

take, corrective action or to demonstrate there is no basis for the dismissal. If corrective action has not been adequate, the applicant will be notified of the decision to dismiss the request for service, and any results of service shall not be released.

§ 868.24 Conditional withholding of service.

(a) *Conditional withholding.* A co-operator or the Service shall conditionally withhold service when an applicant fails to meet any requirement prescribed in § 868.21.

(b) *Procedure for withholding.* The co-operator or the Service shall notify the applicant of the reason for the proposal to conditionally withhold service. The applicant will then be afforded reasonable time to take corrective action or to demonstrate that there is no basis for withholding service. If corrective action has not been adequate, the applicant will be notified of the decision to withhold service; and any results of service shall not be released.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

§ 868.25 Denial or withdrawal of service.

(a) *General.* Service may be denied or withdrawn because of (1) any willful violation of the Act, regulations, standards, or instructions or (2) any interference with or obstruction of any official personnel in the performance of their duties by intimidation, threat, assault, or any other improper means.

(b) The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR part 1, subpart H) shall be followed in the denial or withdrawal of service.

§ 868.26 Expenses of the cooperator or the Service.

For any request that has been withdrawn, dismissed, or withheld under §§ 868.22, 868.23, or 868.24, respectively, each applicant shall pay expenses incurred by the cooperator or the Service.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

INSPECTION METHODS AND PROCEDURES

§ 868.30 Methods and order of performing inspection service.

(a) *Methods.* (1) *General.* All sampling and inspection services performed by official personnel shall be made in accordance with the regulations, standards, and the instructions.

(2) *Lot inspection service.* A lot inspection service shall be based on official personnel obtaining representative samples, examining the commodity in the entire lot, and making an accurate analysis of the commodity on the basis of the samples.

(3) *Submitted sample inspection service.* A submitted sample inspection service shall be based on a submitted sample of sufficient size to enable official personnel to perform an accurate, complete analysis. The sample size will be prescribed in the instructions. If a complete analysis cannot be performed because of an inadequate sample size or other conditions, the request shall be dismissed or a factor only inspection may be performed upon request.

(b) *Order of service.* Inspection services shall be performed, to the extent practicable, in the order in which requests for service are received.

(c) *Recording receipt of documents.* Each document submitted by or on behalf of an applicant for inspection service shall be promptly stamped or similarly marked by official personnel to show the date of receipt.

(d) *Conflicts of interest.* (1) Official personnel shall not perform or participate in performing an inspection service on a commodity or a carrier or container in which the official personnel have a direct or indirect financial interest.

(2) Official personnel shall not perform, participate in performing, or issue a certificate if the official personnel participated in a previous inspection or certification of the lot unless there is only one authorized person available at the time and place of the requested inspection service.

§ 868.31 Kinds of inspection services.

(a) *General.* The inspection of commodities shall be according to the—

- (1) Standards of class, grade, other quality designation, quantity, or condition for such commodities promulgated by the Administrator; or
- (2) Specifications prescribed by Federal agencies; or
- (3) Specifications of trade associations or organizations; or
- (4) Other specifications as requested by applicant; or
- (5) The instructions.

The kinds of services provided and the basis for performing the services include those specified in paragraphs (b) through (m) of this section. Some or all of these services are provided when performing a complete inspection service.

(b) *Quality inspection service.* This service consists of official personnel—

- (1) Obtaining representative sample(s) of an identified commodity lot;
- (2) Examining, grading, or testing the sample(s);
- (3) Examining relevant records for the lot; and
- (4) Certifying the results.

(c) *Submitted sample inspection service.* This service consists of official personnel grading or testing a sample submitted by the applicant and certifying the results.

(d) *Examination service.* This service consists of official personnel examining supplies without the use of special laboratory equipment or procedures to determine conformance to requirements requested by the applicant and certifying the results.

(e) *Checkweighing service (container).* This service consists of official personnel—

- (1) Weighing a selected number of containers from a commodity lot;
- (2) Determining the estimated total gross, tare, and net weights or the estimated average gross or net weight per filled container; and
- (3) Certifying the results.

(f) *Bulk weighing service.* This service consists of official personnel—

- (1) Completely supervising the loading or the unloading of an identified lot of bulk or containerized commodity,
- (2) Physically weighing or completely supervising the weighing of the commodity; and
- (3) Certifying the results.

(g) *Checkloading service.* This service consists of official personnel—

- (1) Performing a stowage examination;
- (2) Computing the number of filled commodity containers loaded aboard the carrier;
- (3) Observing the condition of commodity containers loaded aboard the carrier;
- (4) If practicable, sealing the carrier; and
- (5) Certifying the results.

