

Proposed Rules

Federal Register

Vol. 72, No. 139

Friday, July 20, 2007

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 Chapter VIII

RIN 0580-AB00

The Role of USDA in Differentiating Grain Inputs for Ethanol Production and Standardizing Testing of the Co-Products of Ethanol Production

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are inviting comments from producers, handlers, processors, livestock feeders, industry representatives, and other interested persons on the appropriate government role with regard to differentiating grain attributes for ethanol conversion, as well as standardizing the testing of co-products of ethanol production, commonly referred to as distillers grains. We have monitored the development of this expanding industry and believe now is an appropriate time to seek input from stakeholders in order to foster collaboration among segments of this industry and support the marketing of ethanol co-products.

DATES: We will consider comments that we receive by September 18, 2007.

ADDRESSES: We invite you to submit comments on this advance notice of proposed rulemaking. You may submit comments by any of the following methods:

- *E-Mail:* Send comments via electronic mail to comments.gipsa@usda.gov.
- *Mail:* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604.
- *Fax:* Send comments by facsimile transmission to: (202) 690-2755.
- *Hand Delivery or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue,

SW., Room 1647-S, Washington, DC 20250-3604.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Instructions:* All comments should make reference to the date and page number of this issue of the **Federal Register**.

- *Read Comments:* All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Eric Jabs at GIPSA, USDA, 6501 Beacon Drive, Suite 180 Stop 1404, Kansas City, MO 64133; Telephone (816) 823-4635; Fax Number (816) 823-4644; e-mail Eric.J.Jabs@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This advance notice of proposed rulemaking has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

Background

The modern fuel ethanol industry uses cereal grains, such as corn, sorghum, and wheat, to convert the starch in the seeds to ethanol by fermentation and distillation. GIPSA has followed the growth of this industry for several years, focusing on utilization of grains, the subsequent impact on supply, and the development of markets for the co-product known as distillers grains. Expansion of the fuel ethanol industry is driven, among other things, by the Energy Policy Act of 2005 (42 U.S.C. 15801) which mandates that 7.5 billion gallons of renewable fuels are utilized by 2012 (which has had a bullish impact on corn prices), the relationship between ethanol prices and crude oil futures, and overall profitability in the ethanol sector. At the beginning of 2007, there were 110 bio-refineries or ethanol plants on-line in 19 States with an annual capacity of 5.5 billion gallons. Seventy-three refineries were under construction and eight were expanding, creating an additional 6 billions gallons of production capacity by 2009. Corn is currently the primary grain for ethanol production (more than 95 percent). In calendar year 2006, 1.8 billion bushels of corn produced 4.9

billion gallons of ethanol and 12 million metric tons of distillers grains. In calendar year 2006, the United States exported 1.25 million metric tons of distillers dried grains (DDG), primarily to Mexico, the European Union, Canada, Japan, Taiwan, and others.

Distillers grains are typically marketed to feed formulators for livestock feeding, primarily beef, dairy, pork, and poultry. Most U.S. ethanol plants are located in reasonable proximity to animal feeding operations to aid logistics. When used locally, the distillers grains move by truck and are sold on a "wet" (50-65 percent moisture content) basis, which saves the cost of drying. Distillers grains may move by rail, either to feedlots or to export facilities. In this case, DDG have a moisture content of about 11-12 percent and 75-80 percent of distillers grains are sold this way. One bushel of corn produces approximately 2.8 gallons of ethanol and 17 pounds of distillers grains.

The grains used for ethanol production are standardized in 7 CFR Part 810. Unless exported, there is no requirement for those grains to be officially inspected. The Association of American Feed Control Officials (AAFCO) has developed definitions for distillers grains as provided in their 2006 Official Publication. Section 27 of the Feed Ingredient Definitions provides definitions for Corn Distillers Dried Grains (DDG), Corn Distillers Dried Grains with Solubles (DDGS), Corn Distillers Wet Grains (DWG) and Corn Condensed Distillers Solubles (CDS). (2006 Official Publication, Association of American Feed Control Officials Incorporated. Sharon Krebs, Editor. Oxford, IN. 2006. Distillers Products, pages 273-274.)

Trading Without Federal Standards

There are well developed markets for by-products of standardized grain which trade without government participation. Examples include soybean meal, soybean oil, and brewers spent grains. In the soybean meal market, the National Oilseed Processors Association (NOPA) established trading rules in 1933, which were last revised in February 2007. The rules serve as guides, and parties to trades are free to adopt, modify, or disregard the rules. These rules govern sampling, testing, and specifications for soybean meal.

Soybean meal trades on the Chicago Board of Trade, and the standard specifications for deliverable grade define specified levels of protein, fat, fiber and moisture content. Unlike distillers grains which are highly variable, soybean meal is very consistent because one processing method is used almost exclusively.

