



**National Grain  
and Feed Association**

[www.ngfa.org](http://www.ngfa.org) [ngfa@ngfa.com](mailto:ngfa@ngfa.com)

1400 Crystal Drive, Suite 260  
Arlington, VA 22202  
P: (202) 289-0873  
F: (202) 289-5388

---

**Written Testimony**

**on Reauthorization of the U.S. Grain Standards Act**

**Before the**

**Committee on Agriculture, Nutrition and Forestry**

**U.S. Senate**

**By Bruce Sutherland, President**

**Michigan Agriculture Commodities, Lansing Mich.**

**on Behalf of**

**National Grain and Feed Association**

**July 31, 2019**

Chairman Roberts, Ranking Member Stabenow and members of the Committee, I am Bruce Sutherland, President of Michigan Agricultural Commodities Inc. (MAC), headquartered in Lansing, Mich. I am pleased to testify today on the very important topic of reauthorizing the U.S. Grain Standards Act (USGSA) on behalf of the National Grain and Feed Association (NGFA), on whose Board of Directors I serve. I also serve as a recently appointed member of the Federal Grain Inspection Service's (FGIS) Grain Inspection Advisory Committee.

I have been with MAC for more than 33 years, and have served as its president since June 2016. My duties include capital planning, acquisitions, employee services, trading and risk management. MAC is a privately held, for-profit corporation that buys, sells and stores agricultural commodities throughout the United States and Canada. MAC currently is Michigan's largest grain handler, operating seven elevators with nearly 44 million bushels of total storage capacity. MAC also provides direct-ship, agronomy, dry edible bean and identity-preserved soybean services for Michigan farmers and other customers.

NGFA, established in 1896, comprises more than 1,050 member companies that operate more than 7,000 facilities and handle more than 70 percent of the U.S. grain and oilseed crop. NGFA's membership encompasses all sectors of the industry, including country, terminal and export grain elevators; commercial feed and feed ingredient manufacturers; biofuels producers; cash grain and feed merchants; end-users of grain and grain products, including processors, flour millers, and livestock and poultry integrators; commodity futures brokers and commission merchants; and allied industries. The NGFA also has strategic alliances with North American Export Grain Association (NAEGA) and the Pet Food Institute. In addition, affiliated with the NGFA are 33 state and regional agribusiness associations.

NGFA strongly supports reauthorization of the USGSA to maintain and continually improve the U.S. Official grain inspection system. Our association has a long history of advocating for a federal Official grain inspection and weighing system. We have worked continuously for nearly 45 years to encourage continued improvements to this system – and have several recommendations to further enhance it in our testimony today. NGFA also works to improve the broader regulatory and commercial environment to enhance the value, safety,

competitiveness and sustainability of U.S. agriculture, and the positive contribution it makes to America's balance of trade and job-creation.

FGIS performs an essential role by establishing, maintaining and updating the Official U.S. grain standards, which are critical to establishing value and price-discovery in the U.S. and global grain and oilseed marketplace. The inspection and other services provided by FGIS, which are funded principally through industry-paid fees, 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 recognized around the world for its ability to market and provide a competitively priced, fungible, abundant, safe and sustainable commodity supply that is responsive to customer needs.

U.S. competitiveness in global markets, as well as stakeholders ranging from farmers to end-users, benefit when FGIS and its delegated and designated state and private agencies provide state-of-the-art, market-responsive Official inspection and weighing of bulk grains and oilseeds, and do so in a reliable, uninterrupted, consistent and cost-effective manner.

At the outset, I want to state that NGFA aligns itself with, and supports, the testimony being provided here today by NAEGA, with which we are co-located. NGFA and NAEGA have collaborated closely in developing joint recommendations through our respective committees and Boards of Directors.

NGFA wishes to begin by expressing its 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.

The troubling experience in 2013-14 involving one delegated state agency that repeatedly and with little, if any, notice withdrew Official inspection service at a major export elevator caused NGFA and NAEGA to propose several important changes that Congress saw fit to enact:

- The most important was to establish a transparent notification and reporting requirement if one of FGIS's delegated Official inspection agencies at export ports intended to discontinue offering such service for any reason other than a "major disaster." This notification provides the opportunity for FGIS to step in to fill the void to help preserve the United States' reputation as a reliable supplier. The legislative language also appropriately directs the Secretary of Agriculture to consider such conduct as a factor when determining future delegations of inspection authority.
- A second important change was to modify the method used to calculate export inspection user fees so they are based on a five-year rolling average of the volume of grain being Officially inspected. This helps ensure that fees reflect the volume of business being done by the Official inspection system and prudently provides for upward and downward adjustments in fees accordingly.
- Third was to require transparency and regular review of FGIS's delegation of its Official inspection authority. This subsequently has resulted in the publication of a notice in the *Federal Register*, a 30-day comment period, and publication of a detailed *Federal Register* notice explaining why a state agency has been either approved or disapproved for delegation.

NGFA would be remiss, though, if it didn't voice concern about recent language in the majority report of the House agricultural appropriations bill that contradicts the action taken by Congress in 2015 to provide for predictable and uninterrupted Official inspection service. The House report language, in effect, strongly encourages FGIS employees *not* to fulfill their congressionally mandated obligation to perform Official grain inspection and weighing services by encouraging them not to cross picket lines during a labor dispute at a facility.

