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U. S. DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service

APPENDIX 2

MATRIX OF ENVIRONMENTAL RELATIONSHIPS

ENVIRONMENTAL FACTORS	POTENTIAL ALTERNATIVES				
	FUTURE WITH- OUT PROGRAM	PROPOSED PROGRAM	1/	1/	1/
Land Cover					
Soil Erosion					
Loss of Prime Cropland					
Water Quantity					
Water Quality					
Ground-Water Quality					
Air Quality					
Odor					
Noise					
Radiation					
Energy Supply					
Pesticides					
Fertilizers					
Woodland Production					
Wildlife Habitat					
Fish Production					
Recreation					
Timber Production					
Wetlands					
Natural Streams					
Service Industries					
Economic					
Population Migration					
Social Values					
Unique					
Archaeological					
Historical					
Natural					
Endangered Species					
Landscape					

REMARKS

Relationship of Impacts Toward the Environment - + Slight; ++ Moderate; +++ Important. 1/ List alternative to proposed program.

CHAPTER VIII—GRAIN INSPECTION, PACKERS
AND STOCKYARD ADMINISTRATION (FEDERAL
GRAIN INSPECTION SERVICE), DEPARTMENT
OF AGRICULTURE

<i>Part</i>		<i>Page</i>
800	General regulations	451
801	Official performance requirements for grain in- spection equipment	530
802	Official performance and procedural requirements for grain weighing equipment and related grain handling systems	535
810	Official United States standards for grain	536
868	General regulations and standards for certain agri- cultural commodities	561

PART 800—GENERAL REGULATIONS

DEFINITIONS

Sec.

800.0 Meaning of terms.

ADMINISTRATION

- 800.1 Mission.
- 800.2 Administrator.
- 800.3 Nondiscrimination—policy and provisions.
- 800.4 Procedures for establishing regulations, official standards, and official criteria.
- 800.5 Complaints and reports of alleged violations.
- 800.6 Provisions for hearings.
- 800.7 Information about the Service, Act, and regulations.
- 800.8 Public information.

OFFICIAL INSPECTION AND CLASS X OR CLASS Y WEIGHING REQUIREMENTS

- 800.15 Services.
- 800.16 Certification requirements for export grain.
- 800.17 Special inspection and weighing requirements for sacked export grain.
- 800.18 Waivers of the official inspection and Class X weighing requirements.

RECORDKEEPING AND ACCESS TO FACILITIES

- 800.25 Required elevator and merchandising records.
- 800.26 Access to records and facilities.

REGISTRATION

- 800.30 Foreign commerce grain business.
- 800.31 Who must register.
- 800.32 When to register.
- 800.33 How to register.
- 800.34 Registration fee.
- 800.35 Review of applications.
- 800.36 Certificates of registration.
- 800.37 Notice of change in information.
- 800.38 Termination and renewal of registration.
- 800.39 Suspension or revocation of registration for cause.

CONDITIONS FOR OBTAINING OR WITHHOLDING OFFICIAL SERVICES

- 800.45 Availability of official services.
- 800.46 Requirements for obtaining official services.
- 800.47 Withdrawal of request for official services.
- 800.48 Dismissal of request for official services.
- 800.49 Conditional withholding of official services.
- 800.50 Refusal of official services and civil penalties.
- 800.51 Expenses of agency, field office, or Board of Appeals and Review.

800.52 Official services not to be denied.

DESCRIPTIONS

- 800.55 Descriptions by grade.
- 800.56 Requirements on descriptions.

GRAIN HANDLING PRACTICES

- 800.60 Deceptive actions and practices.
- 800.61 Prohibited grain handling practices.

FEEs

- 800.70 Fees for official services performed by agencies.
- 800.71 Fees assessed by the Service.
- 800.72 Explanation of additional service fees for services performed in the United States only.
- 800.73 Computation and payment of service fees; general fee information.

KINDS OF OFFICIAL SERVICES

- 800.75 Kinds of official inspection and weighing services.
- 800.76 Prohibited services; restricted services.

INSPECTION METHODS AND PROCEDURES

- 800.80 Methods and order of performing official inspection services.
- 800.81 Sample requirements; general.
- 800.82 Sampling provisions by level of service.
- 800.83 Sampling provisions by kind of movement.
- 800.84 Inspection of grain in land carriers, containers, and barges in single lots.
- 800.85 Inspection of grain in combined lots.
- 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.
- 800.87 New inspections.
- 800.88 Loss of identity.

WEIGHING PROVISIONS AND PROCEDURES

- 800.95 Methods and order of performing weighing services.
- 800.96 Weighing procedures.
- 800.97 Weighing grain in containers, land carriers, barges, and shiplots.
- 800.98 Weighing grain in combined lots.
- 800.99 Checkweighing sacked grain.

ORIGINAL SERVICES

- 800.115 Who may request original services.
- 800.116 How to request original services.
- 800.117 Who shall perform.
- 800.118 Certification.

OFFICIAL REINSPECTION SERVICES AND REVIEW OF WEIGHING SERVICES

- 800.125 Who may request reinspection services or review of weighing services.
- 800.126 How to request reinspection or review of weighing services.
- 800.127 Who shall perform reinspection or review of weighing services.

§ 800.0

7 CFR Ch. VIII (1–199 Edition)

- 800.128 Conflicts of interest.
- 800.129 Certificating reinspection and review of weighing results.

APPEAL INSPECTION SERVICES

- 800.135 Who may request appeal inspection services.
- 800.136 How to request appeal inspection services.
- 800.137 Who shall perform appeal inspection services.
- 800.138 Conflict of interest.
- 800.139 Certificating appeal inspections.

OFFICIAL RECORDS AND FORMS (GENERAL)

- 800.145 Maintenance and retention of records—general requirements.
- 800.146 Maintenance and retention of records issued by the Service under the Act.
- 800.147 Maintenance and retention of records on delegations, designations, contracts, and approval of scale testing organizations.
- 800.148 Maintenance and retention of records on organization, staffing, and budget.
- 800.149 Maintenance and retention of records on licenses and approvals.
- 800.150 Maintenance and retention of records on fee schedules.
- 800.151 Maintenance and retention of records on space and equipment.
- 800.152 Maintenance and retention of file samples.
- 800.153 Maintenance and retention of records on official inspection, Class X or Class Y weighing, and equipment testing service.
- 800.154 Availability of official records.
- 800.155 Detailed work records—general requirements.
- 800.156 Official inspection records.
- 800.157 Official weighing records.
- 800.158 Equipment testing work records.
- 800.159 Related official records.

OFFICIAL CERTIFICATES

- 800.160 Official certificates; issuance and distribution.
- 800.161 Official certificate requirements.
- 800.162 Certification of grade; special requirements.
- 800.163 Divided-lot certificates.
- 800.164 Duplicate certificates.
- 800.165 Corrected certificates.
- 800.166 Reproducing certificates.

LICENSES AND AUTHORIZATIONS (FOR INDIVIDUALS ONLY)

- 800.170 When a license or authorization or approval is required.
- 800.171 Who may be licensed or authorized.
- 800.172 Applications for licenses.
- 800.173 Examinations and reexaminations.

- 800.174 Issuance and possession of licenses and authorizations.
- 800.175 Termination of licenses.
- 800.176 Voluntary cancellation or suspension of licenses.
- 800.177 Automatic suspension of license by change in employment.
- 800.178 Summary revocation of licenses.
- 800.179 Refusal of renewal, suspension, or revocation of licenses for cause.
- 800.180 Summary cancellation of licenses.

DUTIES AND CONDUCT OF LICENSED AND AUTHORIZED PERSONNEL

- 800.185 Duties of official personnel and warehouse samplers.
- 800.186 Standards of conduct.
- 800.187 Conflicts of interest.
- 800.188 Crop year, variety, and origin statements.
- 800.189 Corrective actions for violations.

DELEGATIONS, DESIGNATIONS, APPROVALS, CONTRACTS, AND CONFLICTS OF INTEREST

- 800.195 Delegations.
- 800.196 Designations.
- 800.197 Approval as a scale testing and certification organization.
- 800.198 Contracts.
- 800.199 Conflict-of-interest provisions.

SUPERVISION, MONITORING, AND EQUIPMENT TESTING

- 800.215 Activities that shall be supervised.
- 800.216 Activities that shall be monitored.
- 800.217 Equipment that shall be tested.
- 800.218 Review of rejection or disapproval of equipment.
- 800.219 Conditional approval on use of equipment.

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SOURCE: 45 FR 15810, Mar. 11, 1980, unless otherwise noted.

DEFINITIONS

§800.0 Meaning of terms.

(a) *Construction.* Words used in the singular form shall be considered to imply the plural and vice versa, as appropriate. When a section; e.g., §800.2, is cited, it refers to the indicated section in these regulations.

(b) *Definitions.* For the purpose of these regulations, unless the context requires otherwise, the following terms shall have the meanings given for them below. The terms defined in the Act have been incorporated herein for easy reference.

(1) *Act*. The United States Grain Standards Act, as amended (39 Stat. 482-485, as amended 7 U.S.C. 71 *et seq.*).

(2) *Additives*. Materials approved by the Food and Drug Administration or the Environmental Protection Agency and added to grain for purposes of insect and fungi control, dust suppression, or identification.

(3) *Administrator*. The Administrator of the Grain Inspection, Packers and Stockyards Administration or any person to whom authority has been delegated.

(4) *Agency*. A delegated State or an official agency designated by the Administrator, as appropriate.

(5) *Appeal inspection service*. An official review by a field office of the results of an original inspection service or a reinspection service.

(6) *Applicant*. An interested person who requests an official inspection or a Class X or Class Y weighing service.

(7) *Approved scale testing organization*. A State or local governmental agency, or person, approved by the Service to perform official equipment testing services with respect to weighing equipment.

(8) *Approved weigher*. A person employed by or at an approved weighing facility and approved by the Service to physically perform Class X or Class Y weighing services, and certify the results of Class Y weighing.

(9) *Approved weighing equipment*. Any weighing device or related equipment approved by the Service for the performance of Class X or Class Y weighing services.

(10) *Approved weighing facility*. An elevator that is approved by the Service to receive Class X or Class Y weighing services.

(11) *Assigned area of responsibility*. A geographical area assigned to an agency or to a field office for the performance of official inspection or Class X or Class Y weighing services.

(12) *Board appeal inspection service*. An official review by the Board of Appeals and Review of the results on an appeal inspection service.

(13) *Board of Appeals and Review*. The Board of Appeals and Review of the Service.

(14) *Business day*. The established field office working hours, any Monday

through Friday that is not a holiday, or the working hours and days established by an agency.

(15) *Cargo shipment*. Bulk or sacked grain that is loaded directly aboard waterborne carrier for shipment. Grain loaded aboard a land carrier for shipment aboard a waterborne carrier shall not be considered to be a cargo shipment.

(16) *Carrier*. A truck, trailer, truck/trailer(s) combination, railroad car, barge, ship, or other container used to transport bulk or sacked grain.

(17) *Chapter*. Chapter VIII of the Code of Federal Regulations (7 CFR chapter VIII).

(18) *Circuit*. A geographical area assigned to a field office.

(19) *Class X or Class Y weighing equipment testing*. Any operation or procedure performed by official personnel to determine the accuracy of the equipment used, or to be used, in the performance of Class X or Class Y weighing services.

(20) *Combined lot*. Grain loaded aboard, or being loaded aboard, or discharged from two or more carriers as one lot.

(21) *Compliance*. Conformance with all requirements and procedures established by statute, regulation, instruction, or directive so that managerial, administrative, and technical functions are accomplished effectively. Compliance functions include: evaluating alleged violations, initiating preliminary investigations; initiating implementation of all necessary corrective actions; conducting management and technical reviews; administering the designation of agencies and the delegation of State agencies to perform official functions; identifying and, where appropriate, waiving and monitoring conflicts of interest; licensing agency personnel; responding to audits of FGIS programs; and reviewing and, when appropriate, approving agency fee schedules.

(22) *Container*. A carrier, or a bin, other storage space, bag, box, or other receptacle for grain.

(23) *Contract grade*. The official grade, official factors, or official criteria specified in a contract for sale or confirmation of sale; or in the absence of a contract the official grade, official factors,

or official criteria specified by the applicant for official service.

(24) *Contract service.* An inspection or weighing service performed under a contract between an applicant and the Service.

(25) *Contractor.* A person who enters into a contract with the Service for the performance of specified official inspection or official monitoring services.

(26) *Date of official inspection service or Class X or Class Y weighing services.* The day on which an official inspection, or a Class X or Class Y weighing service is completed. For certification purposes, a day shall be considered to end at midnight, local time.

(27) *Deceptive loading, handling, weighing, or sampling.* Any manner of loading, handling, weighing, or sampling that knowingly deceives or attempts to deceive official personnel.

(28) *Delegated State.* A State agency delegated authority under the Act to provide official inspection service, or Class X or Class Y weighing services, or both, at one or more export port locations in the State.

(29) *Department of Agriculture and Department.* The United States Department of Agriculture (USDA).

(30) *Designated agency.* A State or local governmental agency, or person, designated under the Act to provide either official inspection service, or Class X or Class Y weighing services, or both, at locations other than export port locations.

(31) *Door-probe sample.* A sample taken with a probe from a lot of bulk grain that is loaded so close to the top of the carrier that it is possible to insert the probe in the grain only in the vicinity of the tailgate of the truck or trailer, the door of the railroad boxcar, or in a similarly restricted opening or area in the carrier in which the grain is located or is loaded in hopper cars or barges in such a manner that a representative sample cannot be obtained.

(32) *Elevator.* Any warehouse, storage, or handling facility used primarily for receiving, storing, or shipping grain. In a facility that is used primarily for receiving, storing, and shipping grain, all parts of the main facility, as well as annexes, shall be considered to be part of the elevator. A warehouse, storage,

and handling facility that is located adjacent to and is operated primarily as an adjunct of a grain processing facility shall not be considered to be an elevator.

(33) *Elevator areas and facilities.* All operational areas, including the automated data processing facilities that are an integral part of the inspection or weighing operations of an elevator; the loading and unloading docks; the headhouse and control rooms; all storage areas, including the bins, the interstices, the bin floor, and the basement; and all handling facilities, including the belts, other conveyors, distributor scales, spouting, mechanical samplers, and electronic controls.

(34) *Employed.* An individual is employed if the individual is actually employed or the employment is being withheld pending issuance of a license under the Act.

(35) *Exporter.* Any person who ships or causes to be shipped any bulk or sacked grain in a final carrier or container in which the grain is transported from the United States to any place outside the United States.

(36) *Export elevator.* Any grain elevator, warehouse, or other storage or handling facility in the United States (i) from which bulk or sacked export grain is loaded (A) aboard a carrier in which the grain is shipped from the United States to any place outside thereof, or (B) into a container for shipment to an export port location where the grain and the container will be loaded aboard a carrier in which it will be shipped from the United States to any place outside thereof; and (ii) which has been approved by the Service as a facility where Class X or Class Y weighing of grain may be obtained.

(37) *Export grain.* Grain for shipment from the United States to any place outside thereof.

(38) *Export port location.* A commonly recognized port of export in the United States or Canada, as determined by the Administrator, from which grain produced in the United States is shipped to any place outside the United States. Such locations include any coastal or border location or site in the United States which contains one or more export elevators, and is identified by the Service as an export port location.

(39) *False, incorrect, and misleading.* Respectively false, incorrect, and misleading in any particular.²

(40) *Federal Register.* An official U.S. Government publication issued under the Federal Register Act of July 26, 1935, as amended (44 U.S.C. 301 *et seq.*).

(41) *Field Office.* An office of the Service designated to perform or supervise official inspection services and Class X and Class Y weighing services.

(42) *Grain.* Corn, wheat, rye, oats, barley, flaxseed, sorghum, soybeans, triticale, mixed grain, sunflower seed, canola, and any other food grains, feed grains, and oilseeds for which standards are established under section 4 of the Act.

(43) *Handling.* Loading, unloading, elevating, storing, binning, mixing, blending, drying, aerating, screening, cleaning, washing, treating, or fumigating grain.

(44) *Holiday.* The legal public holidays specified in paragraph (a) of section 6103, Title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal statute or Executive Order. Under section 610 and Executive Order No. 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

(45) *"IN" movement.* A movement of grain into an elevator, or into or through a city, town, port, or other location without a loss of identity.

(46) *Instructions.* The Notices, Instructions, Handbooks, and other directives issued by the Service.

(47) *Interested person.* Any person having a contract or other financial interest in grain as the owner, seller, purchaser, warehouseman, or carrier, or otherwise.

(48) *Interstate or foreign commerce.* Commerce from any State to or through any other State, or to or through any foreign country.

¹[Reserved]

²A definition taken from the U.S. Grain Standards Act, as amended, with certain modifications which do not change the meanings.

(49) *Licensee.* Any person licensed by the Service.

(50) *Loading.* Placing grain in or aboard any carrier or container.

(51) *"LOCAL" movement.* A bin run or other inhouse movement, or grain in bins, tanks, or similar containers which are not in transit or designed to transport grain

(52) [Reserved]

(53) *Lot.* A specific quantity of grain identified as such.

(54) *Material error.* An error in the results of an official inspection service that exceeds the official tolerance, or any error in the results of a Class X or Class Y weighing service

(55) *Material portion.* A subsample, component, or subplot which is determined to be inferior to the contract or declared grade. A subsample is a material portion when it has sour, musty, or commercially objectionable foreign odors, when it is heating; or when it is of distinctly low quality. A component is a material portion when it is infested or when it is determined to be inferior in quality by more than one numerical grade to the contract or declared grade. A subplot is a material portion when a factor result causes a breakpoint to be exceeded or when a factor result exceeds specific subplot contract requirements. A subplot designated a material portion shall include only one subplot.

(56) *Merchandiser.* Any person, other than a producer, who buys and sells grain and takes title to the grain. A person who operates as a broker or commission agent and does not take title to the grain shall not be considered to be a merchandiser.

(57) *Monitoring.* Observing or reviewing activities performed under or subject to the Act for adherence to the Act, the regulations, standards, and instructions and preparing reports thereon.

(58) *Nonregular workday.* Any Sunday or holiday.

(59) *Official agency.* Any State or local government agency, or any person, designated by the Administrator pursuant to subsection (f) of section 7 of the Act for the conduct of official inspection (other than appeal inspection), or subsection (c) of section 7A of the Act for the conduct of Class X or

Class Y weighing (other than review of weighing).

(60) *Official certificate.* Those certificates which show the results of official services performed under the Act as provided in the instructions, and any other official certificates which may be approved by the Service in accordance with the instructions.

(61) *Official criteria.* A quantified physical or chemical property of grain that is approved by the Service to determine the quality or condition of grain or other facts relating to grain.

(62) *Official factor.* A quantified physical or chemical property of grain as identified in the Official U.S. Standards for Grain.

(63) *Official forms.* License, authorizations, and approvals; official certificates; official pan tickets; official inspection or weighing logs; weight sheets; shipping bin weight loading logs; official equipment testing reports; official certificates of registration; and any other forms which may be issued or approved by the Service that show the name of the Service or an agency and a form number.

(64) *Official grade designation.* A numerical or sample grade designation, specified in the standards relating to kind, class, quality, and condition of grain provided for in the Act.

(65) *Official inspection.* The determination (by original inspection, and when requested, reinspection and appeal inspection) and the certification, by official personnel, of the kind, class, quality, or condition of grain, under standards provided for in the Act; or the condition of vessels and other carriers or receptacles for the transportation of grain insofar as it may affect the quality of such grain; or other facts relating to grain under other criteria approved by the Administrator (the term "officially inspected" shall be construed accordingly).

(66) *Official inspection equipment testing.* Any operation or procedure by official personnel to determine the accuracy of equipment used, or to be used, in the performance of official inspection services.

(67) *Official inspection technician.* Any official personnel who perform or supervise the performance of specified official inspection services and certify

the results thereof, other than certifying the grade of the grain.

(68) *Official inspector.* Any official personnel who perform or supervise the performance of official inspection services and certify the results thereof including the grade of the grain.

(69) *Official marks.* The symbols or terms "official certificate," "official grade," "officially sampled," "officially inspected," "official inspection," "U.S. inspected," "loaded under continuous official inspection," "official weighing," "officially weighed," "official weight," "official supervision of weighing," "supervision of weighing," "officially supervised weight," "loaded under continuous official weighing," "loaded under continuous official inspection and weighing," "officially tested," "Class X weight," "official Class X weighing," "Class X weighing," "official Class Y weighing," "Class Y weighing," and "Class Y weight."

(70) *Official personnel.* Persons licensed or otherwise authorized by the Administrator pursuant to Section 8 of the Act to perform all or specified functions involved in official inspection, Class X or Class Y weighing, or in the supervision of official inspection, or Class X or Class Y weighing.

(71) *Official sample.* A sample obtained from a lot of grain by, and submitted for official inspection by, official personnel (the term "official sampling" shall be construed accordingly).

(72) *Official sampler.* Any official personnel who perform or supervise the performance of official sampling services and certify the results thereof.

(73) *Official stowage examination.* Any examining operation or procedure performed by official personnel to determine the suitability of a carrier or container to receive or store grain.

(74) *Official tolerance.* A statistical allowance prescribed by the Service, on the basis of expected variation, for use in performing or supervising the performance of official inspection services, official equipment testing services, and, when determined under an established loading plan, reinspection services and appeal inspection services.

(75) *Official U.S. Standards for Grain.* The Official U.S. Standards for Grain established under the Act describe the

physical and biological condition of grain at the time of inspection.

(76) *Official weigher*. Any official personnel who perform or supervise the performance of Class X or Class Y weighing services and certify the results thereof, including the weight of the grain.

(77) *Official weighing*. (Referred to as Class X weighing.) The determination and certification by official personnel of the quantity of a lot of grain under standards provided for in the Act, based on the actual performance of weighing or the physical supervision thereof, including the physical inspection and testing for accuracy of the weights and scales and the physical inspection of the premises at which weighing is performed and the monitoring of the discharge of grain into the elevator or conveyance. (The terms "officially weigh" and "officially weighed" shall be construed accordingly.)

(78) *Official weighing technician*. Any personnel who perform or supervise specified weighing services and certify the results thereof other than certifying the weight of grain.

(79) *Official weight sample*. Sacks of grain obtained at random by, or under the complete supervision of, official personnel from a lot of sacked grain for the purpose of computing the weight of the grain in the lot.

(80) *Original inspection*. An initial official inspection of grain.

(81) *"Out" movement*. A movement of grain out of an elevator or out of a city, town, port, or other location.

(82) *Person*. Any individual, partnership, corporation, association, or other business entity.

(83) *Quantity*. Pounds or kilograms, tons or metric tons, or bushels.

(84) *Reasonably continuous operation*. A loading or unloading operation in one specific location which does not include inactive intervals in excess of 88 consecutive hours.

(85) *Regular workday*. Any Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday that is not a holiday.

(86) *Regulations*. The regulations in parts 800, 801, and 802 of this chapter.

(87) *Reinspection service*. An official review of the results of an original inspection service by the agency or field

office that performed the original inspection service.

(88) *Respondent*. The party proceeded against.

(89) *Review of weighing service*. An official review of the results of a Class X or Class Y weighing service.

(90) *Secretary*. The Secretary of Agriculture of the United States or any person to whom authority has been delegated.

(91) *Service*. The Federal Grain Inspection Service of the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture.

(92) *Service representative*. An authorized salaried employee of the Service; or a person licensed by the Administrator under a contract with the Service.

(93) *Shallow-probe sample*. A sample taken with a probe from a lot of bulk grain that is loaded so close to the top of the carrier that it is possible to insert the probe in the grain at the prescribed locations, but only at an angle greater or more obtuse from the vertical than the angle prescribed in the instructions.

(94) *Ship*. The verb "ship" with respect to grain means transfer physical possession of the grain to another person for the purpose of transportation by any means of conveyance, or transport one's own grain by any means of conveyance.

(95) *Shiplot grain*. Grain loaded aboard, or being loaded aboard, or discharged from an ocean-going vessel including a barge, lake vessel, or other vessel of similar capacity.

(96) *Shipper's Export Declaration*. The Shipper's Export Declaration certificate filed with the U.S. Department of Commerce, Bureau of Census.

(97) *Specified service point*. A city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and within which the agency or one or more of its inspectors or weighers is located.

(98) *Standardization*. The act, process, or result of standardizing methodology and measurement of quality and quantity. Standardization functions include: compiling and evaluating data to develop and to update grading and

weighing standards, developing or evaluating new methodology for determining grain quality and quantity, providing reference standards for official grading methods, and reviewing official results through the use of a quality control and weight monitoring program.

(99) *State*. Any one of the States (including Puerto Rico) or territories or possessions of the United States (including the District of Columbia).

(100) *Submitted sample*. A sample submitted by or for an interested person for official inspection, other than an official sample.

(101) *Supervision*. The effective guidance of agencies, official personnel and others who perform activities under the Act, so as to reasonably assure the integrity and accuracy of the program activities. Supervision includes overseeing, directing, and coordinating the performance of activities under the Act, reviewing the performance of these activities; and effecting appropriate action. FGIS supervisory personnel supervise agencies, official personnel and others who perform activities under the Act. Agency supervisors are responsible for the direct supervision of their own official personnel and employees. FGIS provides oversight, guidance, and assistance to agencies as they carry out their responsibilities.

(102) *Supervision of weighing* (Referred to as Class Y weighing.) Such supervision by official personnel of the grain-weighing process as is determined by the Administrator to be adequate to reasonably assure the integrity and accuracy of the weighing and of certificates which set forth the weight of the grain and such physical inspection by such personnel of the premises at which the grain weighing is performed as will reasonably assure that all the grain intended to be weighed has been weighed and discharged into the elevator or conveyance.

(103) *United States*. The States (including Puerto Rico) and the territories and possessions of the United States (including the District of Columbia).

(104) *Use of official inspection service*. The use of the services provided under

a delegation or designation or provided by the Service.

(105) *Uniform in quality*. A lot of grain in which there are no material portions.

(106) *Warehouseman's sampler*. An elevator employee licensed by the Service to obtain samples of grain for a warehouseman's sample-lot inspection service. Warehouseman's samplers are not considered official personnel, but they are licensed under authority of section 11 of the Act.

[45 FR 15810, Mar. 11, 1980, as amended at 49 FR 36068, Sept. 14, 1984; 49 FR 37055, Sept. 21, 1984; 49 FR 49586, Dec. 21, 1984; 52 FR 6495, Mar. 4, 1987; 55 FR 24041, June 13, 1990; 57 FR 3273, Jan. 29, 1992; 60 FR 5835, Jan. 31, 1995]

ADMINISTRATION

§ 800.1 Mission.

The mission of the Federal Grain Inspection Service is to facilitate the marketing of grain, oilseeds, pulses, rice, and related commodities by:

(a) Establishing descriptive standards and terms,

(b) Accurately and consistently certifying quality,

(c) Providing for uniform official inspection and weighing,

(d) Carrying out assigned regulatory and service responsibilities, and

(e) Providing the framework for commodity quality improvement incentives to both domestic and foreign buyers.

[54 FR 9197, Mar. 6, 1989]

§ 800.2 Administrator.

The Administrator is delegated, from the Secretary, responsibility for administration of the United States Grain Standards Act and responsibilities under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The Administrator is responsible for the establishment of policies, guidelines, and regulations by which the Service is to carry out the provisions of the Act and the Agricultural Marketing Act of 1946. The regulations promulgated under the Agricultural Marketing Act of 1946 appear at part 68 of this title (7 CFR part 68). The Administrator is authorized by the Secretary to take any action required by law or considered to be necessary and proper to the discharge of

the functions and services under the Act. The Administrator may delegate authority to the Deputy Administrator and other appropriate officers and employees. The Administrator may, in emergencies or other circumstances which would not impair the objectives of the Act, suspend for period determined by the Administrator any provision of the regulations or official grain standards. The Administrator may authorize research; experimentation; and testing of new procedures, equipment, and handling techniques to improve the inspection and weighing of grain. The Administrator may waive the official inspection and official weighing requirements pursuant to Section 5 of the Act.

[60 FR 5835, Jan. 31, 1995]

§ 800.3 Nondiscrimination—policy and provisions.

In implementing, administering, and enforcing the Act and the regulations, standards, and instructions, it is the policy of the Service to promote adherence to the provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000a *et seq.*), (Pub. L. 88-352).

§ 800.4 Procedures for establishing regulations, official standards, and official criteria.

Notice of proposals to prescribe, amend, or revoke regulations, official standards, and official criteria under the Act shall be published in accordance with applicable provisions of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*). Proposals to establish, amend, or revoke grain standards will be made effective not less than 1 calendar year after promulgation unless, for good cause, the Service determines that the public health, interest, or safety require that they become effective sooner. Any interested person desiring to file a petition for the issuance, amendment, or revocation of regulations, Official U.S. Standards for Grain, or official criteria may do so in accordance with § 1.28 of the regulations of the Office of the Secretary of Agriculture (7 CFR 1.28).

§ 800.5 Complaints and reports of alleged violations.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, complaints and reports of violations involving the Act or the regulations, standards, and instructions issued under the Act should be filed with the Service in accordance with § 1.133 of the regulations of the Office of the Secretary of Agriculture (7 CFR 1.133) and with the regulations and the instructions.

(b) *Reinspection, review of weighing, and appeal services.* Complaints involving the results of official inspection or Class X or Class Y weighing services shall, to the extent practicable, be submitted as requests for a reinspection service, a review of weighing service, an appeal inspection service, or a Board appeal inspection service as set forth in these regulations.

(c) *Foreign buyer complaints.* Inquiries or complaints from importers or other purchasers in foreign countries involving alleged discrepancies in the quality or weight of officially inspected or Class X weighed export grain shall, to the extent possible, be submitted by the importers or purchasers to the appropriate U.S. Agricultural Attache in accordance with § 2.68(a)(14) of the regulations of the Office of the Secretary of Agriculture (7 CFR 2.68(a)(14)) and the instructions issued by the Foreign Agricultural Service of the Department.

[45 FR 15810, Mar. 11, 1980, as amended at 54 FR 5924, Feb. 7, 1989]

§ 800.6 Provisions for hearings.

Opportunities will be provided for hearings prescribed or authorized by sections 7(g)(3), 7A(c)(2), 9, 10(d), and 17A(d) of the Act, and the hearings shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under Various Statutes (7 CFR, part 1, subpart H).

§ 800.7 Information about the Service, Act, and regulations.

Information about the Grain Inspection, Packers and Stockyards Administration, Service, Act, regulations, official standards, official criteria, rules of practice, instructions, and other matters related to the official inspection or Class X or Class Y weighing of grain may be obtained by telephoning or writing the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, P.O. Box 96454, Washington, D.C. 20090-6454, or any field office or agency of the Service.

[60 FR 5836, Jan. 31, 1995]

§ 800.8 Public information.

(a) *General.* This section is issued in accordance with §§1.1 through 1.23 of the regulations of the Secretary of Agriculture in part 1, subpart A, of subtitle A of title 7 (7 CFR 1.1 through 1.23), and appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this section, govern the availability of records of the Service to the public.

(b) *Public inspection and copying.* Materials maintained by the Service, including those described in 7 CFR 1.5, will be made available, upon a request which has not been denied, for public inspection and copying at the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, at 14th Street and Independence Avenue, SW., Washington, D.C. 20250. The public may request access to these materials during regular working hours, 8:00 a.m. to 4:30 p.m., est, Monday through Friday except for holidays.

(c) *Indexes.* FGIS shall maintain an index of all material required to be made available in 7 CFR 1.5. Copies of these indexes will be maintained at the location given in paragraph (b) of this section. Notice is hereby given that quarterly publication of these indexes is unnecessary and impracticable, because the material is voluminous and does not change often enough to justify the expense of quarterly publication. However, upon specific request, copies of any index will be provided at a cost

not to exceed the direct cost of duplication.

(d) *Requests for records.* Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.6 and shall be addressed as follows: Office of the Administrator, Grain Inspection, Packers and Stockyards Administration; FOIA Request, U.S. Department of Agriculture, P.O. Box 96454, Washington, D.C. 20090-6454.

(e) *Appeals.* Any person whose request under paragraph (d) of this section, is denied shall have the right to appeal such denial in accordance with 7 CFR 1.13. Appeals shall be addressed to the Administrator, Grain Inspection, Packers and Stockyards Administration, FOIA Appeal, P.O. Box 96454, Washington, D.C. 20090-6454.

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884; (7 U.S.C. 76, 87e))

[48 FR 57467, Dec. 30, 1983, as amended at 54 FR 5924, Feb. 7, 1989; 60 FR 5836, Jan. 31, 1995]

OFFICIAL INSPECTION AND CLASS X OR
CLASS Y WEIGHING REQUIREMENTS

§ 800.15 Services.

(a) *General.* These regulations implement requirements for a national inspection and weighing system. This system promotes the uniform and accurate application of the official grain standards and provides inspection and weighing services required by the Act and as requested by applicants for official services. The types and kinds of services available under the Act and regulations can be obtained at all specified service points in the United States and on U.S. grain in Canadian ports.

(b) *Responsibilities for complying with the official inspection, aflatoxin testing, and weighing requirements.*

(1) *Export grain.* Exporters are responsible for (i) complying with all inspection, Class X weighing, and other certification provisions and requirements of section 5(a)(1) of the Act and the regulations applicable to export grain and (ii) having all corn, as defined in §810.401, exported from the United States tested for aflatoxin contamination unless the buyer and seller agree not to have the corn tested. The Service shall perform the aflatoxin testing service unless the buyer and seller

agree to have the corn tested by an entity other than the Service.

(2) *Intercompany barges.* Operators of export elevators at export port locations are responsible for complying with Class X weighing requirements and regulations covering intercompany grain shipments received by barge.

(3) *Grain in marked containers.* When grain is in a container that bears an official grade designation or mark, the person who places the designation or mark on the container or the person who places the grain in a container that bears the designation or mark shall be responsible for determining that the grain has been inspected or weighed by official personnel and qualifies for the official grade designation or mark.

(4) *Grain for which representations have been made.* Any person who makes a representation that (i) grain has been officially inspected or weighed; or (ii) grain has been officially inspected or weighed and found to be of a particular kind, class, quality, condition, or weight; or (iii) particular facts have been established with respect to the grain by official inspection or weighing, shall be responsible for determining that the representation is true and is not in violation of the Act and regulations.

[50 FR 49668, Dec. 4, 1985, as amended at 57 FR 2439, Jan. 22, 1992]

§800.16 Certification requirements for export grain.

(a) *General.* Official Export Grain Inspection and Weight Certificates, Official Export Grain Inspection Certificates, and Official Export Grain Weight Certificates for bulk or sacked grain shall be issued according to §800.162 for export grain loaded by an export elevator. Only these types of export certificates showing the official grade, official aflatoxin test results if required under the Act and the regulations, and/or the Class X weight of the grain shall be considered to be in compliance with inspection and weighing requirements under the Act for export grain.

(b) *Promptly furnished.* Export certificates shall be considered promptly furnished if they are forwarded by the shipper or the shipper's agent to the

consignee not later than 10 business days after issuance.

[50 FR 49668, Dec. 4, 1985, as amended at 57 FR 2439, Jan. 22, 1992]

§800.17 Special inspection and weighing requirements for sacked export grain.

(a) *General.* Subject to the provisions of §800.18, sacked export grain shall be (1) officially inspected on the basis of official samples obtained with an approved sampling device and operated in accordance with instructions, (2) Class X weighed or checkweighed, and (3) officially checkloaded by official personnel at the time the grain is loaded aboard the export carrier, in accordance with the provisions of paragraphs (b) and (c) of this section.

(b) *Services at time of loading.* When official sampling, official inspection, Class X weighing or checkweighing, and checkloading of sacked export grain loaded aboard an export carrier is performed at one location and time, official export inspection and weight certificate(s) which identify the export carrier shall be issued.

(c) *Services prior to loading.* When official sampling, official inspection, and Class X weighing or checkweighing of sacked export grain is performed prior to the date of loading aboard an export carrier, official "OUT" certificates shall be issued. An examination by official personnel for condition and checkloading of the grain shall be made as the grain is loaded aboard the export carrier. If the examination for condition and the checkloading shows that the identity or quantity of the grain has not changed or the condition of the grain has not changed beyond expected variations prescribed in the instruction, official export inspection and weight certificates shall be issued on the basis of the official "OUT" certificates and the checkloading. If the identity, quantity, or the condition has changed, official export inspection and weight certificates shall be issued on the basis of the most representative samples, including weight samples, obtained at the time the grain is loaded aboard the export carrier.

[50 FR 49668, Dec. 4, 1985]

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

(a) *General.* Waivers from the official inspection and Class X weighing requirements for export grain under section 5 of the Act shall be provided in accordance with this section and the Act.

(b) *Waivers.* (1) *15,000 metric-ton waiver.* Official inspection and Class X weighing requirements apply only to exporters and individual elevator operators who (i) exported 15,000 metric tons or more of grain during the preceding calendar year, or (ii) have exported 15,000 metric tons or more of grain during the current calendar year. Exporters and elevator operators who are granted a waiver by reason of this paragraph shall, as a condition of the waiver, keep such accounts, records, and memorandum to fully and correctly disclose all transactions concerning lots of all export grain shipments. In addition, the exporters or elevator operators shall notify the Service in writing of the intention to export grain under this waiver. In the case of lots waived under this provision, if such lots are required by contract to be inspected or weighed, or if the lots are represented by official inspection or weight certificates, then such certificates shall meet the requirements of section 5 of the Act.

(2) *Grain exported for seeding purposes.* Official inspection and Class X weighing requirements do not apply to grain exported for seeding purposes, provided that (i) the grain is (A) sold or consigned for sale and invoiced as seed; and (B) identified as seed for seeding purposes on the Shipper's Export Declaration; and (ii) records pertaining to these shipments are made available, upon request by the Service, for review or copying purposes.

(3) *Grain shipped in bond.* Official inspection and weighing requirements do not apply to grain that is shipped from a foreign country to a foreign country through the United States in bond in accordance with applicable regulations of the United States Customs Service (19 CFR part 18).

(4) *Grain exported by rail or truck to Canada or Mexico.* Inspection and weighing requirements do not apply to

grain exported by rail or truck from the United States to Canada or Mexico.

(5) *Grain not sold by grade.* Official inspection requirements may be waived by the Service on a shipment-by-shipment basis for export grain not sold, offered for sale, or consigned for sale by official grade if (i) the contract and any amendments clearly show that the buyer and seller mutually agree to ship the grain without official inspection and (ii) a copy of the contract and any amendments is furnished in advance of loading, along with a completed application on a form prescribed by the Service.

(6) *Service not available.* Upon request, any required official inspection or Class X weighing of grain may be waived on a shipment-by-shipment basis if (i) official personnel are not and will not be available within a 24-hour period to perform needed inspection or weighing services and (ii) both the buyer and seller of the grain are made aware that the grain has not been officially inspected or Class X weighed.

(7) *Emergency waiver.* Upon request, the requirements for official inspection or Class X weighing may be waived whenever the Service determines (i) that an emergency exists that precludes official inspection or Class X weighing and (ii) that granting an emergency waiver will not impair the objectives of the Act. To qualify for an emergency waiver, the exporter or elevator operator shall make timely application and comply with all conditions which may be required by the Service.

(Approved by the Office of Management and Budget under control number 0580-0011)

[50 FR 49669, Dec. 4, 1985]

RECORDKEEPING AND ACCESS TO FACILITIES

§ 800.25 Required elevator and merchandising records.

(a) *Elevator and merchandiser record-keeping.* Every person and every State or political subdivision of a State that owns or operates an elevator and every merchandiser that has obtained or obtains official inspection or official weighing services other than (1) submitted sample inspection service, or (2)

official sampling service, or (3) official stowage examination service shall keep such accounts, records, and memoranda that fully and correctly disclose all transactions concerning the lots of grain for which the elevator or merchandiser received official services, except as provided under § 800.18.

(b) *Retention period.* Records specified in this section may be disposed of after a period of 3 years from the date of the official service; provided, the 3-year period may be extended if the elevator owner or operator, or merchandiser is notified in writing by the Administrator that specific records should be retained for a longer period for effective administration and enforcement of the Act. This requirement does not restrict or modify the requirements of any other Federal, State, or local statute concerning recordkeeping.

(Approved by the Office of Management and Budget under control number 0580-0011)

[51 FR 1768, Jan. 15, 1986]

§ 800.26 Access to records and facilities.

(a) *Inspection of records and facilities.* Prior to the examination of records or inspection of facilities by an authorized representative of the Secretary or the Administrator, the authorized representative shall contact or otherwise notify the elevator manager or manager's representative of their presence and furnish proof of identity and authority. While in the elevator, the authorized representative shall abide by the safety regulations in effect at the elevator. Every elevator owner and operator and every merchandiser shall permit authorized representatives of the Secretary or Administrator to enter its place of business during normal business hours and have access to the facilities and to inspect any books, documents, papers, and records that are maintained by such persons. Such access and inspection will be to effectuate the purpose, provisions, and objectives of the Act and to assure the integrity of official services under the Act or of any official transaction with which the Act is concerned. All copies of such records will be made at the Service's expense. Reasonable accommodations shall be made available to the duly authorized representative by

elevator owners and operators, and merchandisers for such examination of records.

(b) *Disclosure of business information.* FGIS employees or persons acting for FGIS under the Act shall not, without the consent of the elevator operator or merchandiser concerned, divulge or make known in any manner, any facts or information acquired pursuant to the Act and regulations except as authorized by the Administrator, by a court of competent jurisdiction, or otherwise by law.

[51 FR 1768, Jan. 15, 1986]

REGISTRATION

§ 800.30 Foreign commerce grain business.

"Foreign commerce grain business" is defined as the business of buying grain for sale in foreign commerce or the business of handling, weighing, or transporting grain for sale in foreign commerce. This provision shall not include:

(a) Any person who only incidentally or occasionally buys for sale, or handles, weighs, or transports grain for sale and is not engaged in the regular business of buying grain for sale, or handling, weighing, or transporting grain for sale;

(b) Any producer of grain who only incidentally or occasionally sells or transports grain which the producer has purchased;

(c) Any person who transports grain for hire and does not own a financial interest in such grain; or

(d) Any person who buys grain for feeding or processing and not for the purpose of reselling and only incidentally or occasionally sells such grain as grain.

[48 FR 44455, Sept. 29, 1983]

§ 800.31 Who must register.

Each person who has engaged in foreign commerce grain business totaling 15,000 or more metric tons during the preceding or current calendar year must register with the Service and shall be deemed to be regularly engaged in foreign commerce grain business. This includes foreign-based firms operating in the United States but does

§ 800.32

not include foreign governments or their agents. The Service will, upon request, register persons not required to register under this section if they comply with the requirements of §§ 800.33 and 800.34.

(Approved by the Office of Management and Budget under control number 0580-0012)

[48 FR 44453 and 44455, Sept. 29, 1983, as amended at 54 FR 5924, Feb. 7, 1989]

§ 800.32 When to register.

A person shall submit an application for registration to the Service at least 30 calendar days before regularly engaging in foreign commerce grain business according to § 800.31. For good cause shown, the Service may waive this 30-day requirement.

(Approved by the Office of Management and Budget under control number 0580-0012)

[48 FR 44453 and 44455, Sept. 29, 1983, as amended at 54 FR 5924, Feb. 7, 1989]

§ 800.33 How to register.

Any person who is required or desires to register must submit an application for registration to the Service. Application forms can be obtained from the Service. Each application shall: (a) Be typewritten or legibly written in English; (b) include all information required by the application form; and (c) be signed by the applicant. The information required by this paragraph may be submitted to the Service via telephone, subject to written confirmation. An applicant shall furnish any additional information requested by the Service for consideration of the application.

(Approved by the Office of Management and Budget under control number 0580-0012)

[48 FR 44453 and 44456, Sept. 29, 1983, as amended at 54 FR 5924, Feb. 7, 1989]

§ 800.34 Registration fee.

An applicant shall submit the registration fee prescribed in § 800.71 with the completed application. If an application is dismissed, the fee shall be refunded by the Service. No fee or portion of a fee shall be refunded if a person is registered and the registration is subsequently suspended or revoked under § 800.39.

[48 FR 44456, Sept. 29, 1983]

7 CFR Ch. VIII (1-1-99 Edition)

§ 800.35 Review of applications.

(a) The Service shall review each application to determine if it complies with §§ 800.32, 800.33, and 800.34. If the application complies and the fee has been paid, the applicant shall be registered.

(b) If the application does not comply with §§ 800.32, 800.33, and 800.34 and the omitted information prevents a satisfactory review by the Service, the applicant shall be provided an opportunity to submit the needed information. If the needed information is not submitted within a reasonable time, the application may be dismissed. The Service shall promptly notify the applicant, in writing, of the reasons for the dismissal.

[48 FR 44456, Sept. 29, 1983]

§ 800.36 Certificates of registration.

The Service shall furnish the applicant with an original and three copies of the registration certificate. The registration shall be effective on the issue date shown on the certificate. Each certificate of registration is issued on the condition that the registrant will comply with all provisions of the Act, regulations, and instructions. The Service shall charge a fee, in accordance with § 800.71, for each additional copy of a certificate of registration requested by a registrant.

[48 FR 44456, Sept. 29, 1983]

§ 800.37 Notice of change in information.

Each registrant shall notify the Service within 30 days of any change in the information contained in the application for registration. If the notice is submitted orally, it shall be promptly confirmed in writing.

(Approved by the Office of Management and Budget under control number 0580-0012)

[48 FR 44453 and 44456, Sept. 29, 1983, as amended at 54 FR 5924, Feb. 7, 1989]

§ 800.38 Termination and renewal of registration.

Each certificate of registration shall terminate on December 31 of the calendar year for which it is issued. The Service shall send a letter to each registrant notifying the registrant of the

impending termination of the registration and providing instructions for requesting renewal. The registration may be renewed in accordance with §§ 800.33 and 800.34. Failure to receive the letter shall not exempt registrants from the responsibility of renewing their registration if required by § 800.31.

[48 FR 44456, Sept. 29, 1983]

§ 800.39 Suspension or revocation of registration for cause.

(a) *General.* Registration is subject to suspension or revocation whenever the Administrator determines that the registrant has violated any provision of the Act or regulations, or has been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code.

(b) *Procedure.* Before the Service suspends or revokes a registration, the registrant (hereinafter the "respondent"): (1) Shall be notified of the proposed action and the reasons therefor and (2) shall be afforded opportunity for a hearing in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR, 1.130 through 1.151). Prior to formal adjudicatory proceedings, the Service may allow the respondent to express views on the action proposed by the Service in an informal conference before the Administrator. If the Service and the respondent enter into a consent agreement, no formal adjudicatory proceedings shall be initiated.

[48 FR 44456, Sept. 29, 1983]

CONDITIONS FOR OBTAINING OR
WITHHOLDING OFFICIAL SERVICES

§ 800.45 Availability of official services.

(a) *Original inspection and weighing services.* Original inspection and weighing services on grain are available according to this section and §§ 800.115 through 800.118 when requested by an interested person.

(b) *Reinspection, review of weighing, and appeal inspection services.* Reinspection, review of weighing, appeal inspection, and Board appeal inspection services are available when requested by an interested person, according to

§§ 800.125 through 800.129 and §§ 800.135 through 800.139.

(c) *Proof of authorization.* If an application for official services is filed by a person representing the applicant, the agency or the field office receiving the application may require written proof of the authority to file the application.

(Approved by the Office of Management and Budget under control number 0580-0012)

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30913, Aug. 2, 1984, as amended at 50 FR 45392, Oct. 31, 1985; 54 FR 5924, Feb. 7, 1989]

§ 800.46 Requirements for obtaining official services.

(a) *Consent and agreement by applicant.* In submitting a request for official services, the applicant and the owner of the grain consent to the special and general requirements specified in paragraphs (b) and (c) of this section. These requirements are essential to carry out the purposes or provisions of the Act.

(b) *General requirements.* (1) *Access to grain.* Grain on which official services are to be performed shall, except as provided in §§ 800.85, 800.86, 800.98, and 800.99, be made accessible by the applicant for the performance of the requested official service and related monitoring and supervision activities. For the purposes of this section, grain is not "accessible" if it is offered for official services (i) in containers or carriers that are closed and cannot, with reasonable effort, be opened by or for official personnel; (ii) when any portion is located so as to prohibit the securing or a representative sample; or (iii) under conditions prescribed in the instructions as being hazardous to the health or safety of official personnel.

