



Testimony on
the Reauthorization of the U.S. Grain Standards Act
Before the
United States Senate Committee on Agriculture,
Nutrition, and Forestry
By Nick Friant, Raw Materials Quality Leader
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on Behalf of the
North American Export Grain Association
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Chairman Roberts, Ranking Member Stabenow, and members of the committee, thank you for the opportunity to testify today. I am Nick Friant, Raw Materials Quality Leader for Cargill Inc. In this capacity, I provide technical and regulatory compliance assistance on a wide range of issues related to grain quality, handling and inventory for Cargill's operations and merchandizing personnel in the U.S. and abroad. I appreciate the opportunity to testify today on behalf of the North American Export Grain Association (NAEGA). I serve as Chairman of NAEGA's Grades and Inspections Committee, which addresses issues concerning the official grain inspection and grading system and the U.S. Grain Standards Act that are the subject of this hearing. I also serve as the Chairman of the National Grain and Feed Association (NGFA) Grain Grades and Weights Committee. NAEGA aligns itself with, and supports, the testimony being provided here today by the NGFA with which we are co-located. NGFA and NAEGA have collaborated closely in developing joint recommendations through our respective committees and Boards of Directors.

First and foremost please accept our appreciation to Congress – and particularly this Committee – for its leadership in enacting fundamental reforms as part of the 2015 reauthorization of this statute, which set in motion dramatic improvements within FGIS that place our industry and our farmer-customers in a much better position today than we were then, when the reputation of the Official system for providing reliable and cost-effective Official inspection and weighing service was under serious challenge.

NAEGA promotes and sustains the international trade of grain and oilseeds from the United States. Established in 1912, NAEGA's members include private and publicly owned companies and farmer-owned cooperatives serving the bulk grain and oilseed exporting industry. NAEGA represents the industry in communications with foreign buyers, U.S. and foreign governmental bodies, and before international institutions. NAEGA-member companies ship and support the vast majority of the highly competitive and fungible U.S. grain export supply.

The U.S. grain export industry is a robust, diverse, and dynamic system. It reaches publicly, privately and cooperatively owned and managed facilities and trading entities. NAEGA works in the best interest of the entire value chain to provide for optimal commercial and official practices that provide for safe and secure commerce, increased efficiency, risk management and mitigation, promotion of trade and investment, and a level and competitive global playing field. NAEGA and its members, in cooperation with the U.S. Department of Agriculture's trade-related programming and the U.S. Coast Guard's security programming, provide market education, contract models, dispute resolution, and guidance related to trading and logistics functions for the international trade of grains, oilseeds, and several of their primary derivative products

Having worked with and been in leadership positions with NAEGA, on whose behalf I testify today, I can assure you that NAEGA works with its members, stakeholders and the U.S. government to promote, sustain and grow the development of commercial exports of grains and oilseeds and their primary products, and its findings and actions are tied very closely to understanding global markets.

NAEGA strongly supports reauthorization of the U.S. Grain Standards Act to improve and maintain the U.S. official grain inspection system. NAEGA has a long history of supporting a

federal official grain inspection and weighing system, and I testified in support of the 2015 reauthorization on NAEGA's behalf. NAEGA has continuously worked to encourage continued improvements to this system, as well as the broader regulatory and commercial environment to improve the value, safety, competitiveness and sustainability of U.S. agriculture.

The U.S. Department of Agriculture's Federal Grain Inspection Service (FGIS) performs the essential role of maintaining the official U.S. grain standards, which are critical to establishing value and price-discovery in the U.S. grain and oilseed marketplace. The inspection and other services provided by FGIS contribute significantly to the marketing and trading of U.S. grains and oilseeds by farmers and other commercial parties. The U.S. grain handling and export system is admired around the world for providing a fungible, abundant, safe and sustainable commodity supply that is responsive to customer needs.