U.S. farmers and exporters have worked hard to gain access to overseas markets – particularly given current significant trade disruptions – and any action by state or federal agencies to disregard their statutory obligations would undermine the United States’ reputation as a reliable, predictable supplier of grains and oilseeds. Therefore, we have urged the Senate Appropriations Committee, on which a number of this committee’s members also sit, to reject this misguided and inappropriate House report language. Doing otherwise would send a dangerous and counterproductive signal to domestic and foreign buyers that it’s permissible for inspectors not to perform their statutory duties – and would do so at exactly the wrong time.

As mentioned previously, the reforms enacted by Congress in 2015 set in motion a series of improvements to FGIS and the Official inspection system. The second major contribution was Secretary of Agriculture Sonny Perdue’s decision as part of his 2017 USDA reorganization plan to extricate FGIS from the Grain Inspection, Packers and Stockyards Administration (GIPSA) and return it to the Agricultural Marketing Service, where it had resided prior to 1994, as well as to install fresh new leadership at the agency.

NGFA and NAEGA strongly supported this aspect of Secretary Perdue’s reorganization plan. The merger of FGIS and the Packers and Stockyards Administration into GIPSA during the Clinton administration had always been an odd fit, since the two agencies have distinctly different missions and functions. FGIS is an agency focused on maintaining grain standards and providing Official inspection and weighing service to facilitate the marketing of U.S. agricultural products under authority provided by both the U.S. Grain Standards Act and the Agricultural Marketing Act, under the latter of which AMS operates. By contrast, the Packers and Stockyards Administration is primarily an enforcement agency operating under a completely different statute (the Packers and Stockyards Act).

In addition, the synergy provided by AMS’s administrative support services, development of quality standards, training expertise and experience in operating user-fee-funded services have enhanced FGIS’s performance. So, too, has the capable new leadership installed at the agency. Further, the reorganization helped FGIS address problems that occurred over the last decade involving the overall expense and effectiveness of federally mandated FGIS Official

grain inspection services by eliminating programmatic redundancies, reducing administrative costs, and providing opportunities for interaction with AMS personnel with a similar mission and focus. We especially want to recognize and commend the dedication of many career public servants within AMS and FGIS for their hard work and commitment in addressing important stakeholder issues during this transition.

While continual improvement is necessary and important for all enterprises, NGFA and NAEGA believe that the service-oriented culture of AMS – combined with strong and effective new leadership at FGIS – has had a demonstrable and transformatively positive impact that is serving American farmers and our industry well.

While changes to the USGSA in 2015 and the reorganization of FGIS in 2017 have improved Official inspection and weighing services, NGFA and NAEGA believe 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).

APHIS inappropriately and unwisely in our view 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 in January 2018, APHIS began requiring that an FGIS grain quality factor determination of FM exceeding 1 percent be replicated on APHIS-issued phytosanitary certificates, even though FM content already is listed on the FGIS Official grain inspection certificate. 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. This 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 disregarding 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: APHIS's action cut across existing industry contracts and had the effect of creating huge market risk given the lack of certainty on how such U.S. cargoes would be treated upon arrival in China. That, in turn, led to a significant reduction in U.S. soybean exports to China long before the imposition of retaliatory tariffs later in the year, as demonstrated in the attached analysis done by NGFA. To our knowledge, no other country faces a comparable a requirement from China.

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. But that's exactly what APHIS did.

Using USGSA quality factors as 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.

- 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. The NGFA greatly appreciates 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, NGFA and

NAEGA 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 number of years for reauthorization within that time span.

- Fifth, to maintain transparency with stakeholders, NGFA recommends 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 those 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 operates.

- Seventh, and finally, we recommend that the FGIS Grain Inspection Advisory Committee be reauthorized. The advisory committee 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. NGFA and NAEGA 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 specializes 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.

NGFA and NAEGA believe our legislative recommendations 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. NGFA is committed to working constructively with Congress 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.

## **Bruce Sutherland Biography**

Current Position: President, Michigan Agricultural Commodities (MAC) since 2016.

Tenure: 33 years at MAC.

Education: Graduated from Central Michigan University with a B.S. in Business Administration and Finance (1981).

Related Industry Activities:

- Member: National Grain and Feed Association (NGFA). Current Member of NGFA Board of Directors and Crop Technology Committee. Former Chairman, NGFA Country Elevator Committee.
- Trustee: National Grain and Feed Foundation.
- Member: Michigan Agri Business Association (MABA). Currently member of MABA Grain Committee. Former MABA Board member and Chairman of the Board.
- Committee member: Federal Grain Inspection Service Advisory Committee (Since 2019).
- Committee member: Surface Transportation Board National Grain Car Council (since 2017).

Married to Teresa Sutherland and lives in Okemos, MI.

## **Attachment**

1. *“Estimated Price Impact on U.S. Soybeans due to Additional Declaration Requirement on Phytosanitary Certificates”* by National Grain & Feed Association, July 24, 2019