(2) *Working space.* When official services are performed at an elevator, adequate and separate space must be provided by the applicant for the performance of the requested service and related monitoring and supervision activities. Space will be "adequate" if it meets the space, location, and safety requirements specified in the instructions.

(3) *Notice of changes.* The operator of each facility at which official services

are performed must notify the appropriate agency or field office promptly, in full detail, of changes in the grain handling and weighing facilities, equipment, or procedures at the elevator that could or would affect the proper performance of official services.

(4) *Loading and unloading conditions.* As applicable, each applicant for official services must provide or arrange for suitable conditions in the (i) loading and unloading areas and the truck and railroad holding areas; (ii) gallery and other grain-conveying areas; (iii) elevator legs, distributor, and spout areas; (iv) pier or dock areas; (v) deck and stowage areas in the carrier; and (vi) equipment used in loading or unloading and handling the grain. Suitable conditions are those which will facilitate accurate inspection and weighing, maintain the quantity and the quality of the grain that is to be officially inspected or weighed, and not be hazardous to the health and safety of official personnel, as prescribed in the instructions.

(5) *Timely arrangements.* Requests for official service shall be made in a timely manner; otherwise, official personnel may not be available to provide the requested service. For the purpose of this paragraph, “timely manner” shall mean not later than 2 p.m., local time, of the preceding business day.

(6) *Observation of activities.* Each applicant for official services must provide any interested person, or their agent, an opportunity to observe sampling, inspection, weighing, and loading or unloading of grain. Appropriate observation areas shall be mutually defined by the Service and facility operator. The areas shall be safe and shall afford a clear and unobstructed view of the performance of the activity, but shall not permit a close over-the-shoulder type of observation by the interested person.

(7) *Payment of bills.* Each applicant, for services under the Act, must pay bills for the services according to §§ 800.70 through 800.73.

(8) *Written confirmations.* When requested by the agency or field office, verbal requests for official services shall be confirmed in writing. Each written request shall be signed by the applicant, or the applicant’s agent, and

shall show or be accompanied by the following information: (i) The identification, quantity, and specific location of the grain; (ii) the name and mailing address of the applicant; (iii) the kind and scope of services desired; and (iv) any other information requested by the agency or field office.

(9) *Names and addresses of interested persons.* When requested, each applicant for official services shall show on the application form the name and address of each known interested person.

(10) *Surrender of superseded certificates.* When a request for official service results in a certificate being superseded, the superseded certificate must be promptly surrendered.

(11) *Recordkeeping and access.* Each applicant for official services must comply with applicable recordkeeping and access-to-facility provisions in §§ 800.25 and 800.26.

(12) *Monitoring equipment.* Owners and operators of elevators shall, upon a finding of need by the Administrator, provide equipment necessary for the monitoring by official personnel of grain loading, unloading, handling, sampling, weighing, inspection, and related activities. The finding of need will be based primarily on a consideration of manpower and efficiency.

(c) *Special requirements for official Class X and Class Y weighing services.* (1) *General.* Weighing services shall be provided only at weighing facilities which have met the conditions, duties, and responsibilities specified in section 7A(f) of the Act and this section of the regulations. Weighing services will be available only in accordance with the requirements of § 800.115. Facilities desiring weighing services should contact the Service in advance to allow the Service time to determine if the facility complies with the provisions of the Act and regulations.

(2) *Conditions.* The facility shall provide the following information annually to the Service: (i) The facility owner’s name and address; (ii) the facility operator’s name and address; (iii) the name of each individual employed by the facility as a weigher and a statement that each individual: (A) Has a technical ability to operate grain weighing equipment and (B) has a reputation for honesty and integrity; (iv)

a blueprint or similar drawing of the facility showing the location of: (A) The loading, unloading, and grain handling systems; (B) the scale systems used or to be used in weighing grain; and (C) the bins and other storage areas; (v) the identification of each scale in the facility that is to be used for weighing grain under the Act; (vi) the following information regarding automated data processing systems: (A) Overall system intent, design, and layout; (B) make, model, and technical specifications of all hardware; (C) description of software, language used, and flow charts of all programs, subprograms, routines, and subroutines; and (D) complete operating instructions; and (vii) any other information deemed necessary to carry out the provisions of the Act.

If a facility has, or plans to have, an automated data processing system which is used in conjunction with any portion of the scale system, grain handling system, or the preparing or printing of official weight certificates, the facility shall make available to the Service sufficient documentation to ensure that the system cannot be used deceptively or otherwise provide inaccurate information. The Service or approved scale testing and certification organization shall conduct an onsite review to evaluate the performance and accuracy of each scale that will be used for weighing grain under the Act, and the performance of the grain loading, unloading, and related grain handling equipment and systems.

(3) *Duties and responsibilities of weighing facilities requesting official services.*

(i) *Providing official services.* Upon request, each weighing facility shall permit official weighing services to be performed promptly.

(ii) *Supervision.* Each weighing facility shall supervise its employees and shall take action necessary to assure that employees are performing their duties according to the Act, regulations, and instructions and are not performing prohibited functions or are not involved in any action prohibited by the Act, regulations, and instructions.

(iii) *Facilities and equipment.* (A) *General.* Each weighing facility shall obtain and maintain facilities and equipment which the Service determines are

needed for weighing services performed at the facility. Each facility shall operate and shall maintain each scale system and related grain handling system used in weighing according to instructions issued by the manufacturer and by the Service. A scale log book for each approved scale used for official weighing services shall be maintained according to instructions at each weighing facility.

(B) *Malfunction of scales.* Scales or scale systems that are operating in other than a correct and approved manner shall not be used for weighing grain under the Act. Before the malfunctioning scale or scale system can be used again for weighing grain under the Act, it shall be repaired and determined to be operating properly by the Service or approved scale testing and certification organization.

(iv) *Oral directives.* FGIS oral directives issued to elevator personnel shall be confirmed in writing upon request by elevator management. Whenever practicable, the Service shall issue oral directives through elevator management officials.

(Approved by the Office of Management and Budget under control number 0580-0012)

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984, as amended at 49 FR 49587, Dec. 21, 1984; 50 FR 45392, Oct. 31, 1985; 54 FR 5924, Feb. 7, 1989]

§ 800.47 Withdrawal of request for official services.

An applicant may withdraw a request for official services any time before official personnel release results, either verbally or in writing. See § 800.51 for reimbursement of expenses, if any.

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984]

§ 800.48 Dismissal of request for official services.

(a) *Conditions for dismissal.* (1) *General.* An agency or the Service shall dismiss requests for official services when (i) § 800.76 prohibits the requested service; (ii) performing the requested service is not practicable; (iii) the agency or the

Service lacks authority under the Act or regulations; or (iv) sufficient information is not available to make an accurate determination.

(2) *Original services.* A request for original services shall be dismissed if a reinspection, review of weighing, appeal inspection, or Board appeal inspection has been performed on the same lot at the same specified service point within 5 business days.

(3) *Reinspection, appeal inspection, or Board appeal inspection services.* A request for a reinspection, appeal inspection, or Board appeal inspection service shall be dismissed when: (i) The kind and scope are different from the kind and scope of the last inspection service; (ii) the condition of the grain has undergone a material change; (iii) the request specifies a representative file sample and a representative file sample is not available, (iv) the applicant requests that a new sample be obtained and a new sample cannot be obtained; or (v) the service cannot be performed within 5 business days of the date of the last inspection date.

(4) *Review of weighing services.* A request for review of weighing services shall be dismissed when the request (i) is filed before the weighing results have been released, or (ii) is filed more than 90 calendar days after the date of the original service.

(b) *Procedure for dismissal.* When an agency or the Service proposes to dismiss a request for official services, the applicant shall be notified of the proposed action. The applicant will then be afforded reasonable time to take corrective action or to demonstrate there is no basis for the dismissal. If the agency or the Service determines that corrective action has not been adequate, the applicant will be notified again of the decision to dismiss the request for service, and any results of official services shall not be released.

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984, as amended at 50 FR 45392, Oct. 31, 1985]

§ 800.49 Conditional withholding of official services.

(a) *Conditional withholding.* An agency or the Service shall conditionally

withhold requests for official services when an applicant fails to meet any requirement prescribed in § 800.46.

(b) *Procedure and withholding.* When an agency or the Service proposes to conditionally withhold official services, the applicant shall be notified of the reason for the proposed action. The applicant will then be afforded reasonable time to take corrective action or to show that there is no basis for withholding services. If the agency or the Service determines that corrective action has not been adequate, the applicant will be notified. Any results of official services shall not be released when a request for service is withheld.

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984]

§ 800.50 Refusal of official services and civil penalties.

(a) *Grounds for refusal.* Any or all services available to an applicant under the Act may be refused, either temporarily or indefinitely, by the Service for causes prescribed in section 10(a) of the Act. Such refusal by the Service may be restricted to the particular facility or applicant (if not a facility) found in violation or to a particular type of service, as the facts may warrant. Such action may be in addition to, or in lieu of, criminal penalties or other remedial action authorized by the Act.

(b) *Provision and procedure for summary refusal.* The Service may, without first affording the applicant (hereafter in this section "respondent") a hearing, refuse to provide official inspection and Class X or Y weighing services pending final determination of the proceeding whenever the Service has reason to believe there is cause, as prescribed in section 10 of the Act, for refusing such official services and considers such action to be in the best interest of the official services system under the Act: *Provided that* within 7 days after refusal of such service, the Service shall afford the respondent an opportunity for a hearing as provided under paragraph (c)(2) of this section.

Pending final determination, the Service may terminate the temporary refusal if alternative managerial, staffing, financial, or operational arrangements satisfactory to the Service can be and are made by the respondent.

(c) *Procedure for other than summary refusal.* Except as provided in paragraph (b) of this section, before the Service refuses to provide official services the respondent shall be (1) notified of the services that are to be refused, the locations at which and the time period for which service will be refused, and the reasons for the refusal; and (2) afforded an opportunity for a hearing in accordance with the provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR 1.130 *et seq.*). At the discretion of the Service, prior to initiation of formal adjudicatory proceedings, the respondent may be given an opportunity to express his or her views on the action proposed by the Service in an informal conference before the Administrator of the Service. If, as a result of such an informal conference, the Service and the respondent enter into a consent agreement, no formal adjudicatory proceedings shall be initiated.

(d) *Assessment of civil penalties.* Any person who has knowingly committed any violation of section 13 of the Act or has been convicted of any violation of other Federal law with respect to the handling, weighing, or official inspection of grain may be assessed a civil penalty not to exceed \$75,000 for each such violation as the Administrator determines is appropriate to effect compliance with the Act. Such action may be in addition to, or in lieu of, criminal penalties under section 14 of the Act, or in addition to, or in lieu of, the refusal of official services authorized by the Act.

(e) *Provisions for civil penalty hearings.* Before a civil penalty is assessed against any person, such person shall be afforded an opportunity for a hearing as provided under paragraph (c)(2) of this section.

(f) *Collection of civil penalties.* Upon failure to pay the civil penalty, the Service may request the Attorney General to file civil action to collect the

penalty in a court of appropriate jurisdiction.

[45 FR 15810, Mar. 11, 1980, as amended at 51 FR 12830, Apr. 16, 1986]

§800.51 Expenses of agency, field office, or Board of Appeals and Review.

For any request that has been dismissed or withdrawn under §800.47, §800.48, or §800.49, respectively, each applicant shall pay expenses incurred by the agency or the Service.

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984]

§800.52 Official services not to be denied.

Subject to the provisions of §§800.48, 800.49, and 800.50, no person entitled to official services under the Act shall be denied or deprived of the right thereto by reason of any rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department, or similar organization; or by any contract, agreement, or other understanding.

DESCRIPTIONS

§800.55 Descriptions by grade.

(a) *General.* In any sale, offer for sale, or consignment for sale, which involves the shipment of grain in interstate or foreign commerce, the description of grain, as being of a grade in any advertising, price quotation, other negotiation of sale, contract of sale, invoice, bill of lading, other document, or description on bags or other containers of the grain, is prohibited if such description is other than by an official grade designation, with or without additional information as to specified factors. An official grade designation contains any of the following: The term "U.S.," the numerals 1 through 5, the term "Sample grade," or the name of a subclass or a special grade of grain specified in the Official United States Standards for Grain.

(b) *Proprietary brand names or trademarks.* A description of grain by a proprietary brand name or a trademark that does not resemble an official

§ 800.56

grade designation will not be considered to be a description by grade; but a description by a proprietary brand name or trademark that contains singly or in combination any of the terms referenced in paragraph (a) of this section shall be considered to resemble an official grade designation.

(c) *Use of one or more factor designations.* In interstate commerce, a description of grain by the use of one or more grade factor designations which appear in the Official United States Standards for Grain or by other criteria will not be considered to be a description by grade.

(d) *False or misleading descriptions.* In any sale, offer for sale, or consignment for sale of any grain which involves the shipment of grain from the United States to any place outside thereof, knowingly using a false or misleading description of grain by official grade designation, or other description is prohibited.

[50 FR 9982, Mar. 13, 1985]

§ 800.56 Requirements on descriptions.

Section 13 of the Act contains certain prohibitions with respect to the use of official grade designations, official marks, and other representations with respect to grain.

(a) The use of an official grade designation, with or without factor information, or of official criteria information, or of the term "official grain standards," shall not, without additional information, be considered to be a representation that the grain was officially inspected.

(b) The use of any symbol or term listed as an official mark, at § 800.0(b)(68), with respect to grain shall be considered to be a representation of official service under the Act: Provided however, that the use of the official marks "official certificate;" "officially inspected;" "official inspection;" "officially weighed;" "official weight;" and "official weighing" shall not be considered to be a representation of official service under the Act if it is clearly shown that the activity occurred under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*): Provided further, that the use of the official mark "officially tested" with respect to grain inspection and weighing equipment shall not be con-

7 CFR Ch. VIII (1-1-99 Edition)

sidered to be a representation of testing under the Act if it is clearly shown that the equipment was tested under a State statute.

[50 FR 9982, Mar. 13, 1985]

GRAIN HANDLING PRACTICES

§ 800.60 Deceptive actions and practices.

In the absence of prior adequate notice to appropriate official personnel, any action or practice, including the loading, weighing, handling, or sampling of grain that knowingly causes or is an attempt to cause the issuance by official personnel of a false or incorrect official certificate or other official form, is deemed to be deceptive and, as such, is a violation of section 13(a)(3) of the Act. For the purposes of this paragraph, adequate notice is written or oral notice given to an agency or the Service, as applicable, before official personnel begin to perform official inspection or weighing services. If oral notice is given, it must be confirmed in writing within 2 business days. To be adequate, the notice must explain the nature and extent of the action or practice in question and must identify the grain, stowage container, equipment, facility, and the official personnel actually or potentially involved.

(Approved by the Office of Management and Budget under control number 0580-0011)

[48 FR 17330, Apr. 22, 1983, as amended at 48 FR 44453, Sept. 29, 1983; 54 FR 5924, Feb. 7, 1989]

§ 800.61 Prohibited grain handling practices.

(a) *Definitions.* For the purpose of this section, dockage and foreign material in grain shall be:

(1) Defined for export elevators at export port locations as set forth in 7 CFR part 810 and as dust removed from grain and collected in a bin/container and as dust settling on floors, equipment, and other areas, commonly referred to as dust sweepings; and

(2) Defined for other than export elevators as set forth in 7 CFR part 810.

(b) *Prohibited practices.* Except as permitted in paragraphs (c) and (d) of this section, no person shall:

(1) Recombine or add dockage or foreign material to any grain, or

(2) Blend different kinds of grain except when such blending will result in grain being designated as Mixed grain in accordance with subpart E of the Official United States Standards for Grain.

(3) Add water to grain for purposes other than milling, malting, or similar processing operations.

(c) *Exemption.* (1) The Administrator may grant exemptions from paragraph (b) of this section for grain shipments sent directly to a domestic end-user or processor. Requests for exemptions shall be submitted by grain handlers to the Service through the domestic end-users or processors or their representatives.

(2) Grain sold under an exemption shall be consumed or processed into a product(s) by the purchaser and not resold into the grain market.

(3) Products or byproducts from grain sold under an exemption shall not be blended with or added to grain in commercial channels, except for vegetable oil which may be used as a dust suppressant in accordance with (d)(4) of this section.

(d) *Exceptions.* Paragraph (b) shall not be construed as prohibiting the following grain handling practices. Compliance with paragraphs (d)(1) through (d)(6) of this section does not excuse compliance with applicable Federal, State, and local laws.

(1) *Blending.* Grain of the same kind, as defined by the Official United States Standards for Grain, may be blended to adjust quality. Broken corn or broken kernels may be recombined or added to whole grain of the same kind provided that no foreign material or dockage has been added to the broken corn or broken kernels.

(2) *Insect and fungi control.* Grain may be treated to control insects and fungi. Elevators, other grain handlers, and their agents are responsible for the proper use and applications of insecticides and fungicides. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected and weighed.

(3) *Marketing dockage and foreign material.* Dockage and foreign material may be marketed separately.

(4) *Dust suppressants.* Grain may be treated with an additive, other than

water, to suppress dust during handling. Elevators, other grain handlers, and their agents are responsible for the proper use and application of dust suppressants. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected and weighed.

(5) *Identification.* Confetti or similar material may be added to grain for identification purposes. Elevators, other grain handlers, and their agents are responsible for the proper use and application of such materials. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected or weighed.

(6) *Export loading facilities.* Between May 1, 1987, and December 31, 1987, export elevators at export port locations may recombine dockage and foreign material, but not dust, with grain provided such recombination occurs during the loading of a vessel with the intended purpose of ensuring uniformity of dockage and foreign material in the cargo.

(Approved by the Office of Management and Budget under control number 0580-0011)

[52 FR 24437, June 30, 1987, as amended at 59 FR 52077, Oct. 14, 1994]

FEEES

§ 800.70 Fees for official services performed by agencies.

(a) *Assessment and use of fees.* (1) Fees assessed by an agency for official inspection and Class X or Class Y weighing services or testing of inspection equipment shall be reasonable and non-discriminatory.

(2) In the case of a State or local governmental agency, fees shall not be used for any purpose other than to finance the cost of the official inspection and Class X or Class Y weighing service and inspection equipment testing service performed by the agency or the cost of other closely related programs administered by the agency.

(b) *Approval required.* (1) *Restriction.* Only fees that meet the requirements stated in this section and are approved by the Service as reasonable and non-discriminatory may be charged by an agency.

(2) *Exceptions.* For good cause shown by an agency, the Administrator may

grant case-by-case exceptions to the requirements in this section, provided that a determination is made that the agency fees would be reasonable and nondiscriminatory.

(c) *Reasonable fees.* In determining if an agency's fees are reasonable, the Service will consider whether the fees: (1) Cover the estimated total cost to the agency of (i) official inspection services, (ii) Class X or Class Y weighing services, (iii) inspection equipment testing services, and (iv) related supervision and monitoring activities performed by the agency; (2) Are reasonably consistent with fees assessed by adjacent agencies for similar services; (3) Are assessed on the basis of the average cost of performing the same or similar services at all locations served by the agency; and (4) Are supported by sufficient information which shows how the fees were developed.

(d) *Nondiscriminatory fees.* In determining if fees are nondiscriminatory, the Service will consider whether the fees are collected from all applicants for official service in accordance with the approved fee schedule. Charges for time and travel incurred in providing service at a location away from a specified service point shall be assessed in accordance with the approved fee schedule.

(e) *Schedule of fees to be established.* (1) Each agency shall establish a schedule of fees for official services which the agency is delegated or designated the authority to perform. The schedule shall be in a standard format in accordance with the instructions. Such schedules may include fees for nonofficial services provided by the agency, but they shall be clearly identified and will not be subject to approval by the Service.

(2) The schedule shall be published and made available by the agency to all users of its services.

(f) *Request for approval of fees.* (1) *Time requirement.* A request for approval of a new or revised fee shall be submitted to the Service not less than 60 days in advance of the proposed effective date for the fee. Failure to submit a request within the prescribed time period may be considered grounds for postponement or denial of the request.

(2) *Contents of request.* Each request shall show (i) the present fee, if any, and the proposed fee, together with data showing in detail how the fee was developed, and (ii) the proposed effective date.

(g) *Review of request.* (1) *Approval action.* If upon review the Service finds that the request and supporting data justify the new or revised fee, the request will be marked "approved" and returned to the agency.

(2) *Denial action.* If the Service finds that the request and supporting data do not justify the new or revised fee, approval of the request will be withheld pending receipt of any additional supporting data which the agency has to offer. If the data are not submitted within a reasonable period, the request shall be denied. In the case of a denial of a request, the agency shall be notified of the reason for denial.

(Approved by the Office of Management and Budget under control numbers 0580-0003 and 0580-0012)

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980, as amended at 48 FR 44453, Sept. 29, 1983; 50 FR 30131, July 24, 1985]

§ 800.71 Fees assessed by the Service.

(a) *Official inspection and weighing services.* The fees shown in schedules A and B apply to official inspection and weighing services performed by FGIS in the United States and Canada. The fees shown in schedule C apply to official inspection and weighing services performed by delegated States and designated agencies in the United States, except for those State agencies that have been delegated additional responsibilities by FGIS. These States shall be assessed fees as set forth in the State's Delegation of Authority document. Failure of a delegated State or designated agency to pay prescribed fees within 30 days after being due, shall result in automatic termination of the delegation or designation. The delegation or designation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination are paid within 60 days of the termination.

Grain Inspection, Packers and Stockyard Admin. (FGIS), USDA

§ 800.71

SCHEDULE A—FEES FOR OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED IN THE UNITED STATES

TABLE 1—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT’S FACILITY IN AN ONSITE FGIS LABORATORY ¹

	Monday to Friday (6 a.m to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sun- day, and over- time ²	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract	\$25.20	\$27.20	\$35.40	\$42.60
6-month contract	27.60	29.40	37.60	49.40
3-month contract	31.60	32.60	41.00	51.00
Noncontract	36.60	38.60	46.80	57.60
(2) Additional Tests (cost per test, assessed in addition to the hourly rate) ³				
(i) Aflatoxin (other than Thin Layer Chromatography)				8.50
(ii) Aflatoxin (Thin Layer Chromatography method)				20.00
(iii) Corn oil, protein, and starch (one or any combination)				1.50
(iv) Soybean protein and oil (one or both)				1.50
(v) Wheat protein (per test)				1.50
(vi) Sunflower oil (per test)				1.50
(vii) Vomitoxin (qualitative)				7.50
(viii) Vomitoxin (quantitative)				12.50
(ix) Waxy corn (per test)				1.50
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.				
(xi) Other services				
(a) Class Y Weighing (per carrier)				
(1) Truck/container .....				.30
(2) Railcar				1.25
(3) Barge				2.50
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier)				
(i) All outbound carriers (per-metric-ton) ⁴				
(a) 1–1,000,000				0.1014
(b) 1,000,001–1,500,000				0.0925
(c) 1,500,001–2,000,000				0.0500
(d) 2,000,001–5,000,000				0.0370
(e) 5,000,001–7,000,000				0.0200
(f) 7,000,000–				0.0090

¹ Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee’s assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in §800.72 (a).
² Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.
³ Appeal and reinspection services will be assessed the same fee as the original inspection service.
⁴ The administrative fee is assessed on an accumulated basis beginning at the start of the Service’s fiscal year (October 1 each year).

TABLE 2—SERVICES PERFORMED AT OTHER THAN AN APPLICANT’S FACILITY IN AN FGIS LABORATORY ^{1, 2}

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from table 1).	
(ii) Stationary lots (sampling, grade/factor, & checkloading)	
(a) Truck/trailer/container (per carrier)	\$18.10
(b) Railcar (per carrier)	27.60
(c) Barge (per carrier)	174.35
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.85
(b) Railcar (per carrier)	19.10
(c) Barge (per carrier)	108.10
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services	
(a) Submitted sample (per sample—grade and factor)	10.60
(b) Warehouseman inspection (per sample)	17.60
(c) Factor only (per factor—maximum 2 factors)	4.60
(d) Checkloading/condition examination (use hourly rates from table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	11.60
(f) Class X Weighing (per hour per service representative)	48.00

TABLE 2—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY ^{1, 2}—Continued

(v) Additional tests (excludes sampling).	
(a) Aflatoxin (per test—other than TLC method)	25.60
(b) Aflatoxin (per test—TLC method)	101.60
(c) Corn oil, protein, and starch (one or any combination)	8.10
(d) Soybean protein and oil (one or both)	8.10
(e) Wheat protein (per test)	8.10
(f) Sunflower oil (per test)	8.10
(g) Vomitoxin (qualitative)	26.10
(h) Vomitoxin (quantitative)	31.10
(i) Waxy corn (per test)	9.35
(j) Canola (per test—00 dip test)	9.35
(k) Pesticide Residue Testing ³	
(1) Routine Compounds (per sample)	200.00
(2) Special Compounds (per service representative)	100.00
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from table 1.	
(2) Appeal inspection and review of weighing service. ⁴	
(i) Board Appeals and Appeals (grade and factor)	76.60
(a) Factor only (per factor—max 2 factors)	39.60
(b) Sampling service for Appeals additional (hourly rates from table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	25.85
(b) Aflatoxin (TLC)	111.10
(c) Corn oil, protein, and starch (one or any combination)	15.85
(d) Soybean protein and oil (one or both)	15.85
(e) Wheat protein (per test)	15.85
(f) Sunflower oil (per test)	15.85
(g) Vomitoxin (per test—qualitative)	36.10
(h) Vomitoxin (per test—quantitative)	41.10
(i) Vomitoxin (per test—HPLC Board Appeal)	128.00
(j) Pesticide Residue Testing ³	
(1) Routine Compounds (per sample)	200.00
(2) Special Compounds (per service representative)	100.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from table 1.	
(iii) Review of weighing (per hour per service representative)	69.60
(3) Stowage examination (service-on-request) ³	
(i) Ship (per stowage space)	50.50
	(minimum
	\$275 per
	ship)
(ii) Subsequent ship examinations (same as original) (minimum \$175 per ship)	
(iii) Barge (per examination)	40.50
(iv) All other carriers (per examination)	15.50

¹ Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).
² An additional charge will be assessed when the revenue from the services in schedule A, table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72 (b).

³ If performed outside of normal business, 1–1/2 times the applicable unit fee will be charged.

⁴ If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of \$2.50 per sample by the Service.

TABLE 3—MISCELLANEOUS SERVICES ¹

(1) Grain grading seminars (per hour per service representative) ²	\$48.00
(2) Certification of diverter-type mechanical samplers (per hour per service representative) ²	48.00
(3) Special weighing services (per hour per service representative): ²	
(i) Scale testing and certification	48.00
(ii) Evaluation of weighing and material handling systems	48.00
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	48.00
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car)	48.00
(v) Mass standards calibration and reverification	110.00
(vi) Special projects	48.00
(4) Foreign travel (per day per service representative)	48.00
(5) Online customized data EGIS service:	
(i) One data file per week for 1 year	435.00
(ii) One data file per month for 1 year	500.00
(6) Samples provided to interested parties (per sample)	300.00
(7) Divided-lot certificates (per certificate)	2.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost).	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from table 1).	

¹ Any requested service that is not listed will be performed at \$48.00 per hour.

Grain Inspection, Packers and Stockyard Admin. (FGIS), USDA

§ 800.71

²Regular business hours—Monday thru Friday—service provided at other than regular hours charged at the applicable over-time hourly rate.

SCHEDULE B—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN CANADA¹

Inspection and weighing service (bulk or sacked grain)	Regular workday (Monday thru Saturday)	Non-regular workday (Sunday and holiday)
(1) Original inspection services and official weighing services: ^{2, 3}		
(i) Contract services (per hour per service representative)	\$103.00	\$130.00
(ii) Noncontract service (per hour per service representative)	137.00	172.00
(2) Extra copies of certificates (per copy)	3.00	3.00

¹ Official inspection and weighing services include, but are not limited to grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

² Fees for reinspection and appeal inspection services shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

³ Board appeal inspections are based on file samples. See § 800.71, schedule A for Board Appeal fees.

SCHEDULE C—FEES FOR FGIS SUPERVISION OF OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED BY DELEGATED STATES AND/OR DESIGNATED AGENCIES IN THE UNITED STATES¹

TABLE 1

Inspection services (bulk or sacked grain)	Official inspection or reinspection services
(1) Official sample-lot inspection service (white certificate):	
(i) For official grade and official factor determinations:	
(A) Truck or trailer (per inspection) ²	\$0.30
(B) Boxcar or hopper car (per inspection) ²	0.95
(C) Barge (per inspection) ²	6.15
(D) Ship (per ship) ³	49.20
(E) All other lots (per inspection) ^{2, 4}	0.30
(ii) For official factor or official criteria determinations:	
(A) Factor determination (per inspection) (maximum 2 factors) ⁵	0.20
(B) Official criteria ^{2, 6}	0.20
(2) Stowage examination services:	
(i) Ship (per stowage certificate)	3.00
(ii) Other carriers (per stowage certificate)	0.20

TABLE 1—Continued

Inspection services (bulk or sacked grain)	Official inspection or reinspection services
(3) Warehouseman's sample-lot inspection service (yellow certificate) or submitted sample inspection service (pink certificate):	
(i) For official grade and official factor determinations (per inspection)	0.30
(ii) For official factor or official criteria determinations:	
(A) Factor determination (per inspection) (maximum 2 factors) ⁵	0.20
(B) Official criteria ^{2, 6}	0.20
(4) Reinspection services:	
(i) Truck, boxcar, hopper car, barge, ship, warehouseman's sample-lot, submitted sample, factor determination, and all other lots (per sample inspected)	0.30
(ii) Official criteria ^{2, 6}	0.20

NOTE: The footnotes for table 1 are shown at the end of table 2.

TABLE 2

Official services (bulk or sacked grain)	Official weighing services	
	(class X)	(class Y)
Official weighing services:		
(i) Truck or trailer (per carrier)	\$0.30	\$0.20
(ii) Boxcar or hopper car (per carrier) .....	.95	.25
(iii) Barge (per carrier)	6.15	1.55
(iv) Ship (per carrier) ^{3, 7}	49.20	12.30
(v) All other lots (per lot or part lot) ⁴ .....	.30	.20

¹The fees include the cost of supervision functions performed by the Service for official inspection and weighing services performed by delegated States and/or designated agencies.

²A fee shall be assessed for each carrier or sample inspected if a combined lot certificate is issued or a uniform loading plan is used to determine grade.

³A fee shall be assessed per ship regardless of the number of lots or sublots loaded at a specific service point. A fee shall not be assessed for divided-lot certificates.

⁴Inspection services for all other lots include, but are not limited to, sampling service, condition examinations, and examination of grain in bins and containers. For weighing services, all other lots include, but are not limited to, seawans and inhouse bin transfers.

⁵Fees shall be assessed for a maximum of two factors. If more than two factors are determined, fees are assessed at rates in table 1 (1)(i) or (3)(i) above, as applicable, based on carrier or type sample represented.

⁶Official criteria includes, but is not limited to, protein and oil analyses. A fee shall be assessed for each sample tested.

⁷A Class Y ship fee shall be assessed for shipments destined for domestic markets only.

(b) *Registration certificates and renewals.* (1) Fees for registration certificates and renewals will be based on the nature of the business:

- (i) Firms engaged in the business of buying grain for sale in foreign commerce or the business of handling, weighing, or transporting of grain for sale in foreign commerce

§ 800.71

7 CFR Ch. VIII (1–1–99 Edition)

-\$135.00
- (ii) Firms engaged in the business of buying grain for sale in foreign commerce or the business of handling, weighing, or transporting of grain for sale in foreign commerce who also are in a control relationship, as defined in Section 17A(b)(2) of the Act, with respect to a business engaged in the business of buying, handling, weighing, or transporting grain for sale in interstate commerce270.00
- (2) Requests for extra copies of registration certificates shall be accompanied by a fee of \$2.50 for each copy.
- (c) *Designation amendments.* An application for an amendment to a designation shall be accompanied by a fee of \$75.00.

(d) Each application for approval to operate as a scale testing organization shall be accompanied by a fee of \$250.

(Secs. 8 and 9, Pub. L. 94–582, 90 Stat. 2873, 2877 (7 U.S.C. 79(j), 79a(1)); secs. 9, 18, Pub. L. 94–582, 90 Stat. 2875 and 2884 (7 U.S.C. 79a and 87e); secs. 8 and 9, Pub. L. 94–582, 90 Stat. 2873, 2877 (7 U.S.C. 79(j), 79a(1)), as amended by Pub. L. 97–35, 95 Stat. 371, 372)

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980, as amended at 49 FR 26563, June 28, 1984; 50 FR 38504, Sept. 23, 1985; 51 FR 43724, Dec. 4, 1986; 53 FR 21792, June 10, 1988; 59 FR 52656, Oct. 19, 1994; 61 FR 43303, Aug. 22, 1996; 62 FR 31702, June 11, 1997; 62 FR 34342, June 25, 1997; 62 FR 48939, Sept. 18, 1997; 63 FR 32714, June 16, 1998; 63 FR 35504, June 30, 1998; 63 FR 70992, Dec. 23, 1998]

EFFECTIVE DATE NOTE: At 63 FR 70992, Dec. 23, 1998, §800.71 was amended by revising schedule A in paragraph (a), effective Feb. 1, 1999.

For the convenience of the user, the superseded text is set forth as follows:

SCHEDULE A—FEES FOR OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED IN THE UNITED STATES

TABLE 1—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT’S FACILITY IN AN ONSITE FGIS LABORATORY ¹

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and over- time ²	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract	\$24.40	\$26.40	\$34.40	\$41.40
6-month contract	26.80	28.60	36.60	47.80
3-month contract	30.60	31.60	39.80	49.40
Noncontract	35.40	37.40	45.40	55.80
(2) Additional Tests (cost per test, assessed in addition to the hourly rate) ³				
(i) Aflatoxin (other than Thin Layer Chroma tography)				8.50
(ii) Aflatoxin (Thin Layer Chromatography method)				20.00
(iii) Corn oil, protein, and starch (one or any combination)				1.50
(iv) Soybean protein and oil (one or both)				1.50
(v) Wheat protein (per test)				1.50
(vi) Sunflower oil (per test)				1.50
(vii) Vomitoxin (qualitative)				7.50
(viii) Vomitoxin (quantitative)				12.50
(ix) Waxy corn (per test)				1.50
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rates.				
(xi) Other services				
(a) Class Y Weighing (per carrier)				
(1) Truck/container .....				.30
(2) Railcar				1.25
(3) Barge				2.50
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier).				
(i) All outbound carriers (per-metric-ton): ⁴				
(a) 1–1,000,000				0.1013
(b) 1,000,001–1,500,000				0.0923
(c) 1,500,001–2,000,000				0.0473
(d) 2,000,001–5,000,000				0.0360
(e) 5,000,001–7,000,000				0.0192

Grain Inspection, Packers and Stockyard Admin. (FGIS), USDA

§ 800.71

TABLE 1—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY ¹—Continued

	Monday to Friday (6 a.m to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sun- day, and over- time ²	Holidays
(f) 7,000,000+				0.0023

¹ Fees apply for original inspection and weighing, reinspection, and appeal inspection service include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).
² Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.
³ Appeal and reinspection services will be assessed the same fee as the original inspection service.
⁴ The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY ^{1, 2}

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from table 1).	
(ii) Stationary lots (sampling, grade/factor, & checkloading):	
(a) Truck/trailer/container (per carrier)	\$18.00
(b) Railcar (per carrier)	27.50
(c) Barge (per carrier)	174.25
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.75
(b) Railcar (per carrier)	19.00
(c) Barge (per carrier)	108.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services:	
(a) Submitted sample (per sample—grade and factor)	10.50
(b) Warehouseman inspection (per sample)	17.50
(c) Factor only (per factor—maximum 2 factors)	4.50
(d) Checkloading/condition examination (use hourly rates from table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	11.50
(f) Class X Weighing (per hour per service representative)	46.40
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	\$25.50
(b) Aflatoxin (per test—TLC method)	101.50
(c) Corn oil, protein, and starch (one or any combination)	8.00
(d) Soybean protein and oil (one or both)	8.00
(e) Wheat protein (per test)	8.00
(f) Sunflower oil (per test)	8.00
(g) Vomitoxin (qualitative)	26.00
(h) Vomitoxin (quantitative)	31.00
(i) Waxy corn (per test)	9.25
(j) Canola (per test—00 dip test)	9.25
(k) Pesticide Residue Testing ³ .	
(1) Routine Compounds (per sample)	200.00
(2) Special Compounds (per service representative)	100.00
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from table 1..	
(2) Appeal inspection and review of weighing service. ⁴	
(i) Board Appeals and Appeals (grade and factor)	75.25
(a) Factor only (per factor—max 2 factors)	39.00
(b) Sampling service for Appeals additional (hourly rates from table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	\$25.75
(b) Aflatoxin (TLC)	111.00
(c) Corn oil, protein, and starch (one or any combination)	15.75
(d) Soybean protein and oil (one or both)	15.75
(e) Wheat protein (per test)	15.75
(f) Sunflower oil (per test)	15.75
(g) Vomitoxin (per test—qualitative)	36.00
(h) Vomitoxin (per test—quantitative)	41.00
(i) Vomitoxin (per test—HPLC Board Appeal)	128.00
(j) Pesticide Residue Testing ³ .	
(1) Routine Compounds (per sample)	200.00
(2) Special Compounds (per service representative)	100.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from table 1..	
(iii) Review of weighing (per hour per service representative)	67.40

TABLE 2—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY ^{1, 2}—Continued

(3) Stowage examination (service-on-request) ³	
(i) Ship (per stowage space) (minimum \$250 per ship)	50.00
(ii) Subsequent ship examinations (same as original) (minimum \$150 per ship)	
(iii) Barge (per examination)	40.00
(iv) All other carriers (per examination)	15.00

¹ Fees apply for original inspection and weighing, reinspection, and appeal inspection service include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).
² An additional charge will be assessed when the revenue from the services in schedule A, table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).
³ If performed outside of normal business, 1½ times the applicable unit fee will be charged.

⁴ If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of \$2.50 per sample by the Service.

TABLE 3—MISCELLANEOUS SERVICES ¹

(1) Grain grading seminars (per hour per service representative) ²	\$46.40
(2) Certification of diverter-type mechanical samplers (per hour per service representative) ²	46.40
(3) Special weighing services (per hour per service representative): ²	
(i) Scale testing and certification	46.40
(ii) Evaluation of weighing and material handling systems	46.40
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	46.40
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car)	46.40
(v) Mass standards calibration and reverification	100.00
(vi) Special projects	46.40
(4) Foreign travel (per day per service representative)	430.00
(5) Online customized data EGIS service:	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.50
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost)	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from table 1)	

¹ Any requested service that is not listed will be performed at \$46.40 per hour.
² Regular business hours—Monday thru Friday—service provided at other than regular hours charged at the applicable over-time hourly rate.

§ 800.72 Explanation of additional service fees for services performed in the United States only.

(a) When transportation of the service representative to the service location (at other than a specified duty point) is more than 25 miles from an FGIS office, the actual transportation cost in addition to the applicable hourly rate for each service representative will be assessed from the FGIS office to the service point and return. When commercial modes of transportation (e.g., airplanes) are required, the actual expense incurred for the round-trip travel will be assessed. When services are provided to more than one applicant, the travel and other related charges will be prorated between applicants.

(b) In addition to a 2-hour minimum charge for service on Saturdays, Sundays, and holidays, an additional

charge will be assessed when the revenue from the services in § 800.71, schedule A, table 2, does not equal or exceed what would have been collected at the applicable hourly rate. The additional charge will be the difference between the actual unit fee revenue and the hourly fee revenue. Hours accrued for travel and standby time shall apply in determining the hours for the minimum fee.

[61 FR 43305, Aug. 22, 1996]

§ 800.73 Computation and payment of service fees; general fee information.

(a) *Computing hourly rates.* The applicable hourly rate will be assessed in quarter hour increments for:

(1) Travel from the FGIS field office or assigned duty station to the service point and return;

(2) The performance of the requested service, less mealtime.

(b) *Application of fees when service is delayed or dismissed by the applicant.* The applicable hourly rate will be assessed for the entire period of scheduled service when:

(1) Service has been requested at a specified location;

(2) A service representative is on duty and ready to provide service but is unable to do so because of a delay not caused by the Service; and

(3) FGIS officials determine that the service representative cannot be utilized to provide service elsewhere without cost to the Service.

(c) *Application of fees when an application for service is withdrawn or dismissed.* The applicable hourly rate will be assessed to the applicant for the entire period of scheduled service if the request is withdrawn or dismissed after the service representative departs for the service point, or if the service request is not canceled by 2 p.m., local time, the business day preceding the date of scheduled service. However, the applicable hourly rate will not be assessed to the applicant if FGIS officials determine that the service representative can be utilized elsewhere or released without cost to the Service.

(d) *To whom fees are assessed.* Fees for inspection, weighing, and related services performed by service representatives, including additional fees as provided in §800.72, shall be assessed to and paid by the applicant for the service.

(e) *Monthly payment of administrative fee.* At the option of the applicant, an agreement for 12 equal monthly payments may be entered into for payment of the administrative fee. These monthly payments will be based on the previous fiscal year's volume applied to the current year's administrative fee schedule. If the volume of grain inspected is more than the amount of grain agreed upon at the beginning of the fiscal year, at the point the agreed upon volume is exceeded, the current year's administrative fee schedule shall apply to the remaining amount of grain for the rest of the fiscal year. If the volume of grain inspected is less than the agreed upon amount, any excess monies paid to the Service shall be

applied to the next fiscal year's administrative fee unless a request for a refund is made by the applicant.

(f) *Advance payment.* As necessary, the Administrator may require that fees shall be paid in advance of the performance of the requested service. Any fees paid in excess of the amount due shall be used to offset future billings, unless a request for a refund is made by the applicant.

(g) *Form of payment.* Bills for fees assessed under the regulations in this part for official services performed by FGIS shall be paid by check, draft, or money order, payable to the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration.

[61 FR 43305, Aug. 22, 1996]

KINDS OF OFFICIAL SERVICES

§ 800.75 Kinds of official inspection and weighing services.

(a) *General.* Paragraphs (b) through (m) of this section describe the kinds of official service available. Each kind of service has several levels. §§800.115, 800.116, 800.117, and 800.118 explain Original Services, §§800.125, 800.126, 800.127, 800.128, and 800.129 explain Reinspection Services and Review of Weighing Services, and §§800.135, 800.136, 800.137, 800.138, and 800.139 explain Appeal Inspection Services. The results of each official service listed in paragraphs (b) through (j) will be certificated according to §800.160.

(b) *Official sample-lot inspection service.* This service consists of official personnel (1) sampling an identified lot of grain and (2) analyzing the grain sample for grade, official factors, or official criteria, or any combination thereof, according to the regulations, Official U.S. Standards for Grain, instructions, and the request for inspection.

(c) *Warehouseman's sample-lot inspection service.* This service consists of (1) a licensed warehouseman sampler (i) sampling an identified lot of grain using an approved diverter-type mechanical sampler and (ii) sending the sample to official personnel and (2) official personnel analyzing the grain

sample for grade, official factors, official criteria, or any combination thereof, according to the regulations, Official U.S. Standards for Grain, instructions, and the request for inspection.

(d) *Submitted sample inspection service.* This service consists of an applicant or an applicant's agent submitting a grain sample to official personnel, and official personnel analyzing the grain sample for grade, official factors, official criteria, or any combination thereof, according to the regulations, Official U.S. Standards for Grain, instructions, and the request for inspection.

(e) *Official sampling service.* This service consists of official personnel (1) sampling an identified lot of grain and (2) forwarding a representative portion(s) of the sample along with a copy of the certificate, as requested by the applicant.

(f) *Official stowage examination service.* (1) This service consists of official personnel visually determining if an identified carrier or container is clean; dry; free of infestation, rodents, toxic substances, and foreign odor; and is suitable to store or carry grain.

(2) A stowage examination may be obtained as a separate service or with one or more other services. Approval of the stowage space is required for official sample-lot inspection services on all export lots of grain and all official sample-lot inspection services performed on outbound domestic lots of grain which are sampled and inspected at the time of loading. Also, approval of the stowage space is required for any weighing services performed on all outbound land carriers.

(g) *Class X weighing service.* This service consists of official personnel (1) completely supervising the loading or unloading of an identified lot of grain and (2) physically weighing or completely supervising approved weighers weighing the grain.

(h) *Class Y weighing service.* This service consists of (1) approved weighers physically weighing the grain and (2) official personnel partially or completely supervising the loading or unloading of an identified lot of grain.

(i) *Checkweighing service (sacked grain).* This service consists of official personnel or approved weighers under the supervision of official personnel (1)

physically weighing a selected number of sacks from a grain lot and (2) determining the estimated total gross, tare, and new weights, or the estimated average gross or net weight per filled sack according to the regulations, instructions, and request by the applicant.

(j) *Checkloading service.* This service consists of official personnel (1) performing a stowage examination; (2) computing the number of filled grain containers loaded aboard a carrier; and (3) if practicable, sealing the carrier for security.

(k) *Test weight reverification service.* This service consists of official personnel (1) comparing the weight of elevator test weights with known weights; (2) correcting the elevator test weights, when necessary; and (3) issuing a Report of Test.

(l) *Railroad track scale testing service.* This service consists of official personnel (1) testing railroad track scales with Service-controlled test cars and (2) issuing a Report of Test.

(m) *Hopper and truck scale testing service.* This service consists of official personnel (1) testing hopper and truck scales and (2) issuing a Report of Test.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

[50 FR 45392, Oct. 31, 1985]

§ 800.76 Prohibited services; restricted services.

(a) *Prohibited services.* No agency shall perform any inspection function or provide any inspection service on the basis of unofficial standards, procedures, factors, or criteria if the agency is designated or authorized to perform the service or provide the service on an official basis under the Act. No agency shall perform official and unofficial weighing on the same mode of conveyance at the same facility.

(b) *Restricted services.* (1) *Not standardized grain.* When an inspection or weighing service is requested on a sample or a lot of grain which does not meet the requirements for grain as set forth in the Official U.S. Standards for Grain, a certificate showing the words "Not Standardized Grain" shall be issued according to the instructions.

(2) *Grain screening.* The inspection or weighing of grain screenings may be obtained from an agency or field office according to the instructions.

[50 FR 45393, Oct. 31, 1985, as amended at 60 FR 65235, Dec. 19, 1995; 63 FR 45677, Aug. 27, 1998]

INSPECTION METHODS AND PROCEDURES

§ 800.80 Methods and order of performing official inspection services.

(a) *Methods.* (1) *General.* All official inspection services shall be performed in accordance with methods and procedures prescribed in the regulations and the instructions.

(2) *Lot inspection services.* A lot inspection service shall be based on a representative sampling and examination of the grain in the entire lot, except as provided in § 800.85, and an accurate analysis of the grain in the sample.

(3) *Stowage examination service.* A stowage examination service shall be based on a thorough and accurate examination of the carrier or container into which grain will be loaded.

(4) *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 a complete analysis for grade. If a complete analysis for grade cannot be performed because of an inadequate sample size or other conditions, the request for service shall be dismissed or a factor only inspection may be performed upon request.

(5) *Reinspection and appeal inspection service.* A reinspection, appeal inspection, or Board appeal inspection service shall be based on an independent review of official grade information, official factor information, or other information consistent with the scope of the original inspection.

(b) *Order of service.* Official inspection services shall be performed, to the extent practicable, in the order in which they are received. Priority shall be given to inspections required for export grain. Priority may be given to other kinds of inspection services under the Act with the specific approval of the Service.

(c) *Recording receipt of documents.* Each document submitted by or on be-

half of an applicant for inspection services shall be promptly stamped or similarly marked by official personnel to show the date of receipt.

(d) *Conflicts of interest.* No official personnel shall perform or participate in performing an official inspection service on grain or on a carrier or container in which they have a direct or indirect financial interest.

[50 FR 49669, Dec. 4, 1985]

§ 800.81 Sample requirements; general.