(h) *Checkcounting service.* This service consists of official personnel determining the total number of filled outer containers in a lot to determine that the number of containers shown by the applicant is correct and certifying the results.

(i) *Condition inspection service.* This service consists of official personnel determining the physical condition of the commodity by determining whether an identifiable commodity lot is water damaged, fire damaged, or has rodent or bird contamination, insect infestation, or any other deteriorating condition and certifying the results.

(j) *Condition of food containers service.* This service consists of official personnel determining the degree of acceptability of the containers with respect to absence of defects which affect the serviceability, including appearance as well as usability, of the container for its intended purpose and certifying the results.

(k) *Observation of loading service.* This service consists of official personnel determining that an identified lot has been moved from a warehouse or carrier and loaded into another warehouse or carrier and certifying the results.

(l) *Plant approval service.*¹ This service consists of official personnel performing a plant survey to determine if the plant premises, facilities, sanitary conditions, and operating methods are suitable to begin or continue inspection service.

(m) *Stowage examination service.* This service consists of official personnel visually determining if an identified carrier or container is clean; dry; free

¹Compliance with the requirements in this paragraph does not excuse failure to comply with all applicable sanitation rules and regulations of city, county, State, Federal, or other agencies having jurisdiction over such plants and operations.

of infestation, rodents, toxic substances and foreign odor; and suitable to store or carry commodities and certifying the results.

§ 868.32 Who shall inspect commodities.

Official commodity inspections shall be performed only by official personnel.

§ 868.33 Sample requirements; general.

(a) *Samples for lot inspection service.* (1) *Original lot inspection service.* The sample(s) on which the original inspection is determined shall be—

- (i) Obtained by official personnel;
- (ii) Representative of the commodity in the lot;
- (iii) Protected by official personnel from manipulation, substitution, and improper or careless handling; and
- (iv) Obtained within the prescribed area of responsibility of the cooperator or field office performing the inspection service.

(2) *Retest lot inspection service.* The sample(s) on which the retest is determined shall meet the requirements of paragraph (a)(1) of this section. The retest inspection shall be performed on the basis of a file sample(s), and the samples shall meet the requirements prescribed in § 868.35(e).

(3) *Appeal lot inspection service.* For an appeal lot inspection service, the sample(s) on which the appeal is determined shall meet the requirements of paragraph (a)(1) of this section. If the appeal inspection is performed on the basis of a file sample(s), the samples shall meet the requirements prescribed in § 868.35(e). In accordance with § 868.61(b), an applicant may request that a new sample be obtained and examined as part of the appeal inspection service.

(4) *Board appeal lot inspection service.* A Board appeal lot inspection service shall be performed on the basis of file sample.

(b) *Sampler requirement.* An official sampler shall sample commodities and forward the samples to the appropriate cooperator or field office or other location as specified. A sampling report signed by the sampler shall accompany each sample. The report shall include the identity, quantity, and location of

the commodity sampled; the name and mailing address of the applicant; and all other information regarding the lot as may be required.

(c) *Representative sample.* A sample shall not be considered representative of a commodity lot unless the sample—

- (1) Has been obtained by official personnel;
- (2) Is of the size prescribed in the instructions; and
- (3) Has been obtained, handled, and submitted in accordance with the instructions.

(d) *Protecting samples.* Official personnel shall protect samples from manipulation, substitution, and improper and careless handling which would deprive the samples of their representativeness or which would change the physical and chemical properties of the commodity from the time of sampling until inspection services are completed and file samples have been discarded.

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§ 868.34 Partial inspection.

When the entire lot is not accessible for examination or a representative sample cannot be obtained from the entire lot, the certificate shall state the estimated quantity of the commodity in the accessible portion and the quantity of the entire lot. The inspection shall be limited to the accessible portion. In addition, the words "Partial Inspection" shall be printed or stamped on the certificate.

§ 868.35 Sampling provisions by level of service.

(a) *Original inspection service.* (1) *Lot inspection service.* Each original lot inspection service shall be made on the basis of one or more representative samples obtained by official personnel from the commodity in the lot and forwarded to the appropriate location.

(2) *Submitted sample service.* Each original submitted sample inspection service shall be performed on the basis of the sample as submitted.

(b) *Retest inspection service.* Each retest inspection service performed on a commodity lot or a submitted sample shall be based on an analysis of the file sample.