Testing Grain

We contacted industry participants and heard that price was the focal point for ethanol processors, while grain quality and timing of deliveries were also of concern. Basic quality factors a processor might consider when sourcing grain include moisture content, protein content, and mycotoxins (aflatoxins in corn for example) content. Additional factors for testing might include some aspect of starch quality, nutrient composition, crude fat, crude fiber; a test to differentiate a grain specifically designed for ethanol conversion, such as grain with a high total fermentable starch content; or an end-use trait, such as a specific amino acid characteristic. Many processors indicated that co-product quality was of concern when sourcing grain, and most processors have grain inspected, either in-house or by contract with an independent laboratory. Conversion of grain to ethanol consumes the starch and leaves the remainder of the grain as the co-product. As a general rule, conversion results in a three-fold concentration in the residual material (i.e., protein, fat, or mycotoxins) in the distillers dried grains. Aflatoxin, Deoxynivalenol, Fumonisin, Zearalenone, and T2 Toxin are mycotoxins that can be present in distiller's grains by-products if the grain delivered to the ethanol plant is contaminated. Mycotoxins are not destroyed during the ethanol production process and are not destroyed during the drying process to produce distillers grains co-products.

Definitions and Standardization of Testing for Distillers Grains

While we heard from industry participants that at this time there is no need for GIPSA to establish grading standards for distillers grains (but we might have a role in minimizing market inefficiencies caused by inconsistent testing, either through standardization or validating tests used by the market), others have asked that we at least consider whether there is a need for official standards. Some stakeholders told us they do not feel that current industry-based definitions adequately describe the products.

Alternately, an industry working group, including the American Feed

Industry Association (AFIA), the Renewable Fuels Association, and the National Corn Growers Association, states that the current definitions adequately define the distillers products of today, preferring a broad definition. Further, the working group stated that the AFIA Ingredient Guidelines should be considered for updating to address modern processing technologies.

The industry working group also evaluated empirical methods of analyses for Distillers Dried Grains with Solubles (DDGS) for which "there are no guidelines or recommendations on which analytical test methods should be used * * *", focusing on analytical methods for moisture, crude protein, crude fat and crude fiber. DDGS currently accounts for about half of the distillers grains industry volume.

Potential Role for GIPSA

GIPSA facilitates the marketing of livestock, poultry, meat, cereals, oilseeds, and related agricultural products, and promotes fair and competitive trading practices for the overall benefit of consumers and American agriculture. We facilitate the marketing of U.S. grains and oilseeds by establishing standards for quality assessments, regulating handling practices, and managing a network of Federal, State, and private laboratories that provide impartial, user-fee funded official inspection and weighing services. Recognizing that sampling is the single largest source of error in the analysis of grains, we offer sampling guidelines to the grain handling industry. Finally, for grains and commodities which are not standardized (e.g., hullless oats, popcorn, corn gluten feed), we provide official procedures for analysis of specific factors.

As agricultural crops evolve and varieties with enhanced traits are developed, reliable tests must be developed to quantify the quality traits important to the market. Rapid tests and test kits are evaluated that detect biotechnology derived grains and oil seeds, analyze protein, moisture, oil, and mycotoxins. With the development of such new testing procedures, reference methods are needed to validate and improve their accuracy. This is an area where GIPSA has experience and expertise, which may prove valuable in this instance.

Objective grain/co-product quality assessments (official and unofficial) require reliable, well-standardized measurement methods. Inspection methods can be classified as reference (direct) methods or secondary (indirect) methods. Reference methods are those

that "define" the quantity or quality in question. To provide the market with rapid, cost-effective quality assessments, GIPSA develops secondary or rapid methods, based on national reference methods, for routine inspection use in the official system. These secondary methods make physical, chemical, electronic, and/or optical measurements related to the desired quality characteristics. GIPSA conducts research to develop, evaluate, and improve reference methods and secondary methods for grain and grain product quality analysis to better meet global grain inspection and marketing needs.

In 2001, we took a new approach in response to the market's need for testing the products of agricultural biotechnology. We established a voluntary proficiency program to organizations testing for biotechnology-derived grains and oilseeds to improve the reliability of testing. We also evaluate the performance of rapid tests developed to detect biotechnology-derived grains and oilseeds and mycotoxins, and confirm the tests operate in accordance with the manufacturers' claims.

GIPSA is issuing this advance notice of proposed rulemaking to invite comments from all interested persons on how we can best facilitate the marketing of distillers grains in today's evolving marketplace. We are seeking comment on market needs and the feasibility and desirability of GIPSA's programs to facilitate the marketing of these products. All interested persons are encouraged to comment on the following issues related to this notice:

1. What should GIPSA's role, if any, be in standardizing the testing of inputs and outputs of ethanol co-product processing?