(a) *Samples for official sample-lot inspection service.* (1) *Original official sample-lot inspection service.* For original sample-lot inspection purposes, an official sample shall be (i) obtained by official personnel; (ii) representative of the grain in the lot; (iii) protected from manipulation, substitution, and improper or careless handling; and (iv) obtained within the prescribed geographical boundaries of the agency or field office performing the service.

(2) *Official sample-lot reinspection and appeal inspection service.* For an official sample-lot reinspection service or an official appeal sample-lot inspection service, the sample(s) on which the reinspection or appeal is determined shall (i) be obtained by official personnel and (ii) otherwise meet the requirements of paragraph (a)(1) of this section. If the reinspection or appeal inspection is determined on the basis of official file sample(s), the samples shall meet the requirements of § 800.82(d).

(3) *New sample.* Upon request and if practicable, a new sample shall be obtained and examined as a part of a reinspection or appeal inspection. The provision for a new sample shall not apply if obtaining the new sample involves a change in method of sampling.

(b) *Representative sample.* A sample shall not be considered representative unless it (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. A sample which fails to meet the requirements of this paragraph may, upon request of the applicant, be inspected as a submitted sample.

(c) *Protecting samples.* Official personnel shall protect official samples,

warehouseman's samples, and submitted samples from manipulation, substitution, or improper and careless handling which may deprive the samples of their representativeness or which may change the physical or chemical properties of the grain, as appropriate, from the time of sampling or receipt until the inspection services are completed and the file samples have been discarded.

(d) *Restriction on sampling.* Official personnel shall not perform an original inspection or a reinspection service on an official sample or a warehouseman's sample unless the grain from which the sample was obtained was located within the area of responsibility assigned to the agency or field office at the time of sampling. Upon request, the Administrator may grant an exception to this rule on a case-by-case basis.

(e) *Disposition of samples.* (1) *Excess grain.* Any grain in excess of the quantity specified in the instructions for the requested service, the file samples, and samples requested by interested persons shall be returned to the lot from which the grain was obtained or to the owner of the lot or the owner's order.

(2) *Inspection samples.* Inspection samples, after they have served their intended purpose, shall be disposed of as follows:

(i) Samples which contain toxic substances or materials shall be kept out of food and feed channels, and

(ii) Official personnel shall dispose of samples obtained or submitted to them according to procedures established by the Service. Complete and accurate records of disposition shall be maintained.

(Approved by the Office of Management and Budget under control number 0580-0011)

[50 FR 49669, Dec. 4, 1985]

§ 800.82 Sampling provisions by level of service.

(a) *Original inspection service.* (1) *Official sample-lot inspection service.* Each original inspection service shall be performed on the basis of one or more official samples obtained by official personnel from grain in the lot and forwarded to the appropriate agency or field office.

(2) *Warehouseman's sample-lot inspection.* Each original warehouseman's sample-lot inspection service shall be performed on the basis of samples obtained by a licensed warehouseman and sent to the appropriate agency or field office in whose circuit the warehouse is located.

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

(b) *Reinspection, and appeal inspection services.* (1) *Official sample-lot inspection service.* Each of these inspection services shall be performed on the basis of official samples as available, including file samples, at the time the service is requested. In performing these services, a sample obtained with an approved diverter-type mechanical sampler or with a pelican sampler generally shall be used with respect to quality factors and official criteria, and a sample obtained with a probe at the time of the reinspection or appeal, generally, shall be used with respect to heating, musty, sour, insect infestation, and other condition and odor factors. In instances where original inspection results are based on samples obtained by probe, the decision as to whether file samples or new samples obtained by probe are to be used shall be made by the official personnel performing the service.

(2) *Warehouseman's sample-lot inspection service.* Each reinspection service and appeal inspection service on a warehouseman's sample shall be performed on an analysis of the official file sample.

(3) *Submitted sample service.* Each reinspection service and appeal inspection service on a submitted sample shall be performed on an analysis of the official file sample.

(c) *Board appeal inspection services.* Board appeal inspection services shall be performed on an analysis of the official file sample.

(d) *Use of file samples.* (1) *Requirements for use.* A file sample that is retained by official personnel in accordance with the procedures prescribed in the instructions may be considered representative for a reinspection service, appeal inspection service, and a Board appeal inspection service if (i) the file

sample has remained at all times in the custody and control of the official personnel that performed the inspection service in question; and (ii) the official personnel who performed the original inspection service and those who are to perform the reinspection, the appeal inspection, or the Board appeal inspection service determine that the samples were representative at the time the original inspection service was performed and that the quality or condition of the grain in the samples has not changed.

(2) *Certificate statement.* When the results of a reinspection, appeal inspection, or Board appeal inspection service are based on an official file sample, the certificate for the reinspection service, the appeal inspection service, and the Board appeal inspection service shall show a statement, as specified in the instructions, indicating that the results are based on the official file sample.

[50 FR 49670, Dec. 4, 1985]

§800.83 Sampling provisions by kind of movement.

(a) *Export cargo movements.* (1) *Bulk grain.* Except as may be approved by the Administrator on a shipment-by-shipment basis in an emergency, each inspection for official grade, official factor, or official criteria on an export cargo shipment of bulk grain shall be performed on official samples obtained from the grain (i) as the grain is being loaded aboard the final carrier; (ii) after the final elevation of the grain prior to loading and as near to the final loading spout as is physically practicable (except as approved by the Administrator when representative samples can be obtained before the grain reaches the final loading spout); and (iii) by means of a diverter-type mechanical sampler approved by the Service and operated in accordance with instructions. If an approved diverter-type mechanical sampler is not properly installed at an elevator or facility as required, each certificate issued at that elevator or facility for an export cargo shipment of bulk grain shall show a statement indicating the type of approved sampling method used, as prescribed in the instructions.

(2) *Sacked grain.* Each inspection for official grade, official factor, or official criteria on an export cargo shipment of sacked grain shall be performed on official samples obtained from the grain by any sampling method approved by the Service and operated in accordance with instructions.

(b) *Other movements.* Each inspection for official grade, official factor, or official criteria on a domestic cargo movement ("In," "Out," or en route barge movement), a movement in a land carrier (any movement in a rail-car, truck trailer, truck/trailer combination, or container), or a "LOCAL" movement of bulk or sacked grain shall be performed on official samples obtained from the grain by any sampling method approved by the Service and operated in accordance with the instructions.

[50 FR 49670, Dec. 4, 1985]

§800.84 Inspection of grain in land carriers, containers, and barges in single lots.

(a) *General.* The reinspection of bulk or sacked grain loaded or unloaded from any carrier or container, except shiplot grain, shall be conducted in accordance with the provisions in this section and procedures prescribed in the instructions.

(b) *Single and multiple grade procedure.* (1) *Single grade.* When grain in a carrier or container is offered for inspection as one lot and the grain is found to be uniform in condition, the grain shall be sampled, inspected, graded, and certificated as one lot. For the purpose of this paragraph, condition only includes the factors heating, musty, or sour.

(2) *Multiple grade.* When grain in a carrier or container is offered for inspection as one lot and the grain is found to be not uniform in condition because portions of the grain are heating, musty, or sour, the grain in each portion will be sampled, inspected, and graded separately; but the results shall be shown on one certificate. The certificate shall show the approximate quantity or weight of each portion, the location of each portion in the carrier or container, and the grade of the grain in each portion.

(3) *Infested.* If any portion of grain in a lot is found to be infested, according

to applicable provisions of the Official U.S. Standards for Grain, the entire lot shall be considered infested. When grain in railcars or trucks with permanently enclosed tops is considered infested, the applicant for inspection shall be promptly notified and given the option of (i) receiving a grade certificate with a special grade designation indicating that the entire lot is infested or (ii) fumigating the grain in the lot in accordance with instructions and receiving a grade certificate without the special grade designation.

(c) *One certificate per carrier: exceptions.* Except as provided in this paragraph, one official certificate shall be issued for the inspection of the grain in each truck, trailer, truck/trailer(s) combination, railcar, barge, or similarly sized carrier. The requirements of this paragraph are not applicable:

- (1) When grain is inspected in a combined lot under §800.85;
- (2) When grain is inspected under paragraph (d) of this section; or
- (3) When certification is at the option of the applicant in accordance with instructions.

(d) *Bulkhead lots.* If grain in a carrier is offered for official inspection as two or more lots and the lots are separated by bulkheads or other partitions, the grain in each lot shall be sampled, inspected, and graded separately in accordance with paragraphs (a) and (b) of this section. An official certificate shall be issued for each lot inspected. Each certificate shall show the term "Bulkhead Lot," the approximate quantity or weight of the grain in the lot, the location of the lot in the carrier, and the grade of the grain in the lot.

(e) *Bottom not sampled.* If bulk grain offered for official inspection is at rest in a carrier or container and is fully accessible for sampling in an approved manner, except that the bottom of the carrier or container cannot be reached with each probe, the grain shall be sampled as thoroughly as possible with an approved probe. The grain in the resulting samples shall be inspected, graded, and certificated, except that each certificate shall show a statement, as specified in the instructions, indicating the depth probed. Any inspection which is based on a sample

that does not represent the entire carrier or container does not meet the mandatory inspection requirements of section 5(a)(1) of the Act.

(f) *Partial inspection—heavily loaded.* (1) *General.* When an "In" movement of bulk grain is offered for inspection at rest in a carrier or container and is loaded in such a manner that it is possible to secure only door-probe or shallow-probe samples, the container shall be considered to be "heavily loaded," and the request for inspection either shall be dismissed or a partial inspection shall be made. If the request is for the inspection of an "Out" movement of grain, the request shall be dismissed on the grounds that the grain is not accessible for a correct "Out" inspection.

(2) *Certification procedure.* If a partial inspection is made, the grain will be sampled as thoroughly as possible with an approved probe and inspected, graded, and a "partial inspection—heavily loaded" certificate issued. The certificate shall show the words "Partial inspection—heavily loaded" in the space provided for remarks. The type of samples that were obtained shall be described in terms of "door probe" or "shallow probe."

(3) *Reinspection and appeal inspection procedure.* A request for a reinspection or an appeal inspection service on grain in a carrier or container that is certificated as "partial inspection—heavily loaded" shall be dismissed in accordance with §800.48(a)(4).

(4) *Restriction.* No "partial inspection—heavily loaded" certificate shall be issued for sacked grain or any inspection other than the inspections described in paragraphs (f)(1) through (4) of this section and §800.85(h)(2).

(g) *Part lots.* (1) *General.* If a portion of the grain in a carrier or container is removed, the grain that is removed and the grain remaining shall be considered separate lots. When an official inspection service is requested on either portion, the grain shall be sampled, inspected, graded, and a "part-lot" inspection certificate issued.

(2) *Grain remaining in carrier or container.* The certificate for grain remaining in a carrier or container shall show (i) the following completed statement:

“Partly unloaded; results based on portion remaining in (show carrier or container identification),” (ii) the term “Part lot” following the quantity information, (iii) the identification of the carrier or container, and (iv) the estimated amount and location of the part lot.

(3) *Grain unloaded from carrier or container.* If grain is sampled by official personnel during unloading, the certificate for the grain that is unloaded shall show (i) the completed statement: “Part lot; results based on portion removed from (show carrier identification)” and (ii) the term “Part lot” following the quantity information. If the grain is not sampled by official personnel during unloading, the certificate may, upon request of the applicant, show a completed statement such as “Applicant states grain is ex-car _____” or “Applicant states grain is ex-barge _____,” but the certificate shall not otherwise show a carrier or container identification or the term “Part lot.”

(h) *Identification for compartmented cars.* The identification for compartments in a compartmented railcar shall, in the absence of readily visible markings, be stated in terms of the location of the grain in a compartment, with the first compartment at the brake end of the car being identified as B-1, and the remaining compartments being numbered consecutively towards the other end of the car.

[50 FR 49671, Dec. 4, 1985, as amended at 57 FR 11428, Apr. 3, 1992]

§800.85 Inspection of grain in combined lots.

(a) *General.* The official inspection for grade of bulk or sacked grain loaded aboard, or being loaded aboard, or discharged from two or more carriers or containers (including barges designed for loading aboard a ship) as a combined lot shall be performed according to the provisions of this section and procedures prescribed in the instructions.

(b) *Application procedure.* (1) *For inspection during loading, unloading, or at rest.* Applications for official inspection of grain as a combined lot shall (i) be filed in accordance with §800.116; (ii) show the estimated quantity of grain that is to be certificated as one lot;

(iii) show the contract grade if applicable; and (iv) identify each carrier into which grain is being loaded or from which grain is being unloaded.

(2) *Recertification.* An application for recertification as a combined lot of grain that has been officially inspected and certificated as two or more single lots shall (i) be filed not later than 2 business days after the latest inspection date of the single lots and (ii) show information specified in paragraph (b)(1) of this section.

(c) *Inspection procedure; general—land carriers and barges.* (1) *Inspection during loading, or unloading, or at rest.* Grain in two or more land carriers and barges that are to be officially inspected as a combined lot shall be sampled in a reasonably continuous operation. Representative samples shall be obtained from the grain in each individual carrier and inspected in accordance with procedures as prescribed in the instructions.

(2) *Recertification.* Grain that has been officially inspected and certificated as two or more single lots may be recertificated as a combined lot if (i) the grain in each lot was sampled in a reasonably continuous operation; (ii) the original inspection certificates issued for the single lots have been surrendered to official personnel; (iii) representative file samples of the single lots are available; (iv) the grain in the single lots is of one grade and quality; (v) official personnel who performed the inspection service for the single lots and those who are to recertificate the grain as a combined lot determine that the samples used as a basis for the inspection of the grain in the single lots were representative at the time of sampling and have not changed in quality or condition; and (vi) the quality or condition of the grain meets uniformity requirements established by the Service for official inspection of grain in combined lots.

(d) *Weighted or mathematical average.* Official factor and official criteria information shown on a certificate for grain in a combined lot shall, subject to the provisions of paragraphs (e) through (g) of this section, be based on the weighted or mathematical averages of the analysis of the sublots in the lot

and shall be determined in accordance with the instructions.

(e) *Infested grain.* If the grain in a combined lot is offered for official inspection as it is being loaded aboard a carrier and the grain, or a portion of the grain, in a lot is found to be infested, according to applicable provisions of the Official U.S. Standards for Grain, the applicant shall be notified and may exercise options specified in the instructions. When grain in railcars or trucks with permanently enclosed tops is considered infested, the applicant shall be given the option of (1) receiving a grade certificate with a special grade designation indicating that the entire lot is infested or (2) fumigating the grain in the lot in accordance with instructions and receiving a grade certificate without the special grade designation.

(f) *Grain uniform in quality.* Samples obtained from grain officially inspected as a combined lot shall be examined for uniformity of quality. If the grain in the samples is found to be uniform in quality and the grain is loaded aboard or is unloaded from the carriers in a reasonably continuous operation, the grain in the combined lot shall be officially inspected and certificated as one lot. The requirements of this paragraph (f) and paragraph (c) of this section with respect to reasonably continuous loading or unloading do not apply to grain which is at rest in carriers when the grain is offered for inspection.

(g) *Grain not uniform in quality.* When grain officially inspected as a combined lot is found to be not uniform in quality or if the grain is not loaded or unloaded in a reasonably continuous operation, the grain in each portion, and any grain which is loaded or unloaded at different times, shall be officially sampled, inspected, graded, and certificated as single lots.

(h) *Special certification procedures.* (1) *Grain not uniform in quality.* When grain in a combined lot is found to be not uniform in quality under paragraph (g) of this section, the official inspection certificate for each portion of different quality shall show (i) the grade, identification, and approximate quantity of the grain and (ii) other information required by the instructions.

(2) *Partial inspection.* When an inbound movement of bulk grain is offered for official inspection at rest as a combined lot and all carriers are not fully accessible for sampling, the request for official inspection either shall be dismissed or a combined lot inspection shall be made on those carriers that are accessible. Those lots that are not accessible shall be handled in accordance with §800.84. If the request is for an official inspection service on an outbound movement of grain at rest in a combined lot, the request shall be dismissed on the ground that the grain is not accessible for a correct "Out" inspection.

(3) *Official mark.* If grain in a combined lot is inspected for grade as it is being loaded aboard two or more carriers, upon request of the applicant, the following mark shall be shown on the inspection certificate: "Loaded under continuous official inspection" or "Loaded under continuous official inspection and weighing."

(4) *Combined-lot certification; general.* Each official certificate for a combined-lot inspection service shall show the identification for the "combined lot" or, at the request of the applicant, the identification of each carrier in the combined lot. If the identification of each carrier is not shown, the statement "Carrier identification available on official inspection log" shall be shown on the inspection certificate in the space provided for remarks. The identification and any seal information for the carriers may be shown on the reverse side of the inspection certificate, provided the statement "See reverse side" is shown on the face of the certificate in the space provided for remarks.

(5) *Recertification.* If a request for a combined-lot inspection service is filed after the grain has been officially inspected and certificated as single lots, the combined-lot inspection certificate shall show (i) the date of inspection of the grain in the combined lot (if the single lots were inspected on different dates, the latest of the dates shall be shown); (ii) a serial number other than the serial numbers of the official inspection certificates that are to be superseded; (iii) the location of the grain, if at rest, or the name of the elevator

from which or into which the grain in the combined lot was loaded or unloaded; (iv) a statement showing the approximate quantity of grain in the combined lot; (v) a completed statement showing the identification of any superseded certificates; and (vi) if at the time of issuing the combined-lot inspection certificate the superseded certificates are not in the custody of the official personnel, a statement indicating that the superseded certificates have not been surrendered shall be clearly shown in the space provided for remarks. If the superseded certificates are in the custody of official personnel, the superseded certificates shall be clearly marked "Void."

(i) *Further combining.* After a combined-lot inspection certificate has been issued, there shall be no further combining and no dividing of the certificate.

(j) *Limitation.* No combined-lot inspection certificate shall be issued (1) for any official inspection service other than as described in this section or (2) which shows a quantity of grain in excess of the quantity in the single lots.

[50 FR 49672, Dec. 4, 1985]

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

(a) *General.* Official inspection for grade of bulk or sacked grain aboard, or being loaded aboard, or being unloaded from a ship, unit train, or lash barges as a single lot shall be performed according to the provisions of

this section and procedures prescribed in the instructions.

(b) *Application procedure.* Applications for the official inspection of shiplot, unit train, and lash barges as a single lot shall:

(1) Be filed in advance of loading or unloading;

(2) Show the estimated quantity of grain to be certificated;

(3) Show the contract grade and official criteria if applicable; and

(4) Identify the carrier and stowage area into which the grain is being loaded, or from which the grain is being unloaded, or in which the grain is at rest.

(c) *Inspection procedures.* (1) *General information.* Shiplot, unit train, and lash barge grain officially inspected as a single lot shall be sampled in a reasonably continuous operation. Representative samples shall be obtained from the grain offered for inspection and inspected and graded in accordance with a statistical acceptance sampling and inspection plan according to the provisions of this section and procedures prescribed in the instructions.

(2) *Tolerances.* The probability of accepting or rejecting portions of the lot during loading or unloading is dependent on inspection results obtained from preceding portions and the applied breakpoints and procedures. Breakpoints shall be periodically reviewed and revised based on new estimates of inspection variability. Tables 1 through 24 list the breakpoints for all grains.

TABLE 1—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SIX-ROWED MALTING BARLEY AND SIX-ROWED BLUE MALTING BARLEY

Grade	Minimum limits of—						Maximum limits of—									
	Test weight per bushel (pounds)		Suitable malting types (percent)		Sound barley (percent) ¹		Damaged kernels (percent)		Foreign material (percent)		Other grains (percent)		Skinned and broken kernels (percent)		Thin barley (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	47.0	-0.5	95.0	-1.3	97.0	-1.0	2.0	0.8	0.5	0.1	2.0	0.8	4.0	1.1	7.0	0.6
U.S. No. 2	45.0	-0.5	95.0	-1.3	94.0	-1.4	3.0	0.9	1.0	0.4	3.0	0.9	6.0	1.4	10.0	0.9
U.S. No. 3	43.0	-0.5	95.0	-1.3	90.0	-1.6	4.0	1.1	2.0	0.5	5.0	1.3	8.0	1.5	15.0	0.9
U.S. No. 4	43.0	-0.5	95.0	-1.3	87.0	-1.9	5.0	1.3	3.0	0.6	5.0	1.3	10.0	1.6	15.0	0.9

¹ Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

TABLE 2—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR TWO-ROWED MALTING BARLEY

Grade	Minimum limits of—						Maximum limits of—							
	Test weight per bushel (pounds)		Suitable malting types (percent)		Sound barley ¹ (percent)		Wild oats (percent)		Foreign material (percent)		Skinned and broken kernels (percent)		Thin barley (percent)	
U.S. No. 1	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 2	50.0	-0.5	97.0	-1.0	98.0	-0.8	1.0	0.6	0.5	0.1	5.0	1.3	5.0	0.4
U.S. No. 3	48.0	-0.5	97.0	-1.0	98.0	-0.8	1.0	0.6	1.0	0.4	7.0	1.3	7.0	0.5
U.S. No. 4	48.0	-0.5	95.0	-1.3	96.0	-1.1	2.0	0.8	2.0	0.5	10.0	1.8	10.0	0.9
U.S. No. 5	48.0	-0.5	95.0	-1.3	93.0	-1.1	3.0	0.9	3.0	0.6	10.0	1.8	10.0	0.9

¹ Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley. NOTE: Malting barley shall not be infested in accordance with § 810.107(b) and shall not contain any special grades as defined in § 810.206. Six- and two-rowed barley varieties not meeting the above requirements shall be graded in accordance with standards established for the class Barley.

TABLE 3—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR BARLEY

Grade	Minimum limits of—				Maximum limits of—									
	Test weight per bushel (pounds)		Sound barley (percent)		Damaged kernels ¹ (percent)		Heat damaged kernels (percent)		Foreign material (percent)		Broken kernels (percent)		Thin barley (percent)	
U.S. No. 1	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 2	47.0	-0.5	97.0	-1.1	2.0	0.8	0.2	0.1	1.0	0.4	4.0	1.0	10.0	0.9
U.S. No. 3	45.0	-0.5	94.0	-1.4	4.0	1.0	0.3	0.1	2.0	0.4	8.0	1.5	15.0	0.9
U.S. No. 4	43.0	-0.5	90.0	-1.6	6.0	1.4	0.5	0.2	3.0	0.5	12.0	1.8	25.0	1.3
U.S. No. 5	40.0	-0.5	85.0	-2.2	8.0	1.5	1.0	0.5	4.0	0.5	18.0	1.8	35.0	1.9
U.S. No. 6	36.0	-0.5	75.0	-2.2	10.0	1.8	3.0	0.6	5.0	0.6	28.0	2.4	75.0	2.3

¹ Includes heat-damaged kernels. Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels.

TABLE 4—BREAKPOINTS FOR BARLEY SPECIAL GRADES AND FACTORS

Special grade or factor	Grade or range limit	Breakpoint
Dockage	As specified by contract or load order	0.23

TABLE 5—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR CORN

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—					
			Damaged kernels					
			Heat-damaged kernels (percent)		Total (percent)		Broken corn and foreign material (percent)	
U.S. No. 1	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 2	56.0	-0.4	0.1	0.1	3.0	1.0	2.0	0.2
U.S. No. 3	54.0	-0.4	0.2	0.2	5.0	1.3	3.0	0.3
U.S. No. 4	52.0	-0.4	0.5	0.3	7.0	1.5	4.0	0.3
U.S. No. 5	49.0	-0.4	1.0	0.5	10.0	1.8	5.0	0.4
U.S. No. 6	46.0	-0.4	3.0	0.9	15.0	2.1	7.0	0.4

TABLE 6—BREAKPOINTS FOR CORN SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Flint	95 percent or more of flint corn	-1.0
Flint and Dent	More than 5 percent, but less than 95 percent of flint corn	1.0 or -1.0
Infested	Same as in § 810.107	0
Corn of other colors:		
White	Not more than 2.0 percent	0.8
Yellow	Not more than 5.0 percent	1.0
Waxy	95 percent or more	-3.0

TABLE 6—BREAKPOINTS FOR CORN SPECIAL GRADES AND FACTORS—Continued

Special grade or factor	Grade limit	Breakpoint
High BCFM	As specified by contract or load order grade	10 percent of the load order grade
Moisture	As specified by contract or load order grade	0.4

TABLE 7—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR FLAXSEED

Grade	Minimum test weight per bushel (pounds)		Maximum limits of-damaged kernels			
			Heat-damaged kernels (percent)		Total (percent)	
	GL	BP	GL	BP	GL	BP
U.S. No. 1	49.0	-0.1	0.2	0.1	10.0	0.9
U.S. No. 2	47.0	-0.1	0.5	0.1	15.0	1.1

TABLE 8—BREAKPOINTS FOR FLAXSEED SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Moisture	As specified by load order or contract grade	0.4
Dockage	0.99 percent or above	0.32

TABLE 9—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR MIXED GRAIN

Grade	Moisture (percent)	Maximum Limits of—			
		Damaged kernels		Heat-damaged kernels (percent)	
		Total (percent)		GL	BP
U.S. Mixed Grain	16.0	15.0	0.6	3.0	0.4

Note: There is no tolerance for U.S. Sample grade Mixed Grain.

TABLE 10—BREAKPOINTS FOR MIXED GRAIN SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Smutty	15 or more in 250 grams (wheat, rye, or triticale predominates)	6
	More than 0.2% (all other mixtures)	0.05
Ergoty	More than 0.30% (rye wheat predominates)	0.13
	More than 0.10% (all other mixtures)	0
Garlicky	2 or more per 1,000 grams (wheat, rye, or triticale predominates)	1
	4 or more per 500 grams (all other mixtures)	2
Infested	Same as in § 810.107	0
Blighted	More than 4.0% (barley predominates)	1.1
Treated	Same as in § 810.805	0
Moisture	As specified by contract or load order grade	0.5

TABLE 11—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR OATS

Grade	Minimum limits of—				Maximum limits of—					
	Test weight per bushel (pounds)		Sound Oats (percent)		Heat-damaged kernels (percent)		Foreign material (percent)		Wild Oats (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	36.0	-0.5	97.0	-0.8	0.1	0.1	2.0	0.4	2.0	0.6
U.S. No. 2	33.0	-0.5	94.0	-1.2	0.3	0.4	3.0	0.4	3.0	0.8
U.S. No. 3 ¹	30.0	-0.5	90.0	-1.4	1.0	0.5	4.0	0.5	5.0	1.1
U.S. No. 4 ²	27.0	-0.5	80.0	-1.9	3.0	0.8	5.0	0.5	10.0	1.4

¹ Oats that are Slightly Weathered shall be graded not higher than U.S. No. 3.

² Oats that are Badly Stained or Materially Weathered shall be graded not higher than U.S. No. 4.

TABLE 12—BREAKPOINTS FOR OATS SPECIAL GRADES AND FACTORS

Special grade or factors	Grade limit	Breakpoint
Heavy	38 pounds or more	-0.5
Extra Heavy	40 pounds or more	-0.5
Moisture	As specified by contract or load order grade	0.5
Thin	More than 20.0%	0.5
Smutty	More than 0.2%	0.05
Ergoty	More than 0.10%	0.10
Garlicky	4 or more in 500 grams	2½
Infested	Same as in § 810.107	0
Bleached	Same as in § 810.1005	0

TABLE 13—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR RYE

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—								Thin rye (percent)	
			Foreign Material				Damaged kernels(percent)					
			Foreign matter other than wheat (percent)		Total (percent)		Heat-damaged (percent)		Total (percent)			
GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	
U.S. No. 1	56.0	-0.5	1.0	0.4	3.0	0.8	0.2	0.1	2.0	0.8	10.0	0.6
U.S. No. 2	54.0	-0.5	2.0	0.5	6.0	1.1	0.2	0.1	4.0	1.1	15.0	0.8
U.S. No. 3	52.0	-0.5	4.0	0.8	10.0	1.4	0.5	0.4	7.0	1.4	25.0	0.9
U.S. No. 4	49.0	-0.5	6.0	0.8	10.0	1.4	3.0	0.8	15.0	2.0		

TABLE 14—BREAKPOINTS FOR RYE SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Moisture	As specified by contract or load order grade	0.3
Light Garlicky	2 or more per 1,000 grams	1½
Garlicky	More than 6 per 1,000 grams	7½
Ergoty	More than 0.30%	0.10
Plump	Not more than 5.0% through 0.064×3/8 sieve	0.5
Light Smutty	More than 14 per 250 grams	6
Smutty	More than 30 per 250 grams	10
Infested	Same as in § 810.107	0
Dockage	As specified by contract or load order grade	0.2

TABLE 15—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SORGHUM

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—							
			Damaged kernels				Broken kernels and foreign material			
			Heat-damaged (percent)		Total (percent)		Total (percent)		Foreign material (percent)	
GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	
U.S. No. 1	57.0	-0.4	0.2	0.1	2.0	1.1	4.0	0.3	1.5	0.3
U.S. No. 2	55.0	-0.4	0.5	0.4	5.0	1.8	7.0	0.4	2.5	0.4
U.S. No. 3 ¹	53.0	-0.4	1.0	0.5	10.0	2.3	10.0	0.5	3.5	0.5
U.S. No. 4	51.0	-0.4	3.0	0.8	15.0	2.8	13.0	0.6	4.5	0.6

¹ Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

TABLE 16—BREAKPOINTS FOR SORGHUM SPECIAL GRADES AND FACTORS

Special grade or factors	Grade limit	Breakpoint
Class Tannin	Not less than 90.0%	-1.9
Sorghum	Not less than 97.0%	-1.0
White	Not less than 98.0%	-0.9
Smutty	20 or more in 100 grams	8
Infested	Same as in § 810.107	0
Dockage	0.99% and above	0.32
Moisture	As specified by contract or load order grade	0.5

TABLE 17—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SOYBEANS

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—									
			Damaged kernels				Foreign material (percent)		Splits (percent)		Soybeans of other colors (percent)	
			Heat-damaged (percent)		Total (percent)							
U.S. No. 1	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	56.0	-0.4	0.2	0.2	2.0	0.8	1.0	0.2	10.0	1.6	1.0	0.7
U.S. No. 2	54.0	-0.4	0.5	0.3	3.0	0.9	2.0	0.3	20.0	2.2	2.0	1.0
U.S. No. 3 ¹	52.0	-0.4	1.0	0.5	5.0	1.2	3.0	0.4	30.0	2.5	5.0	1.6
U.S. No. 4 ²	49.0	-0.4	3.0	0.9	8.0	1.5	5.0	0.5	40.0	2.7	10.0	2.3

¹ Soybeans which are purple mottled or stained shall be graded not higher than U.S. No. 3.
² Soybeans which are materially weathered shall be graded not higher than U.S. 4.

TABLE 18—BREAKPOINTS FOR SOYBEAN SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Garlicky	5 or more per 1,000 grams	2
Infested	Same as in §810.107	0
Soybeans of other colors	Not more than 10.0%	2.3
Moisture	As specified by contract or load order grade	0.3

TABLE 19—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SUNFLOWER SEED

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—					
			Damaged sunflower seed				Dehulled seed (percent)	
			Heat-damaged (percent)		Total (percent)			
U.S. No. 1	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	25.0	-0.5	0.5	0.4	5.0	1.3	5.0	1.3
U.S. No. 2	25.0	-0.5	1.0	0.6	10.0	1.8	5.0	1.3

TABLE 20—BREAKPOINTS FOR SUNFLOWER SEED SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Moisture	As specified by contract or load order grade	0.5
Foreign Material	1.25% and less	0.27
	1.26% and above	0.39
Admixture	As specified by contract or load order grade	0.6

TABLE 21—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR TRITICALE

Grade	Minimum test weight per bushel (percent)		Maximum limits of—											
			Damaged kernels				Foreign material				Shrunken and broken kernels (percent)		Defects ³ (percent)	
			Heat-damaged (percent)		Total ¹ (percent)		Material other than wheat or rye (percent)		Total ² (percent)					
U.S. No. 1	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	48.0	-0.5	0.2	0.1	2.0	0.8	1.0	0.4	2.0	0.6	5.0	0.8	5.0	1.3
U.S. No. 2	45.0	-0.5	0.2	0.1	4.0	1.1	2.0	0.5	4.0	0.9	8.0	0.8	8.0	1.3
U.S. No. 3	43.0	-0.5	0.5	0.4	8.0	1.5	3.0	0.6	7.0	1.2	12.0	1.6	12.0	2.3
U.S. No. 4	41.0	-0.5	3.0	0.8	15.0	2.0	4.0	0.8	10.0	1.4	20.0	2.3	20.0	2.3

¹ Includes heat-damaged kernels.
² Includes material other than wheat or rye.
³ Defects includes damaged kernels (total), foreign material (total), and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects for each numerical grade.

TABLE 22—BREAKPOINTS FOR TRITICALE SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Garlicky	2 or more per 1,000 grams	1½
Ergoty	More than 0.10%	0.1
Smutty	More than 14 per 250 grams	6
Infested	Same as in § 810.107	0
Dockage	0.99% or above	0.32
Moisture	As specified by contract or load order grade	0.5

TABLE 23—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR WHEAT

Grade	Minimum limits of—		Maximum limits of—						
	Test weight per bushel		Damaged kernels		Foreign material (percent)	Shrunken and broken kernels (percent)	Defects ³ (percent)	Wheat of other classes ⁴	
	Hard red spring wheat or white club wheat ¹ (pounds)	All other classes and subclasses (pounds)	Heat-damaged kernels (percent)	Total ² (percent)				Contrasting classes (percent)	Total ⁵ (percent)
	GL BP	GL BP	GL BP	GL BP	GL BP	GL BP	GL BP	GL BP	GL BP
U.S. No. 1	58.0 – 0.3	60.0 – 0.3	0.2 0.2	2.0 1.0	0.4 0.2	3.0 0.3	3.0 0.7	1.0 0.7	3.0 1.6
U.S. No. 2	57.0 – 0.3	58.0 – 0.3	0.2 0.2	4.0 1.5	0.7 0.3	5.0 0.4	5.0 0.9	2.0 1.0	5.0 2.1
U.S. No. 3	55.0 – 0.3	56.0 – 0.3	0.5 0.3	7.0 1.9	1.3 0.4	8.0 0.5	8.0 1.2	3.0 1.3	10.0 2.9
U.S. No. 4	53.0 – 0.3	54.0 – 0.3	1.0 0.4	10.0 2.3	3.0 0.6	12.0 0.6	12.0 1.4	10.0 2.3	10.0 2.9
U.S. No. 5	50.0 – 0.3	51.0 – 0.3	3.0 0.7	15.0 2.7	5.0 0.7	20.0 0.7	20.0 1.5	10.0 2.3	10.0 2.9

¹ These requirements also apply when Hard Red Spring or White Club wheat predominate in a sample of Mixed wheat.
² Includes heat-damaged kernels.
³ Defects include damaged kernels (total), foreign material, and shrunken and broken kernels. The sum of these factors may not exceed the limit for defects for each numerical grade.
⁴ Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
⁵ Includes contrasting classes.

TABLE 24—BREAKPOINTS FOR WHEAT SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Moisture	As specified by contract or load order grade	0.3
Garlicky	More than 2 bulblets per 1,000 grams	1½
Light smutty	More than 5 smut balls per 250 grams	3
Smutty	More than 30 smut balls per 250 grams	10
Infested	Same as in § 810.107	0
Ergoty	More than 0.05%	0
Treated	Same as in § 810.2204	0
Dockage	As specified by contract or load order grade	0.2
Protein	As specified by contract or load order grade	0.5
Class and Subclass		
Hard red spring:		
DNS	75% or more DHV	– 5.0
NS	25% or more DHV but less than 75% DHV	– 5.0
Durum:		
HADU	75% or more HVAC	– 5.0
ADU	60% or more HVAC but less than 75% of HVAC	– 5.0
Soft white:		
SWH	Not more than 10% white club wheat	2.0
WHCB	Not more than 10% of other soft white wheat	2.0
WWH	More than 10% WHCB and more than 10% of other soft white wheat	– 3.0

(3) Grain accepted by the inspection plan. Grain which is offered for inspection as part of a single lot and accepted by a statistical acceptance sampling and inspection plan according to the provisions of this section and procedures prescribed in the instructions

shall be certificated as a single lot provided it was sampled in a reasonably continuous operation. Official factor and official criteria information shown on the certificate shall be based on the weighted or mathematical averages of the analysis of sublots.

(4) *Grain rejected by the inspection plan.* When grain which is offered for inspection as part of a single lot is rejected by the plan or is not sampled in a reasonably continuous operation, the grain in each portion shall be certificated separately. If any portion of grain is not accepted by the plan and designated a material portion, the applicant shall be promptly notified and have the option of:

- (i) Removing the material portion from the carrier; or
- (ii) Requesting the material portion be separately certificated; or
- (iii) Requesting either a reinspection or an appeal inspection of the material portion; or
- (iv) Requesting a reinspection service and/or an appeal inspection service on the entire lot.

(5) *Reinspection service and appeal inspection service.* A reinspection or an appeal inspection may be requested on a material portion. A Board appeal inspection may also be requested on a material portion after the reinspection or appeal inspection. A reinspection, an appeal inspection, and a Board appeal inspection may be requested on the total sublots in the lot.

(i) *Material portions.* A material portion designated by the plan may be reinspected or appeal inspected once in the field, but not both, and once at the Board of Appeals and Review. The reinspection or appeal inspection result shall, unless a material error is found, be averaged with the original inspection determination. The Board appeal inspection result shall, unless a material error is found, be averaged with the previous inspection result. The inspection plan tolerances shall be re-applied to the material portion grain to determine acceptance or rejection. If a material error is found, the reinspection or appeal inspection result shall replace the original inspection result or the Board appeal result shall replace the previous inspection result. For purposes of this section, a material error is defined as results differing by more than two standard deviations. Acceptance or rejection of that portion of grain shall be based on the reinspection or appeal inspection and on the Board appeal inspection result alone when a material error is found.

(ii) *Entire lot.* The applicant may request a reinspection service, an appeal inspection service, and a Board appeal inspection service on the entire lot. Inspection results for these services shall replace the previous inspection results. The tolerances shall be reappplied to all portions of the entire lot to determine acceptance or rejection.

(d) *Infested grain.* (1) *Available options.* If gain or any portion of grain in a single shiplot, unit train, or lash barge lot is found to be infested, according to the provisions of the Official U.S. Standards for Grain, the applicant shall be promptly notified and have the option of:

- (i) Unloading the portion of infested grain from the lot and an additional amount of other grain in common stowage with the infested grain; or
- (ii) When applicable, completing the loading and treating all infested grain in the lot; or

(iii) When applicable, treating the infested grain for the purpose of destroying the insects, subject to subsequent examination by official personnel; or

(iv) Continue loading without treating the infested grain, in which case all of the infested grain in the lot and all grain in common stowage areas with the infested grain will be officially certificated as infested according to the provisions of the Official U.S. Standards for Grain.

(2) *Exception.* If infested grain in loaded into common stowage with a lot, or a portion of a lot, which has not been officially certificated as being infested, the applicant loading the infested grain may not use the option in paragraph (d)(1)(i) of this section.

(3) *With treatment.* If infested grain is treated with a fumigant in accordance with the instructions and the treatment is witnessed by official personnel, the official sampling, inspection, grading, and certification of the lot shall continue as though the infested condition did not exist.

(e) *Special certification procedures.* (1) *Rejected grain.* When grain is rejected by the inspection plan under paragraph (c)(4) of this section, the official inspection certificate for each different portion of different quality shall show:

§ 800.87

7 CFR Ch. VIII (1–1–99 Edition)

- (i) A statement that the grain has been loaded aboard with grain of other quality;
- (ii) The grade, location, or other identification and approximate quantity of grain in the portions; and
- (iii) Other information required by the regulations and the instructions.

The requirement of paragraph (e)(1)(i) of this section does not apply to grain that is inspected as it is unloaded from the carrier or to portions loaded in separate carriers or stowage space.

(2) *Common stowage.* (i) *Without separation.* When bulk grain is offered for official inspection as it is loaded aboard a ship and is loaded without separation in a stowage area with other grain or another commodity, the official inspection certificate for the grain in each lot shall show the kind, the grade, if known, and the location of the other grain, or the kind and location of the other commodity in the adjacent lots.

(ii) *With separation.* When separations are laid between lots, the official inspection certificates shall show the kind of material used in the separations and the locations of the separations in relation to each lot.

(iii) *Exception.* The common stowage requirements of this paragraph are not applicable to the first lot in a stowage area unless a second lot is loaded, in whole or in part, in the stowage area prior to issuing the official inspection certificate for the first lot.

(3) *Protein.* A special statement indicating the actual protein range of a lot shall be shown on the official inspection certificate if the difference between the lowest and highest protein determinations for the lot exceeds 1.0 percent when protein is officially determined and a specific range limit is not established by the contract grade.

(4) *Part lot.* If part of a lot of grain in an inbound carrier is unloaded and part is left in the carrier, the unloaded grain shall be officially inspected and certificated in accordance with the provisions of § 800.84(g).

(5) *Official mark.* If the grain in a single lot is officially inspected for grade as it is being loaded, upon request, the following official mark shall be shown on the inspection certificate: "Loaded under continuous official inspection."

[55 FR 24042, June 13, 1990; 55 FR 46131, Nov. 1, 1990; 56 FR 4675, Feb. 5, 1991; 57 FR 58965, 58970, Dec. 14, 1992; 61 FR 18490, Apr. 26, 1996; 63 FR 20056, Apr. 23, 1998]

EFFECTIVE DATE NOTE: At 63 FR 20056, Apr. 23, 1998, § 800.86(c)(2) was amended by revising the entry for "Dockage" in table 14, effective June 1, 1999. For the convenience of the user, the superseded text is set forth as follows:

§ 800.86 Inspection of shiplot, unit trains, and lash barge grain in single lots.

- * * * * *
- (c) * * *
- (2) * * *

TABLE 14—BREAKPOINTS (BP) FOR RYE SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
* * * * *		
Dockage	0.99% or above	0.32

§ 800.87 New inspections.

(a) *Identity lost.* An applicant may request official personnel to perform a new original inspection service on an identified lot of grain, or on an identified carrier or container, if the identity of the lot or the carrier or container has been lost.

(b) *Identity not lost.* If the identity of the grain or the carrier or container is not lost, a new original inspection shall not be performed on the same identified lot of grain or carrier or container in the same assigned area of responsibility within 5 business days after the last official inspection.

[50 FR 49674, Dec. 4, 1985]

§ 800.88 Loss of identity.

(a) *Lots.* Except as noted in paragraph (d) of this section, the identity of a lot of grain shall be considered lost if (1) a portion of the grain is unloaded, transferred, or otherwise removed from the carrier or container in which the grain was located at the time of the original inspection; or (2) a portion of grain or other material, including additives, is added to the lot after the original inspection was performed, unless the addition of the additive was performed in accordance with the regulations and the instructions. At the option of official personnel performing a reinspection, appeal inspection, or Board appeal inspection service, the identity of grain in a closed carrier or container shall be considered lost if the carrier or container is not sealed or if the seal record is incomplete.

(b) *Carriers and containers.* The identity of a carrier or container shall be considered lost when (1) the stowage area is cleaned, painted, treated, fumigated, or fitted after the original inspection was performed; or (2) the identification of the carrier or container has been changed since the original inspection was performed.

(c) *Submitted samples.* The identity of a submitted sample of grain shall be considered lost when (1) the identifying number, mark, or symbol for the sample is lost or destroyed or (2) the samples have not been retained and protected by official personnel as prescribed in the instructions.

(d) *Additives.*¹ If additives are applied during loading to outbound, including export, grain after sampling or during unloading to inbound grain before sampling for the purpose of insect or fungi control, dust suppression, or identification, the inspection certificate shall show a statement showing the type and purpose of the additive application, except that no statement is required to be shown when the additive is a fumi-

¹Elevators, other handlers of grain, and their agents are responsible for the additive's proper usage and application. Compliance with this section does not excuse compliance with applicable Federal, State, and local laws.

gant applied for the purpose of insect control.

[52 FR 6495, Mar. 4, 1987, as amended at 58 FR 3212, Jan. 8, 1993; 59 FR 52077, Oct. 14, 1994]

WEIGHING PROVISIONS AND PROCEDURES

§ 800.95 Methods and order of performing weighing services.

(a) *Methods.* All Class X or Class Y weighing, checkweighing, checkloading, stowage examination, and other weighing services shall be performed by official personnel or approved weighers using approved weighing equipment and according to procedures prescribed in the regulations and the instructions.

(b) *Order of service.* Weighing services shall be performed, to the extent practicable, in the order in which requests are received. Official personnel must mark or stamp the date received on each written request for service. Precedence will be given to requests for weighing required by sections 5(a)(1) or 5(a)(2) of the Act.

[52 FR 6495, Mar. 4, 1987]

§ 800.96 Weighing procedures.

(a) *Inbound.* Inbound grain that is to be weighed must be routed directly from the carrier and cannot be cleaned, dried, or otherwise processed to remove or add other grain or material en route. Except as noted in paragraph (c) of this section, the identity of an inbound lot shall be considered lost when a portion of the lot is transferred or otherwise removed prior to weighing or a portion of grain or other material is added to the lot prior to weighing. When loss of identity occurs, no amount shall be shown in the "Net Weight" portion of the weight certificate for the lot.

(b) *Outbound.* Outbound grain that has been weighed must be routed directly from the scale to the carrier and cannot be cleaned, dried, or otherwise processed to remove or add other grain or material en route. Except as noted in paragraph (c) of this section, the identity of an outbound lot will be considered lost if a portion of the lot is transferred or otherwise removed from the lot after weighing or a portion of grain or other material is added to the

lot after weighing. When loss of identity occurs, no amount shall be shown in the "Net Weight" portion of the weight certificate for the lot.

(c) *Exceptions.* (1) *Spills.* (i) *Outbound.*

(A) *Replaced.* If a spill occurs in handling and loading of outbound grain and the spilled grain is retrieved, or is replaced in kind, and is loaded on board during the loading operations, the weight certificate shall show the weight of the grain that was physically loaded on board. Upon request of the applicant, an additional certificate may be issued by the agency or the field office to show the weight of the additional grain that was used to replace a spill.

(B) *Not replaced.* If a spill occurs in the handling and loading of outbound grain and the spilled grain is not retrieved or is not replaced during the loading operation, the weight certificate shall show the weight of the grain that was actually weighed, minus the estimated amount of the grain that was spilled. Upon request of the applicant, an additional certificate may be issued showing the estimated amount of grain that was spilled. The applicant may, upon request, have the total amount that was weighed shown on the weight certificate with the estimated amount of the spilled grain noted.

(ii) *Inbound.* If a spill occurs in the handling of inbound grain and the grain is not retrieved and weighed, the weight certificate shall show the weight of the grain that was actually unloaded from the carrier and a statement regarding the spill as prescribed in the instructions.

(2) *Additives.*¹ If additives are applied during loading to outbound, including export, grain after weighing or during unloading to inbound grain before weighing for the purpose of insect or fungi control, dust suppression, or identification, the weight certificate shall show the actual weight of the grain after the application of the additive for inbound grain or the actual weight of the grain prior to the appli-

¹Elevators, other handlers of grain, and their agents are responsible for the additive's proper usage and application. Compliance with this section does not excuse compliance with applicable Federal, State, and local laws.

cation of the additive for outbound or export grain and a statement showing the type and purpose of the additive application, except that no statement is required to be shown when the additive is a fumigant applied for the purpose of insect control.

(3) *Dust.* If dust is removed during the handling of grain, the weight certificate shall not be adjusted to reflect the weight of the removed dust.

(4) *Commingled carriers.* If grain from two or more identified carriers becomes mixed, (i) the combined weight of the grain shall be shown in the "Net Weight" block of one certificate with all carrier identification shown in the identification of carrier section of the certificate, or (ii) upon request of the applicant, a certificate shall be issued for each carrier with the "Net Weight" block crossed out, and with the total combined weight unloaded and the identification of the other carrier(s) shown in the "Remarks" section.

(5) *Unremoved grain.* If, after unloading an inbound carrier, there is sound grain remaining in the carrier that could have been removed with reasonable effort, the weight certificate shall show the weight of the grain that was actually unloaded from the carrier and a statement regarding the grain remaining in the carrier.