Both domestic and international markets for commodities covered under the U.S. Grain Standards Act are complex and ever-changing. The commercial environment is driven by multiple factors. But ultimately, the foreign buyer makes a decision based on value. Reliability, predictability, quality, safety and regulatory compliance are key ingredients of the buyer's determination of value. The ultimate determination of the buyer's value equation is strongly influenced by price, which results from the interrelationship between global production and demand with transportation and quality. Volatility of production and reliability of supply, in particular, are inherently important factors in buyers' decision-making. The fungibility of grains and oilseeds is a key attribute to reliably source supplies and determine value of products to meet global food security needs. My company, as well as our many competitors, evaluate and take related risks. The inherent fungibility of grains and oilseeds also empowers buyers to source from multiple suppliers. Buyers rely primarily on the commercial grain trader to serve their needs. Competition drives us to utilize best practices and constantly evolve to embrace opportunity.

The functions and services provided for by the Act and implemented by the Federal Grain Inspection Service are of great value to U.S. agriculture – particularly exporters and their customers. The vital process of providing the market with terms and methods for quality assessments under the U.S. Grain Standards Act is key to an efficient and transparent system of price discovery for those commodities that are covered by the Act. Likewise, FGIS's assistance in problem-solving in international markets has a sound record of success, and like many of the other functions the agency performs is very important to our continued success.

Customers from around the globe are looking for ways to maximize efficiencies, increase profitability, and secure reliable sources for grain. The international market, therefore, is largely served by small, medium and large firms taking some risks, and providing time and space utility, as well as market information. Those involved in the international grain market source and act globally. Often referred to as the "trade," the nexus between supplier, risk-taker, service provider and the international buyer, many of whom are NAEGA members, is constantly seeking trading opportunity founded in the economics of comparative advantage and competing to meet customer demand. Market information, much of which is provided by USDA under the leadership of the Foreign Agricultural Service and its cooperation with commercial enterprises and non-profit organizations like NAEGA, the U.S. Grains Council, the U.S. Soybean Export

Council and U.S. Wheat Associates, is essential to the trading function. A revolution in the access to timeliness and transparency of market information made possible by new information technology is a major driver of change impacting buyer decision-making.

The United States has several very significant advantages in this market: our natural resources, climate and world-leading farmer productivity are chief among them. The U.S.'s ability to reliably provide a safe supply to meet demands for various types and qualities of grains and oilseeds demanded by an ever-changing international customer is further supported by a transportation and handling infrastructure that is second to none. The U.S. sets the pace in providing for adequate fungibility and competitive marketing of those grains and oilseeds addressed by the Grain Standards Act. Our ability to inform all stakeholders in the supply of grains and oilseeds of quality and functionality of the U.S. supply is another important U.S. advantage. Information on individual commercial consignments of commingled grain provided by the highly efficient and sustainable U.S. grain logistics system is central to our competitiveness and must be reliably grounded in integrity. However, these advantages are not static or permanent, and the policies and practices that undergird them require reassessment for improvement and enhancement.

The official inspection and weighing services provided for by the Act play a significant role in meeting value chain needs and should enable the U.S. to take further strides in building its competitive advantage in the international marketplace. We must diligently provide for inspection and services that fit the unique advantages of the U.S. production and logistics system, respond to current market reality, are as competitive and cost-effective as possible and are delivered with unquestioned reliability and integrity. We see the reauthorization of the Act as an opportunity to work to improve and enhance U.S. competitiveness and further burnish the existing official grain inspection and weighing system that government and industry have worked hard to establish as the "gold standard."

As Congress evaluates reauthorization of the Act, the question of how our system for determining grades and communicating quality to create the most value for the U.S. agricultural supply chain must remain front and center. We should continue to provide for Federal Official Weights and Grades, as they are integral to the unique U.S. brand value. In the absence of the provision of a U.S. grade and weight certificate, America's reputation and competitive advantage could sustain serious damage. Therefore, it is imperative to ensure that the federal inspection system comes with the proper controls, best practices, and best science. The paramount issue is reliability. Federal Official weights and grades must be used only to assess the quality of grain, not for inappropriate and misleading purposes such as plant health, which can only serve to degrade the quality of the current system. Further, the best inspection system in the world cannot generate sufficient value if it is not predictable and reliable. These inspections can be achieved with any type of labor force, public or private, but it must be achieved if the United States is going to meet the demands of global customers. The value determination that is central to international buyer decision-making includes the information that is mandatory to be provided by FGIS for most exports of U.S. grains covered by the Act.

