert.Stegeman@faa.gov](mailto:Robert.Stegeman@faa.gov).

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

**Comments Invited**

We invite interested persons to submit such written data, views, or arguments, as they desire. The most

helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

**Background**

On February 3, 2011, AmSafe, Inc. applied for a Supplemental Type Certificate (STC), for the installation of a three-point safety belt restraint system for the pilot, co-pilot and the passenger seats, each incorporating inflatable airbags, for model LC40–550FG, LC41–550FG, and LC42–550FG airplanes.

The inflatable restraint systems are: Three-point safety belt restraint systems consisting of a lap belt and shoulder harness with an inflatable airbag attached to the lap belt. The inflatable portion of the restraint system will rely on sensors to electronically activate the inflator for deployment.

If an emergency landing occurs, the airbags will inflate and provide a protective cushion between the occupant's head and the structure within the airplane. This will reduce the potential for head and torso injury. The inflatable restraint behaves in a manner similar to an automotive airbag; however, in this case, the airbag is integrated into the lap belt. While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable restraint system is novel for general aviation operations.

The FAA has determined that this project will be accomplished on the basis of providing the same current level of safety as the conventional certification basis airplane occupant