[52 FR 6495, Mar. 4, 1987, as amended at 58 FR 3212, Jan. 8, 1993; 59 FR 52077, Oct. 14, 1994]

§ 800.97 Weighing grain in containers, land carriers, barges, and shiplots.

(a) *General.* The weighing of grain loaded or unloaded from any carrier shall be conducted according to this section and the instructions.

(b) *Procedure.* (1) *General.* If grain in a carrier is offered for inspection or weighing service as one lot, the grain shall be weighed and certificated as one lot. The identification of the carrier shall be recorded on the scale tape or ticket and the weight certificate.

(2) *Sacked grain.* If sacked grain is offered for weighing and the grain is not fully accessible, the request for weighing service shall be dismissed.

(3) *Part lots.* If a portion of an inbound lot of grain is unloaded and a portion is left in the carrier because it is not uniform in quality or condition, or the lot is unloaded in other than a

reasonably continuous operation, the portion that is removed and the portion remaining in the carrier shall be considered as part lots and shall be weighed and certificated as part lots.

(c) *Certification of trucklots, carlots, and bargelots.* (1) *Basic requirement.* One official certificate shall be issued for the weighing of the grain in each truck, trailer, truck/trailer(s) combination, railroad car, barge, or similarly sized carrier. This requirement shall not be applicable to grain weighed as a combined lot under § 800.98.

(2) *Part-lot weight certificates.* A part-lot weight certificate shall show (i) the weight of the portion that is unloaded and (ii) the following statement: "Part-lot: The net weight stated herein reflects a partial unload."

(d) *Certification of shiplot grain.* (1) *Basic requirement.* The certificate shall show (i) if applicable, a statement that the grain has been loaded aboard with other grain, (ii) the official weight, (iii) the stowage or other identification of the grain, and (iv) other information required by the regulations and the instructions.

(2) *Common stowage.* (i) *Without separation.* If bulk grain is offered for weighing as it is being loaded aboard a ship and is loaded without separation in a stowage area with other grain or another commodity, the weight certificate for the grain in each lot shall show that the lot was loaded aboard with other grain or another commodity without separation and the relative location of the grain.

(ii) *With separation.* If separations are laid between adjacent lots, the weight certificates shall show the kind of material used in the separations and the location of the separations in relation to each lot.

(iii) *Exception.* The common stowage requirements of this paragraph shall not be applicable to the first lot in a stowage area unless a second lot has been loaded, in whole or in part, in the stowage area before issuing the official weight certificate for the first lot.

(3) *Official mark.* If the grain is officially weighed in a reasonably continuous operation, upon request by the applicant, the following statement may be shown on the weight certificate:

"Loaded under continuous official weighing."

[52 FR 6496, Mar. 4, 1987]

§ 800.98 Weighing grain in combined lots.

(a) *General.* The weighing of bulk or sacked grain loaded aboard, or being loaded aboard, or unloaded from two or more carriers as a combined lot shall be conducted according to this section and the instructions.

(b) *Weighing procedure.* (1) Single lot weighing. Single lots of grain that are to be weighed as a combined lot shall be weighed in one location. The grain loaded into or unloaded from each carrier must be weighed in accordance with procedures prescribed in the instructions. In the case of sacked grain, a representative weight sample shall be obtained from the grain in each carrier unless otherwise specified in the instructions.

(2) *Recertification.* Grain that has been weighed and certificated as two or more single lots may be recertificated as a combined lot provided that (i) the grain in each single lot has been weighed in one location, (ii) the original weight certificates issued for the single lots have been or will be surrendered to the appropriate agency or field office, (iii) the official personnel who performed the weighing service for the single lots and the official personnel who are to recertificate the grain as a combined lot determine that the weight of the grain in the lots has not since changed and, in the case of sacked grain, that the weight samples used as a basis for weighing the single lots were representative at the time of the weighing.

(3) *Grain uniform in quality.* An applicant may request that grain be weighed and certificated as a combined lot whether or not the grain is uniform in quality for the purpose of inspection under the Act.

(c) *Certification procedures.* (1) *General.* Each certificate for a combined-lot Class X or Class Y weighing service shall show the identification for the "Combined lot" or, at the request of the applicant, the identification of each carrier in the combined lot. The identification and any seal information for the carriers may be shown on the

reverse side of the weight certificate, provided the statement "See reverse side" is shown on the face of the certificate in the space provided for remarks.

(2) *Recertification.* If a request for a combined-lot Class X or Class Y weighing service is filed after the grain in the single lots has been weighed and certificated, the combined-lot weighing certificate shall show (i) the date of weighing the grain in the combined lot (if the single lots were weighed on different dates, the latest of the dates shall be shown); (ii) a serial number, other than the serial numbers of the weight certificates that are to be superseded; (iii) the name of the elevator from which or into which the grain in the combined lot was loaded or unloaded; (iv) a statement showing the weight of the grain in the combined lot; (v) a completed statement showing the identification of any superseded certificate as follows: "This combined-lot certificate supersedes certificate Nos. _____, dated _____; and (vi) if at the time of issuing the combined-lot weight certificate the superseded certificates are not in the custody of the agency or field office, the statement "The superseded certificates identified herein have not been surrendered" shall be clearly shown, in the space provided for remarks, beneath the statement identifying the superseded certificates. If the superseded certificates are in the custody of the agency or field office, the superseded certificates shall be clearly marked "Void."

(3) *Part lot.* If a part of a combined lot of grain in inbound carriers is unloaded and a part is left in the carriers, the grain that is unloaded shall be certificated in accordance with the provisions in § 800.97(c)(2).

(4) *Official mark.* When grain is weighed as a combined lot in one continuous operation, upon request by the applicant, the following statement shall be shown on the weight certificate: "Loaded under continuous official weighing," or "Loaded under continuous official inspection and weighing."

(5) *Further combining.* After a combined-lot weight certificate has been issued, there shall be no further combining and no dividing of the certificate.

(6) *Limitations.* No combined-lot weight certificate shall be issued (i) for any weighing service other than as described in this section or (ii) which shows a weight of grain different from the total of the combined single lot.

[52 FR 6496, Mar. 4, 1987]

§ 800.99 Checkweighing sacked grain.

(a) *General.* Each checkweighing service performed on a lot of sacked grain to determine the weight of the grain shall be made on the basis of one or more official weight samples obtained from the grain by official personnel according to this section and procedures prescribed in the instructions.

(b) *Representative sample.* No official weight sample shall be considered to be representative of a lot of sacked grain unless the sample is of the size prescribed in the instructions and has been obtained and weighed according to the procedures prescribed in the instructions.

(c) *Protecting samples and data.* Official personnel and other employees of an agency or the Service shall protect official weight samples and data from manipulation, substitution, and improper and careless handling which might deprive the samples and sample data of their representativeness.

(d) *Restriction on weighing.* No agency shall weigh any lot of sacked grain unless at the time of obtaining the official weight sample the grain from which the sample was obtained was located within the area of responsibility assigned to the agency. Upon good cause shown by the agency, the Administrator may grant an exception to this rule on a case-by-case basis.

(e) *Equipment and labor.* Each applicant for weighing services shall provide necessary labor for obtaining official weight samples and place the samples in a position for weighing and shall supply suitable weighing equipment approved by the Service, pursuant to the regulations and the instructions.

(f) *Disposition of official weight samples.* In weighing sacked grain in lots, the grain in the official weight samples shall be returned to the lots from which the samples were obtained.

(g) *Provisions by kinds of service.* (1) "IN" movements. Each checkweighing on an "IN" movement of sacked grain

shall be based on an official weight sample obtained while the grain is at rest in the carrier or during unloading, in accordance with procedures prescribed in the instructions.

(2) *“OUT” movements (export)*. Each checkweighing of sacked export grain shall be based on an official weight sample obtained as the grain is being loaded aboard the final carrier, as the grain is being sacked, or while the grain is at rest in a warehouse or holding facility, in accordance with procedures prescribed in the instructions.

(3) *“OUT” movements (other than export)*. Each checkweighing of an “OUT” movement of nonexport sacked grain shall be based on an official weight sample obtained from the grain as the grain is being loaded in the carrier, or while the grain is at rest in the carrier, or while the grain is at rest in a warehouse or holding facility, or while the grain is being sacked, in accordance with procedures prescribed in the instructions.

(4) *“LOCAL” weighing*. Each checkweighing of a “LOCAL” movement of sacked grain shall be based on an official weight sample obtained while the grain is at rest or while the grain is being transferred, in accordance with procedures prescribed in the instructions.

[52 FR 6497, Mar. 4, 1987]

ORIGINAL SERVICES

§ 800.115 Who may request original services.

(a) *General*. Any interested person may request original inspection and weighing services. The kinds of inspection and weighing services are described in § 800.75.

(b) *Class Y weighing services*. A request for Class Y weighing services at an export elevator at an export port location shall cover all lots shipped or received in a specific type of carrier. At all other elevators, the request shall cover all lots shipped from or to a specific location in a specific type of carrier. Each request shall be for a contract period of at least 3 months, but a facility may, upon satisfactory notification, exempt specific unit trains from the request.

(c) *Contract services*. Any interested person may enter into a contract with an agency or the Service whereby the agency or Service will provide original services for a specified period and the applicant will pay a specified fee.

(Approved by the Office of Management and Budget under control number 0580-0012)

[50 FR 45393, Oct. 31, 1985]

§ 800.116 How to request original services.

(a) *General*. Requests shall be filed with the agency or field office responsible for the areas in which the original service is to be performed. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel, as specified in § 800.46. Copies of request forms may be obtained from the agency or field office upon request. If at the time the request is filed, the information specified by § 800.46 is not available official personnel may at their discretion, withhold service pending receipt of the required information. An official certificate shall not be issued unless (1) the information as required by § 800.46 has been submitted or (2) official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(b) *Request requirements*. Requests for original services, other than submitted sample inspections, must be made with the agency or field office responsible for the area in which the service will be provided. Requests for submitted sample inspections may be made with any agency, or any field office that provides original inspection service. Requests for inspection or Class X weighing of grain during loading, unloading, or handling must be received in advance of loading so official personnel can be present. All requests will be considered filed when the request is received by official personnel. A record shall be maintained for all requests. All requests for service that is to be performed outside normal business

§ 800.117

hours must be received by 2 p.m. the preceding day.

(Approved by the Office of Management and Budget under control number 0580-0012)

[50 FR 45393, Oct. 31, 1985]

§ 800.117 Who shall perform.

Original services shall be performed by the agency or field office assigned the area in which the service will be provided.

[50 FR 45393, Oct. 31, 1985]

§ 800.118 Certification.

Official certificates shall be issued according to § 800.160. Upon request, a combination inspection and Class X weighing certificate may be issued when both services are performed in a reasonably continuous operation at the same location by the same agency or field office.

[50 FR 45393, Oct. 31, 1985]

OFFICIAL REINSPECTION SERVICES AND REVIEW OF WEIGHING SERVICES

§ 800.125 Who may request reinspection services or review of weighing services.

(a) *General.* Any interested person may request a reinspection or review of weighing service, except as provided for in § 800.86(c)(5). Only one reinspection service or review of weighing service may be performed on any original service. When more than one interested person requests a reinspection or review of weighing service, the first person to file is the applicant of record.

(b) *Kind and scope of request.* The kind and scope of a reinspection or review of weighing service will be limited to the kind and scope of the original service. If the request specifies a different kind or scope, the request will be dismissed. The request may be resubmitted as a request for original services. Official criteria are considered separately from official grade or official factors when determining the kind and scope. When requested, a reinspection for official grade or official factors and official criteria may be handled separately even though both sets of results are reported on the same certificate. Moreover, a reinspection or review of weighing may be requested on either the inspection

7 CFR Ch. VIII (1-1-99 Edition)

or Class X weighing results when both results are reported on a combination inspection and Class X weight certificate. Reinspections for grade shall include a review of all official factors that (1) may determine the grade; or (2) are reported on the original certificate; and (3) are required to be shown.

(Approved by the Office of Management and Budget under control number 0580-0012)

[50 FR 45393, Oct. 31, 1985, as amended at 54 FR 5924, Feb. 7, 1989; 55 FR 24048, June 13, 1990]

§ 800.126 How to request reinspection or review of weighing services.

(a) *General.* Requests shall be made with the agency or field office that performed the original service. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel. Copies of request forms may be obtained from the agency or field office. If at the time the request is filed the documentation required by § 800.46 is not available, official personnel may, at their discretion, withhold services pending the receipt of the required documentation. A reinspection certificate or the results of a review of weighing service shall not be issued unless (1) the documentation requested under § 800.46 has been submitted or (2) official personnel determine sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available shall be included in the record of the official service.

(b) *Request requirements.* Requests will be considered filed on the date they are received by official personnel. A record shall be maintained for all requests.

(1) *Reinspection services.* Requests shall be received (i) before the grain has left the specified service point where the grain was located when the original inspection was performed; (ii) no later than the close of business on the second business day following the date of the original inspection; and (iii) before the identity of the grain has been lost. If a representative file sample, as prescribed in § 800.82, is available, official personnel may waive the requirements pursuant to this subparagraph. The requirements of paragraph

(b)(1)(i) of this section may be waived only upon written consent of the applicant and all interested persons. The requirements of paragraph (b)(1)(ii) and (iii) of this section may be waived at the request of the applicant or other interested persons. The requirement of paragraph (b)(1)(ii) of this section may also be waived upon satisfactory showing by an interested person of evidence of fraud or that because of distance or other good cause, the time allowed for filing was not sufficient. A record of each waiver shall be included in the record of the reinspection service.

(2) *Review of weighing services.* Requests shall be received no later than 90 calendar days after the date of the original Class X or Class Y weighing service.

(Approved by the Office of Management and Budget under control number 0580-0012)

[50 FR 45394, Oct. 31, 1985]

§ 800.127 Who shall perform reinspection or review of weighing services.

Reinspection or review of weighing services shall be performed by the agency or field office that performed the original service.

[50 FR 45394, Oct. 31, 1985]

§ 800.128 Conflicts of interest.

Official personnel cannot perform or participate in performing or issue an official certificate for a reinspection or a review of weighing service if they participated in the original service unless there is only one qualified person available at the time and place of the reinspection or review of weighing.

[50 FR 45394, Oct. 31, 1985]

§ 800.129 Certifying reinspection and review of weighing results.

(a) *General.* Except as provided in paragraph (a)(1) of this paragraph, official certificates shall be issued according to § 800.160 and the instructions. Except as provided in paragraph (b)(2) of this section, only the result of the reinspection service shall be reported.

(1) *Results of material portion sublots.* When results of a reinspection on a material portion do not detect a material error, they shall be averaged with the original inspection results. For purposes of this section, a material error

is defined as results differing by more than two standard deviations. The averaged inspection results shall replace the original inspection results recorded on the official inspection log. Reinspection results shall replace the original inspection results recorded on the official inspection log if a material error is detected. No certificates will be issued unless requested by the applicant or deemed necessary by official personnel.

(2) *Reporting review of weighing results.* When the review of weighing service results indicate that the original weighing results were correct, the applicant will be notified in writing. When the original weighing service results are incorrect, a corrected weight certificate or, if applicable, a corrected combination inspection and Class X weight certificate will be issued according to the provisions of § 800.165.

(b) *Required statements on reinspection certificates.* Each reinspection certificate shall show the statements required by this section, § 800.161, and applicable instructions.

(1) Each reinspection certificate must clearly show (i) the term "Reinspection" and (ii) a statement identifying the superseded certificate. The superseded certificate will be considered null and void as of the date of the reinspection certificate.

(2) When official grade or official factors, Class X weighing results, and official criteria are reported on the same certificate, the reinspection certificate shall show a statement indicating that the reinspection results are based on official grade, or official factors, or official criteria and that all other results are those of the original service.

(3) If the superseded certificate is in the custody of the agency or field office, the superseded certificate shall be marked "Void." If the superseded certificate is not in the custody of the agency or field office at the time the reinspection certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the reinspection certificate.

(4) As of the date of issuance of the official certificate, the superseded certificate for the original service will be

§ 800.135

7 CFR Ch. VIII (1–1–99 Edition)

void and shall not be used to represent the grain.

(5) When certificates are issued under paragraph (a)(1) of this section, the reinspection certificate shall show a statement indicating that the results replaced the original results and that the reinspection certificate is not valid for trading purposes.

[50 FR 45394, Oct. 31, 1985, as amended at 55 FR 24048, June 13, 1990]

APPEAL INSPECTION SERVICES

§ 800.135 Who may request appeal inspection services.

(a) *General.* Any interested person may request appeal inspection or Board appeal inspection services, except as provided for in § 800.86(c)(5). When more than one interested person requests an appeal inspection or Board appeal inspection service, the first person to file is the applicant of record. Only one appeal inspection may be obtained from any original inspection or reinspection service. Only one Board appeal inspection may be obtained from an appeal inspection. Board appeal inspections will be performed on the basis of the official file sample. Board appeal inspections are not available on stowage examination services.

(b) *Kind and scope of request.* The kind and scope of an appeal inspection service will be limited to the kind and scope of the original inspection, or reinspection, or, in the case of a Board appeal inspection service, the appeal inspection service. If the request specifies a different kind or scope, the request shall be dismissed. It may, however, be resubmitted as a request for original services. Official criteria is considered separately from official grade or official factors when determining kind and scope. When requested, an appeal inspection for grade, or official factors, and official criteria may be handled separately even though both results are reported on the same certificate. Moreover, an appeal inspection may be requested on the inspection results when both inspection and Class X weighing results are reported on a combination inspection and Class X weight certificate. An appeal inspection for grade shall include a review of all official factors that (1) may deter-

mine the grade; or (2) are reported on the original, reinspection, or in the case of a Board appeal inspection, the appeal inspection certificate; and (3) are required to be shown on a certificate of grade.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0012)

[50 FR 45395, Oct. 31, 1985, as amended at 55 FR 24048, June 13, 1990]

§ 800.136 How to request appeal inspection services.

(a) *General.* Requests shall be filed with the field office responsible for the area in which the original service was performed. Requests for Board appeal inspections may be filed with the Board of Appeals and Review or the field office that performed the appeal inspection. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel as specified in § 800.46. Copies of request forms may be obtained from the field office upon request. If at the time the request is filed the documentation required by § 800.46 is not available, official personnel may, at their discretion, withhold service pending the receipt of the required documentation. An appeal inspection certificate will not be issued unless (1) documentation requested under § 800.46 has been submitted or (2) office personnel determine that sufficient information has been made available so as to perform the request. A record that sufficient information has been made available must be included in the record of the official service.

(b) *Filing requirements.* Requests will be considered filed on the date they are received by official personnel. A record shall be maintained for all requests. Requests must be filed (1) before the grain has left the specified service point where the grain was located when the original inspection was performed, (2) no later than the close of business on the second business day following the date of the last inspection, and (3) before the identity of the grain has been lost. If a representative file sample as prescribed in § 800.82 is available,

official personnel may waive the requirements pursuant to this paragraph. The requirements of paragraph (b)(1) of this section may be waived only upon written consent of the applicant and all interested persons. The requirements of paragraphs (b)(2) and (b)(3) of this section may be waived at the request of the applicant or other interested persons. The requirement of paragraph (b)(2) of this section may also be waived upon satisfactory showing by an interested person of evidence of fraud or that because of distance or other good cause, the time allowed for filing was not sufficient. A record of each waiver shall be included in the record of the appeal inspection service.

(Approved by the Office of Management and Budget under control number 0580-0012)

[50 FR 45395, Oct. 31, 1985, as amended at 54 FR 5924, Feb. 7, 1989]

§ 800.137 Who shall perform appeal inspection services.

(a) *Appeal.* Appeal inspection services shall be performed by the field office responsible for the area in which the original inspection was performed.

(b) *Board appeal.* Board appeal inspection services shall be performed only by the Board of Appeals and Review. The field office that performed the appeal inspection service will act as a liaison between the Board of Appeals and Review and the applicant.

[50 FR 45395, Oct. 31, 1985]

§ 800.138 Conflict of interest.

Official personnel cannot perform or participate in performing or issue an official certificate for an appeal inspection if they participated in the original inspection, reinspection, or, in the case of a Board appeal inspection, the appeal inspection service unless there is only one qualified person available at the time and place of the appeal inspection.

[50 FR 45395, Oct. 31, 1985]

§ 800.139 Certificating appeal inspections.

(a) *General.* Except as provided in paragraphs (b) of this section, official certificate shall be issued according to § 800.160 and the instructions. Except as provided in paragraph (c)(2) of this sec-

tion, only the results of the appeal inspection service shall be reported.

(b) *Results of material portion sublots.* When results of an appeal inspection performed by a field office or the Board of Appeals and Review on a material portion do not detect a material error, they shall be averaged with the previous inspection results recorded on the official inspection log for the identified sample. For purposes of this section, a material error is defined as results differing by more than two standard deviations. The appeal or Board appeal inspection result shall replace the previous inspection results recorded on the official inspection log for the identified sample if a material error is detected. No certificate will be issued unless requested by the applicant or deemed necessary by inspection personnel.

(c) *Required statements.* Each appeal certificate shall show the statements required by this section, § 800.161, and applicable instructions.

(1) Each appeal inspection certificate shall clearly show (i) the term "Appeal" or "Board appeal" and (ii) a statement identifying the superseded certificate. The superseded certificate will be considered null and void as of the date of the appeal inspection certificate.

(2) When official grade or official factors, Class X weighing results, and official criteria are reported on the same certificate, the appeal inspection certificate shall show a statement indicating that appeal or Board appeal inspection results are based on official grade, official factors, or official criteria and that all other results are those of the original, reinspection, or, in the case of a Board appeal, the appeal inspection results.

(3) Superseded certificates held by the Service shall be marked "Void." If the superseded certificate is not in the custody of the Service at the time the appeal certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the appeal certificate.

(4) As of the date of issuance of the appeal or Board appeal certificate, the superseded certificate for the original,

§ 800.145

7 CFR Ch. VIII (1–199 Edition)

reinspection, or appeal inspection service will be void and shall not be used to represent the grain.

(5) When certificates are issued under paragraph (b) of this section, the appeal inspection certificate shall show a statement indicating that the results replace the original inspection, reinspection, or, in the case of a Board appeal, the appeal inspection results and that the appeal inspection certificate is not valid for trading purposes.

(d) *Finality of Board appeal inspections.* A Board appeal inspection will be the final appeal inspection service.

[50 FR 45395, Oct. 31, 1985, as amended at 55 FR 24048, June 13, 1990]

OFFICIAL RECORDS AND FORMS
(GENERAL)

SOURCE: Sections 800.145 through 800.159 appear at 50 FR 18986, May 6, 1985, unless otherwise noted.

§ 800.145 Maintenance and retention of records—general requirements.

(a) *Preparing and maintaining records.* The records specified in §§ 800.146–800.159 shall be prepared and maintained in a manner that will facilitate (1) the daily use of records and (2) the review and audit of the records to determine compliance with the Act, the regulations, the standards, and the instructions.

(b) *Retaining records.* Records shall be retained for a period not less than that specified in §§ 800.146–800.159. In specific instances, the Administrator may require that records be retained for a period of not more than 3 years in addition to the specified retention period. In addition, records may be kept for a longer time than the specified retention period at the option of the agency, the contractor, the approved scale testing organization, or the individual maintaining the records.

(Approved by the Office of Management and Budget under control number 0580–0011)

§ 800.146 Maintenance and retention of records issued by the Service under the Act.

Agencies, contractors, and approved scale testing organizations shall maintain complete records of the Act, regulations, the standards, any instructions

issued by the Service, and all amendments and revisions thereto. These records shall be maintained until superseded or revoked.

(Approved by the Office of Management and Budget under control number 0580–0011)

§ 800.147 Maintenance and retention of records on delegations, designations, contracts, and approval of scale testing organizations.

Agencies, contractors, and approved scale testing organizations shall maintain complete records of their delegation, designation, contract, or approval. These records consist of a copy of the delegation or designation documents, a copy of the current contract, or a copy of the notice of approval, respectively, and all amendments and revisions thereto. These records shall be maintained until superseded, terminated, revoked, or cancelled.

(Approved by the Office of Management and Budget under control number 0580–0011)

§ 800.148 Maintenance and retention of records on organization, staffing, and budget.

(a) *Organization.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their organization. These records shall consist of the following documents: (1) If it is a business organization, the location of its principal office; (2) if it is a corporation, a copy of the articles of incorporation, the names and addresses of officers and directors, and the names and addresses of shareholders; (3) if it is a partnership or an unincorporated association, the names and addresses of officers and members, and a copy of the partnership agreement or charter; and (4) if it is an individual, the individual's place of residence. These records shall be maintained for 5 years.

(b) *Staffing.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their employees. These records consist of (1) the name of each current employee, (2) each employee's principal duty, (3) each employee's principal duty station, (4) information about the

training that each employee has received, and (5) related information required by the Service. These records shall be maintained for 5 years.

(c) *Budget.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their budget. These records consist of actual income generated and actual expenses incurred during the current year. Complete accounts for receipts from (1) official inspection, weighing, equipment testing, and related services; (2) the sale of grain samples; and (3) disbursements from receipts shall be available for use in establishing or revising fees for services under the Act. Budget records shall also include detailed information on the disposition of grain samples obtained under the Act. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.149 Maintenance and retention of records on licenses and approvals.

(a) *Licenses.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of licenses. These records consist of current information showing (1) the name of each licensee, (2) the scope of each license, (3) the termination date of each license, and (4) related information required by the Service. These records shall be maintained for the tenure of the licensee.

(b) *Approvals.* Agencies shall maintain complete records of approvals of weighers. These records consist of current information showing the name of each approved weigher employed by or at each approved weighing facility in the area of responsibility assigned to an agency or field office. These records shall be maintained for the tenure of the weigher's employment as an approved weigher.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.150 Maintenance and retention of records on fee schedules.

Agencies, contractors, and approved scale testing organizations shall maintain complete records on fee schedules. These records consist of (a) a copy of the current fee schedule; (b) in the case

of an agency, data showing how the fees in the schedule were developed; (c) superseded fee schedules; and (d) related information required by the Service. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.151 Maintenance and retention of records on space and equipment.

(a) *Space.* Agencies shall maintain complete records on space. These records consist of (1) a description of space that is occupied or used at each location, (2) the name and address of the owner of the space, (3) financial arrangements for the space, and (4) related information required by the Service. These records shall be maintained for 5 years.

(b) *Equipment.* Agencies shall maintain complete records on equipment. These records consist of (1) the description of each piece of equipment used in performing official inspection or Class X or Class Y weighing services under the Act, (2) the location of the equipment, (3) the name and address of the owner of the equipment, (4) the schedules for equipment testing and the results of the testing, and (5) related information required by the Service. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.152 Maintenance and retention of file samples.

(a) *General.* The Service and agencies shall maintain complete file samples for their minimum retention period (calendar days) after the official function was completed or the results otherwise reported.

(b) *Minimum retention period.*

(1) Trucks	
In	3
Out	5
(2) Railcars	
In	5
Out	10
(3) Barges (river)	
In	5
Out	25
(4) Ships and barges (lake or ocean)	
In	5
Out	25
Export (sublot samples)	60

(5) Bins and tanks 3
 (6) Submitted samples 3
 Upon request by an agency and with the approval of the Service, specified file samples or classes of file samples may be retained for shorter periods of time.

(c) *Special retention periods.* In specific instances, the Administrator may require that file samples be retained for a period of not more than 90 calendar days. File samples may be kept for a longer time than the regular retention period at the option of the Service, the agency, or the individual maintaining the records.

(Approved by the Office of Management and Budget under control number 0580–0011)

§ 800.153 Maintenance and retention of records on official inspection, Class X or Class Y weighing, and equipment testing service.

Agencies and approved scale testing organizations shall maintain complete detailed official inspection work records, copies of official certificates, and equipment testing work records for 5 years.

(Approved by the Office of Management and Budget under control number 0580–0011)

§ 800.154 Availability of official records.

(a) *Availability to officials.* Each agency, contractor, and approved scale testing organization shall permit authorized representatives of the Comptroller General, the Secretary, or the Administrator to have access to and to copy, without charge, during customary business hours any records maintained under §§ 800.146–800.159.

(b) *Availability to the public—*(1) *Agency, contractor, and approved scale testing organization records.* The following official records will be available, upon request by any person, for public inspection during customary business hours: (i) Copies of the Act, the regulations, the standards, and the instructions; (ii) the delegation, designation, contract, or approval issued by the Service; (iii) organization and staffing records; (iv) a list of licenses and approvals; and (v) the approved fee schedule of the agency, if applicable.

(2) *Service records—*Records of the Service are available in accordance

with the Freedom of Information Act (5 U.S.C. 552(a)(3)) and the regulations of the Secretary of Agriculture (7 CFR, part 1, subpart A).

(c) *Locations where records may be examined or copied—*(1) *Agency, contractor, and approved scale testing organization records.* Records of agencies, contractors, and approved scale testing organizations available for public inspection shall be retained at the principal place of business of the agency, contractor, or approved scale testing and certification organization.

(2) *Service records.* Records of the Service available for public inspection shall be retained at each field office and at the headquarters of the Service in Washington, D.C.

§ 800.155 Detailed work records—general requirements.

(a) *Preparation.* Detailed work records shall be prepared for each official inspection, Class X or Class Y weighing, and equipment testing service performed or provided under the Act. The records shall (1) be on standard forms prescribed in the instructions; (2) be typed or legibly written in English; (3) be concise, complete, and accurate; (4) show all information and data that are needed to prepare the corresponding official certificates or official report; (5) show the name or initials of the individual who made each determination; and (6) show other information required by the Service to monitor or supervise the service provided.

(b) *Use.* Detailed work records shall be used as a basis for (1) issuing official certificates or official forms, (2) approving inspection and weighing equipment for the performance of official inspection or Class X or Class Y weighing services, (3) monitoring and supervising activities under the Act, (4) answering inquiries from interested persons, (5) processing complaints, and (6) billing and accounting. These records may be used to report results of official inspection or Class X or Class Y weighing services in advance of issuing an official certificate.

(c) *Standard forms.* The following standard forms shall be furnished by the Service to an agency: Official Export Grain Inspection and Weight Certificates (singly or combined), official

inspection logs, official weight loading logs, official scale testing reports, and official volume of work reports. Other forms used by an agency in the performance of official services, including certificates, shall be furnished by the agency.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.156 Official inspection records.

(a) *Pan tickets.* The record for each kind of official inspection service identified in § 800.76 shall, in addition to the official certificate, consist of one or more pan tickets as prescribed in the instructions. Activities that are performed as a series during the course of an inspection service may be recorded on one pan ticket or on separate pan tickets. The original copy of each pan ticket shall be retained by the agency or field office that performed the inspection.

(b) *Inspection logs.* The record of an official inspection service for grain in a combined lot and shiplot shall include the official inspection log as prescribed in the instructions. The original copy of each inspection log shall be retained by the agency or field office that performed the inspection. If the inspection is performed by an agency, one copy of the inspection log shall be promptly sent to the appropriate field office.

(c) *Other forms.* Any detailed test that cannot be completely recorded on a pan ticket or an inspection log shall be recorded on other forms prescribed in the instructions. If the space on a pan ticket or an inspection log does not permit showing the full name for an official factor or an official criteria, an approved abbreviation may be used.

(d) *File samples*—(1) *General.* The record for an official inspection service based, in whole or in part, on an examination of a grain in a sample shall include one or more file samples as prescribed in the instructions.

(2) *Size.* Each file sample shall consist of an unworked portion of the official sample or warehouseman's sample obtained from the lot of grain and shall be large enough to permit a reinspection, appeal inspection, or Board appeal inspection for the kind and scope of inspection for which the sample was obtained. In the case of a submitted

sample inspection, if an undersized sample is received, the entire sample shall be retained.

(3) *Method.* Each file sample shall be retained in a manner that will preserve the representativeness of the sample from the time it is obtained or received by the agency or field office until it is discarded. High moisture samples, infested samples, and other problem samples shall be retained according to the instructions.

(4) *Uniform system.* To facilitate the use of file samples, agencies shall establish and maintain a uniform file sample system according to the instructions.

(5) *Forwarding samples.* Upon request by the supervising field office or the Board of Appeals and Review, each agency shall furnish file samples (i) for field appeal or Board appeal inspection service, or (ii) for monitoring or supervision. If, at the request of the Service, an agency locates and forwards a file sample for an appeal inspection, the agency may, upon request, be reimbursed at the rate prescribed in § 800.71 by the Service.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.157 Official weighing records.

(a) *Scale ticket, scale tape, or other weight records.* In addition to the official certificate, the record for each Class X or Class Y weighing service shall consist of a scale ticket, a scale tape, or any other weight record prescribed in the instructions.

(b) *Weighing logs.* The record of a Class X or Class Y weighing service performed on bulk grain in a combined lot or bulk shiplot grain shall include the official weighing log as prescribed in the instructions. The original copy of each weighing log shall be retained by the field office or agency that performed the weighing.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.158 Equipment testing work records.

The record for each official equipment testing service or activity consists of an official equipment testing

report as prescribed in the instructions. Upon completion of each official equipment test, one or more copies of the completed testing report may, upon request, be issued to the owner or operator of the equipment. The testing report shall show the (a) date the test was performed, (b) name of the organization and personnel that performed the test, (c) names of the Service employees who monitored the testing, (d) identification of equipment that was tested, (e) results of the test, (f) names of any interested persons who were informed of the test results, (g) number or other identification of the approval tag or label affixed to the equipment, and (h) other information required by the instructions.

(Approved by the Office of Management and Budget under control number 0580–0011)

§ 800.159 Related official records.

(a) *Volume of work report.* Field offices and agencies shall prepare periodic reports showing the kind and the volume of inspection and weighing services that they performed. The report shall be prepared and copies shall be submitted to the Service according to the instructions.

(b) *Record of withdrawals and dismissals.* Field offices and agencies shall maintain a complete record of requests for official inspection or weighing services that are withdrawn by the applicant or that are conditionally withheld or dismissed. The record shall be prepared and maintained according to the instructions.

(c) *Licensee record.* Licensees, including licensed warehouse samplers, shall (1) keep the license issued to them by the Service and (2) keep or have reasonable access to a complete record of the Act, the standards, the regulations, and the instructions.

(Approved by the Office of Management and Budget under control number 0580–0011)

OFFICIAL CERTIFICATES

SOURCE: Sections 800.160 through 800.166 appear at 50 FR 45396, Oct. 31, 1985, unless otherwise noted.

§ 800.160 Official certificates; issuance and distribution.

(a) *Required issuance.* An official certificate shall be issued for each inspection service and each weighing service except as provided §§ 800.84, 800.129, and 800.139 and paragraph (b) of this section.

(b) *Distribution—(1) General—(i) Export.* The original and at least three copies of each certificate will be distributed to the applicant or applicant's order. One copy of each certificate shall be retained by the agency, field office, or Board of Appeals and Review.

(ii) *Nonexport.* The original and at least one copy of each certificate will be distributed to the applicant or to the applicant's order. In the case of inbound trucklot grain, one copy shall be delivered by the applicant to the person who owned the grain at the time of delivery. One copy of each certificate shall be retained by the agency, field office, or Board of Appeals and Review.

(iii) *Local movements of shiplot grain.* When shiplot grain is offered for inspection as a single lot and a portion of the lot is returned to the elevator, certificates representing the inspection service shall not be issued unless (A) requested by the applicant or (B) deemed necessary by official personnel.

(2) *Reinspection and appeal inspection services.* In addition to the distribution requirements of paragraph (b) of this section, one copy of each reinspection or appeal inspection certificate shall be distributed to each interested person of record or the interested person's order and to the agency or field office that issued the superseded certificate.

(3) *Additional copies.* Additional copies of certificates will be furnished to the applicant or interested person upon request. Fees for extra copies may be assessed according to the fee schedules established by the agency or the Service.

(c) *Prompt issuance.* The results of the inspection or weighing service shall be reported to the applicant on the date the inspection or weighing service is completed. Certificates shall be issued as soon as possible, but no later than the close of business on the next business day. Upon request of an agency or a field office, the requirements of this

paragraph may be waived by the Service when results have been reported before issuing the certificate.

(d) *Who may issue certificates*—(1) *Authority*. Certificates for inspection or Class X weighing services may be issued only by official personnel who are specifically licensed or authorized to perform and certify the results reported on the certificate. Certificates for Class Y weighing services may be issued only by individuals who are licensed or authorized or are approved to perform and certify the results.

(2) *Exception*. The person in the best position to know whether the service was performed in an approved manner and that the determinations are accurate and true should issue the certificate. If the service is performed by one person, the certificate should be issued by that person. If the service is performed by two or more persons, the certificate should be issued by the person who made the majority of the determinations or the person who makes the final determination. Supervisory personnel may issue a certificate when the individual is licensed or authorized to perform the service being certified.

(e) *Name requirement*. On export certificates, the typewritten name and signature of the individual issuing the certificate shall appear on the original and all copies. On all other certificates, the name or signature of the individual issuing the certificate shall appear on the original and all copies. Upon request by the applicant, the name and signature may be shown on all other certificates.

(f) *Authorization to affix names*—(1) *Requirements*. The name or signature of official personnel may be affixed to official certificates which are prepared from work records signed or initialed by the person whose name will be shown. An agent affixing the name and signature shall (i) be employed by the agency or Service; (ii) have been designated to affix names and signatures; and (iii) hold a power of attorney from the person whose name and signature will be affixed. The power of attorney shall be on file with the agency or Service.

(2) *Initialing*. When a name or signature is affixed by an authorized agent,

the initials of the agent shall appear directly below or following the signature of the person.

(g) *Advance information*. Upon request, the contents of an official certificate may be furnished in advance to the applicant and any other interested party, or to their order, and any additional expense shall be borne by the requesting party.

(h) *Certification after dismissal*. An official certificate cannot be issued for a service after the request has been withdrawn or dismissed.

(Approved by the Office of Management and Budget under control number 0580-0011)

[50 FR 45396, Oct. 31, 1985, as amended at 57 FR 11428, Apr. 3, 1992]

§ 800.161 Official certificate requirements.

(a) *General*. Official certificates shall show the information and statements required by § 800.161 through § 800.165 and the instructions. The Administrator shall approve any other information and statements reported. Information shall be reported in a uniform, accurate, and concise manner, be in English, be typewritten or handwritten in ink, and be clearly legible.

(b) *Required format*. Official certificates shall be uniform in size, shape, color, and format and conform to requirements prescribed in the instructions. Upon request and for good cause, the Service may approve special design certificates. All information and statements shall be shown on the front of the certificate, except that on domestic grain certificates, (1) approved abbreviations for official factors and official criteria, with their meanings, may be shown on the back and (2) the identification of carriers or containers in a combined-lot inspection may be shown on the back if ample space is not available on the front. When information is recorded on the back of the certificate, the statement "See reverse side" must be shown on the front.

(c) *Required information*. Each official certificate shall show the following information in accordance with the instructions: (1) For an agency issuing export certificates or the Federal Grain Inspection Service, "United States Department of Agriculture—Federal

Grain Inspection Service;" (2) for a designated agency, the name of the agency, as applicable; (3) captions identifying the kind of service; (4) a preprinted serial number and lettered prefix; (5) "original" or "copy," as applicable; (6) "divided lot," "duplicate," or "corrected," as applicable; (7) the identification of the carrier or container; (8) the date the service was performed; (9) the date and method of sampling; (10) the kind of movement and the level of service performed; (11) the grade and kind or "Not Standardized Grain," as applicable; (12) the results of the service performed; (13) the location of the issuing office; (14) the location of the grain when the service was performed; (15) a space for remarks; (16) whether a reinspection or appeal inspection service was based in whole or in part on file samples when file samples are used; (17) a statement reflecting the results of a stowage examination, when applicable; (18) seal records, when applicable; and (19) the name of the person issuing the certificate.

(d) *Required statements.* Each official certificate shall include the following statements according to the instructions: (1) A statement that the certificate is issued under the authority of the United States Grain Standards Act; (2) a nonnegotiability statement; (3) a warning statement; and (4) a statement referencing the certificate number and date. Each official certificate for an official sample-lot inspection service shall include a caption "U.S. Grain Standards Act" and a USDA-FGIS shield ghosted across the front. Each official certificate for a warehouseman's sample-lot inspection, a submitted sample inspection, or Class Y weighing service shall include a statement that the certificate does not meet the requirements of section 5 of the Act of warehouseman's sample-lot inspection, the word "QUALIFIED;" for submitted sample inspections, the words "Not Officially Sampled;" for Class Y weighing, the words "Class Y Weighing" screened across the front.

(e) *Permissive information and statements—(1) Certificates.* Information and statements requested by the applicant but not required by the regulations or

instructions may be shown on the certificate if the information or statements have been approved in the instructions or on a case-by-case basis by the Administrator.

(2) *Letterhead.* Information and statements requested by the applicant but not required by the regulations or instructions may be shown on letterhead stationary of the Service or an agency when (i) ample space is not available for reporting the information or statements on the certificate, (ii) letterhead stationary is determined to be more suitable than the official certificate, and (iii) the certificate is referenced on the letterhead stationary and distributed according to § 800.160. Letterhead stationary of the Service shall be used for all export grain.

(Approved by the Office of Management and Budget under control number 0580–0011)

§ 800.162 Certification of grade; special requirements.

(a) *General.* Each official certificate for grade shall show (1) the grade and factor information required by the Official U.S. Standards for Grain; (2) the test weight of the grain, if applicable; (3) the moisture content of the grain; (4) the results for each official factor for which a determination was made; (5) the result for each official factor that determined the grade when the grain is graded other than U.S. No. 1; (6) any other factor information considered necessary to describe the grain; and (7) any additional factor results requested by the applicant for official factors defined in the Official U.S. Standards for Grain.

(b) *Cargo shipments.* Each official certificate for grade representing a cargo shipment shall show, in addition to the requirements of paragraph (a) of this section, the results of all official grade factors defined in the Official United States Standards for Grain for the type of grain being inspected.

(c) [Reserved]

(d) *Aflatoxin test for corn.* Official corn export certificates shall show, in addition to the requirements of paragraphs

(a), (b), and (c) of this section, the official aflatoxin test results if required under § 800.15(b).

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[50 FR 45396, Oct. 31, 1985, as amended at 52 FR 24437, June 30, 1987; 57 FR 2439, Jan. 22, 1992; 57 FR 3273, Jan. 29, 1992; 57 FR 56439, Nov. 30, 1992]

§ 800.163 Divided-lot certificates.

(a) *General.* When shiplot grain is offered for inspection or Class X weighing as a single lot and is certificated as a single lot, the applicant may exchange the official certificate for two or more divided-lot certificates. This applies to original inspection, reinspection, appeal inspection, Board appeal inspection, and Class X weighing services.

(b) *Application.* Requests for divided-lot certificates shall be made (1) in writing; (2) by the applicant who filed the initial request; (3) to the office that issued the outstanding certificate; (4) within 5 business days of the outstanding certificate date; and (5) before the identity of the grain has been lost.

(c) *Quantity restrictions.* Divided-lot certificates shall not show a aggregate quantity different than the total quantity shown on the superseded certificate.

(d) *Surrender of certificate.* The certificate that will be superseded shall (1) be in the custody of the agency or the Service; (2) be marked "Void;" and (3) show the identification of the divided-lot certificates.

(e) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the superseded certificate shall be shown on each divided-lot certificate. Divided-lot certificates shall show (1) a statement indicating the grain was inspected or weighed as an undivided lot; (2) the terms "Divided Lot-Original," and the copies shall show "Divided Lot-Copies;" (3) the same serial number with numbered suffix (for example, 1764-1, 1764-2, 1764-3, and the like); and (4) the quantity specified by the request.

(f) *Issuance and distribution.* Divided-lot certificates shall be issued no later than the close of business on the next

business day after the request and be distributed according to § 800.160.

(g) *Limitations.* No divided-lot certificate can be issued (1) for grain in any shipment other than shiplot grain inspected or weighed as a single lot or (2) for an export certificate which has been superseded by another export certificate. After divided-lot certificates have been issued, further dividing or combining is prohibited except with the approval of the Service.

(h) *Use of superseded certificate prohibited.* As of the date of the divided-lot certificate, the superseded certificate will be void and shall not be used or represent the grain.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.164 Duplicate certificates.

Upon request, a duplicate certificate may be issued for a lost or destroyed official certificate.

(a) *Application.* Requests for duplicate certificates shall be filed: (1) in writing; (2) by the applicant who requested the service covered by the lost or destroyed certificate; and (3) with the office that issued the initial certificate.

(b) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the lost or destroyed certificate shall be shown on the duplicate certificate. Duplicate certificates shall show (1) the terms "Duplicate-Original" and the copies shall show "Duplicate-Copies" and (2) a statement that the certificate was issued in lieu of a lost or destroyed certificate.

(c) *Issuance.* Duplicate certificates shall be issued as promptly as possible and distributed according to § 800.160.

(d) *Limitations.* Duplicate certificates will not be issued for certificates that have been superseded.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 800.165 Corrected certificates.

(a) *General.* The accuracy of the statements and information shown on official certificates shall be verified by the individual whose name or signature is shown on the certificate, or by the authorized agent who affixed the name or signature. Errors found during this

process shall be corrected according to this section.

(b) *Who may correct.* Only official personnel or their authorized agents may make corrections, erasures, additions, or other changes to official certificates.

(c) *Corrections prior to issuance—(1) Export certificates.* No corrections, erasures, additions, or other changes can be made to an export certificate. If any error is found prior to issuance, a new certificate shall be prepared and issued and the incorrect certificate marked “Void.”

(2) *Other than export certificates.* No corrections, erasures, additions, or other changes shall be made to other than export certificates which involve identification, grade, gross, tare, or net weight. If errors are found, a new certificate shall be prepared and issued and the incorrect certificate marked “Void.” Otherwise, errors may be corrected provided that (i) the corrections are neat and legible, (ii) each correction is initialed by the individual who corrects the certificate, and (iii) the corrections and initials are shown on the original and all copies.

(d) *Corrections after issuance—(1) General.* If errors are found on a certificate at any time up to a maximum of 1 year after issuance, the errors shall be corrected by obtaining the incorrect certificate and replacing it with a corrected certificate. When the incorrect certificate cannot be obtained, a corrected certificate can be issued superseding the incorrect one.

(2) *Certification requirements.* The same statements and information, including permissive statements, that were shown on the incorrect certificate, along with the correct statement or information, shall be shown on the corrected certificate. According to this section and the instructions, corrected certificates shall show (i) the terms “Corrected-Original” and “Corrected-Copy;” (ii) a statement identifying the superseded certificate and the corrections; (iii) a statement indicating the superseded certificate was not surrendered if the incorrect certificate was not surrendered; and (iv) a new serial number. In addition, the incorrect certificate shall be marked “Void” when submitted.

(e) *Limitations.* Corrected certificates cannot be issued for a certificate that has been superseded by another certificate or on the basis of a subsequent analysis for quality.

(f) *Use of superseded certificate prohibited.* As of the date of issuance of the corrected certificate, the superseded certificate will be void and shall not be used to represent the grain.

(Approved by the Office of Management and Budget under control number 0580–0011)

§ 800.166 Reproducing certificates.

Official certificates may be photo copied or similarly reproduced.

(Approved by the Office of Management and Budget under control number 0580–0011)

LICENSES AND AUTHORIZATIONS (FOR INDIVIDUALS ONLY)

§ 800.170 When a license or authorization or approval is required.

(a) *Requirement.* (1) Any individual who performs or represents that he or she is licensed or authorized to perform any or all inspection or Class X weighing services under the Act must be licensed or authorized by the Service to perform each service. (2) Any individual who performs or represents that he or she is licensed or authorized, or an approved weigher, to perform Class Y weighing services under the Act must be licensed or authorized, or approved, by the Service to perform this service.

(b) *Excepted activities.* A license or authorization, or approval for weighing, under the Act and regulations is not required for (1) opening or closing a carrier or container of grain, or transporting or filing official samples, or similar laboring functions; (2) typing or filing official inspection and weighing certificates or other official forms or performing similar clerical functions; (3) performing official equipment testing functions with respect to official inspection equipment; (4) performing inspection, weighing, or scale testing functions that are not conducted for the purposes of the Act; or (5) performing scale testing functions by a State or municipal agency or by the employees of such agencies.