In addition to close collaboration with the NGFA, NAEGA consideration of the upcoming reauthorization of the U.S. Grain Standards Act is informed by communication with multiple

stakeholders including ongoing engagement with the USDA's Foreign Agriculture Service (FAS) Cooperator Program and our highly valued and relevant partner organizations like the U.S. Grains Council, the U.S. Soybean Export Council and U.S. Wheat Associates which are integral to understanding the global marketplace for commodities addressed by the Act. NAEGA has also again turned to W. Kirk Miller, former General Sales Manager for FAS and former FGIS Administrator for analysis and advice. Mr. Miller's report from May 23, 2019: "2019 U.S. GRAIN STANDARDS ACT REAUTHORIZATION ISSUES" is attached for background.

While changes to the USGSA in 2015 and the reorganization of FGIS in 2017 have greatly improved U.S. official inspection and weighing services, NGFA and NAEGA believes there are several additional improvements that can be made to create an even more reliable, competitive and cost-effective system to facilitate the marketing of U.S. grains and oilseeds in export and domestic markets.

NGFA and NAEGA's recommendations consist of the following:

- First, we urge that the USGSA be strengthened by expressly prohibiting the inappropriate and misleading practice of using grain standard quality factors as an indicator of plant health risk on phytosanitary certificates issued by USDA's Animal and Plant Health Inspection Service (APHIS). The purpose of the USGSA is to establish Official marketing standards (not plant health and safety standards) for covered commodities. As already articulated in Section 78 of the USGSA, Official grade designations, including grain quality factors like FM, are not to be used in a false or misleading fashion. Using USGSA quality factors an indicator of plant health risk is inappropriate and misleading, and NGFA and NAEGA believes this practice should be expressly prohibited by statute so it never recurs nor sets a dangerous precedent for future misguided action by APHIS.

As you will find in the attached 2018 reports "*NAEGASoybeanReportMay30*" and "*Estimated Price Impact on U.S. Soybeans due to Additional Declaration Requirement of Foreign Material*" APHIS inappropriately and unwisely in our view reportedly acquiesced in late December 2017 to Chinese officials' requests that foreign material (FM) content – a grain quality factor – be used as a proxy for weed seed content in U.S. soybean export shipments. Subsequently, starting on January 1, 2018, APHIS began requiring that an FGIS grain quality factor determination of FM exceeding 1 percent be replicated on APHIS-issued phytosanitary certificates, despite the fact that FM content is appropriately listed on the mandatory Official inspection certificate provided for by the Act. This was a startling development, because APHIS data shared with industry stakeholders in November and December 2017 prior to its meetings with the Chinese showed no direct correlation between FM and weed seed content, and there was substantial evidence that many of the weeds of alleged concern to China already were present in that country and the action was taken contrary to 2017 indications of possible actions from APHIS without sufficient notice to U.S. farmers and grain handlers. The APHIS action had the effect of further flagging this factor for Chinese import officials, inferring a plant health risk that did not exist in U.S. soybean shipments and disregarded

international conventions for risk assessment and management including mitigation measures that can be implemented at import (e.g., processing) to denature weed seeds so they cannot germinate. The result was predictable and damaging: With little to no certainty on how such U.S. cargoes would be treated upon arrival in China, APHIS's action cut across existing industry contracts and had the lasting effect of creating huge market uncertainty that immediately led to a significant reduction in U.S. soybean exports to China long before the imposition of retaliatory tariffs later in the year. To our knowledge, no other country faces a comparable requirement from China.

- Our second recommendation pertains to the 72-hour advance notification requirement mandated by Congress under the 2015 reauthorization to Section 79 of the USGSA if FGIS-delegated agencies intend to discontinue providing Official inspection service. While the statutory language expressly requires such notification be made to USDA, FGIS when implementing this provision inexplicably did not require its delegated agencies to grant the same advance notification to the actual facilities affected by such disruptions in Official service. Nor did USDA commit to providing such notification itself.