2. What factors are currently assessed on the input grains for ethanol conversion? Please list the factors by specific grain. What other factors would you test input grain for, if a test were available?

3. What analytes or factors are currently assessed on co-products of ethanol production? Please list the factors by specific co-product type. What other factors would you test for, if a test were available?

4. The industry lacks agreement on reference methods for analysis of co-product attributes. Should GIPSA play a role in the standardization of reference methods? If so, what should that role be?

5. Secondary or rapid methods are used by the official inspection system to determine product quality. Should GIPSA play a role in the validation or

standardization of secondary or rapid methods? Should we limit our participation to validating the performance of test kits? Are there rapid tests in existence other than test kits of which you are aware?

6. Should we work on developing reference methods for tests of specific traits in grains, such as fermentable starch content? Should GIPSA pursue standardized, secondary tests for the presence of specific traits in grains, such as fermentable starch content?

7. Are co-products of ethanol production considered cereal products, according to the European Union regulations (COMMISSION REGULATION (EC) No 856/2005) for mycotoxin limits in cereals and cereal products? Should GIPSA validate the performance of test kits for the detection of mycotoxins in distillers grains? If so, what are the limits of detection which should be considered?

We welcome your comments on these issues as well as any comments or suggestions related to distillers grains.

Authority: 7 U.S.C. 71–87.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E7–14018 Filed 7–19–07; 8:45 am]

BILLING CODE 3410-KD-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

RIN 0580-AA96

Request for Public Comment on the United States Standards for Soybeans

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

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: We published an advance notice of proposed rulemaking in the *Federal Register* on May 1, 2007, (72 FR 23775), initiating a review of the United States Standards for Soybeans to determine their effectiveness and responsiveness to current grain industry needs. The notice provided an opportunity for interested parties to forward written comments to GIPSA until July 2, 2007. As a result of a request from the soybean industry, we are reopening the comment period to provide interested parties with additional time in which to comment.

DATES: We will consider comments that we receive by August 20, 2007.

ADDRESSES: We invite you to submit comments on this advance notice of proposed rulemaking. You may submit comments by any of the following methods:

- *E-Mail:* Send comments via electronic mail to comments.gipsa@usda.gov

- *Mail:* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604

- *Fax:* Send comments by facsimile transmission to: (202) 690–2755

- *Hand Delivery or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Instructions:* All comments should make reference to the date and page number of this issue of the **Federal Register**.

- *Read Comments:* All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Marianne Plaus at GIPSA, USDA, 1400 Independence Avenue, SW., Washington, DC 20250–3630; Telephone (202) 720–0228; Fax Number (202) 720–1015; e-mail Marianne.Plaus@usda.gov.

SUPPLEMENTARY INFORMATION:

GIPSA published an advance notice of proposed rulemaking in the **Federal Register** on May 1, 2007, (72 FR 23775) with the intent to obtain public comment on the United States Standards for Soybeans (7 CFR Part 810). Our intent is, through the comments, to determine their effectiveness and responsiveness to current grain industry needs. The comment period of 60 days from the date of publication closed on July 2, 2007. GIPSA received a request from the soybean industry to provide interested parties additional time to comment. As a result, the comment period is reopened for a 30 day period.

Authority: 7 U.S.C. 71–87.

Alan Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E7–14017 Filed 7–19–07; 8:45 am]

BILLING CODE 3410-KD-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 40 and 41

RIN 3038-AC44

Confidential Information and Commission Records and Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission is proposing to amend the procedures for confidential treatment requests by derivatives transaction execution facilities (DTEF), derivatives clearing organizations (DCO), or designated contract markets (DCM) for products and rules submitted via certification procedures or for Commission review and approval. The proposed rules will provide the exclusive means of requesting confidential treatment for product and rule submissions filed under Parts 40 and 41 of the Commission's regulations. Specifically, DCMs, DTEFs, and DCOs will be required to follow the customary procedures of requesting confidential treatment of information submitted to the Commission except: The submitter also will be required to file a detailed written justification simultaneously with the request for confidential treatment; and the submitter will be required to segregate the material deemed confidential in an appendix to the submission. Additionally, Commission staff may make an initial determination to grant or deny confidential treatment to such material before receiving a request under the Freedom of Information Act (FOIA). The Commission is proposing these amendments to expedite the confidential treatment review process and consequently allow the Commission to provide the public with more immediate access to non-confidential information.

DATES: Submit comments on or before August 20, 2007.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

- *Mail/Hand Delivery:* Eileen A. Donovan, Acting Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- *E-mail:* secretary@cftc.gov.

FOR FURTHER INFORMATION CONTACT: Riva Adriance, Deputy Director for Market Review, (202) 418–5494; or David