(c) *30-day waiver.* A prospective applicant for a license as a sampler, inspection technician, or weighing technician

may, for a period of time not to exceed 30 calendar days, help perform those official sampling, inspection, or Class X or Class Y weighing services for which the applicant desires to be licensed, under the direct physical supervision of an individual who is licensed to perform the services. The supervising individual shall be fully responsible for each function performed by the prospective applicant and shall initial any work form prepared by the prospective applicant.

(d) *No fee by Service.* No fee will be assessed by the Service for licensing an individual employed by an agency or contractor.

(e) *Fee by agency.* At the request of the Service, an agency may help examine an applicant for a warehouse sampler's license for competency and may assess a fee in accordance with the provisions of §800.70. The fee shall be paid by the applicant or by the elevator that employs the applicant.

(Secs. 9, 18, Pub. L. 94-582, 90 Stat. 2875 and 2884 (7 U.S.C. 79a and 87e))

[45 FR 15810, Mar. 11, 1980, as amended at 46 FR 30325, June 5, 1981]

§800.171 Who may be licensed or authorized.

(a) *Prohibitions.* No person may be licensed or authorized who has a conflict of interest as defined in section 11 of the Act or specified in §800.187.

(b) *Exceptions to prohibitions—(1) Conflict by agency.* An employee of an agency that has a conflict of interest that is waived by the Administrator under section 11(b)(5) of the Act may be licensed: *Provided,* That the employee has no conflict of interest other than the agency conflict of interest.

(2) *Warehouse samplers.* A qualified employee of an elevator may be licensed to perform specified sampling services under the Act in accordance with the provisions of §800.174(a)(2).

(c) *General qualifications—(1) Inspection and weighing.* To obtain a license to perform inspection or weighing services under the Act, an individual must be employed by an agency to perform the services and must otherwise be found competent in accordance with this section and §800.173.

(2) *Specified technical services.* To obtain a license to perform specified sam-

pling, inspection testing, weighing, and similar services under the Act, an individual must (i) be employed by an agency to perform the services, or (ii) enter into or be employed under a contract with the Service to perform the services, and (iii) otherwise be found competent in accordance with this section and §800.173.

(3) *Warehouse sampler.* To obtain a warehouse sampler's license, an applicant must be employed by an elevator to perform sampling services and otherwise be found competent in accordance with this section and §800.173.

(4) *Requirements.* To be considered competent, an individual must (i) meet the qualifications specified in §800.173; and (ii) have available the equipment and facilities necessary to perform the services for which the individual is to be licensed.

(d) *Competency determinations—(1) Agency samplers and technicians.* The competency of an applicant for a license as a sampler, inspection technician, or weighing technician shall be determined by (i) the chief inspector or the chief weighmaster, as applicable, of the agency that employs the applicant or, in the case of a warehouse sampler, the agency that is assigned the area in which the elevator that employs the sampler is located, and (ii) the field office supervisor.

(2) *Inspectors, weighers, contract samplers, and technicians.* The competency of an applicant for a license as an inspector or weigher or any license issued under the terms of a contract with the Service shall be determined by the Service.

(3) *Examinations.* A determination of competency of an applicant for a license shall include an evaluation of the results of examinations or reexaminations under §800.173.

[45 FR 15810, Mar. 11, 1980, as amended at 49 FR 36072, Sept. 14, 1984]

§800.172 Applications for licenses.

(a) *General.* An application for a license, the renewal of a license, or the return of a suspended license shall be made to the Service on forms furnished by the Service. Each application shall (1) be in English, (2) be typewritten or

legibly written in ink, (3) show all information prescribed by the application form, and (4) be signed by the applicant.

(b) *Additional information.* An applicant shall furnish any additional information considered necessary by the Service for consideration of an application.

(c) *Withdrawal.* An application for a license may be withdrawn by an applicant at any time.

(d) *Review of applications—(1) General procedure.* Each application shall be reviewed to determine whether the applicant and the application comply with the Act and the regulations.

(2) *Application and applicant in compliance.* If it is determined that the applicant and the application comply with the Act and the regulations, the requested license shall be granted.

(3) *Application not in compliance.* If an application does not comply with this section and the noncompliance prevents a satisfactory review by the Service, the applicant shall be provided an opportunity to submit any needed information. If the needed information is not submitted by the applicant within a reasonable time, the application may be dismissed.

(4) *Applicant not in compliance.* If it is determined that an applicant does not comply with the provisions of the Act and §§ 800.171, 800.173, and 800.187 at the time the application is submitted, the applicant shall be provided an opportunity to comply. If the applicant cannot comply within a reasonable period of time, the application shall be dismissed.

(e) *Procedure for dismissal.* If a dismissal involves an application for a renewal of a license or for the return of a suspended license, the dismissal shall be performed in accordance with the provisions of § 800.179. All other dismissals shall be performed by promptly notifying the applicant and the employer of the applicant of the reasons for the dismissal.

(Approved by the Office of Management and Budget under control number 0580-0012)

[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44453, Sept. 29, 1983; 54 FR 5924, Feb. 7, 1989]

§ 800.173 Examinations and reexaminations.

(a) *General.* Applicants for a license and individuals who are licensed to perform any or all official inspection or Class X or Class Y weighing services shall, at the discretion of the Service, submit to examinations or reexaminations to determine their competency to perform the official inspection or weighing functions for which they desire to be, or are, licensed.

(b) *Time and place of examinations and reexaminations.* Examinations or reexaminations under this section shall be conducted by official personnel designated by the Service and shall be given at a reasonable time and place in accordance with the instructions.

(c) *Scope of examinations and reexaminations.* Examinations or reexaminations may include oral or written tests on the applicable provisions of the Act, the regulations, the Official U.S. Standards for Grain, the procedures for the inspection and weighing of grain under the Act, the instructions, on-site performance evaluations, and vision or olfactory examinations.

(d) *Competency standards—(1) Inspection.* An individual may be found to be incompetent to perform official inspection services if the individual (i) has a color-vision deficiency; (ii) cannot meet the physical requirements necessary to perform the functions; (iii) cannot readily distinguish between the different kinds and classes of grain, or the different conditions in grain, including heating, musty, sour, insect infestation, and smut; (iv) cannot demonstrate a technical ability to operate grain sampling, testing, and grading equipment; (v) does not have a working knowledge of applicable provisions of the Act, the regulations, the Official U.S. Standards for Grain, and the instructions; (vi) cannot determine work-related mathematical computations; or (vii) cannot prepare legible records in English.

(2) *Weighing.* An individual may be found to be incompetent to perform Class X or Class Y weighing services under the Act if the individual (i) does not meet the requirements of paragraphs (d)(1)(ii), (v), (vi), and (vii) of this section or (ii) cannot demonstrate

a technical ability to operate grain weighing equipment.

§ 800.174 Issuance and possession of licenses and authorizations.

(a) *Scope of licenses and authorizations.* Subject to the provisions of § 800.171, eligible individuals may be licensed or authorized by the Service to perform one or more services specified in this paragraph.

(1) *Official samplers.* Individuals employed by an agency or the Service or employed under the terms of a contract with the Service may be licensed or authorized, as applicable, to perform or supervise the performance of stowage examinations, grain sampling, and related technical services and to issue official certificates for the services performed by them.

(2) *Licensed warehouse samplers.* Elevator or warehouse employees may be licensed to sample grain and perform stowage examinations. No elevator employee shall be licensed to (i) sample export grain for inspection under the Act, (ii) test or grade grain, or (iii) certify the results of any inspection service under the Act.

(3) *Official inspection technicians.* Individuals employed by an agency or the Service or employed under the terms of a contract with the Service may be licensed or authorized to perform or supervise the performance of stowage examinations, grain sampling, or all or specified noninterpretive laboratory-testing services and to issue official certificates for the services performed by them.

(4) *Official inspectors.* Individuals employed by an agency or the Service may be licensed or authorized to perform and supervise the performance of stowage examinations, sampling, laboratory-testing, grading, and related services and to issue official certificates for the services performed by them.

(5) *Official weighing technicians.* Individuals who are employed by an agency or the Service to observe the loading, unloading, and handling of grain that has been or is to be weighed under the Act may be licensed or authorized to perform and supervise the performance of grain handling and stowage examination services and to issue official

certificates for the services performed by them.

(6) *Official weighers.* Individuals employed by an agency or the Service may be licensed or authorized to perform and supervise the performance of grain handling, stowage examination, official weighing (Class X), and supervision of weighing (Class Y), and related services and to issue official certificates for the services performed by them.

(7) *Authorized scale tester.* Individuals employed by the Service may be authorized to test and supervise the testing of scales used for Class X and Class Y weighing services and to approve and certify scales based on the results of these tests.

(b) *Condition for issuance—(1) Compliance with the Act.* Each license is issued on the condition that the licensee will, during the term of the license, comply with the Act, the regulations, and the instructions.

(2) *Possession of license.* Each license shall be the property of the Service, but each licensee shall have the right to possess the license subject to the provisions of §§ 800.173, 800.186, and 800.187.

(c) *Duplicate license.* Upon satisfactory proof of the loss or destruction of a license, a duplicate will be issued by the Service.

(d) *Retention of licenses.* Each license shall be retained by the holder of the license in a manner that the license can be examined upon request by service personnel.

§ 800.175 Termination of licenses.

(a) *Term of license.* Each license shall terminate in accordance with the termination date shown on the license and as specified in paragraph (b) of this section. The termination date for a license shall be no less than 3 years or more than 4 years after the issuance date for the initial license; thereafter, every 3 years. Upon request of a licensee and for good cause shown, the termination date may be advanced or delayed by the Administrator for a period not to exceed 60 days.

(b) *Termination schedule for licenses.* Subject to the provisions of paragraph

§ 800.176

(a) of this section, licenses shall terminate on the last day of the month shown in the following schedule:

Last names beginning with	Termination date
A	January.
B	February.
C, D	March.
E, F, G	April.
H, I, J	May.
K, L	June.
M	July.
N, O, P, Q	August.
S	September.
R, T, U, V	October.
W	November.
X, Y, Z	December.

(c) *Termination notices.* The Service shall issue notice of termination to licensees and to their employers at least 60 days before the termination date. The notice shall (1) provide detailed instructions for requesting renewal of licenses; (2) state whether a reexamination will be required; and (3) if a reexamination will be required, show the nature and scope of the reexamination. Failure to receive a notice from the Service shall not exempt a licensee from the responsibility of having the license renewed on or before the termination date.

(d) *Renewal of licenses.* Licenses that are renewed shall show the permanent license number, the date of renewal, and the word "Renewed."

(e) *Termination of suspended licenses.* Any suspension of a license, including voluntary suspension or suspension by change in employment, shall not affect the termination date of the license. If a licensee applies for renewal of the license prior to the termination date, the license will not terminate during the period of suspension.

(f) *Surrender of license.* Each license that is terminated, suspended, or canceled under the provisions of §§ 800.175 through 800.178 or is suspended, revoked, or not renewed for cause under the provisions of § 800.179 shall be promptly surrendered to the field office.

(g) *Marking terminated, canceled, or revoked licenses.* Each terminated, canceled, or revoked license surrendered to the Service shall be marked "Canceled."

§ 800.176 Voluntary cancellation or suspension of licenses.

Upon request by a licensee, the Service may cancel a license or suspend a license for a period of time not to exceed 1 year. A license that has been voluntarily suspended shall be returned by the Service upon request by the licensee within 1 year, subject to the provisions of § 800.172; a license that has been cancelled shall be considered void and shall not be subject to return or renewal.

§ 800.177 Automatic suspension of license by change in employment.

A license issued to an individual who is employed by an agency shall be automatically suspended when the individual ceases to be employed by the agency. If the individual is reemployed by the agency or employed by another agency within 1 year of the suspension date and the license has not terminated in the interim, upon request of the licensee, the license will be reinstated subject to the provisions of §§ 800.172 and 800.173.

§ 800.178 Summary revocation of licenses.

Licenses may be summarily revoked upon a finding that the licensee has been convicted of any offense either prohibited by section 13 of the Act or prohibited by Title 18 of the United States Code, with respect to the performance of services under the Act.

§ 800.179 Refusal of renewal, suspension, or revocation of licenses for cause.

(a) *General.* A license may be suspended or revoked or may be refused renewal or return (if suspended) for causes prescribed in section 9 of the Act.

(b) *Procedure for summary action.* Under section 9 of the Act, any license may, without first affording the licensee (hereafter in this section the "respondent") an opportunity for a hearing, be summarily suspended pending final determination, whenever the action is considered to be in the best interest of the official inspection system. Such action shall be effective upon receipt of notice from the Service by the respondent. Within 30 calendar

days after issuing a notice of summary action, the Service shall afford the respondent an opportunity for a hearing as provided under paragraph (c) of this section. Pending final determination, the Service may terminate the action if alternative employment arrangements satisfactory to the Service can be and are made for the respondent by the employer of the respondent.

(c) *Procedure for other than summary action.* Except as provided for in paragraph (a) of this section, before the Service refuses to renew, or suspends or revokes a license, or refuses to return a suspended license, the respondent shall be (1) notified of the proposed action and the reasons therefor, and (2) afforded (i) an opportunity to express his/her views on the proposed action in an informal manner, or (ii) at the request of the respondent, a hearing in accordance with the provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR, part 1, subpart H).

§800.180 Summary cancellation of licenses.

A license may be summarily canceled when (a) the license has been under voluntary or automatic suspension for a period of 1 year and there has been no request for return of the license or a request for return of the license has been dismissed in accordance with §800.172; or (b) the licensee has died or fails to surrender the license in accordance with §800.175(f).

DUTIES AND CONDUCT OF LICENSED AND AUTHORIZED PERSONNEL

§800.185 Duties of official personnel and warehouse samplers.

(a) *General.* Official personnel and warehouse samplers shall, when performing official services or duties under the Act, the regulations, and the instructions.

(b) *Inspection and weighing services.* Official personnel shall perform requested official inspection and Class X and Class Y weighing services (1) without discrimination, (2) as soon as practicable, and (3) in accordance with methods and procedures prescribed in the instructions.

(c) *Sealing carriers or containers.* Upon request, or in accordance with the instructions, official personnel shall (1) when feasible, affix security seals to doors, hatch covers, and similar openings on carriers or containers that contain grain that has been officially inspected or Class X or Class Y weighed under the Act and (2) show seal records on certificates and other official forms in accordance with the provisions of §800.161.

(d) *Scope of operations.* Official personnel and warehouse samplers shall (1) operate only within the scope of the services specified on their license or authorization and (2) operate only within the area of responsibility assigned to the applicable agency, field office, or contractor which employs them. Official personnel and warehouse samplers may perform official inspection or weighing services in a different area of responsibility with the specific consent of the Service.

(e) *Working materials.* Official personnel and warehouse samplers shall be responsible for maintaining a working knowledge of the applicable provisions of the Act, the regulations, the Official U.S. Standards for Grain, the instructions, and all amendments and revisions thereto.

(f) *Observation of services.* Official personnel and warehouse samplers shall permit any person (or the person's agent) who has a financial interest in grain that is being inspected or weighed under the Act, or in equipment that is being tested under the Act, to observe the performance of any or all official inspection, or Class X or Class Y weighing. Appropriate areas in the elevator may be specified by the Service in conjunction with the elevator management for observing each service. The areas shall be safe, shall afford a clear and unobstructed view of the performance of the services, but shall not permit a close over-the-shoulder type of observation by the interested person or the person's agent.

(g) *Reporting violations.* Official personnel and warehouse samplers shall in accordance with the instructions promptly report (1) information which shows or tends to show a violation of

any provision of the Act, the regulations, or the instructions, and (2) information on any instructions which have been issued to them by any official personnel or other persons which are contrary to the Act, the regulations, or the instructions.

(h) *Related duties.* Official personnel and warehouse samplers shall, when practicable, assist in training other employees who desire to become licensed.

(i) *Instructions by Service.* Official personnel and warehouse samplers shall carry out all written instructions or oral directives issued to them by the Service and, upon request, inform the Service regarding inspection, weighing, or equipment testing services performed by them. Oral directives from the Service not found in written instructions shall be confirmed in writing, upon request.

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[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980, as amended at 48 FR 44453 and 44454, Sept. 29, 1983; 54 FR 5924, Feb. 7, 1989]

§ 800.186 Standards of conduct.

(a) *General.* Official personnel and warehouse samplers must maintain high standards of honesty, integrity, and impartiality to assure proper performance of their duties and responsibilities and to maintain public confidence in the services provided by them.

(b) *Prohibited conduct; official personnel and warehouse samplers.* No official personnel or warehouse sampler shall:

(1) Perform any official inspection, Class X or Class Y weighing, or equipment testing service unless licensed or authorized to do so;

(2) Engage in criminal, dishonest, or notoriously disgraceful conduct, or other conduct prejudicial to the Department or the Service;

(3) Report for duty in an intoxicated or drugged condition, or consume intoxicating beverages or incapacitating drugs while on duty;

(4) Smoke in prohibited areas in elevators or perform official services in an unsafe manner that could endanger official personnel working on or about the premises;

(5) Make unwarranted criticisms or accusations against other official personnel, warehouse samplers, or employees of the Department; and

(6) Refuse to testify or respond to questions in connection with official inquiries or investigations.

(7) Coerce or attempt to coerce any person into providing any special or undue benefit to official personnel, approved weighers, or warehouse samplers.

(c) *Prohibited conduct; official personnel.* In addition to the conduct prohibited by paragraph (b) of this section, no official personnel shall:

(1) Solicit contributions from other official personnel or warehouse samplers for an employee of the Service, or make such a contribution. Nothing in this paragraph shall preclude the occasional voluntary giving or acceptance of gifts of a nominal value on special occasions;

(2) Take any action that might (i) create the appearance of a loss of impartiality or (ii) adversely affect the confidence of the public in the integrity of the inspection, weighing, or equipment testing services performed under the Act;

(3) Except as provided in §800.76(a), engage in any outside (unofficial) work or activity that:

(i) may impair their efficiency in performing official functions; or

(ii) consists in whole or in part of unofficial acts of sampling, stowage examination, inspection testing, equipment testing, inspection, or weighing services similar to the official services for which the employing agency is designated; or

(iii) may result in the acquisition of property interests that could create a conflict of interest as defined in section 11 of the Act; or

(iv) may tend to bring criticism on or otherwise embarrass the Department or the Service;

(4) Issue to other official personnel, warehouse samplers, or approved weighers any instructions or directives inconsistent with the Act, the regulations, the Official U.S. Standards for Grain, or the instructions;

(5) Organize or help establish a general or specialized farm organization, or act as an officer or business agency

in, recruit members for, or accept office space or contributions from such an organization;

(6) Advocate that any general or specialized farm organization better represents the interest of farmers than any other organization or individual, or recommend that the responsibilities of any government agency be carried out through a general or specialized farm organization. Nothing in paragraph (c)(5) of this section shall prevent official personnel from holding membership in a general or specialized farm organization or prohibit official personnel from participating in the operation of local groups or organizations that conduct government-authorized programs.

[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44454, Sept. 29, 1983; 60 FR 65235, Dec. 19, 1995; 63 FR 45677, Aug. 27, 1998]

§ 800.187 Conflicts of interest

(a) *General.* Warehouse samplers are exempt from the conflict-of-interest provisions of this section.

(b) *What constitutes a gratuity.* For the purposes of these regulations, the term "gratuity" shall include any favor, entertainment, gift, tip, loan, payment for unauthorized or fictitious work, unusual discount, or anything of monetary value. The term shall not include (1) the occasional exchange of a cup of coffee or similar social courtesies of nominal value in a business or work relationship if the exchange is wholly free of any embarrassing or improper implications; (2) the acceptance of unsolicited advertising material such as pencils, pens, and note pads of nominal value if the material is wholly free of any embarrassing or improper implications; and (3) the exchange of the usual courtesies in an obvious family or personal relationship (including those between official personnel and their parents, spouses, children, or close personal friends) when the circumstances make it clear that the exchange is the result of the family or personal relationship, rather than a business or work relationship.

(c) *Conflicts.* In addition to the conflicts of interest prohibited by section 11 of the Act, the activities specified in this paragraph shall also be considered to be a conflict of interest. Accord-

ingly, no official personnel shall, during the term of their license or authorization (including any period of suspension):

(1) Accept any gratuity.

(2) Accept any fee or charge or other thing of monetary value, in addition to the published fee or charge, for the performance of official inspection or weighing services under circumstances in which the acceptance could result, or create the appearance of resulting, in (i) the use of their office or position for undue private gain, (ii) an undertaking to give undue preferential treatment to any group or any person, or (iii) any other loss of independence or impartiality in the performance of official inspection or Class X or Class Y weighing services.

(3) Knowingly perform, or participate in performing, an inspection or weighing service on grain in which they have a direct or indirect financial interest.

(4) Engage in the business by buying, selling, transporting, cleaning, elevating, storing, binning, mixing, blending, drying, treating, fumigating, or other preparation of grain (other than a grower of grain, or in the disposition of inspection samples); or in the business of cleaning, treating, or fitting carriers or containers for transporting or storing grain; the merchandising for non-farm use of equipment for cleaning, drying, treating, fumigating, or otherwise processing, handling, or storing grain; or the merchandising of grain inspection or weighing equipment (other than buying or selling by official personnel of the equipment for use in the performance of their official services).

(5) Seek or hold any appointive or elective office in a grain industry organization or association. This provision does not apply to organizations of official inspectors or official weighers.

(6) Participate in any transaction involving the purchase or sale of corporate stocks or bonds, grain or grain-related commodities, or other property for speculative or income purposes if the transaction could reasonably be construed to interfere with the proper and impartial performance of official inspection for Class X or Class Y weighing services. Official personnel are not prohibited from (i) producing grain as a grower and selling the grain;

(ii) making bona fide investments in governmental obligations, banking institutions, savings and loan associations, and other tangibles and intangibles that are clearly not involved in the production, transportation, storage, marketing, or processing of grain; or (iii) borrowing money from banks or other financial institutions on customary terms.

(d) *Reports of interests.* Official personnel shall report information regarding their employment or other business or financial interests which may be required by the Service.

(e) *Avoiding conflicts of interest.* Official personnel shall not acquire any financial interest or engage in any activity that would result in a violation of this § 800.187, or § 800.186, or section 11 of the Act and shall not permit their spouses, minor children, or blood relatives who reside in their immediate households to acquire any such interest or engage in any such activity. For the purpose of this section, the interest of a spouse, minor child, or blood relative who is a resident of the immediate household of official personnel shall be considered to be an interest of the official personnel.

(f) *Disposing of a conflict of interest—*
(1) *Remedial action.* Upon being informed that a conflict of interest exists and that remedial action is required, an applicant for a license and official personnel shall take immediate action to end the conflict of interest and inform the Service of the action taken.

(2) *Hardship cases.* Applicants and official personnel who believe that remedial action will cause undue personal hardship may request an exception by forwarding to the Service a written statement setting forth the facts, circumstances, and reasons for requesting an exception.

(3) *Failure to terminate.* If a final determination is made by the Service that a conflict of interest does exist and should not be excepted, failure to terminate the conflict of interest shall subject: (i) An applicant for a license to a dismissal of the application; (ii) An employee of the Service to disciplinary

action; and (iii) A licensee to license revocation.

(Approved by the Office of Management and Budget under control number 0580-0012)

[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44453 and 44454, Sept. 29, 1983; 54 FR 5924, Feb. 7, 1989]

§ 800.188 Crop year, variety, and origin statements.

No official personnel shall certify or otherwise state in writing (a) the year of production of grain, including use of terms such as “new crop” or “old crop”; (b) the place or geographical area where the grain was grown; or (c) the variety of the grain.

§ 800.189 Corrective actions for violations.

(a) *Criminal prosecution.* Official personnel and warehouse samplers who commit an offense prohibited by section 13 of the Act are subject to criminal prosecution in accordance with section 14 of the Act.

(b) *Administrative action—*(1) *Other than Service employees.* In addition to possible criminal prosecution, licensees and warehouse samplers are subject to administrative action in accordance with sections 9 and 14 of the Act.

(2) *Service employees.* In addition to possible criminal prosecution, employees of the Service are subject to disciplinary action by the Service.

DELEGATIONS, DESIGNATIONS, APPROVALS, CONTRACTS, AND CONFLICTS OF INTEREST

AUTHORITY: Sections 800.195 through 800.199 were issued under secs. 8, 9, 10, 13, and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e.

§ 800.195 Delegations.

(a) *General.* Eligible States may be delegated authority to perform official services (excluding appeal inspection) at export port locations within their respective States.

(b) *Restrictions.* Only the Service or the delegated State may perform official inspection, Class X, and Class Y

weighing services at an export port location within the State. If official inspection services, at export port locations within the State, are performed by the Service, only the Service may perform Class X and Class Y weighing services at the locations. If official inspection services are performed by a delegated State, either the State or the Service may perform Class X and Class Y weighing services at the export port locations within the State.

(c) *Who can apply.* States which: (1) Were performing official inspection at an export port location under the Act on July 1, 1976, or; (2)(i) performed official inspection at an export port location at any time prior to July 1, 1976; (ii) were designated under section 7(f) of the Act on December 22, 1981, to perform official inspections; and (iii) operate in a State from which total annual exports of grain do not exceed, as determined by the Administrator, 5 percent of the total amount of grain exported from the United States annually may apply to the Service for a delegation.

(d) *When and how to apply.* A request for authority to operate as a delegated State should be filed with the Service not less than 90 calendar days before the State proposes to perform the official service. A request for authority to operate as a delegated State shall show: (1) The export port location(s) where the State proposes to perform official inspection, Class X, and Class Y weighing services; (2) the estimated annual volume of inspection and weighing services for each location; and (3) the schedule of fees the State proposes to assess. A request for a revision to a delegation shall (i) be filed with the Service not less than 90 calendar days before the desired effective date, and (ii) specify the change desired.

(e) *Review of eligibility and criteria for delegation.* Each applicant for authority to operate as a delegated State shall be reviewed to determine whether the applicant meets the eligibility conditions contained in paragraph (c) of this section and the criteria contained in section 7(f)(1)(A) of the Act. The requested delegation may be granted if the Service determines that the applicant meets the eligibility conditions and criteria. If an application is dismissed,

the Service shall notify the applicant promptly, in writing, of the reason(s) for the dismissal.

(f) *Responsibilities.* (1) *Providing official services.* Each delegated State shall be responsible for providing each official service authorized by the delegation at all export elevators at export port locations in the State. The State shall perform each official service according to the Act, regulations, and instructions.

(2) *Staffing, licensing, and training.* Delegated States shall employ official personnel on the basis of job qualifications rather than political affiliations. The State shall employ sufficient personnel to provide the services normally requested in an accurate and timely manner. The State shall only use personnel licensed by the Service for the performance of official services and shall train and assist its personnel in acquiring and maintaining the necessary skills. The State shall keep the Service informed of the employment status of each of its licensees and any substantial change in a licensee's duties.

(3) *Rotation of personnel.* Where feasible, each delegated State shall rotate licensees among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighting systems.

(4) *Supervision.* The State and its officials shall be responsible for the actions of the official personnel employed by the State, for direct supervision of the daily activities of such personnel, and for the conduct of official services and related activities in the State. The State shall supervise official activities according to the Act, regulations, and instructions and shall take action necessary to ensure that its employees are not performing prohibited functions and are not involved in any action prohibited by the Act, regulations, or instructions. Each State shall report to the Service information which shows or may show a violation of any provision of the Act, regulations, or instructions and information on any instructions which have been issued to State personnel by Service personnel or by any other person which are contrary to or inconsistent with the Act, regulations, or instructions.

(5) *Conflict of interest.* (i) *General.* The delegated State and any commissioner, director, employee, or other related person or entity shall not have a conflict of interest, as defined in section 11 of the Act and §800.199 of the regulations. A conflict of interest may be waived pursuant to §800.199(d).

(ii) *Unofficial activities.* The delegated State or personnel employed by the State shall not perform any unofficial service that is the same as any of the official services covered by the delegation.

(6) *Fees.* The delegated State shall charge fees according to §800.70.

(7) *Facilities and equipment.* (i) *General.* The laboratory and office facilities of each delegated State shall be: Located; equipped; and large enough so that requested services are provided in an orderly and timely manner.

(ii) *Equipment testing.* Each delegated State shall test the equipment that it uses for official services according to the instructions.

(8) *Security.* Each delegated State shall provide sufficient security to assure that official samples, records, equipment, and forms are reasonably secure from theft, alteration, or misuse.

(9) *Certificate control system.* Each delegated State shall establish a certificate control system for all official certificates it receives, issues, voids, or otherwise renders useless. The system shall provide for: (i) Recording the numbers of the official certificates printed or received; (ii) protecting unused certificates from fraudulent or unauthorized use; and (iii) maintaining a file copy of each certificate issued, voided, or otherwise rendered useless in a manner that would permit retrieval.

(10) *Records.* Each delegated State shall maintain the records specified in §§800.145 through 800.159.

(g) *Termination.* (1) *Automatic termination.* Failure to pay the user fees prescribed by the Service for supervisory costs related to official inspection and weighing services within 30 days after due shall result in the automatic termination of the delegation. The delegation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service

because of the termination, are paid within 60 days after the termination.

(2) *Voluntary cancellation.* A State may request that its delegation be canceled by giving 90 days written notice to the Service.

(3) *Revocation.* (i) *Without hearing.* The Administrator may revoke the delegation of a State without first affording the State opportunity for a hearing. Unless otherwise provided, the revocation shall be effective when the State receives a notice from the Service regarding the revocation and the reason(s) therefor.

(ii) *Informal conference.* At the discretion of the Administrator, before the delegation of a State is revoked under paragraph (g)(3)(i) of this section, the Service may (A) notify the State of the proposed action and the reason(s) therefor, and (B) afford the State an opportunity to express its views in an informal conference before the Administrator.

(h) *Provision of services following termination.* If a State's delegation is terminated, official services at the export port locations in the State shall be provided by the Service.

(The information collection requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 0580-0012; paragraphs (f)(2) and (f)(4) were approved under control number 0580-0011)

[49 FR 30915, Aug. 2, 1984, as amended at 50 FR 18988, May 6, 1985; 54 FR 5924, Feb. 7, 1989; 60 FR 65236, Dec. 19, 1995]

§800.196 Designations.

(a) *General.* Eligible persons or governmental agencies may be designated to perform official services (excluding appeal inspection) within a specified area (other than export port locations).

(b) *Restrictions.* (1) *General.* If official inspection services are performed in an area by a designated agency, Class X and Class Y weighing services in that area may be performed only by the designated agency if the agency applies for designation to provide weighing services and is found qualified by the Service. If the agency designated to provide official inspection services is found not qualified or does not apply, the Class X and Class Y weighing services may be performed by another

available agency that is found qualified and is designated by the Service, or the official services may be performed by the Service.

(2) *Interim authority.* (i) *By agency.* A designated agency may perform official services outside its assigned area on an interim basis when authorized by the Service.

(ii) *By Service.* Official inspection services and/or Class X and Class Y weighing services may be performed by the Service in an area (other than export port locations) on an interim basis in accordance with sections 7(h) and 7A(c) of the Act.

(c) *Who can apply.* Any State or local governmental agency or any person may apply, subject to sections 7 and 7A of the Act, to the Service for designation as an official agency to perform official inspection services (excluding appeal inspection) and/or Class X and Class Y weighing services in a given area (other than export port locations) in the United States.

(d) *When and how to apply.* An application for designation should be filed with the Service, according to the provisions of the FEDERAL REGISTER notice which requests applicants for designation to perform official services in existing or new geographic areas. The application for designation: (1) Shall be submitted on a form furnished by the Service; (2) shall be typewritten or legibly written in English; (3) shall show or be accompanied by documents which show all information requested on the form, or otherwise required by the Service; and (4) shall be signed by the applicant or its chief operating officer.

(e) *Review of conditions and criteria for designation.* (1) *Application.* Each application for a designation shall be reviewed to determine whether it complies with paragraph (d) of this section. If an application is not in compliance, the applicant shall be provided an opportunity to submit the needed information. If the needed information is not submitted within a reasonable time, as determined by the Service, the application may be dismissed. When an application is dismissed, the Service shall notify the applicant, in writing, of the reason(s) for the dismissal.

(2) *Applicant.* Each applicant for authority to operate as as designated

agency shall be reviewed to determine whether the applicant meets the conditions and criteria contained in sections 7(f)(1)(A) and (B) of the Act, §800.199 of the regulations, and paragraph (g) of this section. The requested designation may be granted if the Service determines that: (i) The requested action is consistent with the need for official services; (ii) the applicant meets the conditions and criteria specified in the Act and regulations; and (iii) the applicant is better able than any other applicant to provide official services.

(f) *Area of responsibility.* (1) *General.* Each agency shall be assigned an area of responsibility by the Service. Each area shall be identified by geographical boundaries and, in the case of a State or local government, shall not exceed the jurisdictional boundaries of the State or the local government, unless otherwise approved by the Service. The area of responsibility may not include any export elevators at export port locations or any portion of an area of responsibility assigned to another agency that is performing the same functions. A designated agency may perform official services at locations outside its assigned area of responsibility only after obtaining approval from the Service.

(2) *Amending.* A request for an amendment to an assigned area of responsibility shall (i) be submitted to the Service in writing; (ii) specify the change desired; (iii) be signed by the applicant or its chief operating officer; and (iv) be accompanied by the fee prescribed by the Service. The assigned area may be amended if the Service determines that the amendment is consistent with the provisions and objectives of the Act, regulations, and instructions. Upon a finding of need, the Service may initiate action to change an assigned area of responsibility.

(3) *Specified service points.* An agency may change its specified service points by notifying the Service in advance. Interested persons may obtain a list of specified service points within an agency's area of responsibility by contacting the agency. The list shall include all specified service points and shall identify each specified service point which operates on an intermittent or seasonal basis.

(g) *Responsibilities.* (1) *Providing official services.* Insofar as practicable, each agency shall be responsible for providing at all locations in its assigned area each service authorized by the designation. An agency may, subject to Service approval, make arrangements with a neighboring agency to provide official services requested infrequently. The agency shall perform all official services according to the Act, regulations, and instructions in effect at the time of designation or which may be promulgated subsequently.

(2) *Fees.* The agency shall charge fees according to §800.70.

(3) *Staffing, licensing, and training.* (i) *General.* The agency shall employ sufficient personnel to provide the official services normally requested in an accurate and timely manner. Each agency shall only use personnel licensed by the Service for the performance of official services and shall train and assist its personnel in acquiring and maintaining the necessary skills. Each agency shall keep the Service informed of the employment status of each of its licensees and any substantial change in a licensee's duties.

(ii) *State agencies.* State agencies shall employ official personnel on the basis of job qualifications rather than political affiliations.

(4) *Rotation of personnel.* Where feasible, each agency shall rotate licensees among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighing systems.

(5) *Supervision.* The agency and its officials shall be responsible for the actions of the official personnel employed by the agency, for direct supervision of the daily activities of such personnel, and for the conduct of official services and related activities at the agency. The agency shall supervise official activities, in accordance with the Act, regulations, and instructions, and shall take action necessary to ensure that its employees are not performing prohibited functions and are not involved in any action prohibited by the Act, regulations, or instructions. Each agency shall report to the responsible field office information which shows or may show a violation of any provision

of the Act, regulations, or instructions and information on any instructions which have been issued to agency personnel by Service personnel or by any other person which are inconsistent with the Act, regulations, or instructions.

(6) *Conflict of interest.* (i) *General.* Each agency and any officer, director, stockholder, employee, or other related entity shall not have a conflict of interest, as defined in Section 11 of the Act and §800.199 of the regulations. A conflict of interest may be waived pursuant to §800.199(d). The agency shall advise the Service immediately of any proposed change in name, ownership, officers or directors, or control of the agency and, if a trust, any change affecting the trust agreement.

(ii) *Unofficial activities.* Except as provided in §800.76(a), the agency or personnel employed by the agency shall not perform any unofficial service that is the same as the official services covered by the designation.

(7) *Facilities and equipment.* (i) *General.* The laboratory and office facilities of each agency shall be: Located; equipped; and large enough so that requested services are provided in an orderly and timely manner.

(ii) *Equipment testing.* Each agency shall test the equipment it uses for official services according to the instructions.

(8) *Security.* Each agency shall provide sufficient security to ensure that official samples, records, equipment, and forms are reasonably secure from theft, alteration, or misuse.

(9) *Certificate control system.* Each agency shall establish a certificate control system for all official certificates it receives, issues, voids, or otherwise renders useless. The system shall provide for (i) recording the numbers of the official certificates printed or received; (ii) protecting unused certificates from fraudulent or unauthorized use; and (iii) maintaining a file copy of each certificate issued, voided, or otherwise rendered useless in a manner that would permit retrieval.

(10) *Records.* Each agency shall maintain the records specified in §§800.145 through 800.159.

(h) *Termination and renewal.* (1) *Triennial.* (i) *Termination.* A designation

shall terminate at a time specified by the Administrator, but not later than 3 years after the effective date of the designation. A notice of triennial termination shall be issued by the Service to a designated agency at least 120 calendar days in advance of the termination date. The notice shall provide instructions for requesting renewal of the designation. Failure to receive a notice from the Service shall not exempt a designated agency from the responsibility of having its designation renewed on or before the specified termination date.

(ii) *Renewal.* Designations may be renewed, upon application, in accordance with criteria and procedures for designation prescribed in section 7(f) of the Act and this section of the regulations. The Administrator may decline to renew a designation if: (A) The requesting agency fails to meet or comply with any of the criteria for designation set forth in the Act, regulations, and instructions, or (B) the Administrator determines that another qualified applicant is better able to provide official services in the assigned area.

(2) *Automatic termination.* Failure to pay the user fees prescribed by the Service for supervisory costs related to official inspection and weighing services within 30 days after due shall result in the automatic termination of the designation. The designation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination, are paid within 60 days after the termination.

(3) *Voluntary cancellation.* An agency may request that its designation be canceled by giving 90 days written notice to the Service.

(4) *Suspension or revocation of designation.* (i) *General.* A designation is subject to suspension or revocation, under section 7(g)(3) of the Act, by the Service, whenever the Administrator determines that: (A) The agency has failed to meet one or more of the criteria specified in section 7(f) of the Act or the regulations for the performance of official functions, or otherwise has not complied with any provision of the Act, regulations, or instructions, or (B) has been convicted of any violation of

other Federal law involving the handling or official inspection of grain.

(ii) *Summary suspension.* The Service may, without first affording the agency (hereafter referred to in this paragraph as the "respondent") an opportunity for a hearing, suspend a designation or refuse to reinstate a designation when the suspension period has expired, pending final determination of the proceeding whenever the Service has reason to believe there is cause for revocation of the designation and considers such action to be in the best interest of the official inspection and weighing system. A suspension or refusal to reinstate a suspended designation shall be effective upon the respondent's receipt of a notice from the Service. Within 30 calendar days following the issuance of a notice of such action, the Service shall afford the respondent an opportunity for a hearing under paragraph (h)(4)(iii) of this section. The Service may terminate the action if it finds that alternative managerial, staffing, financial, or operational arrangements satisfactory to the Service can be and are made by the respondent.

(iii) *Other than summary suspension.* Except as provided in paragraph (h)(4)(ii) of the section, before the Service revokes or suspends a designation, the respondent shall be: (A) Notified by the Service of the proposed action and the reason(s) therefor, and (B) afforded an opportunity for a hearing in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR part 1, subpart H). Before initiating formal adjudicatory proceedings, the Service may, at its discretion, afford the respondent an opportunity to present its views on the proposed action and the reason(s) therefor in an informal conference. If, as a result of the informal conference, a consent agreement is reached, no formal adjudicatory proceedings shall be initiated.

(i) *Provision of services following suspension or termination.* If the designation of an agency is suspended, terminated, or the renewal of a designation is not granted, the Service shall attempt, upon a finding of need, to arrange for a replacement agency. If a qualified replacement agency cannot

be designated on a timely basis, a qualified agency, if available, shall be designated on an interim basis. If a qualified agency is not available on an interim basis, the Service shall provide needed services on an interim basis.

(The information collection requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 0580–0012; paragraphs (g)(3) and (g)(5) were approved under control number 0580–0011)

[49 FR 30915, Aug. 2, 1984, as amended at 50 FR 18989, May 6, 1985; 54 FR 5924, Feb. 7, 1989; 60 FR 65236, Dec. 19, 1995; 63 FR 45677, Aug. 27, 1998]

§ 800.197 Approval as a scale testing and certification organization.

(a) *Who may apply.* Any State, local government, or person may request approval to perform scale testing and certification under the Act.

(b) *When and how to apply.* A request for approval to perform scale testing and certification under the Act should be filed with the Service not less than 90 calendar days before the requested action's effective date. A request for approval to perform scale testing and certification shall: (1) Show or be accompanied by documents which show all information required by the Service; (2) certify that each employee scheduled to perform official scale testing and certification services is competent to test weighing equipment and has a working knowledge of the regulations and instructions applicable to such services; (3) be accompanied by the fee prescribed in § 800.71; and (4) be signed by the applicant or its chief operating officer.

(c) *Review of applicant.* The review of an applicant for authority to perform scale testing and certification shall include an evaluation of the applicant's policies and procedures for testing and certifying scales for Class X and Class Y weighing.

(d) *Termination.* (1) *Voluntary.* A scale testing and certification organization may request cancellation of its approval by notifying the Service.

(2) *Suspension or revocation of approval.* (i) *General.* An approval is subject to suspension or revocation whenever the Administrator determines that the approved organization has vio-

lated any provision of the Act or regulations, or has been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code.

(ii) *Summary suspension.* The Service may, without first affording the organization an opportunity for a hearing, suspend an approval or refuse to reinstate an approval when the suspension period has expired, pending final determination of the proceeding whenever the Service has reason to believe there is cause for revocation of the approval and considers such action to be in the best interest of the official weighing system. A suspension or refusal to reinstate a suspended approval shall be effective when the organization receives a notice from the Service. Within 30 calendar days following the issuance of a notice of such action, the Service shall give the organization an opportunity for a hearing under paragraph (d)(2)(iii) of this section. The Service may terminate its action if it finds that alternative managerial, staffing, or operational arrangements satisfactory to the Service can be and are made by the organization.

(iii) *Other than summary suspension.* Except as provided in paragraph (d)(2)(ii) of this section, before the Service revokes or suspends an approval, the organization shall be notified by the Service of the proposed action and the reason(s) therefor and shall be given an opportunity for a hearing. Before the Service initiates a hearing, it may, at its discretion, give the organization an opportunity to present its views on the proposed action and the reason(s) therefor in an informal conference. If a consent agreement is reached during the informal conference, no formal adjudicatory proceedings shall be initiated.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 0580–0012)

[49 FR 30915, Aug. 2, 1984, as amended at 54 FR 5924, Feb. 7, 1989]

§ 800.198 Contracts.

(a) *Services contracted and who may apply.* The Service may enter into a contract with any person, State, or governmental agency to perform on an

occasional basis: (1) Specified official sampling, laboratory testing, or other similar objective technical activities involved in the testing of grain for official factors or official criteria, and (2) monitoring activities in foreign ports with respect to export grain that has been inspected and weighed under the Act.

(b) *Restrictions.* (1) *Conflict of interest.* A person, State or governmental agency with a conflict of interest prohibited by section 11 of the Act or § 800.199 shall not be eligible to enter into a contract with the Service.

(2) *Appeal service.* An agency or employees of agencies shall not be eligible to enter into a contract with the Service to obtain samples for, or to perform other services involved in appeal inspection or Board appeal inspection services. However, agencies may forward file samples to the Service in accordance with § 800.156(d).

(3) *Monitoring services.* Agencies, employees of agencies, organizations, employees of organizations, and other persons that regularly provide official services to persons who export grain from the United States are eligible to enter into a contract with the Service to perform monitoring services on export grain in foreign ports only if they are under Service employees' direct supervision during monitoring activities.

(c) *When and how to apply.* An application for a contractual arrangement shall: (1) Be typewritten or legibly written in English; (2) conform to the invitation to bid or other instructions issued by the Service or be filed on a form furnished by the Service; (3) show or be accompanied by documents which show any information requested by the Service; and (4) be signed by the applicant or its chief operating officer. All contracts shall be issued by the Department and shall follow Departmental procedures.

(d) *Termination and renewal.* A contract with the Service shall terminate annually unless otherwise provided in the contract. A contract may be renewed in accordance with Departmental procedures.

(e) *Cancellation.* A contract may, upon request of the governmental agency or person that entered into the contract with the Service, be canceled

by the Department in accordance with the terms of the contract or Departmental procedures and regulations.

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 0580-0012)

[49 FR 30915, Aug. 2, 1984, as amended at 50 FR 18989, May 6, 1985; 54 FR 5924, Feb. 7, 1989]

§ 800.199 Conflict-of-interest provisions.

(a) *Meaning of terms.* For the purpose of this section, the following terms shall have the meaning given for them below:

(1) *Grain business.* The term "grain business" shall include (i) any entity that is engaged in the commercial transportation, storage, merchandising or other commercial handling of grain, which includes: The commercial buying, selling, transporting, cleaning, elevating, storing, binning, mixing, blending, drying, treating, fumigating, or other preparation of grain (other than as a grower of grain or the disposition of inspection samples); the cleaning, treating, or fitting of carriers or containers for transporting or storing of grain; the merchandising of equipment for cleaning, drying, treating, fumigating, or other processing, handling, or storing of grain; the merchandising of grain inspection and weighing equipment (other than the buying or selling by an agency or official personnel of the equipment for their exclusive use in the performance of their official inspection or Class X or Class Y weighing services); and the commercial use of official inspection and Class X or Class Y weighing services and (ii) any board of trade, chamber of commerce, grain exchange, or other trade group composed, in whole or in part, of one or more such entities.

(2) *Interest.* The term "interest" when used with respect to an individual, shall include the interest of a spouse, minor child, or blood relative who resides in the immediate household of the individual.

(3) *Related.* The term "related" when used in reference to a business or governmental entity means an entity that owns or controls another entity, or is owned or controlled by another entity,

or both entities are owned or controlled by another entity.

(4) *Substantial stockholder.* The term “substantial stockholder” means any person holding 2 per centum or more, or 100 shares or more of the voting stock of the corporation, whichever is the lesser interest.

(b) *Prohibited conflicts of interest.* Unless waived on a case-by-case basis by the Administrator under section 11(b)(5) or the Act, the following conflicts of interest for a business or association are prohibited:

(1) *Agency and contractor.* No agency or contractor, or any member, director, officer, or employee thereof, and no business or governmental entity related to any such agency or contractor, shall be employed in or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any grain business or otherwise have any conflict of interest specified in § 800.187(b).

(2) *Grain business.* No grain business or governmental entity conducting any such business, or any member, director, officer, or employee thereof, and no other business or governmental entity related to any such entity, shall operate or be employed by, or directly or indirectly have any stock or other financial interest in, any agency or contractor.

(3) *Stockholder in any agency or contractor.* No substantial stockholder in any agency or contractor shall be employed in or otherwise engaged in, or be a substantial stockholder in, any grain business, or directly or indirectly have any other kind of financial interest in any such business or otherwise have any conflict of interest specified in § 800.187(b).

(4) *Stockholder of a grain business.* No substantial stockholder in any grain business shall operate or be employed by or be a substantial stockholder in, or directly or indirectly have any other kind of financial interest in an incorporated agency or contractor.

(5) *Gratuity.* No person described in paragraph (b)(1) of this section shall give to or accept from a person described in paragraph (b)(2) of this section any gratuity, and no person described in paragraph (b)(2) of this section shall give to or accept from a per-

son described in paragraph (b)(1) of this section any gratuity. A “gratuity” is defined in § 800.187(a).

(c) *Exempt conflicts of interest.* (1) *Agency and contractor.* An agency or contractor may use laboratory or office space or inspection, weighing, transportation, or office equipment that is owned or controlled, in whole or in part, by a grain business or related entity when the use of the space or equipment is approved by the Service for the performance of onsite official services under the Act.

(2) *Financial institution.* A bona fide financial institution that has a financial relationship with one or more grain businesses or related entities may have a financial relationship with an agency, contractor, or related agency.