We strongly believe affected facilities need and deserve the same courtesy and consideration as currently provided to USDA so they can make appropriate logistical and other alternative arrangements to continue to serve customers whenever possible – including farmers and upstream and downstream customers. Such disruptions, if and when they occur, adversely affect a facility's ability to fulfill existing grain purchase-and-sales contracts with customers (including farmers and domestic and foreign buyers), alter their ability to handle inbound and outbound grain movements, cause disarray in domestic and export transportation logistics (including costly demurrage), complicate staffing requirements, and create a host of other business consequences. We therefore recommend legislative language to require comparable 72-hour advance notification for affected facilities.

- Third, we urge FGIS to conduct a detailed review of the current domestic geographic boundaries used to establish the territories within which each designated Official agency operates.

In the domestic market, the use of Official grain inspection and weighing service is voluntary, which is appropriate given the diverse nature of the industry. Grain handling facilities wishing to use Official grain inspection and weighing services designated by FGIS in the domestic market generally only can use the single Official agency designated by FGIS for the specific geographic territory in which the facility is located. If the Officially designated agency is unable to perform inspection and weighing services, then the grain handling facility can request from FGIS a "non-use of service exception," which allows a non-incumbent Officially designated agency to perform the functions of the incumbent agency.

Previous misinterpretation by GIPSA of the intent of the 2015 Reauthorizations Act caused many grain elevators to have their exception agreements with a domestic Official

inspection agency wrongly and unilaterally terminated. As a result, the NGFA worked last year with this Senate Committee, as well as the House Agriculture Committee, to include language in the 2018 farm law that gave grain handlers – who had exception agreements wrongly canceled – the opportunity to restore the service arrangement with their prior Officially designated domestic inspection agency by notifying USDA of the change. We greatly appreciate this committee’s and your staffs’ efforts to address this issue.

But for our industry, this points to a larger matter. FGIS, while making minor adjustments from time-to-time, has not conducted a truly comprehensive review of its geographic boundaries for domestic Official agencies since it was established in 1976. During that 43-year span, there have been significant changes in the number and operations of both grain handling facilities and Officially designated inspection agencies; the amount of grain and oilseeds handled and processed within each geographic boundary; and the number of quality attributes and other quality tests conducted by these agencies. These changes in the domestic marketplace, we believe, necessitate that USDA comprehensively update information and data upon which the geographic boundaries are based.

For these reasons, we urge that Congress include language in the USGSA to require FGIS to periodically conduct such a comprehensive review and report its findings to Congress. Upon completing such a review, we believe FGIS will have a much better basis for determining if, whether and how to update geographic boundaries for Officially designated agencies than it does now.

- Fourth, given the extremely positive changes brought about by Congress in revising the USGSA in 2015, combined with the highly successful reorganization and realignment of FGIS into AMS and the continued improvement of FGIS operations in providing accurate, reliable, timely and more predictable service, NAEGA and NGFA are comfortable recommending that the reauthorization period be extended from the current five years to a time period of more than five years but no longer than 10 years. We defer to Congress to determine the appropriate specific number of years for reauthorization that should be within that time span.
- Fifth, to maintain transparency with stakeholders, we recommend requiring that FGIS report the number of and specific type(s) of waivers from Official inspection and weighing service being requested and granted, the number of non-use of service exceptions requested and granted, and the number of specific testing services requested (e.g., for such services as intrinsic quality and food safety factor determinations that are available from FGIS or private surveyors upon request), with appropriate protection to preserve the confidentiality of trade secrets and confidential business information. We believe more transparency of this information would be valuable for Congress and stakeholders alike.
- Sixth, we believe FGIS user fees paid by the industry should be directed solely to Official inspection and weighing services. Users of these Official services already pay for the

direct costs incurred by FGIS in providing them, plus administrative overhead for these services, which typically comprises 70 percent of FGIS's total annual budget. The remaining 30 percent (approximately \$20 million annually) is covered through appropriated funds and are used to finance the agency's activities to establish, maintain and update the U.S. grain standards, as well as for monitoring and compliance/enforcement activities. The activities financed by appropriated funds have broad societal benefits – for instance, farmers and consumers alike benefit from the efficient price-discovery made possible by the U.S. grain standards. Assessing additional user fees to finance these non-inspection-related functions of FGIS would increase business costs and likely be passed back to farmers in the form of reduced farmgate prices for their commodities given the highly competitive global market in which U.S. agriculture the United States operates.