(3) *Grain business.* A grain business or related entity may furnish laboratory or office space or inspection, weighing, transportation, or office equipment for use by an agency, contractor, or field office when use of the space or equipment is approved by the Service for the performance of onsite official inspection or weighing services.

(d) *Disposition of a conflict of interest.* Upon being informed that a prohibited conflict of interest exists in the ownership, management, or operation of an agency and that remedial action is required, the agency shall take immediate action to resolve that conflict of interest and inform the Service of the action taken. An agency which believes that remedial action will cause undue economic hardship or other irreparable harm may request a waiver by forwarding to the Service a written statement setting forth the facts, the circumstances, and the reasons for requesting a waiver.

[49 FR 30915, Aug. 2, 1984]

SUPERVISION, MONITORING, AND
EQUIPMENT TESTING

§ 800.215 Activities that shall be supervised.

(a) *General.* Supervision of the activities described in this section shall be performed in accordance with the instructions.

(b) *Administrative activities.* Administrative activities subject to supervision

include but are not limited to (1) providing staffing, equipment, and facilities for performing authorized services; (2) dismissing requests for services and withholding requested services; (3) maintaining official records; (4) assessing and collecting fees; (5) rotating official personnel; (6) implementing instructions for (i) recruiting official personnel, (ii) training and supervising official and approved personnel, (iii) work performance and work production standards; and (7) supervising and monitoring.

(c) *Technical activities.* (1) *Equipment testing activities.* Equipment testing activities subject to supervision include but are not limited to (i) implementing (A) the equipment performance requirements in parts 801 and 802 of this chapter and (B) the instructions for the operation of equipment used under the Act and for performing equipment-testing activities and (ii) performing equipment-testing activities by official personnel or by approved scale testing organizations.

(2) *Inspection activities.* Inspection activities subject to supervision include but are not limited to (i) implementing (A) the Official U.S. Standards for Grain, (B) official criteria, and (C) instructions for the performance of inspection activities and (ii) performing stowage examination, sampling, laboratory testing, grading, and certification activities by official personnel.

(3) *Weighing activities.* Weighing activities subject to supervision include but are not limited to (i) implementing (A) uniform weighing procedures and (B) instructions for the performance of weighing activities and (ii) performing (A) stowage examination, sampling (sacked grain), weighing, and certification activities by official personnel and (B) by approved weighers of weighing activities.

(4) *Testing of prototype equipment activities.* Prototype or proposed equipment is tested to determine whether the equipment will improve the performance of activities under the Act. Prototype equipment-testing activities subject to supervision include but are not limited to (i) implementing instructions for the testing of prototype equipment, (ii) testing prototype equipment by official personnel, and

(iii) approving or denying the use of prototype equipment for use under the Act.

§800.216 Activities that shall be monitored.

(a) *General.* Each of the administrative and technical activities identified in §800.215 and the elevator and merchandising activities identified in this section shall be monitored in accordance with the instructions.

(b) *Grain merchandising activities.* Grain merchandising activities subject to monitoring for compliance with the Act include but are not limited to (1) failing to promptly forward an export certificate; (2) describing grain by other than official grades; (3) falsely describing export grain; (4) falsely making or using official certificates, forms, or marks; (5) making false quality or quantity representations about grain; and (6) selling export grain without a certificate of registration.

(c) *Grain handling activities.* Grain handling activities subject to monitoring for compliance with the Act include but are not limited to (1) shipping export grain without inspection or weighing; (2) transferring grain from intercompany barges into an export elevator at an export port location without Class X weighing; (3) violating any Federal law with respect to the handling, weighing, or inspection of grain; (4) deceptively loading, handling, weighing, or sampling grain; and (5) exporting grain without a certificate of registration.

(d) *Recordkeeping activities.* Elevator and merchandising recordkeeping activities subject to monitoring for compliance with the Act include those that are identified in section 12(d) of the Act and §800.25 of the regulations.

(e) *Other activities.* Other activities subject to monitoring for compliance with the Act include but are not limited to (1) resolving conflicts of interest by official agencies or their employees; (2) providing access to elevator facilities and records; (3) improperly influencing or interfering with official personnel; (4) falsely representing that a person is official personnel; (5) using false means in filing an application for services under the Act; and (6)

§ 800.217

preventing interested persons from observing the loading, Class X or Class Y weighing, or official sampling of grain.

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980, as amended at 50 FR 2273, Jan. 16, 1985]

§ 800.217 Equipment that shall be tested.

(a) General. Testing of equipment and prototype equipment described in this section shall be performed in accordance with the instructions.

(b) Inspection equipment. Each unit of equipment used in the official sampling, testing, or grading of grain, or in monitoring the official inspection of grain, shall be examined to determine whether the equipment is functioning in an approved manner. In addition, each unit of equipment for which official performance requirements have been established shall be tested for accuracy. For the purpose of this paragraph, diverter-type mechanical samplers used in obtaining warehouseman's samples shall be considered to be official inspection equipment used under the Act.

(c) Weighing equipment. Each unit of equipment used in the Class X or Class Y weighing of grain or in monitoring the Class X or Class Y weighing of grain, each related grain handling system, and each related computer system shall be examined to determine whether it is functioning in an approved manner. In addition, each unit of equipment for which official performance requirements have been established shall be tested for accuracy.

(d) Prototype equipment. (1) At request of interested party. Upon request of a financially interested party and with the concurrence of the Administrator, prototype grain inspection or weighing equipment may be tested by the Service for official use.

(2) Determination by Service. Upon a determination of need, the Service may develop, contract for, or purchase and test prototype grain inspection or weighing equipment for official use.

§ 800.218 Review of rejection or disapproval of equipment.

Any person desiring to complain of a rejection or disapproval of equipment by official personnel or of any alleged

7 CFR Ch. VIII (1-1-99 Edition)

discrepancy in the testing of equipment under the Act by official personnel or by approved scale testing organizations may file a complaint with the Service.

§ 800.219 Conditional approval on use of equipment.

(a) Approval. Equipment that is in use under the Act on the effective date of this section shall be considered conditionally to have been adopted and approved by the Service.

(b) Limitation on approval. This conditional approval shall not bar a later rejection or disapproval of the equipment by the Service upon a determination that the equipment (1) should be rejected for official use, or (2) is not functioning in an approved manner, or (3) is not producing results that are accurate within prescribed tolerances, or (4) is producing results that are otherwise not consistent with the objectives of the Act.

PART 801—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN INSPECTION EQUIPMENT

- Sec.
801.1 Applicability.
801.2 Meaning of terms.
801.3 Tolerances for barley pearlers.
801.4 Tolerances for dockage testers.
801.5 Tolerances for diverter-type mechanical samplers.
801.6 Tolerances for moisture meters.
801.7 Reference methods and tolerances for near-infrared spectroscopy (NIRS) analyzers.
801.8 Tolerances for sieves.
801.9 Tolerances for test weight apparatuses.
801.10 Tolerance for dividers.
801.11 Related design requirements.
801.12 Design requirements incorporated by reference.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended, (7 U.S.C. 71 et seq.).

SOURCE: 51 FR 7050, Feb. 28, 1986, unless otherwise noted.

§ 801.1 Applicability.

The requirements set forth in this part 801 describe certain specifications, tolerances, and other technical requirements for official grain inspection equipment and related sample handling

systems used in performing inspection services under the Act.

§ 801.2 Meaning of terms.

(a) *Construction.* Words used in the singular form in this part shall be considered to imply the plural and vice versa, as appropriate.

(b) *Definitions.* The definitions of terms listed in the part 800 shall have the same meaning when the terms are used in this part 801. For the purposes of this part, the following terms shall have the meanings given for them below.

(1) *Avoirdupois weight.* A unit of weight based on a pound of 16 ounces.

(2) *Barley pearler.* An approved laboratory device used to mechanically dehull kernels of barley or other grain.

(3) *Deviation from standard.* In testing inspection equipment for accuracy, the variation between (i) the individual test result from the equipment that is being tested and (ii) the reference standard or the individual test result from the standard (or National standard) equipment, as applicable.

(4) *Direct comparison method.* An equipment testing procedure wherein transfer standards are tested at the same time and place to compare the performance of two or more units of the same inspection equipment. One unit of the equipment used in the test shall be standard inspection equipment. (See also sample exchange method.)

(5) *Diverter-type mechanical sampler (primary).* An approved device used to obtain representative portions from a flowing stream of grain.

(6) *Diverter-type mechanical sampler (secondary).* An approved device used to subdivide the portions of grain obtained with a diverter-type mechanical sampler (primary).

(7) *Divider.* An approved laboratory device used to mechanically divide a sample of grain into two or more representative portions.

(8) *Dockage tester.* An approved laboratory device used to mechanically separate dockage and/or foreign material from grain.

(9) *Maintenance tolerance.* An allowance established for use in determining whether inspection equipment should

be approved for use in performing official inspection services.

(10) *Mean deviation from standard.* In testing inspection equipment for accuracy, the variation between (i) the average for the test results from the equipment that is being tested and (ii) the reference standard or the average of the test results from the standard (or National standard) equipment, as applicable.

(11) *Metric weight.* A unit of weight based on the kilogram of 1,000 grams.

(12) *Moisture meter.* An approved laboratory device used to indicate directly or through conversion and/or correction tables the moisture content of grain including cereal grains and oil seeds.

(13) *National standard inspection equipment.* A designated approved unit of inspection equipment used as the reference in determining the accuracy of standard inspection equipment.

(14) *Official inspection equipment.* Equipment approved by the Service and used in performing official inspection services.

(15) *Sample exchange method.* An equipment testing procedure wherein transfer standards are tested to compare the performance of two or more units of the same inspection equipment installed at different locations. One unit of the equipment used in the test shall be standard inspection equipment. (See also direct comparison method.)

(16) *Sieves.* Approved laboratory devices with perforations for use in separating particles of various sizes.

(17) *Standard inspection equipment.* An approved unit of inspection equipment that is designated by the Service for use in determining the accuracy of official inspection equipment.

(18) *Test weight.* The avoirdupois weight of the grain or other material in a level-full Winchester bushel.

(19) *Test weight apparatus.* An approved laboratory device used to measure the test weight (density) of a sample of grain.

(20) *Transfer standard.* The medium (device or material) by which traceability is transferred from one inspection equipment standard unit to another unit.

§ 801.3

(21) *Winchester bushel*. A container that has a capacity of 2,150.42 cubic inches (32 dry quarts).

§ 801.3 Tolerances for barley pearlers.

The maintenance tolerances for barley pearlers used in performing official inspection services shall be:

Item	Tolerance
Timer switch:	
0 to 60 seconds	±5 seconds, deviation from standard clock
61 to 90 seconds ...	±7 seconds, deviation from standard clock
Over 90 seconds	±10 seconds, deviation from standard clock
Pearled portion	±1.0 gram, mean deviation from standard barley pearler using barley

§ 801.4 Tolerances for dockage testers.

The maintenance tolerances for dockage testers used in performing official inspection services shall be:

Item	Tolerance
Air separation	±0.10 percent, mean deviation from standard dockage tester using Hard Red Winter wheat

Moisture range	Tolerance	
	Direct comparison	Sample exchange
Low	±0.05 percent moisture, mean deviation from National standard moisture meter using Hard Red Winter wheat	
Mid	±0.05 percent moisture, mean deviation from National standard moisture meter using Hard Red Winter wheat	
High	±0.05 percent moisture, mean deviation from National standard moisture meter using Hard Red Winter wheat	

(2) All other than Headquarters standard meters:

Moisture range	Tolerance	
	Direct comparison	Sample exchange
Low	±0.15 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat	±0.20 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat
Mid	±0.10 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat	±0.15 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat
High	±0.15 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat	±0.20 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat

(b) The maintenance tolerances for forming official inspection services GAC 2100 moisture meters used in per- shall be:

7 CFR Ch. VIII (1–199 Edition)

Item	Tolerance
Riddle separation	±0.10 percent, mean deviation from standard dockage tester using Hard Red Winter wheat
Sieve separation	±0.10 percent, mean deviation from standard dockage tester using Hard Red Winter wheat
Total dockage separation.	±0.15 percent, mean deviation from standard dockage tester using Hard Red Winter wheat

§ 801.5 Tolerance for diverter-type mechanical samplers.

The maintenance tolerance for diverter-type mechanical samplers (primary, or primary and secondary in combination) used in performing official inspection services shall be ±10 percent, mean deviation from standard sampling device using corn or the same type of grain that the system will be used to sample.

§ 801.6 Tolerances for moisture meters.

(a) The maintenance tolerances for Motomco 919 moisture meters used in performing official inspection services shall be:

(1) Headquarters standard meters:

(1) Headquarters standard meters. By direct comparison using mid-range Hard Red Winter wheat, $\pm 0.05\%$ mean deviation for the average of the Headquarters standard moisture meters.

(2) All other than Headquarters standard meters. By sample exchange using mid-range Hard Red Winter wheat, $\pm 0.15\%$ mean deviation from the standard meter.

[63 FR 34554, June 25, 1998]

§ 801.7 Reference methods and tolerances for near-infrared spectroscopy (NIRS) analyzers.

(a) *Reference methods.* (1) The chemical reference protein determinations used to reference and calibrate official NIRS instruments shall be performed in accordance with "Comparison of Kjeldahl Method for Determination of Crude Protein in Cereal Grains and Oilseeds with Generic Combustion Method: Collaborative Study," July/August 1993, Ronald Bicsak, Journal of AOAC International Vol. 76, No. 4, 1993, and subsequently approved by the AOAC International as the Combustion method, AOAC International Method 992.23. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Director, Technical Services Division, Federal Grain Inspection Service, 10383 North Executive Hills Blvd., Kansas City, MO 64153-1394. Copies may be inspected at the above address or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington, DC 20408.

(2) The chemical reference starch determination used to reference and calibrate official NIRS instruments shall be performed in accordance with the Corn Refiners Association Method A-20, Analysis for Starch in Corn, Second revision, April 15, 1986, Standard Analytical Methods of the Member Companies of the Corn Refiners Association, Inc. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Director, Technical Services Division, Federal Grain Inspection Service, 10383 North Executive Hills Blvd., Kansas City, MO 64153-

1394. Copies may be inspected at the above address or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington, DC 20408.

(b) *Tolerances*—(1) *NIRS wheat protein analyzers.* The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of wheat protein content shall be ± 0.15 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23.

(2) *NIRS soybean oil and protein analyzers.* The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of soybean oil shall be ± 0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; and for determination of protein content shall be ± 0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23.

(3) *NIRS corn oil, protein, and starch analyzers.* The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of corn oil shall be ± 0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; for determination of protein content shall be ± 0.30 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23; and for determination of starch content shall be ± 0.35 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Starch method, Corn Refiners Association Method A-20.

[63 FR 35505, June 30, 1998]

§ 801.8 Tolerances for sieves.

The maintenance tolerances for sieves used in performing official inspection services shall be:

(a) Thickness of metal: ± 0.0015 inch.

(b) Accuracy of perforation: ±0.001 inch from design specification. (c) Sieving accuracy:

Sieve description	Tolerance	
	Direct comparison	Sample exchange
.064× $\frac{3}{8}$ inch oblong	±0.2 percent, mean deviation from standard sieve using wheat.	±0.3 percent, mean deviation from standard sieve using wheat
$\frac{5}{16}$ × $\frac{3}{4}$ inch slotted	±0.3 percent, mean deviation from standard sieve using barley.	±0.5 percent, mean deviation from standard sieve using barley
5 $\frac{5}{16}$ × $\frac{3}{4}$ inch slotted	±0.5 percent, mean deviation from standard sieve using barley.	±0.7 percent, mean deviation from standard sieve using barley
$\frac{5}{8}$ × $\frac{3}{4}$ inch slotted	±0.7 percent, mean deviation from standard sieve using barley.	±1.0 percent, mean deviation from standard sieve using barley

§801.9 Tolerances for test weight apparatuses.

The maintenance tolerances for test weight per bushel apparatuses used in performing official inspection services shall be:

Item	Tolerance
Beam/scale accuracy	±0.10 pound per bushel deviation at any reading, using test weights
Overall accuracy	±0.15 pound per bushel, mean deviation from standard test weight apparatus using wheat

§801.10 Tolerance for dividers.

The maintenance tolerance for dividers used in performing official inspection services shall be ±1.0 percent, mean deviation from target value using wheat.

§801.11 Related design requirements.

(a) *Suitability.* The design, construction, and location of official sampling and inspection equipment and related sample handling systems shall be suitable for the official sampling and inspection activities for which the equipment is to be used.

(b) *Durability.* The design, construction, and material used in official sampling and inspection equipment and related sample handling systems shall assure that, under normal operating conditions, operating parts will remain fully operable, adjustments will remain reasonably constant, and accuracy will be maintained between equipment test periods.

(c) *Marking and identification.* Official sampling and inspection equipment for which tolerances have been established shall be permanently marked to show the manufacturer's name, initials, or

trademark; the serial number of the equipment; and the model, the type, and the design or pattern of the equipment. Operational controls for mechanical samplers and related sample handling systems, including but not limited to pushbuttons and switches, shall be conspicuously identified as to the equipment or activity controlled by the pushbutton or switch.

(d) *Repeatability.* Official inspection equipment when tested in accordance with §§800.217 and 800.219 shall, within the tolerances prescribed in §§801.3 through 801.10, be capable of repeating its results when the equipment is operated in its normal manner.

(e) *Security.* Mechanical samplers and related sample handling systems shall provide a ready means of sealing to deter unauthorized adjustments, removal, or changing of component parts or timing sequence without removing or breaking the seals; and otherwise be designed, constructed, and installed in a manner to prevent deception by any person.

(f) *Installation requirements.* Official sampling and inspection equipment and related sample handling systems shall be installed (1) at a site approved by the Service, (2) according to the manufacturer's instructions, and (3) in such a manner that neither the operation nor the performance of the equipment or system will be adversely affected by the foundation, supports, or any other characteristic of the installation.

§801.12 Design requirements incorporated by reference.

(a) *Moisture meters.* All moisture meters approved for use in official grain

moisture determination and certification shall meet applicable requirements contained in the FGIS Moisture Handbook and the General Code and Grain Moisture Meters Code of the 1991 edition of the National Institute of Standards and Technology's (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices." Pursuant to the provisions of 5 U.S.C. 552(a), the materials in Handbook 44 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

The NIST Handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. It is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

The following Handbook 44 requirements are not incorporated by reference:

General Code (1.10.)

- G-S.5.5. Money Values, Mathematical Agreement
- G-T.1. Acceptance Tolerances
- G-UR.3.3. Position of Equipment
- G-UR.3.4. Responsibility, Money-Operated Devices

Grain Moisture Meters (5.56.)

- N.1.1. Transfer Standards
- N.1.2. Minimum Test
- N.1.3. Temperature Measuring Equipment
- T.2. Tolerance Values
- T.3. For Test Weight Per Bushel Indications or Recorded Representations
- UR.3.2. Other Devices not used for Commercial Measurement
- UR.3.7. Location
- UR.3.11. Posting of Meter Operating Range
- (b) [Reserved]

[57 FR 2673, Jan. 23, 1992]

PART 802—OFFICIAL PERFORMANCE AND PROCEDURAL REQUIREMENTS FOR GRAIN WEIGHING EQUIPMENT AND RELATED GRAIN HANDLING SYSTEMS

Sec.

802.0 Applicability.

802.1 Qualified laboratories.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

§ 802.0 Applicability.

(a) The requirements set forth in this part 802 describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services, official inspection services, and commercial services under the Act. All scales used for official grain weight and inspection certification services provided by FGIS shall meet applicable requirements contained in the FGIS Weighing Handbook, the General Code, the Scales Code, the Automatic Bulk Weighing Systems Code, and the Weights Code of the 1994 edition of National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" (Handbook 44); and NIST HANDBOOK 105-1 (1990 Edition), "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures" (Handbook 105-1). These requirements are confirmed to be met by having National Type Evaluation Program or Federal Grain Inspection Service type approval. Scales used for commercial purposes will be required to meet only the applicable requirements of the 1994 edition of the NIST Handbook-44. Pursuant to the provisions of 5 U.S.C. 552(a), with the exception of the Handbook 44 requirements listed in paragraph (b) of this section, the materials in Handbooks 44 and 105-1 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER. The NIST Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. They are also available for inspect at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(b) The following Handbook 44 requirements are not incorporated by reference:

Scales Code (2.20)

- S.1.8. Computer Scales
- S.1.8.2. Money-Value Computation
- S.1.8.3. Customer's Indications

§ 802.1

- S.1.8.4. Recorded Representations, Point of Sale
- S.2.5.2. Jeweler's, Prescription, & Class I & II Scales
- S.3.3. Scoop Counterbalance
- N.1.3.2. Dairy-Product Test Scales
- N.1.5. Discrimination Test (Not adopted for Grain Test Scales only)
- N.1.8. Material Tests
 - N.3.1.2. Interim Approval
 - N.3.1.3. Enforcement Action for Inaccuracy
- N.4. Coupled-in-Motion Railroad Weighing Systems
- N.5. Nominal Capacity of Prescription Scales
 - T.1.2. Postal and Parcel Post Scales
 - T.2.3. Prescription Scales
 - T.2.4. Jewelers' Scales (all sections)
 - T.2.5. Dairy—Product-Test Scales (all sections)
- T.N.3.9. Materials Test on Customer-Operated Bulk-Weighing Systems for Recycled Materials
- UR.1.4. Grain Test Scales: Value of Scale Divisions
 - UR.3.1. Recommended Minimum Load
 - UR.3.1.1. Minimum Load, Grain Dockage Automatic Bulk Weighing Systems (2.22):
 - UR.1.1. Selection Requirements for Systems Used to Weight Grain.

[60 FR 31910, June 19, 1995]

§ 802.1 Qualified laboratories.

(a) *Metrology laboratories.* (1) Any State metrology laboratory currently approved by the NBS ongoing certification program having auditing capability is automatically approved by the Service.

(2) Any county or city weights and measures jurisdiction approved by NBS or by their respective NBS-Certified State laboratory as being equipped with appropriate traceable standards and trained staff to provide valid calibration is approved by the Service. The State approval may be documented by a certificate or letter. The jurisdiction must be equipped to provide suitable certification documentation.

(3) Any commercial industrial laboratory primarily involved in the business of sealing and calibrating test weights (standards) will be approved by the Service provided:

(i) It requests written authority to perform tolerance testing of weights used within the Service's program(s) through their approved State jurisdiction. Copies of its request and written reference regarding the State decision shall be provided to the Service. A

7 CFR Ch. VIII (1–1–99 Edition)

positive decision by the State will be required as a prerequisite to the Service's granting approval to any commercial laboratory to tolerance test the weights used in testing scales under the jurisdiction of the Service;

(ii) It has NBS traceable standards (through the State) and trained staff to perform calibrations in a manner prescribed by NBS and/or the State;

(iii) It is equipped to provide suitable certification documentation;

(iv) It permits the Service to make onsite visits to laboratory testing space.

(4) Approval of the commercial industrial laboratory will be at the Service's discretion. Once it has obtained approval, the commercial industrial laboratory maintains its site in a manner prescribed by the State and the Service.

(b) *Type evaluation laboratories.* Any State measurement laboratory currently certified by NBS in accordance with its program for the Certification of Capability of State Measurement Laboratories to conduct evaluations under the National Type Evaluation Program is approved by the Service.

(Approved by the Office of Management and Budget under control number 0580–0011)

[51 FR 7052, Feb. 28, 1986, as amended at 54 FR 5925, Feb. 7, 1989]

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

Subpart A—General Provisions

TERMS DEFINED

Sec.

810.101 Grains for which standards are established.

810.102 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.103 Basis of determination.

810.104 Percentages.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

810.105 Grades and grade requirements.

810.106 Grade designations.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

810.107 Special grades and special grade requirements.

810.108 Special grade designations.

Subpart B—United States Standards for Barley

TERMS DEFINED

810.201 Definition of barley.
810.202 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.203 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.204 Grades and grade requirements for Six-rowed Malting barley and Six-rowed Blue Malting barley.
810.205 Grades and grade requirements for Two-rowed Malting barley.
810.206 Grades and grade requirements for barley.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.207 Special grades and special grade requirements.

Subpart C—United States Standards for Canola—Terms Defined

810.301 Definition of canola.
810.302 Definitions of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.303 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.304 Grades and grade requirements for canola.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.305 Special grades and special grade requirements.

NONGRADE REQUIREMENTS

810.306 Nongrade requirements.

Subpart D—United States Standards for Corn

TERMS DEFINED

810.401 Definition of corn.
810.402 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.403 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.404 Grades and grade requirements for corn.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.405 Special grades and special grade requirements.

Subpart E—United States Standards for Flaxseed

TERMS DEFINED

810.601 Definition of flaxseed.
810.602 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.603 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.604 Grades and grade requirements for flaxseed.

Subpart F—United States Standards for Mixed Grain

TERMS DEFINED

810.801 Definition of mixed grain.
810.802 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.803 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.804 Grades and grade requirements for mixed grain.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.805 Special grades and special grade requirements.

Subpart G—United States Standards for Oats

TERMS DEFINED

810.1001 Definition of oats.
810.1002 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.1003 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.1004 Grades and grade requirements for oats.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.1005 Special grades and special grade requirements.

Pt. 810

7 CFR Ch. VIII (1–1–99 Edition)

Subpart H—United States Standards for Rye

TERMS DEFINED

- 810.1201 Definition of rye.
- 810.1202 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

- 810.1203 Basis of determination.

GRADES AND GRADE REQUIREMENTS

- 810.1204 Grades and grade requirements for rye.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

- 810.1205 Special grades and special grade requirements.

Subpart I—United States Standards for Sorghum

TERMS DEFINED

- 810.1401 Definition of sorghum.
- 810.1402 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

- 810.1403 Basis of determination.

GRADES AND GRADE REQUIREMENTS

- 810.1404 Grades and grade requirements for sorghum.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

- 810.1405 Special grades and special grade requirements.

Subpart J—United States Standards for Soybeans

TERMS DEFINED

- 810.1601 Definition of soybeans.
- 810.1602 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

- 810.1603 Basis of determination.

GRADES AND GRADE REQUIREMENTS

- 810.1604 Grades and grade requirements for soybeans.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

- 810.1605 Special grades and special grade requirements.

Subpart K—United States Standards for Sunflower Seed

TERMS DEFINED

- 810.1801 Definition of sunflower seed.
- 810.1802 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

- 810.1803 Basis of determination.

GRADES AND GRADE REQUIREMENTS

- 810.1804 Grades and grade requirements for sunflower seed.

Subpart L—United States Standards for Triticale

TERMS DEFINED

- 810.2001 Definition of triticale.
- 810.2002 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

- 810.2003 Basis of determination.

GRADES AND GRADE REQUIREMENTS

- 810.2004 Grades and grade requirements for triticale.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

- 810.2005 Special grades and special grade requirements.

Subpart M—United States Standards for Wheat

TERMS DEFINED

- 810.2201 Definition of wheat.
- 810.2202 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

- 810.2203 Basis of determination.

GRADES AND GRADE REQUIREMENTS

- 810.2204 Grades and grade requirements for wheat.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

- 810.2205 Special grades and special grade requirements.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

SOURCE: 52 FR 24418, June 30, 1987, unless otherwise noted.

Subpart A—General Provisions

NOTE: Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

TERMS DEFINED

§ 810.101 Grains for which standards are established.

Grain refers to barley, canola, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, sunflower seed, triticale, and wheat. Standards for these food grains, feed grains, and oilseeds are established under the United States Grain Standards Act.

[57 FR 3274, Jan. 29, 1992]

§ 810.102 Definition of other terms.

Unless otherwise stated, the definitions in this section apply to all grains. All other definitions unique to a particular grain are contained in the appropriate subpart for that grain.

(a) *Distinctly low quality.* Grain that is obviously of inferior quality because it is in an unusual state or condition, and that cannot be graded properly by use of other grading factors provided in the standards. Distinctly low quality includes the presence of any objects too large to enter the sampling device; i.e., large stones, wreckage, or similar objects.

(b) *Moisture.* Water content in grain as determined by an approved device according to procedures prescribed in FGIS instructions.

(c) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate in water.

(d) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inches) as determined using an approved device according to procedures prescribed in FGIS instructions. Test weight per bushel in the standards for corn, mixed grain, oats, sorghum, and soybeans is determined on the original sample. Test weight per bushel in the standards for barley, flaxseed, rye, sunflower seed, triticale, and wheat is determined after mechanically cleaning the original sample. Test weight per bushel is recorded to the nearest tenth

pound for corn, rye, triticale, and wheat. Test weight per bushel for all other grains, if applicable, is recorded in whole and half pounds with a fraction of a half pound disregarded. Test weight per bushel is not an official factor for canola.

(e) *Whole kernels.* Grain with $\frac{1}{4}$ or less of the kernel removed.

[52 FR 24418, June 30, 1987, as amended at 60 FR 61196, Nov. 29, 1995]

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

§ 810.103 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality is made on the basis of the lot as a whole at the time of sampling when a condition exists that may or may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of rodent pellets, bird droppings, other animal filth, broken glass, castor beans, cocklebur, crotalaria seeds, dockage, garlic, live insect infestation, large stones, moisture, temperature, an unknown foreign substance(s), and a commonly recognized harmful or toxic substance(s) is made on the basis of the sample as a whole. When a condition exists that may not appear in the representative sample, the determination may be made on the basis of the lot as a whole at the time of sampling according to procedures prescribed in FGIS instructions.

(c) *All other determinations.* The basis of determination for all other factors is contained in the individual standards.

§ 810.104 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 8.34 as 8.3, and 1.22 as 1.2.

§ 810.105

7 CFR Ch. VIII (1-1-99 Edition)

(b) *Recording.* The percentage of dockage in flaxseed and sorghum is reported in whole percent with fractions of a percent being disregarded. Dockage in barley and triticale is reported in whole and half percent with a fraction less than one-half percent being disregarded. Dockage in wheat and rye is reported in whole and tenth percents to the nearest tenth percent. Foreign material in sunflower seed is reported to the nearest one-half percent. Ranges of sunflower seed foreign material are reported as follows: 0.0 to 0.24 is reported as 0.0 percent, 0.25 to 0.74 as 0.5 percent, 0.75 to 1.24 as 1.0 percent, and the like. Foreign material and fines in mixed grain is reported in whole percent. The percentage of smut in barley, sclerotinia and stones in canola, and ergot in all grains is reported to the nearest hundredth percent. The percentage when determining the identity of all grains is reported to the nearest whole percent. Also reported to the nearest whole percent are the classes and subclasses in wheat; flint corn; flint and dent corn; waxy corn; classes in barley; and the percentage of each kind of grain in mixed grain. Plump barley shall be expressed in terms of the range in which it falls. Ranges shall be: Below 50 percent, 50 to 55 percent, 56 to 60 percent, 61 to 65 percent, and the like. All other percentages are reported in tenths percent.

[52 FR 24418, June 30, 1987; 52 FR 28534, July 31, 1987, as amended at 54 FR 24157, June 6, 1989; 57 FR 3274, Jan. 29, 1992; 59 FR 10573, Mar. 7, 1994; 61 FR 18491, Apr. 26, 1996; 63 FR 20056, Apr. 23, 1998]

EFFECTIVE DATE NOTE: At 63 FR 20056, Apr. 23, 1998, §810.104 was amended by revising the first three sentences of paragraph (b), effective June 1, 1999. For the convenience of the user, the superseded text is set forth as follows:

§ 810.104 Percentages.

* * * * *

(b) *Recording.* The percentage of dockage in flaxseed, rye, and sorghum is reported in whole percent with fractions of a percent being disregarded. Dockage in barley and triticale is reported in whole and half percent with a fraction less than one-half percent being disregarded. Dockage in wheat is reported in whole and tenth percent to the nearest tenth percent.* * *

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 810.105 Grades and grade requirements.

The grades and grade requirements for each grain (except mixed grain) and shown in the grade table(s) of the respective standards. Mixed grain grade requirements are not presented in tabular form.

§ 810.106 Grade designations.

(a) *Grade designations for grain.* The grade designations include in the following order:

- (1) The letters "U.S.";
- (2) The abbreviation "No." and the number of the grade or the words "Sample grade";
- (3) When applicable, the subclass;
- (4) The class or kind of grain;
- (5) When applicable, the special grade(s) except in the case of bright, extra heavy, and heavy oats or plump rye, the special grades, "bright", "extra heavy", "heavy" and "plump" will precede the word "oats" or "rye" as applicable; and
- (6) When applicable, the word "dockage" together with the percentage thereof.

When applicable, the remarks section of the certificate will include in the order of predominance; in the case of a mixed class, the name and approximate percentage of the classes; in the case of sunflower seed, the percentage of admixture; in the case of mixed grain, the grains present in excess of 10.0 percent of the mixture and when applicable, the words *Other grains* followed by a statement of the percentage of the combined quantity of those kinds of grains, each of which is present in a quantity less than 10.0 percent; in the case of barley, if requested, the word "plump" with the percentage range thereof; in the case of wheat, if requested, the percentage of protein content.

(b) *Optional grade designations.* In addition to paragraph (a) of this Section, grain may be certificated under certain conditions as described in FGIS instructions when supported by official analysis, as "U.S. No. 2 or better (*type*

of grain)", "U.S. No. 3 or better (*type of grain*)", and the like.

[52 FR 24418, June 30, 1987, as amended at 53 FR 15017, Apr. 27, 1988]

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§ 810.107 Special grades and special grade requirements.

A special grade serves to draw attention to a special factor or condition present in the grain and, when applicable, is supplemental to the grade assigned under § 810.106. Except for the special grade "infested," the special grades are identified and requirements are established in each respective grain standards.

(a) *Infested wheat, rye, and triticale.* Tolerances for live insects responsible for infested wheat, rye, and triticale are defined according to sampling designations as follows:

(1) *Representative sample.* The representative sample consists of the work portion, and the file sample if needed and when available. These grains will be considered infested if the representative sample (other than shiplots) contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored grain, or two or more live insects injurious to stored grain.

(2) *Lot as a whole (stationary).* The lot as a whole is considered infested when two or more live weevils, or one live weevil and one or more other live insects injurious to stored grain, or two or more other live insects injurious to stored grain are found in, on, or about the lot (excluding submitted samples and shiplots).

(3) *Sample as a whole (continuous loading/unloading of shiplots and bargelots).* The minimum sample size for bargelots and shiplots is 500 grams per each 2,000 bushels of grain. The sample as a whole is considered infested when a component (as defined in FGIS instructions) contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored grain, or two or more other live insects injurious to stored grain.

(b) *Infested barley, canola, corn, oats, sorghum, soybeans, sunflower seed, and*

mixed grain. Tolerances for live insects responsible for infested barley, canola, corn, oats, sorghum, soybeans, sunflower seed, and mixed grain are defined according to sampling designations as follows:

(1) *Representative sample.* The representative sample consists of the work portion, and the file sample if needed and when available. These grains will be considered infested if the representative sample (other than shiplots) contains two or more live weevils, or one live weevil and five or more other live insects injurious to stored grain, or ten or more other live insects injurious to stored grain.

(2) *Lot as a whole (stationary).* The lot as a whole is considered infested when two or more live weevils, or one live weevil and five or more other live insects injurious to stored grain, or ten or more other live insects injurious to stored grain are found in, on, or about the lot (excluding submitted samples and shiplots).

(3) *Sample as a whole (continuous loading/unloading of shiplots and bargelots).* The minimum sample for shiplots and bargelots is 500 grams per each 2,000 bushels of grain. The sample as a whole is considered infested when a component (as defined in FGIS instructions) contains two or more live weevils, or one live weevil and five or more other live insects injurious to stored grain, or ten or more other live insects injurious to stored grain.

[52 FR 24441, June 30, 1987, as amended at 57 FR 3274, Jan. 29, 1992]

§ 810.108 Special grade designations.

Special grade designations are shown as prescribed in § 810.106. Multiple special grade designations will be listed in alphabetical order. In the case of treated wheat, the official certificate shall show whether the wheat has been scoured, limed, washed, sulfured, or otherwise treated.

Subpart B—United States Standards for Barley

TERMS DEFINED

§ 810.201 Definition of barley.

Grain that, before the removal of dockage, consists of 50 percent or more

of whole kernels of cultivated barley (*Hordeum vulgare* L.) and not more than 25 percent of other grains for which standards have been established under the United States Grain Standards Act. The term “barley” as used in these standards does not include hull-less barley or black barley.

§ 810.202 Definition of other terms.

(a) *Black barley.* Barley with black hulls.

(b) *Broken kernels.* Barley with more than ¼ of the kernel removed.

(c) *Classes.* There are two classes of barley: Malting barley and Barley.

(1) *Malting barley.* Barley of a six-rowed or two-rowed malting type. The class Malting barley is divided into the following three subclasses:

(i) *Six-rowed Malting barley.* Barley that has a minimum of 95.0 percent of a six-rowed suitable malting type that has 90.0 percent or more of kernels with white aleurone layers that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, and 0.1 percent heat-damaged kernels. Six-rowed Malting barley shall not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(ii) *Six-rowed Blue Malting barley.* Barley that has a minimum of 95.0 percent of a six-rowed suitable malting type that has 90.0 percent or more of kernels with blue aleurone layers that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, and 0.1 percent heat-damaged kernels. Six-rowed Blue Malting barley shall not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(iii) *Two-rowed Malting barley.* Barley that has a minimum of 95.0 percent of a two-rowed suitable malting type that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, 0.1 percent heat-damaged kernels, 1.9 percent injured-by-mold kernels, and 0.4 percent mold-damaged kernels. Two-rowed Malting barley shall not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(2) *Barley.* Any barley of a six-rowed or two-rowed type. The class Barley is divided into the following three subclasses:

(i) *Six-rowed barley.* Any Six-rowed barley that contains not more than 10.0 percent of two-rowed varieties.

(ii) *Two-rowed barley.* Any Two-rowed barley with white hulls that contains not more than 10.0 percent of six-rowed varieties.

(iii) *Barley.* Any barley that does not meet the requirements for the subclasses Six-rowed barley or Two-rowed barley.

(d) *Damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, injured-by-heat, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(e) *Dockage.* All matter other than barley that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of barley kernels removed in properly separating the material other than barley and that cannot be recovered by properly rescreening or recleaning.

(f) *Foreign material.* All matter other than barley, other grains, and wild oats that remains in the sample after removal of dockage.

(g) *Frost-damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are badly shrunken and distinctly discolored black or brown by frost.

(h) *Germ-damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that have dead or discolored germ ends.

(i) *Heat-damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are materially discolored and damaged by heat.

(j) *Injured-by-frost kernels.* Kernels and pieces of barley kernels that are distinctly indented, immature or shrunken in appearance or that are light green in color as a result of frost before maturity.

(k) *Injured-by-heat kernels.* Kernels, pieces of barley kernels, other grains,

and wild oats that are slightly discolored as a result of heat.

(l) *Injured-by-mold kernels.* Kernels, pieces of barley kernels containing slight evidence of mold.

(m) *Mold-damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are weathered and contain considerable evidence of mold.

(n) *Other grains.* Black barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, and wheat.

(o) *Plump barley.* Barley that remains on top of a $\frac{5}{64} \times \frac{3}{4}$ slotted-hole sieve after sieving according to procedures prescribed in FGIS instructions.

(p) *Sieves.* (1) $\frac{5}{64} \times \frac{3}{4}$ slotted-hole sieve. A metal sieve 0.032 inch thick with slotted perforations 0.0781 ($\frac{5}{64}$) inch by 0.750 ($\frac{3}{4}$) inch.

(2) $5\text{-}\frac{1}{2} \frac{5}{64} \times \frac{3}{4}$ slotted-hole sieve. A metal sieve 0.032 inch thick with slotted perforations 0.0895 ($5\text{-}\frac{1}{2}/64$) inch by 0.750 ($\frac{3}{4}$) inch.

(3) $\frac{5}{64} \times \frac{3}{4}$ slotted-hole sieve. A metal sieve 0.032 inch thick with slotted perforations 0.0937 ($\frac{5}{64}$) inch by 0.750 ($\frac{3}{4}$) inch.

(q) *Skinned and broken kernels.* Barley kernels that have one-third or more of the hull removed, or that the hull is loose or missing over the germ, or broken kernels, or whole kernels that have a part or all of the germ missing.

(r) *Sound barley.* Kernels and pieces of barley kernels that are not damaged, as defined under (d) of this section.

(s) *Suitable malting type.* Varieties of malting barley that are recommended by the American Malting Barley Association and other malting type(s) used by the malting and brewing industry. The varieties are listed in GIPSAs instructions.

(t) *Thin barley.* Thin barley shall be defined for the appropriate class as follows:

(1) *Malting barley.* Six-rowed Malting barley that passes through a $\frac{5}{64} \times \frac{3}{4}$ slotted-hole sieve and Two-rowed Malting barley which passes through a $5\text{-}\frac{5}{64} \times \frac{3}{4}$ slotted-hole sieve in accordance with procedures prescribed in GIPSAs instructions.

(2) *Barley.* Six-rowed barley, Two-rowed barley, or Barley that passes through a $\frac{5}{64} \times \frac{3}{4}$ slotted-hole sieve in accordance with procedures prescribed in GIPSAs instructions.

(u) *Wild oats.* Seeds of *Avena fatua* L. and *A. sterilis* L.

[52 FR 24418, June 30, 1987; 52 FR 28534, July 31, 1987; 61 FR 18491, Apr. 26, 1996]

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

§ 810.203 Basis of determination.

All other determinations. Each determination of heat-damaged kernels, injured-by-heat kernels, and white or blue aleurone layers in Six-rowed barley is made on pearled, dockage-free barley. Other determinations not specifically provided for under the *General Provisions* are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

GRADES AND GRADE REQUIREMENTS

§ 810.204 Grades and grade requirements for Six-rowed Malting barley and Six-rowed Blue Malting barley.

Grade	Minimum limits of—			Maximum limits of—				
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley ¹ (percent)	Damaged kernels ¹ (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 1	47.0	95.0	97.0	2.0	0.5	2.0	4.0	7.0
U.S. No. 2	45.0	95.0	94.0	3.0	1.0	3.0	6.0	10.0
U.S. No. 3	43.0	95.0	90.0	4.0	2.0	5.0	8.0	15.0

§ 810.205

7 CFR Ch. VIII (1–199 Edition)

Grade	Minimum limits of—			Maximum limits of—				
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley ¹ (percent)	Damaged kernels ¹ (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 4	43.0	95.0	87.0	5.0	3.0	5.0	10.0	15.0

¹ Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

NOTES: Malting barley shall not be infested in accordance with §810.107(b) and shall not contain any special grades as defined in §810.206. Six-rowed Malting barley and Six-rowed Blue Malting barley varieties not meeting the requirements of this section shall be graded in accordance with standards established for the class Barley.

[61 FR 18492, Apr. 26, 1996]

§ 810.205 Grades and grade requirements for Two-rowed Malting barley.

Grade	Minimum limits of—			Maximum limits of—			
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley ¹ (percent)	Wild oats (percent)	Foreign material (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 1	50.0	97.0	98.0	1.0	0.5	5.0	5.0
U.S. No. 2	48.0	97.0	98.0	1.0	1.0	7.0	7.0
U.S. No. 3	48.0	95.0	96.0	2.0	2.0	10.0	10.0
U.S. No. 4	48.0	95.0	93.0	3.0	3.0	10.0	10.0

¹ Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

NOTES: Malting barley shall not be infested in accordance with §810.107(b) and shall not contain any special grades as defined in §810.206. Two-rowed Malting barley varieties not meeting the requirements of this section shall be graded in accordance with standards established for the class Barley.

[61 FR 18492, Apr. 26, 1996]

§ 810.206 Grades and grade requirements for barley.

Grade	Minimum limits of—		Maximum Limits of—				
	Test weight per bushel (pounds)	Sound barley (percent)	Damaged kernels ¹ (percent)	Heat damaged kernels (percent)	Foreign material (percent)	Broken kernels (percent)	Thin barley (percent)
U.S. No. 1	47.0	97.0	2.0	0.2	1.0	4.0	10.0
U.S. No. 2	45.0	94.0	4.0	0.3	2.0	8.0	15.0
U.S. No. 3	43.0	90.0	6.0	0.5	3.0	12.0	25.0
U.S. No. 4	40.0	85.0	8.0	1.0	4.0	18.0	35.0
U.S. No. 5	36.0	75.0	10.0	3.0	5.0	28.0	75.0

U.S. Sample Grade:

U.S. Sample grade shall be barley that:

- (a) Does not meet the requirements for the grades 1, 2, 3, 4, or 5; or
- (b) Contains 8 or more stones or any number of stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of unknown foreign substance(s) or commonly recognized harmful or toxic substance(s), 8 or more cocklebur (*Xanthium* spp.) or similar seeds singly or in combination, 10 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1 1/8 to 1 1/4 quarts of barley; or
- (c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or
- (d) Is heating or otherwise of distinctly low quality.

¹ Includes heat-damaged kernels. Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels.

[61 FR 18492, Apr. 26, 1996]

SPECIAL GRADES AND SPECIAL GRADE
REQUIREMENTS**§ 810.207 Special grades and special grade requirements.**

(a) *Blighted barley.* Barley that contains more than 4.0 percent of fungus-damaged and/or mold-damaged kernels.

(b) *Ergoty barley.* Barley that contains more than 0.10 percent ergot.

(c) *Garlicky barley.* Barley that contains three or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets in 500 grams of barley.

(d) *Smutty barley.* Barley that has kernels covered with smut spores to give a smutty appearance in mass, or which contains more than 0.20 percent smut balls.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987]

Subpart C—United States Standards for Canola—Terms Defined

SOURCE: 57 FR 3274, Jan. 29, 1992, unless otherwise noted.

§ 810.301 Definition of canola.

Seeds of the genus *Brassica* from which the oil shall contain less than 2 percent erucic acid in its fatty acid profile and the solid component shall contain less than 30.0 micromoles of any one or any mixture of 3-butenyl glucosinolate, 4-pentenyl glucosinolate, 2-hydroxy-3-butenyl, or 2-hydroxy-4-pentenyl glucosinolate, per gram of air-dried, oil free solid. Before the removal of dockage, the seed shall contain not more than 10.0% of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.302 Definitions of other terms.

(a) *Conspicuous Admixture.* All matter other than canola, including but not limited to ergot, sclerotinia, and stones, which is conspicuous and readily distinguishable from canola and which remains in the sample after the removal of machine separated dockage. Conspicuous admixture is added to machine separated dockage in the computation of total dockage.

(b) *Damaged kernels.* Canola and pieces of canola that are heat-damaged, sprout-damaged, mold-damaged, distinctly green damaged, frost damaged, rimed damaged, or otherwise materially damaged.

(c) *Distinctly green kernels.* Canola and pieces of canola which, after being crushed, exhibit a distinctly green color.

(d) *Dockage.* All matter other than canola that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of canola kernels that cannot be recovered by properly rescreening or recleaning. Machine separated dockage is added to conspicuous admixture in the computation of total dockage.

(e) *Ergot.* Sclerotia (sclerotium, sing.) of the fungus, *Claviceps* species, which are associated with some seeds other than canola where the fungal organism has replaced the seed.

(f) *Heat-damaged kernels.* Canola and pieces of canola which, after being crushed, exhibit that they are discolored and damaged by heat.

(g) *Inconspicuous admixture.* Any seed which is difficult to distinguish from canola. This includes, but is not limited to, common wild mustard (*Brassica kaber* and *B. juncea*), domestic brown mustard (*Brassica juncea*), yellow mustard (*B. hirta*), and seed other than the mustard group.

(h) *Sclerotia (Sclerotium, sing.).* Dark colored or black resting bodies of the fungi *Sclerotinia* and *Claviceps*.

(i) *Sclerotinia.* Genus name which includes the fungus *Sclerotinia sclerotiorum* which produces sclerotia. Canola is only infrequently infected, and the sclerotia, unlike sclerotia of ergot, are usually associated within the stem of the plants.

PRINCIPLES GOVERNING THE
APPLICATION OF STANDARDS**§ 810.303 Basis of determination.**

Each determination of conspicuous admixture, ergot, sclerotinia, stones, damaged kernels, heat-damaged kernels, distinctly green kernels, and inconspicuous admixture is made on the basis of the sample when free from

§ 810.304

dockage. Other determinations not specifically provided for under the general provisions are made on the basis of the sample as a whole, except the determination of odor is made on either the basis of the sample as a whole or the sample when free from dockage. The content of glucosinolates and erucic acid is determined on the basis of the sample according to procedures prescribed in FGIS instructions.

GRADES AND GRADE REQUIREMENTS

§ 810.304 Grades and grade requirements for canola.

Grading factors	Grades, U.S. Nos.		
	1	2	3
Damaged kernels:			
Heat damaged	0.1	0.5	2.0
Distinctly green	2.0	6.0	20.0
Total	3.0	10.0	20.0
Conspicuous admixture:			
Ergot	0.05	0.05	0.05
Sclerotinia	0.05	0.10	0.15
Stones	0.05	0.05	0.05
Total	1.0	1.5	2.0
Inconspicuous admixture	5.0	5.0	5.0
	Maximum count limits of:		
Other material:			
Animal filth	3	3	3
Glass	0	0	0
Unknown foreign substance	1	1	1

U.S. Sample grade Canola that:
 (a) Does not meet the requirements for U.S. Nos. 1, 2, 3; or
 (b) Has a musty, sour, or commercially objectionable foreign odor; or
 (c) Is heating or otherwise of distinctly low quality.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

§ 810.305 Special grades and special grade requirements.

Garlicky canola. Canola that contains more than two green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in approximately a 500 gram portion.

NONGRADE REQUIREMENTS

§ 810.306 Nongrade requirements.

Glucosinolates. Content of glucosinolates in canola is determined according to procedures prescribed in FGIS instructions.

7 CFR Ch. VIII (1–1–99 Edition)

Subpart D—United States Standards for Corn

TERMS DEFINED

§ 810.401 Definition of corn.

Grain that consists of 50 percent or more of whole kernels of shelled dent corn and/or shelled flint corn (*Zea mays* L.) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.402 Definition of other terms.

(a) *Broken corn.* All matter that passes readily through a 12/64 round-hole sieve and over a 6/64 round-hole sieve sample according to procedures prescribed in FGIS instructions.

(b) *Broken corn and foreign material.* All matter that passes readily through a 12/64 round-hole sieve and all matter other than corn that remains in the sieved after sieving according to procedures prescribed in FGIS instructions.

(c) *Classes.* There are three classes for corn: Yellow corn, White corn, and Mixed corn.

(1) *Yellow corn.* Corn that is yellow-kernelled and contains not more than 5.0 percent of corn of other colors. Yellow kernels of corn with a slight tinge of red are considered yellow corn.

(2) *White corn.* Corn that is white-kernelled and contains not more than 2.0 percent of corn of other colors. White kernels of corn with a slight tinge of light straw or pink color are considered white corn.

(3) *Mixed corn.* Corn that does not meet the color requirements for either of the classes Yellow corn or White corn and includes white-capped Yellow corn.

(d) *Damaged kernels.* Kernels and pieces of corn kernels that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(e) *Foreign material.* All matter that passes readily through a 6/64 round-hole sieve and all matter other than corn that remains on top of the 12/64 round-hole sieve according to procedures prescribed in FGIS instructions.

(f) *Heat-damaged kernels.* Kernels and pieces of corn kernels that are materially discolored and damaged by heat.

(g) *Sieves.* (1) *12/64 round-hole sieve.* A metal sieve 0.032 inch thick with round perforations 0.1875 (12/64) inch in diameter which are 1/4 inch from center to center. The perforations of each row shall be staggered in relation to the adjacent row.

(2) *6/64 round-hole sieve.* A metal sieve 0.032 inch thick with round perforations 0.0937 (6/64) inch in diameter which are 5/32 inch from center to center. The perforations of each row shall be staggered in relation to the adjacent row.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24437, June 30, 1987; 52 FR 28534, July 31, 1987]

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

§ 810.403 Basis of determination.

Each determination of class, damaged kernels, heat-damaged kernels, waxy corn, flint corn, and flint and dent corn is made on the basis of the grain after the removal of the broken corn and foreign material. Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from broken corn and foreign material.

[52 FR 24418, June 30, 1987; 52 FR 28534, July 31, 1987]

GRADES AND GRADE REQUIREMENTS

§ 810.404 Grades and grade requirements for corn.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of		
		Damaged kernels		Broken corn and foreign material (percent)
		Heat damaged kernels (percent)	Total (percent)	
U.S. No. 1	56.0	0.1	3.0	2.0
U.S. No. 2	54.0	0.2	5.0	3.0
U.S. No. 3	52.0	0.5	7.0	4.0
U.S. No. 4	49.0	1.0	10.0	5.0
U.S. No. 5	46.0	3.0	15.0	7.0

U.S. Sample Grade

U.S. Sample grade is corn that:

- (a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or
- (b) Contains stones with an aggregate weight in excess of 0.1 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 8 or more cockleburrs (*Xanthium* spp.), or similar seeds singly or in combination, or animal filth in excess of 0.20 percent in 1,000 grams; or
- (c) Has a musty, sour, or commercially objectionable foreign odor; or
- (d) Is heating or otherwise of distinctly low quality.

[60 FR 61196, Nov. 29, 1995]

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

§ 810.405 Special grades and special grade requirements.

(a) *Flint corn.* Corn that consists of 95 percent or more of flint corn.

(b) *Flint and dent corn.* Corn that consists of a mixture of flint and dent corn containing more than 5.0 percent but less than 95 percent of flint corn.

(c) *Waxy corn.* Corn that consists of 95 percent or more waxy corn, according to procedures prescribed in FGIS instructions.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987; 52 FR 28534, July 31, 1987]

Subpart E—United States Standards for Flaxseed

TERMS DEFINED

§ 810.601 Definition of flaxseed.

Grain that, before the removal of dockage, consists of 50 percent or more of common flaxseed (*Linum usitatissimum* L.) and not more than 20 percent of other grains for which standards have been established under the United States Grain Standards Act and which, after the removal of dockage, contains 50 percent or more of whole flaxseed.

§ 810.602 Definition of other terms.

(a) *Damaged kernels.* Kernels and pieces of flaxseed kernels that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Dockage.* All matter other than flaxseed that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of flaxseed kernels removed in properly separating the material other than flaxseed and that cannot be recovered by properly rescreening or recleaning.

(c) *Heat-damaged kernels.* Kernels and pieces of flaxseed kernels that are materially discolored and damaged by heat.

(d) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, wheat, and wild oats.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

§ 810.603 Basis of determination.

Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either

the basis of the grain as a whole or the grain when free from dockage.

GRADES AND GRADE REQUIREMENTS

§ 810.604 Grades and grade requirements for flaxseed.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of damaged kernels—	
		Heat damaged kernels (per cent)	Total (per cent)
U.S. No. 1	49.0	0.2	10.0
U.S. No. 2	47.0	0.5	15.0

- U.S. Sample grade—
 U.S. Sample grade is flaxseed that:
- (a) Does not meet the requirements for the grades U.S. Nos. 1 or 2; or
 - (b) Contains 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 10 or more rodent pellets, bird dropping, or equivalent quantity of other animal filth per 1 1/8 to 1 1/4 quarts of flaxseed; or
 - (c) Has musty, sour, or commercially objectionable foreign odor (except smut or garlic odor), or
 - (d) Is heating or otherwise of distinctly low quality.

Subpart F—United States Standards for Mixed Grain

TERMS DEFINED

§ 810.801 Definition of mixed grain.

Any mixture of grains for which standards have been established under the United States Grain Standards Act, provided that such mixture does not come within the requirements of any of the standards for such grains; and that such mixture consists of 50 percent or more of whole kernels of grain and/or whole or broken soybeans which will not pass through a 5/64 triangular-hole sieve and/or whole flaxseed that passes through such a sieve after sieving according to procedures prescribed in FGIS instructions.

§ 810.802 Definition of other terms.

(a) *Damaged kernels.* Kernels and pieces of grain kernels for which standards have been established under the Act, that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged,

sprout-damaged, or otherwise materially damaged.

(b) *Foreign material and fines.* All matter other than whole flaxseed that passes through a $\frac{5}{64}$ triangular-hole sieve, and all matter other than grains for which standards have been established under the Act, that remains in the sieved sample.

(c) *Grades.* U.S. Mixed Grain, or U.S. Sample grade Mixed Grain, and special grades.

(d) *Heat-damaged kernels.* Kernels and pieces of grain kernels for which standards have been established under the Act, that are materially discolored and damaged by heat.

(e) *Sieve— $\frac{3}{64}$ triangular-hole sieve.* A metal sieve 0.032 inch thick with equilateral triangular perforations the inscribed circles of which are 0.0781 ($\frac{5}{64}$) inch in diameter.

PRINCIPLES GOVERNING THE
APPLICATION OF STANDARDS

§ 810.803 Basis of determination.

Each determination of damaged and heat-damaged kernels, and the percentage of each kind of grain in the mixture is made on the basis of the sample after removal of foreign material and fines. Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from foreign material and fines.

GRADES AND GRADE REQUIREMENTS

§ 810.804 Grades and grade requirements for mixed grain.

(a) *U.S. Mixed Grain (grade).* Mixed grain with not more than 15.0 percent of damaged kernels, and not more than 3.0 percent of heat-damaged kernels, and that otherwise does not meet the requirements for the grade U.S. Sample grade Mixed Grain.

(b) *U.S. Sample grade Mixed Grain.* Mixed grain that:

(1) Does not meet the requirements for the grade U.S. Mixed Grain; or

(2) Contains more than 16.0 percent moisture; or

(3) Contains 8 or more stones that have an aggregate weight in excess of

0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more *Crotalaria* seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 8 more cockleburrs (*Xanthium* spp.) or similar seeds singly or in combination, 4 or more pieces of an unknown foreign substance(s) or a recognized harmful or toxic substance(s), 10 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth per 1,000 grams of mixed grain; or

(4) Is musty, sour, or heating; or

(5) Has any commercially objectionable foreign odor except smut or garlic; or

(6) Is otherwise of distinctly low quality.

SPECIAL GRADES AND SPECIAL GRADE
REQUIREMENTS

§ 810.805 Special grades and special grade requirements.

(a) *Blighted mixed grain.* Mixed grain in which barley predominates and that contains more than 4.0 percent of fungus-damaged and/or mold-damaged barley kernels.

(b) *Ergoty mixed grain.* (1) Mixed grain in which rye or wheat predominates and that contains more than 0.30 percent ergot, or

(2) Any other mixed grain that contains more than 0.10 percent ergot.

(c) *Garlicky mixed grain.* (1) Mixed grain in which wheat, rye, or triticale predominates, and that contains 2 or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets in 1,000 grams of mixed grain; or

(2) Any other mixed grain that contains 4 or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 500 grams of mixed grain.

(d) *Smutty mixed grain.* (1) Mixed grain in which rye, triticale, or wheat predominates, and that contains 15 or more average size smut balls, or an equivalent quantity of smut spores in 250 grams of mixed grain, or

(2) Any other mixed grain that has the kernels covered with smut spores to give a smutty appearance in mass, or that contains more than 0.2 percent smut balls.

(e) *Treated mixed grain.* Mixed grain that has been scoured, limed, washed,

sulfured, or treated in such a manner that its true quality is not reflected by the grade designation U.S. Mixed Grain or U.S. Sample grade Mixed Grain.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987]

Subpart G—United States Standards for Oats

TERMS DEFINED

§ 810.1001 Definition of oats.

Grain that consists of 50 percent or more of oats (*Avena sativa* L. and *A. byzantina* C. Koch) and may contain, singly or in combination, not more than 25 percent of wild oats and other grains for which standards have been established under the United States Grain Standards Act.

§ 810.1002 Definition of other terms.

(a) *Fine seeds.* All matter that passes through a ⁵/₆₄ triangular-hole sieve after sieving according to procedures prescribed in FGIS instructions.

(b) *Foreign material.* All matter other than oats, wild oats, and other grains.

(c) *Heat-damaged kernels.* Kernels and pieces of oat kernels, other grains, and wild oats that are materially discolored and damaged by heat.

(d) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, and wheat.

(e) *Sieves*—(1) ⁵/₆₄ triangular-hole sieve. A metal sieve 0.032 inch thick with equilateral triangular perforations the inscribed circles of which are 0.0781 (⁵/₆₄) inch in diameter.

(2) *0.064 x ³/₈ oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (³/₈) inch.

(f) *Sound oats.* Kernels and pieces of oat kernels (except wild oats) that are not badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(g) *Wild oats.* Seeds of *Avena fatua* L. and *A. sterilis* L.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

§ 810.1003 Basis of determination.

Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole.

GRADES AND GRADE REQUIREMENTS

§ 810.1004 Grades and grade requirements for oats.

Grade	Minimum limits—		Maximum limits—		
	Test weight per bushel (pounds)	Sound oats (percent)	Heat-damaged kernels (percent)	Foreign material (percent)	Wild oats (percent)
U.S. No. 1	36.0	97.0	0.1	2.0	2.0
U.S. No. 2	33.0	94.0	0.3	3.0	3.0
U.S. No. 3 ¹	30.0	90.0	1.0	4.0	5.0
U.S. No. 4 ²	27.0	80.0	3.0	5.0	10.0

U.S. Sample grade—

U.S. Sample grade are oats which:

- (a) Do not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or
- (b) Contain 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 8 or more cocklebur (*Xanthium* spp.) or similar seeds singly or in combination, 10 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1 ¹/₈ to 1 ¹/₄ quarts of oats; or
- (c) Have a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or
- (d) Are heating or otherwise of distinctly low quality.

¹ Oats that are slightly weathered shall be graded not higher than U.S. No. 3.

² Oats that are badly stained or materially weathered shall be graded not higher than U.S. No. 4.

SPECIAL GRADES AND SPECIAL GRADE
REQUIREMENTS**§ 810.1005 Special grades and special grade requirements.**

(a) *Bleached oats.* Oats that in whole or in part, have been treated with sulfuric acid or any other bleaching agent.

(b) *Bright oats.* Oats, except bleached oats, that are of good natural color.

(c) *Ergoty oats.* Oats that contain more than 0.10 percent ergot.

(d) *Extra-heavy oats.* Oats that have a test weight per bushel of 40 pounds or more.

(e) *Garlicky oats.* Oats that contain 4 or more green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in 500 grams of oats.

(f) *Heavy oats.* Oats that have a test weight per bushel of 38 pounds or more but less than 40 pounds.

(g) *Smutty oats.* Oats that have kernels covered with smut spores to give a smutty appearance in mass, or that contain more than 0.2 percent of smut balls.

(h) *Thin oats.* Oats that contain more than 20.0 percent of oats and other matter, except fine seeds, that pass through a $0.064 \times \frac{3}{8}$ oblong-hole sieve but remain on top of a $\frac{5}{64}$ triangular-hole sieve after sieving according to procedures prescribed in FGIS instructions.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987]

Subpart H—United States Standards for Rye

TERMS DEFINED

§ 810.1201 Definition of rye.

Grain that, before the removal of dockage, consists of 50 percent or more of common rye (*Secale cereale* L.) and not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and that, after the removal of dockage, contains 50 percent or more of whole rye.

§ 810.1202 Definition of other terms.

(a) *Damaged kernels.* Kernels, pieces of rye kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Dockage.* All matter other than rye that can be removed from the original sample by use of an approved device in accordance with procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of rye kernels removed in properly separating the material other than rye and that cannot be recovered by properly rescreening and recleaning.

(c) *Foreign material.* All matter other than rye that remains in the sample after the removal of dockage.

(d) *Heat-damaged kernels.* Kernels, pieces of rye kernels, and other grains that are materially discolored and damaged by heat.

(e) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, wheat, and wild oats.

(f) *Sieve—~~0.064~~ $\times \frac{3}{8}$ oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 by 0.375 ($\frac{3}{8}$) inch.

(g) *Thin rye.* Rye and other matter that passes through a $0.064 \times \frac{3}{8}$ oblong-hole sieve after sieving according to procedures prescribed in FGIS instructions.

PRINCIPLES GOVERNING THE
APPLICATION OF STANDARDS**§ 810.1203 Basis of determination.**

Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

GRADES AND GRADE REQUIREMENTS

§ 810.1204 Grades and grade requirements for rye.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—				Thin Rye (percent)
		Foreign material		Damaged kernels		
		Foreign matter other than wheat (percent)	Total (percent)	Heat damaged (percent)	Total (percent)	
U.S. No. 1	56.0	1.0	3.0	0.2	2.0	10.0
U.S. No. 2	54.0	2.0	6.0	0.2	4.0	15.0
U.S. No. 3	52.0	4.0	10.0	0.5	7.0	25.0
U.S. No. 4	49.0	6.0	10.0	3.0	15.0	.....
U.S. Sample grade—						
U.S. Sample grade is rye that:						
(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or						
(b) Contains 8 or more stones or any numbers of stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more <i>Crotalaria</i> seeds (<i>Crotalaria</i> spp.), 2 or more castor beans (<i>Ricinus communis</i> L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1½ to 1¼ quarts of rye; or						
(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or						
(d) Is heating or otherwise of distinctly low quality.						

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

§ 810.1205 Special grades and special grade requirements.

- (a) *Ergoty rye*. Rye that contains more than 0.30 percent of ergot.
- (b) *Garlicky rye*. Rye that contains in a 1,000-gram portion more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.
- (c) *Light garlicky rye*. Rye that contains in a 1,000-gram portion two or more, but not more than six, green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.
- (d) *Light smutty rye*. Rye that has an unmistakable odor of smut, or that contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls but not in excess of a quantity equal to 30 smut balls of average size.
- (e) *Plump rye*. Rye that contains not more than 5.0 percent of rye and other matter that passes through a 0.064×¾ oblong-hole sieve.
- (f) *Smutty rye*. Rye that contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987]

Subpart I—United States Standards for Sorghum

TERMS DEFINED

§ 810.1401 Definition of sorghum.

Grain that, before the removal of dockage, consists of 50 percent or more of whole kernels of sorghum (*Sorghum bicolor* (L.) Moench) excluding nongrain sorghum and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.1402 Definition of other terms.

- (a) *Broken kernels*. All matter which passes through a 5/64 triangular-hole sieve and over a 2–1/2/64 round-hole sieve according to procedures prescribed in FGIS instructions.
- (b) *Broken kernels and foreign material*. The combination of broken kernels and foreign material as defined in paragraph (a) and (f) of this section.
- (c) *Classes*. There are four classes of sorghum: Sorghum, Tannin sorghum, White sorghum, and Mixed sorghum.
 - (1) *Sorghum*. Sorghum which is low in tannin content due to the absence of a pigmented testa (subcoat) and contains less than 98.0 percent White sorghum and not more than 3.0 percent Tannin sorghum. The pericarp color of this class may appear white, yellow, pink, orange, red, or bronze.

(2) *Tannin sorghum*. Sorghum which is high in tannin content due to the presence of a pigmented testa (subcoat) and contains not more than 10.0 percent non-Tannin sorghum. The pericarp color of this class is usually brown but may also be white, yellow, pink, orange, red, or bronze.

(3) *White sorghum*. Sorghum which is low in tannin content due to the absence of a pigmented testa (subcoat) and contains not more than 2.0 percent sorghum of other classes. The pericarp color of this class is white or translucent and includes sorghum containing spots that, singly or in combination, cover 25.0 percent or less of the kernel.

(4) *Mixed sorghum*. Sorghum which does not meet the requirements for any of the classes Sorghum, Tannin sorghum, or White sorghum.

(d) *Damaged kernels*. Kernels, pieces of sorghum kernels and other grains that are badly ground damaged, badly weather damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(e) *Dockage*. All matter other than sorghum that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of sorghum kernels removed in properly separating the material other than sorghum.

(f) *Foreign material*. All matter, except sorghum, which passes over the number 6 riddle and all matter other than sorghum that remains on top of the 5/64 triangular-hole sieve according to procedures prescribed in FGIS instructions.

(g) *Heat-damaged kernels*. Kernels, pieces of sorghum kernels, and other grains that are materially discolored and damaged by heat.

(h) *Nongrain sorghum*. Seeds of broomcorn, Johnson-grass, *Sorghum almum* Parodi, sorghum-sudangrass hybrids, sorgrass, sudangrass, and sweet sorghum (*sorgo*).

(i) *Pericarp*. The pericarp is the outer layers of the sorghum grain and is fused to the seedcoat.

(j) *Sieves*.

(1) *1.98 mm (5/64 (0.0781) inches) triangular-hole sieve*. A metal sieve 0.81 mm (0.032 inches) thick with equilateral triangular perforations the inscribed circles of which are 1.98 mm (0.0781 inches) in diameter.

(2) *0.99 mm (2 1/2 /64 (0.0391) inches) round-hole sieve*. A metal sieve 0.81 mm (0.032 inch) thick with round holes 0.99 mm (0.0391 inches) in diameter.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24437, June 30, 1987; 52 FR 28534, July 31, 1987; 57 FR 58971, Dec. 14, 1992]

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

§ 810.1403 Basis of Determination.

Each determination of broken kernels and foreign material is made on the basis of the grain when free from dockage. Each determination of class, damaged kernels, heat-damaged kernels, and stones is made on the basis of the grain when free from dockage and that portion of the broken kernels, and foreign material that will pass through a 1.98 mm (5/64 inches) triangular-hole sieve. Other determinations not specifically provided for in the general provisions are made on the basis of the grain as a whole except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage, broken kernels, and foreign material removed by the 1.98 mm (5/64 inches) triangular-hole sieve.

[57 FR 58971, Dec. 14, 1992]

GRADES AND GRADE REQUIREMENTS

§ 810.1404 Grades and grade requirements for sorghum.

Grading factors	Grades U.S. Nos. ¹			
	1	2	3	4
Minimum pound limits of:				
Test weight per bushel	57.0	55.0	53.0	51.0
Maximum percent limits of:				
Damaged kernels:				
Heat (part of total)	0.2	0.5	1.0	3.0
Total	2.0	5.0	10.0	15.0
Broken kernels and foreign material:				
Foreign material (part of total)	1.5	2.5	3.5	4.5
Total	4.0	7.0	10.0	13.0
Maximum count limits of:				
Other material:				
Animal filth	9	9	9	9
Castor beans	1	1	1	1
Crotalaria seeds	2	2	2	2
Glass	1	1	1	1
Stones ²	7	7	7	7
Unknown foreign substance	3	3	3	3
Cockleburrs	7	7	7	7
U.S. Sample grade is Sorghum that:				
(a) Does not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or				
(b) Has a musty, sour or commercially objectionable foreign odor (except smut odor); or				
(c) Is badly weathered, heating or distinctly low quality.				

¹ Sorghum which is distinctly discolored shall not grade higher than U.S. No. 3.
² Aggregate weight of stones must also exceed 0.2 percent of sample weight.

[57 FR 58971, Dec. 14, 1992]

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

§ 810.1405 Special grades and special grade requirements.

Smutty sorghum. Sorghum that has kernels covered with smut spores to give a smutty appearance in mass, or that contains 20 or more smut balls in 100 grams of sorghum.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987]

Subpart J—United States Standards for Soybeans

TERMS DEFINED

§ 810.1601 Definition of soybeans.

Grain that consists of 50 percent or more of whole or broken soybeans (*Glycine max* (L.) Merr.) that will not pass through an ³/₆₄ round-hole sieve

and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.1602 Definition of other terms.

(a) *Classes.* There are two classes for soybeans: Yellow soybeans and Mixed soybeans.

(1) *Yellow soybeans.* Soybeans that have yellow or green seed coats and which in cross section, are yellow or have a yellow tinge, and may include not more than 10.0 percent of soybeans of other colors.

(2) *Mixed soybeans.* Soybeans that do not meet the requirements of the class Yellow soybeans.

(b) *Damaged kernels.* Soybeans and pieces of soybeans that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged,

stinkbug-stung, or otherwise materially damaged. Stinkbug-stung kernels are considered damaged kernels at the rate of one-fourth of the actual percentage of the stung kernels.

(c) *Foreign material.* All matter that passes through an $\frac{8}{64}$ round-hole sieve and all matter other than soybeans remaining in the sieved sample after sieving according to procedures prescribed in FGIS instructions.

(d) *Heat-damaged kernels.* Soybeans and pieces of soybeans that are materially discolored and damaged by heat.

(e) *Purple mottled or stained.* Soybeans that are discolored by the growth of a fungus; or by dirt; or by a dirt-like substance(s) including nontoxic inoculants; or by other nontoxic substances.

(f) *Sieve— $\frac{8}{64}$ round-hole sieve.* A metal sieve 0.032 inch thick perforated with round holes 0.125 ($\frac{8}{64}$) inch in diameter.

(g) *Soybeans of other colors.* Soybeans that have green, black, brown, or bicolored seed coats. Soybeans that have

green seed coats will also be green in cross section. Bicolored soybeans will have seed coats of two colors, one of which is brown or black, and the brown or black color covers 50 percent of the seed coats. The hilum of a soybean is not considered a part of the seed coat for this determination.

(h) *Splits.* Soybeans with more than $\frac{1}{4}$ of the bean removed and that are not damaged.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

§ 810.1603 Basis of determination.

Each determination of class, heat-damaged kernels, damaged kernels, splits, and soybeans of other colors is made on the basis of the grain when free from foreign material. Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole.

GRADES AND GRADE REQUIREMENTS

§ 810.1604 Grades and grade requirements for soybeans.

Grading factors	Grades U.S. Nos.			
	1	2	3	4 - s4
Minimum test weight per bushel	56.0	54.0	52.0	49.0
Maximum percent limits of:				
Damaged kernels:				
Heat (part of total)	0.2	0.5	1.0	3.0
Total	2.0	3.0	5.0	8.0
Foreign material	1.0	2.0	3.0	5.0
Splits	10.0	20.0	30.0	40.0
Soybeans of other colors ¹	1.0	2.0	5.0	10.0
Maximum count limits of:				
Other material:				
Animal filth	9	9	9	9
Castor beans	1	1	1	1
Crotalaria seeds	2	2	2	2
Glass	0	0	0	0
Stones ²	3	3	3	3
Unknown foreign substance	3	3	3	3
Total ³	10	10	10	10

U.S. Sample grade Soybeans that:

- (a) Do not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or
- (b) Have a musty, sour, or commercially objectionable foreign odor (except garlic odor); or
- (c) Are heating or of distinctly low quality.

¹ Disregard for Mixed soybeans.

² In addition to the maximum count limit, stones must exceed 0.1 percent of the sample weight.

³ Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substances. The weight of stones is not applicable for total other material.

§ 810.1605

7 CFR Ch. VIII (1–1–99 Edition)

[59 FR 10573, Mar. 7, 1994]

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

§ 810.1605 Special grades and special grade requirements.

(a) *Garlicky soybeans.* Soybeans that contain 5 or more green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in a 1,000 gram portion.

(b) *Purple mottled or stained soybeans.* Soybeans with pink or purple seed coats as determined on a portion of approximately 400 grams with the use of an FGIS Interpretive Line Photograph.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987; 59 FR 10573, Mar. 7, 1994]

Subpart K—United States Standards for Sunflower Seed

TERMS DEFINED

§ 810.1801 Definition of sunflower seed.

Grain that, before the removal of foreign material, consists of 50.0 percent or more of cultivated sunflower seed (*Helianthus annuus* L.) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.1802 Definition of other terms.

(a) *Cultivated sunflower seed.* Sunflower seed grown for oil content. The term seed in this and other definitions related to sunflower seed refers to both the kernel and hull which is a fruit or achene.

(b) *Damaged sunflower seed.* Seed and pieces of sunflower seed that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, mold-damaged, sprout-damaged, or otherwise materially damaged.

(c) *Dehulled seed.* Sunflower seed that has the hull completely removed from the sunflower kernel.

(d) *Foreign material.* All matter other than whole sunflower seeds containing kernels that can be removed from the original sample by use of an approved device and by handpicking a portion of the sample according to procedures prescribed in FGIS instructions.

(e) *Heat-damaged sunflower seed.* Seed and pieces of sunflower seed that are materially discolored and damaged by heat.

(f) *Hull (Husk).* The ovary wall of the sunflower seed.

(g) *Kernel.* The interior contents of the sunflower seed that are surrounded by the hull.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

§ 810.1803 Basis of determination.

Each determination of heat-damaged kernels, damaged kernels, test weight per bushel, and dehulled seed is made on the basis of the grain when free from foreign material. Other determinations not specifically provided for in the general provisions are made on the basis of the grain as a whole, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from foreign material.

GRADES AND GRADE REQUIREMENTS

§ 810.1804 Grades and grade requirements for sunflower seed.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—		
		Damaged Sunflower Seed		Dehulled seed (percent)
		Heat Damaged (percent)	Total (Percent)	
U.S. No. 1	25.0	0.5	5.0	5.0
U.S. No. 2	25.0	1.0	10.0	5.0

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—		
		Damaged Sunflower Seed		Dehulled seed (per-cent)
		Heat Damaged (per-cent)	Total (Per-cent)	
U.S. Sample grade— U.S. Sample grade is sunflower seed that: (a) Does not meet the requirements for the grades U.S. Nos. 1 or 2; or (b) Contains 8 or more stones which have an aggregate weight in excess of 0.20 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (<i>Crotalaria</i> spp.), 2 or more castor beans (<i>Ricinus communis</i> L.), 4 or more particles of an unknown foreign substance(s), or a commonly recognized harmful or toxic substance(s), 10 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 600 grams of sunflower seed; or (c) Has a musty, sour, or commercially objectionable foreign odor; or (d) Is heating or otherwise of distinctly low quality.				

Subpart L—United States Standards for Triticale

TERMS DEFINED

§ 810.2001 Definition of triticale.

Grain that, before the removal of dockage, consists of 50 percent or more of triticale (*X Triticosecale* Wittmack) and not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and that, after the removal of dockage, contains 50 percent or more of whole triticale.

§ 810.2002 Definition of other terms.

(a) *Damaged kernels.* Kernels, pieces of triticale kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Defects.* Damaged kernels, foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for the factor defects for each numerical grade.

(c) *Dockage.* All matter other than triticale that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of triticale kernels removed in properly separating the material other than triticale and that cannot be recovered by properly rescreening or re-cleaning.

(d) *Foreign material.* All matter other than triticale.

(e) *Heat-damaged kernels.* Kernels, pieces of triticale kernels, and other grains that are materially discolored and damaged by heat.

(f) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, wheat, and wild oats.

(g) *Shrunken and broken kernels.* All matter that passes through a 0.064 x 3/8 oblong-hole sieve after sieving according to procedures prescribed in FGIS instructions.

(h) *Sieve—0.064 x 3/8 oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (3/8) inch.

[52 FR 24418, June 30, 1987; 52 FR 28534, July 31, 1987]

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

§ 810.2003 Basis of determination.

Each determination of heat-damaged kernels, damaged kernels, material other than wheat or rye, and foreign material (total) is made on the basis of the grain when free from dockage and shrunken and broken kernels. Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

GRADES AND GRADE REQUIREMENTS

§ 810.2004 Grades and grade requirements for triticale.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—					
		Damaged Kernels		Foreign material		Shrunken and broken kernels (percent)	Defects ³ (percent)
		Heat damaged (percent)	Total ¹ (percent)	Material other than wheat or rye (percent)	Total ² (percent)		
U.S. No. 1	48.0	0.2	2.0	1.0	2.0	5.0	5.0
U.S. No. 2	45.0	0.2	4.0	2.0	4.0	8.0	8.0
U.S. No. 3	43.0	0.5	8.0	3.0	7.0	12.0	12.0
U.S. No. 4	41.0	3.0	15.0	4.0	10.0	20.0	20.0
U.S. Sample grade—							

U.S. Sample grade is triticale that:

- (a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or
- (b) Contains 8 or more stones or any number of stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more *Crotalaria* seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1½ to 1¼ quarts of triticale; or
- (c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or
- (d) Is heating or otherwise of distinctly low quality.

¹ Includes heat-damaged kernels.

² Includes material other than wheat or rye.

³ Defects include damaged kernels (total), foreign material (total) and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects for each numerical grade.

[52 FR 24418, June 30, 1987; 52 FR 28534, July 31, 1987]

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

§ 810.2005 Special grades and special grade requirements.

- (a) *Ergoty triticale*. Triticale that contains more than 0.10 percent of ergot.
- (b) *Garlicky triticale*. Triticale that contains in a 1,000 gram portion more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.
- (c) *Light garlicky triticale*. Triticale that contains in a 1,000 gram portion two or more, but not more than six, green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.
- (d) *Light smutty triticale*. Triticale that has an unmistakable odor of smut, or that contains in a 250 gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.
- (e) *Smutty triticale*. Triticale that contains in a 250 gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987]

Subpart M—United States Standards for Wheat

TERMS DEFINED

§ 810.2201 Definition of wheat.

Grain that, before the removal of dockage, consists of 50 percent or more common wheat (*Triticum aestivum* L.), club wheat (*T. compactum* Host.), and durum wheat (*T. durum* Desf.) and not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and that, after the removal of the dockage, contains 50 percent or more of whole kernels of one or more of these wheats.

§ 810.2202 Definition of other terms.

(a) *Classes*. There are eight classes for wheat: Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, Hard White wheat, Soft White wheat, Unclassed wheat, and Mixed wheat.

(1) *Durum wheat*. All varieties of white (amber) durum wheat. This class is divided into the following three subclasses:

(i) *Hard Amber Durum wheat.* Durum wheat with 75 percent or more of hard and vitreous kernels of amber color.

(ii) *Amber Durum wheat.* Durum wheat with 60 percent or more but less than 75 percent of hard and vitreous kernels of amber color.

(iii) *Durum wheat.* Durum wheat with less than 60 percent of hard vitreous kernels of amber color.

(2) *Hard Red Spring wheat.* All varieties of Hard Red Spring wheat. This class shall be divided into the following three subclasses.

(i) *Dark Northern Spring wheat.* Hard Red Spring wheat with 75 percent or more of dark, hard, and vitreous kernels.

(ii) *Northern Spring wheat.* Hard Red Spring wheat with 25 percent or more but less than 75 percent of dark, hard, and vitreous kernels.

(iii) *Red Spring wheat.* Hard Red Spring wheat with less than 25 percent of dark, hard, and vitreous kernels.

(3) *Hard Red Winter wheat.* All varieties of Hard Red Winter wheat. There are no subclasses in this class.

(4) *Soft Red Winter wheat.* All varieties of Soft Red Winter wheat. There are no subclasses in this class.

(5) *Hard White wheat.* All hard endosperm white wheat varieties. There are no subclasses in this class.

(6) *Soft White wheat.* All soft endosperm white wheat varieties. This class is divided into the following three subclasses:

(i) *Soft White wheat.* Soft endosperm white wheat varieties which contain not more than 10 percent of white club wheat.

(ii) *White Club wheat.* Soft endosperm white club wheat varieties containing not more than 10 percent of other soft white wheats.

(iii) *Western White wheat.* Soft White wheat containing more than 10 percent of white club wheat and more than 10 percent of other soft white wheats.

(7) *Unclassed wheat.* Any variety of wheat that is not classifiable under other criteria provided in the wheat standards. There are no subclasses in this class. This class includes any wheat which is other than red or white in color.

(8) *Mixed wheat.* Any mixture of wheat that consists of less than 90 per-

cent of one class and more than 10 percent of one other class, or a combination of classes that meet the definition of wheat.

(b) *Contrasting classes.* Contrasting classes are:

(1) Durum wheat, Hard White wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.

(2) Hard Red Spring wheat, Hard Red Winter wheat, Hard White wheat, Soft Red Winter wheat, Soft White wheat, and Unclassed wheat in the class Durum wheat.

(3) Durum wheat and Unclassed wheat in the class Soft Red Winter wheat.

(4) Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, and Unclassed wheat, in the classes Hard White wheat and Soft White wheat.

(c) *Damaged kernels.* Kernels, pieces of wheat kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(d) *Defects.* Damaged kernels, foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for the factor defects for each numerical grade.

(e) *Dockage.* All matter other than wheat that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of wheat kernels removed in properly separating the material other than wheat and that cannot be recovered by properly rescreening or recleaning.

(f) *Foreign material.* All matter other than wheat that remains in the sample after the removal of dockage and shrunken and broken kernels.

(g) *Heat-damaged kernels.* Kernels, pieces of wheat kernels, and other grains that are materially discolored and damaged by heat which remain in the sample after the removal of dockage and shrunken and broken kernels.

(h) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley,

§ 810.2203

7 CFR Ch. VIII (1–199 Edition)

nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, and wild oats.

(i) *Shrunken and broken kernels.* All matter that passes through a $0.064 \times \frac{3}{8}$ oblong-hole sieve after sieving according to procedures prescribed in the FGIS instructions.

(j) *Sieve— $0.064 \times \frac{3}{8}$ oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 ($\frac{3}{8}$) inch.

[52 FR 24418, June 30, 1987, as amended at 54 FR 48736, Nov. 27, 1989; 57 FR 58966, Dec. 14, 1992]

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

§ 810.2203 **Basis of determination.**

Each determination of heat-damaged kernels, damaged kernels, foreign material, wheat of other classes, contrasting classes, and subclasses is made on the basis of the grain when free from dockage and shrunken and broken kernels. Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

[52 FR 24418, June 30, 1987; 52 FR 28534, July 31, 1987]

GRADES AND GRADE REQUIREMENTS

§ 810.2204 **Grades and grade requirements for wheat.**

(a) Grades and grade requirements for all classes of wheat, except Mixed wheat.

Grading Factors	Grades U.S. Nos.				
	1	2	3	4	5
Minimum pound limits of:					
Test weight per bushel:					
Hard Red Spring wheat or White Club wheat	58.0	57.0	55.0	53.0	50.0
All other classes and subclasses	60.0	58.0	56.0	54.0	51.0
Maximum percent limits of:					
Defects:					
Damaged kernels:					
Heat (part of total)	0.2	0.2	0.5	1.0	3.0
Total	2.0	4.0	7.0	10.0	15.0
Foreign material	0.4	0.7	1.3	3.0	5.0
Shrunken and broken kernels	3.0	5.0	8.0	12.0	20.0
Total ¹	3.0	5.0	8.0	12.0	20.0
Wheat of other classes: ²					
Contrasting classes	1.0	2.0	3.0	10.0	10.0
Total ³	3.0	5.0	10.0	10.0	10.0
Stones	0.1	0.1	0.1	0.1	0.1
Maximum count limits of:					
Other material:					
Animal filth	1	1	1	1	1
Castor beans	1	1	1	1	1
Crotalaria seeds	2	2	2	2	2
Glass	0	0	0	0	0
Stones	3	3	3	3	3
Unknown foreign substance	3	3	3	3	3
Total ⁴	4	4	4	4	4

Grading Factors	Grades U.S. Nos.				
	1	2	3	4	5
Insect-damaged kernels: In 100 grams	31	31	31	31	31

U.S. Sample grade is Wheat that:
 (a) does not meet the requirements for U.S. Nos. 1, 2, 3, 4, or 5; or
 (b) has a musty, sour or commercially objectionable foreign odor (except smut or garlic odor); or
 (c) is heating or of distinctly low quality.

¹ Includes damaged kernels (total), foreign material, shrunken and broken kernels.
² Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
³ Includes contrasting classes.
⁴ Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substance.

(b) *Grades and grade requirements for Mixed wheat.* Mixed wheat is graded according to the U.S. numerical and U.S. Sample grade requirements of the class of wheat that predominates in the mixture, except that the factor wheat of other classes is disregarded.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24442, June 30, 1987; 57 FR 58966, Dec. 14, 1992]

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

§810.2205 Special grades and special grade requirements.

- (a) *Ergoty wheat.* Wheat that contains more than 0.05 percent of ergot.
- (b) *Garlicky wheat.* Wheat that contains in a 1,000 gram portion more than two green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.
- (c) *Light smutty wheat.* Wheat that has an unmistakable odor of smut, or which contains, in a 250-gram portion, smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 5 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.
- (d) *Smutty wheat.* Wheat that contains, in a 250 gram portion, smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.
- (e) *Treated wheat.* Wheat that has been scoured, limed, washed, sulfured, or treated in such a manner that the true quality is not reflected by either the numerical grades or the U.S. Sample grade designation alone.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24442, June 30, 1987; 57 FR 58967, Dec. 14, 1992]

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

Subpart A—Regulations

DEFINITIONS

- Sec.
- 868.1 Meaning of terms.

ADMINISTRATION

- 868.5 Administrator.
- 868.6 Nondiscrimination—policy and provisions.
- 868.7 Procedures for establishing regulations and standards.
- 868.8 Complaints and reports of alleged violations.
- 868.9 Provisions for hearings.
- 868.10 Information about the Service, Act, and regulations.
- 868.11 Public information.
- 868.12 Identification.
- 868.13 Regulations not applicable for certain purposes.

CONDITIONS FOR OBTAINING OR WITHHOLDING SERVICE

- 868.20 Availability of services.
- 868.21 Requirements for obtaining service.
- 868.22 Withdrawal of request for inspection service by applicant.
- 868.23 Dismissal of request for inspection service.
- 868.24 Conditional withholding of service.
- 868.25 Denial or withdrawal of service.
- 868.26 Expenses of the cooperator or the Service.

INSPECTION METHODS AND PROCEDURES

- 868.30 Methods and order of performing inspection service.
- 868.31 Kinds of inspection services.
- 868.32 Who shall inspect commodities.
- 868.33 Sample requirements; general.
- 868.34 Partial inspection.
- 868.35 Sampling provisions by level of service.
- 868.36 Loss of identity.

Pt. 868

7 CFR Ch. VIII (1–1–99 Edition)

ORIGINAL INSPECTION SERVICE

- 868.40 Who may request original inspection service.
- 868.41 Contract service.
- 868.42 How to request original inspection service.
- 868.44 New original inspection.

RETEST INSPECTION SERVICE

- 868.50 Who may request retest inspection service.
- 868.51 How to request retest inspection service.
- 868.52 Certifying retest inspection results.

APPEAL INSPECTION SERVICE

- 868.60 Who may request appeal inspection service.
- 868.61 How to request appeal inspection service.
- 868.62 Who shall perform appeal inspection service.
- 868.63 Certifying appeal inspection results.

OFFICIAL CERTIFICATES

- 868.70 Official certificates; issuance and distribution.
- 868.71 Official certificate requirements.
- 868.72 Certification of results.
- 868.73 Corrected certificates.
- 868.74 Divided-lot certificates.
- 868.75 Duplicate certificates.

LICENSED INSPECTORS, TECHNICIANS, AND SAMPLERS

- 868.80 Who may be licensed.
- 868.81 Licensing procedures.
- 868.82 Voluntary cancellation or suspension of license.
- 868.83 Automatic suspension of license by change in employment.
- 868.84 Suspension or revocation of license.

FEEES

- 868.90 Fees for certain Federal inspection services.
- 868.91 Fees for certain Federal rice inspection services.
- 868.92 Explanation of service fees and additional fees.

Subpart B—Marketing Standards

- 868.101 General information.
- 868.102 Procedures for establishing and revising grade standards.
- 868.103 Public notification of grade standards action.

Subpart C—United States Standards for Rough Rice

TERMS DEFINED

- 868.201 Definition of rough rice.
- 868.202 Definition of other terms.

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

- 868.203 Basis of determination.
- 868.204 Interpretive line samples.
- 868.205 Milling requirements.
- 868.206 Milling yield determination.
- 868.207 Moisture.
- 868.208 Percentages.
- 868.209 Information.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

- 868.210 Grades and grade requirements for the classes of rough rice.
- 868.211 Grade designation.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

- 868.212 Special grades and requirements.
- 868.213 Special grade designation.

Subpart D—United States Standards for Brown Rice for Processing

TERMS DEFINED

- 868.251 Definition of brown rice for processing.
- 868.252 Definition of other terms.

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

- 868.253 Basis of determination.
- 868.254 Broken kernels determination.
- 868.255 Interpretive line samples.
- 868.256 Milling requirements.
- 868.257 Milling yield determination.
- 868.258 Moisture.
- 868.259 Percentages.
- 868.260 Information.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

- 868.261 Grades and grade requirements for the classes of brown rice for processing.
- 868.262 Grade designation.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

- 868.263 Special grades and special grade requirements.
- 868.264 Special grade designation.

Subpart E—United States Standards for Milled Rice

TERMS DEFINED

- 868.301 Definition of milled rice.

868.302 Definition of other terms.

PRINCIPLES GOVERNING APPLICATION OF
STANDARDS

868.303 Basis of determination.

868.304 Broken kernels determination.

868.305 Interpretive line samples.

868.306 Milling requirements.

868.307 Moisture.

868.308 Percentages.

868.309 Information.

GRADES, GRADE REQUIREMENTS, AND GRADE
DESIGNATIONS

868.310 Grade and grade requirements for the classes Long Grain Mixed Rice, Mixed Grain Miller Rice, Short Grain Miller Rice, and Mixed Miller Rice.

868.311 Grades and grade requirements for the class Second Head Milled Rice.

868.312 Grades and grade requirements for the class Screenings Milled Rice.

868.313 Grades and grade requirements for the class Brewers Milled Rice.

868.314 Grade designations.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

868.315 Special grades and special grade requirements.

868.316 Special grade designation.

AUTHORITY: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Subpart A—Regulations

SOURCE: 53 FR 3722, Feb. 9, 1988, unless otherwise noted. Redesignated at 60 FR 16364, Mar. 30, 1995.

DEFINITIONS

§ 868.1 Meaning of terms.

(a) *Construction.* Words used in the singular form are considered to imply the plural and vice versa, as appropriate.

(b) *Definitions.* For the purpose of these regulations, unless the context requires otherwise, the following terms have the meanings given for them in this paragraph.

(1) *Act.* The Agricultural Marketing Act of 1946, as amended (secs. 202–208, 60 Stat. 1087, as amended, 7 U.S.C. 1621 *et seq.*).

(2) *Administrator.* The Administrator of the Grain Inspection, Packers and Stockyards Administration or any person to whom the Administrator's authority has been delegated.

(3) *Appeal inspection service.* A review by the Service of the results of an original inspection or retest inspection service.

(4) *Applicant.* An interested person who requests any inspection service with respect to a commodity.

(5) *Authorized inspector.* A Department employee authorized by the Administrator to inspect a commodity in accordance with the Act, regulations, standards, and instructions.

(6) *Board appeal inspection service.* A review by the Board of Appeals and Review of the results of an original inspection or appeal inspection service on graded commodities.

(7) *Board of Appeals and Review or Board.* The Board of Appeals and Review of the Service that performs Board appeal inspection services.

(8) *Business day.* The established field office working hours, any Monday through Friday that is not a holiday, or the working hours and days established by a cooperator.

(9) *Carrier.* A truck, trailer, truck/trailer(s) combination, railroad car, barge, ship, or other container used to transport bulk, sacked, or packaged commodity.

(10) *Commodity.* Agricultural commodities and products thereof that the Secretary has assigned to the Service for inspection under the Act, including but not limited to dry beans, grain, hops, lentils, oilseeds, dry peas, split peas, and rice.

(11) *Continuous inspection.* The conduct of inspection services in an approved plant where one or more official inspection personnel are present during the processing of a commodity to make in-process examinations of the preparation, processing, packing, and warehousing of the commodity and to determine compliance with applicable sanitation requirements.

(12) *Contract service.* Any service performed under a contract between an applicant and the Service.

(13) *Contractor.* Any person who enters into a contract with the Service or with a cooperator to perform specified inspection services.

(14) *Cooperator.* An agency or department of the Federal Government which has an interagency agreement or State

agency which has a reimbursable agreement with the Service.

(15) *Cooperator inspection service.* The inspection service provided by a cooperator under the regulations. Under this service, inspection certificates are issued by the cooperator and all fees and charges are collected by the cooperator, except as provided in the agreement.

(16) *Department.* The United States Department of Agriculture.

(17) *Factor.* A quantified physical or chemical property identified in official standards, specifications, abstracts, contracts, or other documents whose measurement describes a specific quality of a commodity.

(18) *Field office.* An office of the Service designated to perform, monitor, or supervise inspection services.

(19) *Grade.* A grade designating a level of quality as defined in the commodity standards promulgated pursuant to the Act.