- Seventh, and finally, we recommend that the FGIS Grain Inspection Advisory Committee be reauthorized. I have enjoyed serving on the committee in the past. The advisory committee is designed to provides counsel to the FGIS administrator on the implementation of the USGSA. It is comprised of members who represent the interests of grain producers, exporters and handlers. NAEGA and NGFA believe the advisory committee serves a worthwhile function by providing expert advice and assistance to FGIS – and helps hold the agency accountable – for fulfilling its core mission of ensuring that Official inspections are performed in a reliable, consistent, cost-effective and uninterrupted manner to facilitate the export of U.S. grains and oilseeds to global customers.

Conclusion

The grain storage, handling and export industry specialize in the logistics of purchasing the commodities a farmer grows and finding a market for it here at home or in global markets. In serving this role, our industry relies on FGIS and its delegated and designated state and private agencies to provide competent, state-of-the-art and reliable Official inspection, weighing and related services for which the industry pays to facilitate the efficient and cost-effective marketing of U.S. grains and oilseeds to domestic and global markets.

NAEGA and NGFA believe that the legislative recommendations contained herein to amend the USGSA will strengthen the Official inspection and weighing system, foster the competitive position of U.S. grains and oilseeds in world markets, and maintain the integrity of Official inspection results. In addition, reauthorizing the USGSA on schedule – or even a bit early – would provide continued certainty to grain handlers, farmers and our global customers. We are committed to working constructively with Congress and all stakeholders to enact policies that achieve these positive outcomes.

Thank you for the opportunity to testify. I am pleased to respond to questions you may have.

Nick Friant
Raw Materials Quality Leader
Cargill Agriculture Supply Chain North America

Nick grew up on a small, family grain farm in north-central Illinois, which his father just retired from after the 2017 harvest. The main commodities were corn and soybeans. He attended Michigan State University where he graduated with a Bachelor of Science in 2000 and a Master of Science in 2002, both in Biosystems and Agricultural Engineering. His main area of study was grain quality, handling, storage, and drying. The focus of his Master's Degree was the development of an equation to model ear corn drying.

Nick joined Cargill in 2002 and has held several roles within the Operations and Food Safety, Quality, and Regulatory teams focusing on grain quality, inventory control, food safety, and regulatory affairs, including time working at facilities involved in both domestic and export grain operations. During his time with Cargill, he has worked in Topeka, KS, New Orleans, LA, and Minneapolis, MN. His current role, Raw Materials Quality Leader, was created when Cargill's North American grain origination and oilseeds processing business units combined to form one new business group – Cargill Agriculture Supply Chain North America.

The key responsibilities of his position are to provide technical and regulatory assistance to Operations and Merchandizing personnel on a wide range of issues related to grain quality, handling, and inventory control. Additionally, he is the chairman for the National Grain & Feed Association (NGFA) Grain Grades and Weights Committee, and the North America Export Grain Association (NAEGA) Grain Grades and Inspections Committee. He also works with the US Government (USDA FGIS & APHIS, and FDA) on these issues as well as International Sanitary and Phytosanitary (ISPS) Regulations. Nick served as a member of the Federal Grain Inspection Service Grain Inspection Advisory Committee from April 2007 to March 2010 and from October 2015 to September 2018. Other responsibilities include: assisting in developing grain survey programs; collecting information on analytical testing practices/providers; research; answering biotech, grain quality, and ISPS questions; and providing training on grain quality, food safety, biotech, IP procedures, and inventory control.

Attachments

- 1.** “*2019 U.S. GRAIN STANDARDS ACT REAUTHORIZATION ISSUES*” by W. Kirk Miller, NAEGA Consultant, May 23, 2019.
- 2.** “*NAEGASoybeanReportMay30*” by Informa Agribusiness Consulting, May 30, 2018
- 3.** “*Estimated Price Impact on U.S. Soybeans due to Additional Declaration Requirement on Phytosanitary Certificates*” by National Grain & Feed Association, July 24, 2019