(20) *Graded commodity.* Commodities for which the Service has promulgated Standards under the Act and commodities which are tested by the Service at a field office or by a cooperator for specific physical factors using approved equipment and an inspector's interpretation of visual conditions.

(21) *Holiday.* The legal public holidays specified in paragraph (a) of section 6103, title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal Statute or Executive Order. Under section 6103 and Executive Order 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

(22) *Inspection certificate.* A written or printed official document which is approved by the Service and which shows the results of an inspection service performed under the Act.

(23) *Inspection service.* (i) Applying such tests and making examinations of a commodity and records by official personnel as may be necessary to determine the kind, class, grade, other quality designation, the quantity, or condition of commodity; performing

condition of container, carrier stowage examinations; and any other services as related to commodities, as necessary; and (ii) issuing an inspection certificate.

(24) *Instructions.* The Notices, Instructions, Handbooks, and other directives issued by the Service.

(25) *Interagency agreement.* An agreement between the Service and other agencies or departments of the Federal Government to conduct commodity inspection services as authorized in the Act.

(26) *Interested person.* Any person having a contract or other financial interest in a commodity as the owner, seller, purchaser, warehouseman, carrier, or otherwise.

(27) *Licensee.* Any person licensed by the Service.

(28) *Nongraded commodity.* Nonprocessed commodities which are chemically tested for factors not included in the Standards under the Act or the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*) and processed commodities.

(29) *Nonregular workday.* Any Sunday or holiday.

(30) *Official inspector.* Any official personnel who performs, monitors, or supervises the performance of inspection service and certifies the results of inspection of the commodity.

(31) *Official personnel.* Any authorized Department employee or person licensed by the Administrator to perform all or specified functions under the Act.

(32) *Official sampler.* Any official personnel who performs, monitors, or supervises the performance of sampling of a commodity.

(33) *Official technician.* Any official personnel who performs, monitors, or supervises the performance of specified inspection services and certifies the results thereof, other than certifying the grade of a commodity.

(34) *Origin.* The geographical area or place where the commodity is grown.

(35) *Original inspection service.* An initial inspection of a community.

(36) *Person.* Any individual, partnership, association, corporation, or other business entity.

(37) *Plant.* The premises, buildings, structure, and equipment (including but not limited to machines, utensils,

vehicles, and fixtures located in or about the premises) used or employed in the preparation, processing, handling, transporting, and storage of commodities.

(38) *Regular workday.* Any Monday through Saturday that is not a holiday.

(39) *Regulations.* The regulations in this part.

(40) *Reimbursable agreement.* An agreement between the Service and State agencies to conduct commodity inspection services authorized pursuant to the Act.

(41) *Retest inspection service.* To test, using the same laboratory procedures, a factor(s) of nongraded commodities previously tested.

(42) *Secretary.* The Secretary of Agriculture of the United States or any person to whom the Secretary's authority has been delegated.

(43) *Service.* The Federal Grain Inspection Service of the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture.

(44) *Service representative.* An employee authorized by the Service or a person licensed by the Administrator.

(45) *Specification.* A document which clearly and accurately describes the essential and technical requirements for items, materials, or services including requested inspection procedures.

(46) *Standards.* The commodity standards in this part that describe the physical and biological condition of a commodity at the time of inspection.

(47) *Submitted sample.* A sample submitted by or for an applicant for inspection.

(48) *Test.* A procedure to measure a factor using specialized laboratory equipment involving the application of established scientific principles and laboratory procedures.

[53 FR 3722, Feb. 9, 1988, as amended at 60 FR 5835, Jan. 31, 1995, Redesignated at 60 FR 16364, Mar. 30, 1995, and amended at 63 FR 29531, June 1, 1998]

ADMINISTRATION

§ 868.5 Administrator.

The Administrator, under the authority delegated by the Secretary, is charged with administering the programs and functions authorized under

the Act and the regulations concerning those commodities assigned by the Secretary to the Service.

§ 868.6 Nondiscrimination—policy and provisions.

In implementing, administering, and enforcing the Act and the regulations, standards, and instructions, it is the policy of the Service to promote adherence to the provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000a *et seq.*).

§ 868.7 Procedures for establishing regulations and standards.

Notice of proposals to prescribe, amend, or revoke regulations and standards shall be published in accordance with applicable provisions of the Administrative Procedures Act (5 U.S.C. 551 *et seq.*). Any interested person desiring to file a petition for the issuance, amendment, or revocation of regulations or standards may do so in accordance with 7 CFR 1.28 of the regulations of the Office of the Secretary of Agriculture.

§ 868.8 Complaints and reports of alleged violations.

(a) *General.* Except as provided in paragraph (b) of this section, complaints and reports of violations involving the Act or the regulations, standards, and instructions issued under the Act should be filed with the Service in accordance with 7 CFR 1.133 of the regulations of the Office of the Secretary of Agriculture and these regulations and the instructions.

(b) *Retest inspection and appeal inspection service.* Complaints involving the results of inspection services shall, to the extent practicable, be submitted as requests for retest inspection, appeal inspection, or Board appeal inspection services as set forth in these regulations.

(Approved by the Office of Management and Budget under control number 0580-0011)

§ 868.9 Provisions for hearings.

Opportunities shall be provided for hearings either in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes

§ 868.10

(7 CFR part 1, subpart H) or in accordance with FGIS procedures as appropriate.

§ 868.10 Information about the Service, Act, and regulations.

Information about the Service, Act, regulations, standards, rules of practice, instructions, and other matters related to the inspection of commodities may be obtained by telephoning or writing the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090-6454, or any field office or co-operator.

§ 868.11 Public information.

(a) *General.* This section is issued in accordance with §§1.1 through 1.23 of the regulations of the Secretary in part 1, subpart A, of subtitle A of title 7 (7 CFR 1.1 through 1.23), and appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this section, govern the availability of records of the Service to the public.

(b) *Public inspection and copying.* Materials maintained by the Service, including those described in 7 CFR 1.5, will be made available, upon a request which has not been denied, for public inspection and copying at the U.S. Department of Agriculture, Federal Grain Inspection Service, 1400 Independence Avenue SW., Washington, DC 20250. The public may request access to these materials 8:00 a.m.-4:30 p.m. Monday through Friday except for holidays.

(c) *Indexes.* The Service shall maintain an index of all material required to be made available in 7 CFR 1.5. Copies of these indexes will be maintained at the location given in paragraph (b) of this section. Notice is hereby given that quarterly publication of these indexes is unnecessary and impracticable because the material is voluminous and does not change often enough to justify the expense of quarterly publication. However, upon specific request, copies of any index will be provided at a cost not to exceed the direct cost of duplication.

(d) *Requests for records.* Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.6 and shall be addressed as follows: Office of

7 CFR Ch. VIII (1-1-99 Edition)

the Administrator, Federal Grain Inspection Service, FOIA Request, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090-6454.

(e) *FOIA Appeals.* Any person whose request, under paragraph (d) of this section, is denied shall have the right to appeal such denial in accordance with 7 CFR 1.13. Appeals shall be addressed to the Administrator, Federal Grain Inspection Service, FOIA Appeal, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090-6454.

(f) *Disclosure of information.* FGIS employees or persons acting for FGIS under the Act shall not, without the consent of the applicant, divulge or make known in any manner any facts or information acquired pursuant to the Act, regulations, or instructions except as authorized by the Administrator, by a court of competent jurisdiction, or otherwise by law.

[53 FR 3722, Feb. 9, 1988, as amended 54 FR 5923, Feb. 7, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.12 Identification.

All official personnel shall have in their possession and present upon request, while on duty, the means of identification furnished to them by the Department.

§ 868.13 Regulations not applicable for certain purposes.

These regulations do not apply to the inspection of grain under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) or the inspection of commodities under the United States Warehouse Act, as amended (7 U.S.C. 241 *et seq.*).

CONDITIONS FOR OBTAINING OR WITHHOLDING SERVICE

§ 868.20 Availability of services.

(a) *Original inspection service.* Original inspection services are available according to this section and §§868.40 through 868.44.

(b) *Retest inspection and appeal inspection services.* Retest inspection, appeal inspection, and Board appeal inspection services are available according to §§868.50 through 868.52 and §§868.60 through 868.63.

(c) *Proof of authorization.* A cooperator or the Service may request satisfactory proof that an applicant is an interested person or their authorized agent.

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

§ 868.21 Requirements for obtaining service.

(a) *Consent and agreement by applicant.* In submitting a request for inspection service, the applicant and the owner of the commodity consent to the requirements specified in paragraphs (b) through (j) of this section.

(b) *Written confirmation.* Verbal requests for inspection service shall be confirmed in writing upon request. Each written request shall be made in English and shall include:

- (1) The date filed;
- (2) The identification, quantity, and location of the commodity;
- (3) The type of service(s) requested;
- (4) The name and mailing address of the applicant and, if made by an authorized agent, the agent's name and mailing address; and
- (5) Any other relevant information that the official with whom the application is filed may request.

A written request or a written confirmation of a verbal request shall be signed by the applicant or a duly authorized agent.

(c) *Names and addresses of interested persons.* When requested, each applicant for inspection service shall show on the application form the name and mailing address of each known interested person.

(d) *Surrender of superseded certificates.* Superseded certificates must be promptly surrendered.

(e) *Accessibility.* (1) *Commodities.* Each commodity lot inspected shall be arranged so the entire lot may be examined or, if necessary, a representative sample, as appropriate, can be obtained. If the entire lot is not accessible for examination or a representative sample cannot be obtained, the inspection shall be restricted to an examination or sampling of the accessible portion and the results certified as stated in § 868.34.

(2) *Origin records.* When an applicant requests origin inspection, the records

indicating the origin of the commodity to be inspected shall be made accessible for examination and verification by official personnel.

(f) *Plant examination.* Plant surveys shall be performed upon request. Survey results shall be reported in writing to a designated plant official. If the plant is approved as a result of the survey, inspection service may begin or continue at a time agreed upon by the plant management and the cooperator or Service. If the plant is not approved as a result of the survey, inspection service shall be conditionally withheld pursuant to the procedures in § 868.24.

(g) *Working space.* An applicant must provide adequate and separate space when inspection service is performed at a plant.

(h) *Loading and unloading conditions.* Each applicant for inspection service shall provide or arrange for suitable conditions in the—

- (1) Loading and unloading areas and the truck and railroad holding areas;
- (2) Pier or dock areas;
- (3) Deck and stowage areas of a carrier;
- (4) Other service areas; and
- (5) Equipment used in loading or unloading, processing, and handling the commodity.

Suitable conditions are those which will facilitate accurate inspection, maintain the quantity and the quality of the commodity that is to be inspected, and not be hazardous to the health and safety of official personnel as prescribed in the instructions.

(i) *Timely arrangements.* Requests for inspection service shall be made in a timely manner; otherwise, official personnel may not be available to provide the requested service. "Timely manner" shall mean not later than 2 p.m., local time, of the preceding business day.

(j) *Payment of bills.* Each applicant for inspection service shall pay bills for the service pursuant to §§ 868.90-868.92.

(Approved by the Office of Management and Budget under control number 0580-0012)

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

§ 868.22 Withdrawal of request for inspection service by applicant.

An applicant may withdraw a request for inspection service any time before official personnel release results, either verbally or in writing. Reimbursement of expenses, if any, shall be made pursuant to § 868.26.

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

§ 868.23 Dismissal of request for inspection service.

(a) *Conditions for dismissal.* (1) *General.* A cooperator or the Service shall dismiss requests for inspection service when:

(i) Performing the requested service is not practicable or possible.

(ii) The cooperator or the Service lacks authority under the Act or regulations to provide the inspection service requested or is unable to comply with the Act, regulations, standards, or instructions.

(iii) Sufficient information is not available to make an accurate determination.

(2) *Original inspection service.* A request for original inspection service shall be dismissed if an original inspection has already been performed and circumstances do not prevent a retest inspection, appeal inspection, or Board appeal inspection from being performed on the same lot.

(3) *Retest inspection service.* A request for a retest inspection service shall be dismissed by official personnel when:

(i) The factor requested was not tested during the original inspection;

(ii) The condition of the commodity has undergone a material change;

(iii) A representative file sample is not available;

(iv) The applicant requests that a new sample be obtained;

(v) The request is for a graded commodity; or

(vi) The reasons for the retest inspection are frivolous.

(4) *Appeal inspection service.* A request for an appeal inspection service shall be dismissed by official personnel when:

(i) The scope is different from the scope of the original inspection service;

(ii) The condition of the commodity has undergone a material change;

(iii) The request specifies a file sample and a representative file sample is not available;

(iv) The applicant requests that a new sample be obtained and a new sample cannot be obtained; or

(v) The reasons for the appeal inspection are frivolous.

(5) *Board appeal inspection service.* A request for a Board appeal inspection service shall be dismissed by official personnel when:

(i) The scope is different from the scope of the original inspection service;

(ii) The condition of the commodity has undergone a material change;

(iii) A representative file sample is not available;

(iv) The applicant requests that a new sample be obtained; or

(v) The reasons for the Board appeal inspection are frivolous.

(b) *Procedure for dismissal.* The cooperator or the Service shall notify the applicant of the proposed dismissal of service. If correctable, the applicant will be afforded reasonable time to 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 cooperator or the Service shall conditionally withhold service when an applicant fails to meet any requirement prescribed in § 868.21.

(b) *Procedure for withholding.* The cooperator 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 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

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.

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.

(c) *Appeal inspection service.* (1) *Lot inspection service.* Each appeal inspection service on a commodity lot shall be made on the basis of a file sample or, upon request, a new sample.

(2) *Submitted sample service.* Each appeal inspection service on the commodity in a submitted sample shall be based on an analysis of the file sample.

(d) *Board appeal inspection service.* Each Board appeal inspection service performed on a commodity lot or submitted sample shall be based on an analysis of the file sample.

(e) *Use of file samples.* (1) *Requirements for use.* A file sample that is retained by official personnel in accordance with the procedures prescribed in the instructions shall be considered representative for retest inspection, appeal inspection, and Board appeal inspection service if: (i) The file samples have remained at all times in the custody and control of the official personnel that performed the inspection service and (ii) the official personnel who performed the inspection service in question and those who are to perform

the retest inspection, the appeal inspection, or the Board appeal inspection service determines that the samples were representative of the commodity at the time the inspection service was performed and that the quality or condition of the commodity in the samples has not since changed.

(2) *Certificate statement.* The certificate for a retest inspection, appeal inspection, or Board appeal inspection service which is based on a file sample shall show the statement "Results based on file sample."

§ 868.36 Loss of identity.

(a) *Lots.* The identity of a packaged lot, bulk lot, or subplot of a commodity shall be considered lost if:

(1) A portion of the commodity is unloaded, transferred, or otherwise removed from the carrier or location after the time of original inspection, unless the identity is preserved; or

(2) More commodity or other material, including a fumigant or insecticide, is added to the lot after the original inspection was performed, unless the addition of the fumigant or insecticide was performed in accordance with the instructions; or

(3) At the option of official personnel performing an appeal inspection or Board appeal inspection service, the identity of a commodity in a closed carrier or container may be considered lost if the carrier or container is not sealed or the seal record is incomplete.

(b) *Carriers and containers.* The identity of a carrier or container shall be considered lost if (1) the stowage area is cleaned, treated, fumigated, or fitted after the original inspection was performed or (2) the identification has been changed since the original inspection.

(c) *Submitted sample.* The identity of a submitted sample of a commodity shall be considered lost if:

(1) The identifying number, mark, or symbol for the sample is lost or destroyed; or

(2) The sample has not been retained and protected by official personnel as prescribed in the regulations and the instructions.

ORIGINAL INSPECTION SERVICE

§ 868.40 Who may request original inspection service.

Any interested person may apply for inspection service.

§ 868.41 Contract service.

Any interested person may enter into a contract with a cooperator or the Service whereby the cooperator or Service will provide original inspection services for a specified period, and the applicant will pay a specific fee.

§ 868.42 How to request original inspection service.

(a) *General.* Requests may be made verbally or in writing. Verbal requests shall be confirmed in writing when requested by official personnel. All written requests shall include the information specified in § 868.21. Copies of request forms may be requested from the cooperator or the Service. If all required documentation is not available when the request is made, it shall be provided as soon as it is available. At their discretion, official personnel may withhold inspection service pending receipt of the required documentation.

(b) *Request requirements.* Requests for original inspection service, other than submitted sample inspections, must be made with the cooperator or the Service responsible for the area in which the service will be provided. Requests for submitted sample inspections may be made with any cooperator or any field office that provides original inspection service. Requests for inspection of commodities during loading, unloading, handling, or processing shall be received far enough in advance so official personnel can be present.

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§ 868.44 New original inspection.

When circumstances prevent a retest inspection, appeal inspection, or Board appeal inspection, an applicant may request a new original inspection on any previously inspected lot; except that a new original inspection may not be

performed on an identifiable commodity lot which, as a result of a previous inspection, was found to be contaminated with filth, other than insect fragments in nongraded processed products, or to contain a deleterious substance. A new original inspection shall be based on a new sample and shall not be restricted to the scope of any previous inspection. A new original inspection certificate shall not supersede any previously issued certificate.

RETEST INSPECTION SERVICE

§ 868.50 Who may request retest inspection service.

(a) *General.* Any interested person may request a retest inspection service on nongraded commodities. When more than one interested person requests a retest inspection service, the first interested person to file is the applicant of record. Only one retest inspection service may be performed on any original inspection service.

(b) *Scope of request.* A retest inspection service may be requested for any or all quality factors tested but shall be limited to analysis of the file sample.

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§ 868.51 How to request retest inspection service.

(a) *General.* Requests shall be made with the field office responsible for the area in which the original inspection service was performed. Verbal requests shall be confirmed in writing, upon request, as specified in § 868.21. Copies of request forms may be obtained from the field office upon request. If at the time the request is filed and the documentation required by § 868.21 is not available, official personnel may, at their discretion, withhold service pending the receipt of the required documentation.

(b) *Request requirements.* Requests will be considered filed on the date they are received by official personnel.

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

§ 868.52 Certificating retest inspection results.

(a) *General.* Retest inspection certificates shall be issued according to § 868.70 and instructions. The certificate shall show the results of the factor(s) retested and the original results not included in the retest service.

(b) *Required statements on retest certificates.* Each retest inspection certificate shall show the statements required by this section, § 868.71, and the instructions.

(1) Each retest inspection certificate shall clearly show the term "Retest" and a statement identifying the superseded original certificate. The superseded certificate shall be considered null and void as of the date of the retest certificate. When applicable, the certificate shall also show a statement as to which factor(s) result is based on the retest inspection service and that all other results are those of the original inspection service.

(2) If the superseded certificate is in the custody of the Service, the superseded certificate shall be marked "Void." If the superseded certificate is not in the custody of the Service at the time the retest certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the retest certificate.

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

APPEAL INSPECTION SERVICE

§ 868.60 Who may request appeal inspection service.

(a) *General.* Any interested person may request appeal inspection or Board appeal inspection service. When more than one interested person requests an appeal inspection or Board appeal inspection service, the first interested person to file is the applicant of record. Only one appeal inspection may be obtained from any original inspection or retest inspection service for nongraded commodities. Only one Board appeal inspection may be obtained from any original or appeal inspection service for graded commodities. Board appeal inspection shall be performed on the basis of the file sample.

(b) *Kind and scope of request.* When the results for more than one kind of service are reported on a certificate, an appeal inspection or Board appeal inspection service, as applicable, may be requested on any or all kinds of services reported on the certificate. The scope of an appeal inspection service will be limited to the scope of the original inspection or, in the case of a Board appeal inspection service, the original or appeal inspection service. A request for appeal inspection of a retest inspection will be based upon the scope of the original inspection. If the request specifies a different scope, the request shall be dismissed. An appeal inspection for grade shall include a review of all factors that: (1) Determine the grade and (2) are reported on the original or, in the case of a Board appeal inspection, the original or appeal inspection certificate.

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§ 868.61 How to request appeal inspection service.

(a) *General.* Requests shall be made with the field office responsible for the area in which the original service was performed. Requests for Board appeal inspections may be made with the Board of Appeals and Review or the field office that performed the appeal inspection. Verbal requests must be confirmed in writing, upon request, as specified in § 868.21. Copies of request forms may be obtained from the field office upon request. If at the time the request is made the documentation required by § 868.21 is not available, official personnel may, at their discretion, withhold service pending the receipt of the required documentation.

(b) *Request requirements.* (1) This subparagraph is applicable to rice inspection only. Except as may be agreed upon by the interested persons, the application shall be made: (i) Before the rice has left the place where the inspection being appealed was performed and (ii) no later than the close of business on the second business day following the date of the inspection being appealed. However, the Administrator may extend the time requirement as deemed necessary.

(2) Subject to the limitations of paragraph (b)(3) of this section, the applicant may request that an appeal inspection be based on: (i) The file sample or (ii) a new sample. However, an appeal inspection shall be based on a new sample only if the lot can positively be identified by official personnel as the one that was previously inspected and the entire lot is available and accessible for sampling and inspection. Board appeals shall be on the basis of the file sample.

(3) An appeal inspection shall be limited to a review of the sampling procedure and an analysis of the file sample when, as a result of a previous inspection, the commodity was found to be contaminated with filth (other than insect fragments in nongraded processed products) or to contain a deleterious substance. If it is determined that the sampling procedures were improper, a new sample shall be obtained if the lot can be positively identified as the lot which was previously inspected and the entire lot is available and accessible for sampling and inspection.

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§ 868.62 Who shall perform appeal inspection service.

(a) *Appeal.* For graded commodities, the appeal inspection service shall be performed by the field office responsible for the area in which the original inspection was performed. For nongraded commodities, the appeal inspection service shall be performed by the Service's Commodity Testing Laboratory.

(b) *Board appeal.* Board appeal inspection service shall be performed only by the Board of Appeals and Review. The field office will act as a liaison between the Board of Appeals and Review and the applicant.

§ 868.63 Certifying appeal inspection results.

(a) *General.* An appeal inspection certificate shall be issued according to § 868.70 and instructions. Except as provided in paragraph (b)(2) of this section, only the results of the appeal inspection or Board appeal inspection

service shall be shown on the appeal inspection certificate.

(b) *Required statements.* Each appeal inspection certificate shall show the statements required by this section, §868.71, and instructions.

(1) Each appeal inspection certificate shall clearly show: (i) The term "Appeal" or "Board Appeal" and (ii) a statement identifying the superseded certificate. The superseded certificate shall be considered null and void as of the date of the appeal inspection or Board appeal inspection certificate.

(2) When the results for more than one kind of service are reported on a certificate, the appeal or Board appeal inspection certificate shall show a statement of which kind of service(s) results are based on the appeal or Board appeal inspection service and that all other results are those of the original inspection, retest inspection, or appeal inspection service.

(3) If the superseded certificate is in the custody of the Service, the superseded certificate shall be marked "Void." If the superseded original inspection, retest inspection, or appeal inspection certificate is not in the custody of the Service at the time the appeal certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the appeal certificate.

(c) *Finality of Board appeal inspection.* A Board appeal inspection shall be the final appeal inspection service except that for nongraded commodities an appeal shall be the final appeal inspection.

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

OFFICIAL CERTIFICATES

§868.70 Official certificates; issuance and distribution.

(a) *Required issuance.* An inspection certificate shall be issued to show the results of each kind and each level of inspection service.

(b) *Distribution*—(1) *Original.* The original and one copy of each inspection certificate shall be distributed to the applicant or the applicant's order. In addition, one copy of each inspection certificate shall be filed with the office providing the inspection; and, if

the inspection is performed by a co-operator, one copy shall be forwarded to the appropriate field office. If requested by the applicant prior to issuance of the inspection certificate, additional copies not to exceed a total of three copies will be furnished at no extra charge.

(2) *Retest and appeal inspection service.* In addition to the distribution requirements in paragraph (b)(1) of this section, one copy of each retest or appeal inspection certificate will be distributed to each interested person of record or the interested person's order and to the cooperator or field office that issued the superseded certificate.

(3) *Additional copies.* Additional copies of certificates will be furnished to the applicant or interested person upon request. Fees for extra copies in excess of three may be assessed according to the fee schedules established by the cooperator or the Service.

(c) *Prompt issuance.* An inspection certificate shall be issued before the close of business on the business day following the date the inspection is completed.

(d) *Who may issue a certificate.* (1) *Authority.* Certificates for inspection services may be issued only by official personnel who are specifically authorized or licensed to perform and certify the results reported on the certificate.

(2) *Exception.* The person in the best position to know whether the service was performed in an approved manner and that the determinations are accurate and true should issue the certificate. If the inspection is performed by one person, the certificate should be issued by that person. If an inspection is performed by two or more persons, the certificate should be issued by the person who makes the majority of the determinations or the person who makes the final determination. Supervisory personnel may issue a certificate when the individual is licensed or authorized to perform the inspection being certificated.

(e) *Name requirement.* The name or the signature, or both, of the person who issued the inspection certificate shall be shown on the original and all copies of the certificate.

(f) *Authorization to affix names.* (1) *Requirements.* The names or the signatures, or both, of official personnel may be affixed to official certificates which are prepared from work records signed or initialed by the person whose name will be shown. The agent affixing the name or signature, or both, shall: (i) Be employed by a cooperating agency or the Service, (ii) have been designated to affix names or signatures, or both, and (iii) hold a power of attorney from the person whose name or signature, or both, will be affixed. The power of attorney shall be on file with the employing cooperating agency or the Service as appropriate.

(2) *Initialing.* When a name or signature, or both, is affixed by an authorized agent, the initials of the agent shall appear directly below or following the name or signature of the person.

(g) *Advance information.* Upon request, the contents of an official certificate may be furnished in advance to the applicant and any other interested person, or to their order, and any additional expense shall be borne by the requesting party.

(h) *Certification; when prohibited.* An official certificate shall not be issued for service after the request for an inspection service has been withdrawn or dismissed.

§ 868.71 Official certificate requirements.

Official certificates shall—

(a) Be on standard printed forms prescribed in the instructions;

(b) Be in English;

(c) Be typewritten or handwritten in ink and be clearly legible;

(d) Show the results of inspection services in a uniform, accurate, and concise manner;

(e) Show the information required by §§ 868.70–868.75; and

(f) Show only such other information and statements of fact as are provided in the instructions authorized by the Administrator.

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§ 868.72 Certification of results.

(a) *General.* Each official certificate shall show the results of the inspection service.

(b) *Graded commodities.* Each official certificate for graded commodities shall show—

(1) The class, grade, or any other quality designation according to the official grade standards;

(2) All factor information requested by the applicant; and

(3) All grade determining factors for commodities graded below the highest quality grade.

§ 868.73 Corrected certificates.

(a) *General.* The accuracy of the statements and information shown on official certificates must be verified by the individual whose name or signature, or both, is shown on the official certificate or by the authorized agent who affixed the name or signature, or both. Errors found during this process shall be corrected according to this section.

(b) *Who may correct.* Only official personnel or their authorized agents may make corrections, erasures, additions, or other changes to official certificates.

(c) *Corrections prior to issuance.* No corrections, erasures, additions, or other changes shall be made which involve identification, quality, or quantity. If such errors are found, a new official certificate shall be prepared and issued and the incorrect certificate marked “Void.” Otherwise, errors may be corrected provided that—

(1) The corrections are neat and legible;

(2) Each correction is initialed by the individual who corrects the certificate; and

(3) The corrections and initials are shown on the original and all copies.

(d) *Corrections after issuance.* (1) *General.* If errors are found on an official certificate at any time up to a maximum of 1 year after issuance, the errors shall be corrected by obtaining the incorrect certificate and replacing it with a corrected certificate. When the incorrect certificate cannot be obtained, a corrected certificate can be issued superseding the incorrect one.

(2) *Certification requirements.* The same statements and information, including permissive statements, that were shown on the incorrect certificate, along with the correct statement or information, shall be shown on the corrected certificate. According to this section and the instructions, corrected certificates shall show—

(i) The terms “Corrected Original” and “Corrected Copy;”

(ii) A statement identifying the superseded certificate and the corrections,

(iii) A statement indicating the superseded certificate was not surrendered when the incorrect certificate was not submitted; and

(iv) A new serial number.

In addition, the incorrect certificate shall be marked “Void” when submitted.

(e) *Limitations.* Corrected certificates cannot be issued for a certificate that has been superseded by another certificate or on the basis of a subsequent analysis for quality.

§ 868.74 Divided-lot certificates.

(a) *General.* When commodities are offered for inspection and are certified as a single lot, the applicant may exchange the inspection certificate for two or more divided-lot certificates.

(b) *Application.* Requests for divided-lot certificates shall be made—

(1) In writing;

(2) By the applicant who made the initial request;

(3) To the office that issued the outstanding certificate;

(4) Within 5 business days of the outstanding certificate date; and

(5) Before the identity of the commodity has been lost.

(c) *Quantity restrictions.* Divided-lot certificates shall not show an aggregate quantity different than the total quantity shown on the superseded certificate.

(d) *Surrender of certificate.* The certificate that will be superseded shall—

(1) Be in the custody of the cooperator or the Service;

(2) Be marked “Void;” and

(3) Show the identification of the divided-lot certificates.

(e) *Certification requirements.* The same information and statements, in-

cluding permissive statements, that were shown on the superseded certificate shall be shown on each divided-lot certificate. Divided-lot certificates shall show—

(1) A statement indicating the commodity was inspected as an undivided lot;

(2) The terms “Divided-Lot Original,” and the copies shall show “Divided-Lot Copy;”

(3) The same serial number with numbered suffix (for example, 1764-1, 1764-2, 1764-3, and so forth); and

(4) The quantity specified by the request.

(f) *Issuance and distribution.* Divided-lot certificates shall be issued no later than the close of business on the next business day after the request and be distributed according to § 868.70(b).

(g) *Limitations.* After divided-lot certificates have been issued, further dividing or combining is prohibited except with the approval of the Service.

(Approved by the Office of Management and Budget under control number 0580-0012)

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

§ 868.75 Duplicate certificates.

Upon request, a duplicate certificate may be issued for a lost or destroyed official certificate.

(a) *Application.* Requests for duplicate certificates shall be filed—

(1) In writing;

(2) By the applicant who requested the service covered by the lost or destroyed certificate; and

(3) With the office that issued the initial certificate.

(b) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the lost or destroyed certificate shall be shown on the duplicate certificate. Duplicate certificates shall show: (1) The terms “Duplicate Original,” and the copies shall show “Duplicate Copy” and (2) a statement that the certificate was issued in lieu of a lost or destroyed certificate.

(c) *Issuance.* Duplicate certificates shall be issued as promptly as possible and distributed according to § 868.70(b).

(d) *Limitations.* Duplicate certificates shall not be issued for certificates that have been superseded.

(Approved by the Office of Management and Budget under control number 0580-0012)

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

LICENSED INSPECTORS, TECHNICIANS,
AND SAMPLERS

§ 868.80 Who may be licensed.

(a) *Inspectors.* The Administrator may license any person to inspect commodities and to perform related services if the individual—

(1) Is employed by a cooperator, is a contractor, or is employed by a contractor;

(2) Possesses the qualifications prescribed in the instructions; and

(3) Has no interest, financial or otherwise, direct or indirect in merchandising, handling, storing, or processing the kind of commodities or related products to be inspected.

The Administrator may require applicants to be examined for competency at a specific time and place and in a prescribed manner.

(b) *Technicians or samplers.* The Administrator may license any person as a technician to perform official specified laboratory functions, including sampling duties and related services, or as a sampler to draw samples of commodities and perform related services if the individual: (1) Possesses proper qualifications as prescribed in the instructions and (2) has no interest, financial or otherwise direct or indirect in merchandising, handling, storing, or processing the kind of commodities or related products to be chemically analyzed, mechanically tested, sampled, and so forth. The Administrator may require applicants to be examined for competency at a specific time and place and in a prescribed manner.

(Approved by the Office of Management and Budget under control number 0580-0012)

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995; 63 FR 29531, June 1, 1998]

§ 868.81 Licensing procedures.

(a) *Application.* An application for a license, the renewal of a license, or the

return of a suspended license shall be submitted to the Service on forms furnished by the Service. Each application shall be in English, be typewritten or legibly written in ink, show all information prescribed by the application form, and be signed by the applicant.

(b) *Examinations and reexaminations.* Applicants for a license and individuals who are licensed to perform any or all inspection services shall, at the discretion of the Service, submit to examinations or reexaminations to determine their competency to perform the inspection functions for which they desire to be or are licensed.

(c) *Termination.* (1) *Procedure.* Each license shall terminate according to the termination date shown on the license and as specified by the schedule in this paragraph. The termination date for a license shall be no less than 3 years or more than 4 years after the issuance date for the initial license; thereafter, every 3 years. Upon request of a licensee and for good cause shown, the termination date may be advanced or delayed by the Administrator for a period not to exceed 60 days.

TERMINATION SCHEDULE

Last name beginning with	Termination date
A	January.
B	February.
C, D	March.
E, F, G	April.
H, I, J	May.
K, L	June.
M	July.
N, O, P, Q	August.
R	September.
S, T, U, V	October.
W	November.
X, Y, Z	December.

The Service shall issue a termination notice 60 days before the termination date. The notice shall give detailed instructions for requesting renewal of license, state whether a reexamination is required, and, if a reexamination is required, give the scope of the examination. Failure to receive a notice from the Service shall not exempt a licensee from the responsibility of having the license renewed by the termination date.

(2) *Exception.* The license of an individual under contract with the Service shall terminate upon termination of the contract.

(d) *Surrender of license.* Each license that is terminated or which is suspended or revoked under §868.84 shall be promptly surrendered to the Administrator or other official of the Service designated by the Administrator.

(Approved by the Office of Management and Budget under control number 0580-0012)

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

§868.82 Voluntary cancellation or suspension of license.

Upon request by a licensee, the Service may cancel a license or suspend a license for a period of time not to exceed 1 year. A license that has been voluntarily suspended shall be returned by the Service upon request by the licensee within 1 year, subject to the provisions of §868.81(a) and (b); a license that has been cancelled shall be considered void and shall not be subject to return or renewal.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

§868.83 Automatic suspension of license by change in employment.

A license issued to an individual shall be automatically suspended when the individual ceases to be employed by the cooperator. If the individual is reemployed by the cooperator or employed by another cooperator within 1 year of the suspension date and the license has not terminated in the interim, upon request of the licensee, the license will be reinstated subject to the provisions of §868.81(a) and (b).

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

§868.84 Suspension or revocation of license.

(a) *General.* (1) An inspector's, technician's, or sampler's license may be suspended or revoked if the licensee: (i) Willfully, carelessly, or through incompetence fails to perform the duties

specified in the Act, regulations, standards, or the instructions or (ii) becomes incapable of performing required duties.

(2) A license may not be suspended or revoked until the individual: (i) Has been served notice, in person or by registered mail, that suspension or revocation of the license is under consideration for reasons set out in the notice and (ii) has been given an opportunity for a hearing.

(b) *Procedure for summary action.* In cases where the public health, interest, or safety require, the Administrator may summarily suspend an inspector's, technician's, or sampler's license without prior hearing. In such cases, the licensee shall be advised of the factors which appear to warrant suspension or revocation of the license. The licensee shall be accorded an opportunity for a hearing before the license is finally suspended or revoked.

(c) *Procedures for other than summary action.* Except in cases of willfulness or those described in paragraph (b) of this section, the Administrator, before instituting proceedings for the suspension or revocation of a license, shall provide the licensee an opportunity to demonstrate or achieve compliance with the Act, regulations, standards, and instructions. If the licensee does not demonstrate or achieve compliance, the Administrator may institute proceedings to suspend or revoke the license.

(The information collection requirements contained in paragraph (c) have been approved by the Office of Management and Budget under control number 0580-0012)

FEES

§868.90 Fees for certain Federal inspection services.

(a) The fees shown in table 1 apply to Federal Commodity Inspection Services specified below.

TABLE 1—HOURLY RATES ^{1, 3}
[Fees for Inspection of Commodities Other Than Rice]

Hourly Rates (per service representative):	
Monday to Friday —\$33.00	
Saturday, Sunday, and Holidays—\$42.80	
Miscellaneous Processed Commodities ² :	
(1) Additional Tests (cost per test, assessed in addition to the hourly rate):	
(i) Aflatoxin Test (Thin Layer Chromatography)	\$51.40

TABLE 1—HOURLY RATES^{1, 3}—Continued
[Fees for Inspection of Commodities Other Than Rice]

(ii) Falling Number	\$12.00
(iii) Aflatoxin Test Kit	\$7.50
Graded Commodities (Beans, Peas, Lentils, Hops, and Pulses):	
(1) Additional Tests—Unit Rates (Beans, Peas, Lentils):	
(i) Field run (per lot or sample)	\$22.70
(ii) Other than field run (per lot or sample)	\$13.50
(iii) Factor analysis (per factor)	\$5.50
(2) Additional Tests—Unit Rates (Hops):	
(i) Lot or sample (per lot or sample)	\$29.00
(3) Additional Tests—Unit Rates (Nongraded Nonprocessed Commodities):	
(i) Factor analysis (per factor)	\$5.50
(4) Stowage examination (service-on- request) ⁴	
(i) Ship (per stowage space)	\$ 50.00 (minimum \$250 per ship)
(ii) Subsequent ship examinations (same as original)	(minimum \$150 per ship)
(iii) Barge (per examination)	\$40.00
(iv) All other carriers (per examination)	\$15.00

¹Fees for original commodity inspection and appeal inspection services include, but are not limited to, sampling, grading, weighing, stowage examinations, pre-inspection conferences, sanitation inspections, and other services requested by the applicant and that are performed within 25 miles of the field office. Travel and related expenses (commercial transportation costs, mileage, and per diem) will be assessed in addition to the hourly rate for service beyond the 25-mile limit. Refer to § 868.92, Explanation of service fees and additional fees, for all other service fees except travel and per diem.
²When performed at a location other than the Commodity Testing Laboratory.
³Faxed and extra copies of certificates will be charged at \$1.50 per copy.
⁴If performed outside of normal business, 1½ times the applicable unit fee will be charged.

(b) In addition to the fees, if any, for sampling or other requested service, a fee will be assessed for each laboratory test (original, retest, or appeal) listed in table 2 of this section.

(c) If a requested test is to be reported on a specified moisture basis, a fee for a moisture test will also be assessed.

(d) Laboratory tests referenced in table 2 of this section will be charged at the applicable laboratory fee when performed at field locations other than at the applicant's facility.

TABLE 2—FEES FOR LABORATORY TEST SERVICES¹

Laboratory tests	Fees
(1) Alpha monoglycerides	\$18.00
(2) Aflatoxin test (other than TLC or Minicolumn method)	22.50
(3) Aflatoxin (TLC)	48.00
(4) Aflatoxin (Minicolumn method)	25.00
(5) Appearance & odor	3.00
(6) Ash	8.50
(7) Bacteria count	10.00
(8) Baking test (cookies)	28.00
(9) Bostwick (cooked)	12.60
(10) Bostwick (uncooked/cook test/dispersibility)	6.50
(11) Brix	8.00
(12) Calcium	12.50
(13) Carotenoid color	12.50
(14) Cold test (oil)	10.00
(15) Color test (syrups)	6.50
(16) Cooking test (other than corn soy blend)	7.00
(17) Crude fat	10.00
(18) Crude fiber	13.00
(19) Dough handling (baking)	8.50
(20) E. coli	19.00
(21) Falling number	12.00

TABLE 2—FEES FOR LABORATORY TEST SERVICES¹—Continued

Laboratory tests	Fees
(22) Fat (acid hydrolysis)	14.00
(23) Fat stability (A.O.M.)	27.00
(24) Flash point (open & close cup)	14.00
(25) Free fatty acid	12.00
(26) Hydrogen ion activity (ph)	9.50
(27) Iron enrichment	15.00
(28) Iodine number/value	9.50
(29) Linolenic acid (fatty acid profile)	50.00
(30) Lipid phosphorous	47.00
(31) Livibond color	10.00
(32) Margarine (nonfat solids)	23.60
(33) Moisture	6.00
(34) Moisture average (crackers)	4.00
(35) Moisture & volatile matter	8.50
(36) Performance test (prepared bakery mix)	32.00
(37) Peroxide value	13.50
(38) Phosphorus	14.00
(39) Popcorn kernels (total defects)	19.00
(40) Popping ratio/value popcorn	19.00
(41) Potassium bromate	20.00
(42) Protein	7.50
(43) Rope spore count	31.50
(44) Salmonella	40.00
(45) Salt or sodium content	12.50
(46) Sanitation (filth light)	24.00
(47) Sieve test	5.00
(48) Smoke point	22.00
(49) Solid fat index	85.00
(50) Specific volume (bread)	21.80
(51) Staphylococcus aureus	24.50
(52) Texture	6.50
(53) Tilletia controversa kuhn (TCK) (Qualitative)	25.20
(54) Tilletia controversa kuhn (TCK) (Quantitative)	76.00
(55) Unsaponifiable matter	25.00
(56) Urease activity	12.50
(57) Visual exam (hops pellet)	7.50
(58) Visual exam (insoluble impurities oils & shortenings)	5.00
(59) Visual exam (pasta)	10.50
(60) Visual exam (processed grain products)	12.00
(61) Visual exam (total foreign material other than cereal grains)	6.50

TABLE 2—FEES FOR LABORATORY TEST SERVICES¹—Continued

Laboratory tests	Fees
(62) Vitamin enrichment	7.00
(63) Vomitoxin (TLC)	40.00
(64) Vomitoxin (Qualitative)	30.00
(65) Vomitoxin (Quantitative)	40.00
(66) Water activity	20.00
(67) Wiley melting point	12.50
(68) Other laboratory tests	²

²Fees for other laboratory tests not referenced in this table will be based on the applicable hourly rate listed in table 1 of this section.

[61 FR 66535, Dec. 18, 1996]

§ 868.91 Fees for certain Federal rice inspection services.

The fees shown in tables 1 and 2 apply to Federal Rice Inspection Services.

¹When laboratory test service is provided for GIPSA by a private laboratory, the applicant will be assessed a fee which, as nearly as practicable, covers the costs to GIPSA for the service provided.

TABLE 1—HOURLY RATES/UNIT RATE PER CWT
[Fees for Federal Rice Inspection Services]

Service ¹	Regular Workday (Monday–Saturday)	Nonregular Workday (Sunday–Holiday)
Effective August 2, 1996		
Contract (per hour per Service representative)	\$35.80	\$49.80
Noncontract (per hour per Service representative)	43.50	60.50
Export Port Services ² .....	.042/CWT .....	.042/CWT
Effective January 1, 1997		
Contract (per hour per Service representative)	37.90	52.80
Noncontract (per hour per Service representative)	46.10	64.10
Export Port Services ² .....	.045/CWT .....	.045/CWT
Effective January 1, 1998		
Contract (per hour per Service representative)	40.20	56.00
Noncontract (per hour per Service representative)	48.90	67.90
Export Port Services ² .....	.048/CWT .....	.048/CWT

¹ Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.
² Services performed at export port locations on lots at rest.

TABLE 2—UNIT RATES

Service ^{1 3}	Rough rice	Brown rice for processing	Milled rice
Effective August 2, 1996			
Inspection for quality (per lot, subplot, or sample inspection)	\$29.20	\$25.30	\$18.00
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	22.70	22.70	.....
(b) All other factors (per factor)	10.80	10.80	10.80
Total oil and free fatty acid .....	.....	35.40	35.40
Interpretive line samples: ²			
(a) Milling degree (per set) .....	.....	.....	75.80
(b) Parboiled light (per sample) .....	.....	.....	19.00
Extra copies of certificates (per copy)	3.00	3.00	3.00
Effective January 1, 1997			
Inspection for quality (per lot, subplot, or sample inspection)	31.00	26.80	19.10
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	24.10	24.10	.....
(b) All other factors (per factor)	17.40	11.40	11.40
Total oil and free fatty acid .....	.....	37.50	37.50
Interpretive line samples: ²			
(a) Milling degree (per set) .....	.....	.....	80.30
(b) Parboiled light (per sample) .....	.....	.....	20.10
Extra copies of certificates (per copy)	3.00	3.00	3.00
Effective January 1, 1998			
Inspection for quality (per lot, subplot, or sample inspection)	32.90	28.40	20.20
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	25.50	25.50	.....
(b) All other factors (per factor):	12.10	12.10	12.10
Total oil and free fatty acid .....	.....	39.80	39.80
Interpretive line samples: ²			
(a) Milling degree (per set) .....	.....	.....	85.10
(b) Parboiled light (per sample) .....	.....	.....	21.30

TABLE 2—UNIT RATES—Continued

Service ^{1 3}	Rough rice	Brown rice for processing	Milled rice
Extra copies of certificates (per copy)	3.00	3.00	3.00

¹ Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

² Interpretive line samples may be purchased from the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration; Technical Services Division; Board of Appeals and Review; FGIS Technical Center, 10383 North Executive Hills Boulevard, Kansas City, MO 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Deputy Director, Field Management Division, USDA, GIPSA, FGIS, P.O. Box 96454, Washington, DC 20090–6454. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

³ Fees for other services not referenced in table 2 will be based on the noncontract hourly rate listed in § 868.90, table 1.

[61 FR 34715, July 3, 1996]

§ 868.92 Explanation of service fees and additional fees.

(a) *Costs included in the fees.* Fees for official services in §§ 868.90 and 868.91 include—

- (1) The cost of performing the service and related supervision and administrative costs;
- (2) The cost of per diem, subsistence, mileage, or commercial transportation to perform the service for rice inspection only in § 868.91, table 1. See § 868.90, table 1, footnote 1, for fees for inspection of commodities other than rice.
- (3) The cost of first-class mail service;
- (4) The cost of overtime and premium pay; and
- (5) The cost of certification except as provided in § 868.92(c).

(b) *Computing hourly rates.* Hourly fees will be assessed in quarter hour increments for—

- (1) Travel from the FGIS field office or assigned duty location to the service point and return; and
- (2) The performance of the requested service, less mealtime.

(c) *Additional fees.* Fees in addition to the applicable hourly or unit fee will be assessed when—

- (1) An applicant requests more than the original and three copies of a certificate;
- (2) An applicant requests onsite typing of certificates or typing of certificates at the FGIS field office during other than normal working hours; and
- (3) An applicant requests the use of express-type mail or courier service.

(d) *Application of fees when service is delayed by the applicant.* Hourly fees will be assessed when—

(1) Service has been requested at a specified location;

(2) A Service representative is on duty and ready to provide service but is unable to do so because of a delay not caused by the Service; and

(3) FGIS officials determine that the Service representative(s) cannot be utilized elsewhere or cannot be released without cost to the Service.

(e) *Application of fees when an application for service is withdrawn or dismissed.* Hourly fees will be assessed to the applicant for the scheduled service if the request is withdrawn or dismissed after the Service representative departs for the service point or if the request for service is not withdrawn or dismissed by 2 p.m. of the business day preceding the date of scheduled service. However, hourly fees will not be assessed to the applicant if FGIS officials determine that the Service representative can be utilized elsewhere or if the Service representative can be released without cost to the Service.

(f) *To whom fees are assessed.* Fees for official services including additional fees as provided in § 868.92(c) shall be assessed to and paid by the applicant for the Service.

(g) *Advance payment.* As necessary, the Administrator may require that fees shall be paid in advance of the performance of the requested service. Any fees paid in excess of the amount due shall be used to offset future billings, unless a request for a refund is made by the applicant.

(h) *Time and form of payment.* (1) *Fees for Federal inspection service.* Bills for fees assessed under the regulations for official services performed by FGIS shall be paid by check, draft, or money order, payable to U.S. Department of

Agriculture, Federal Grain Inspection Service.

(2) *Fees for cooperator inspection service.* Fees for inspection services provided by a cooperator shall be paid by the applicant to the cooperator in accordance with the cooperator's fee schedule.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995; 61 FR 66536, Dec. 18, 1996]

Subpart B—Marketing Standards

SOURCE: 62 FR 6706, Feb. 13, 1997, unless otherwise noted.

§ 868.101 General information.

The Grain Inspection, Packers and Stockyards Administration (GIPSA) of the U.S. Department of Agriculture (USDA) facilitates the fair and efficient marketing of agricultural products by maintaining voluntary grade standards for Beans, Whole Dry Peas, Split Peas, and Lentils, which provide a uniform language for describing the quality of these commodities in the marketplace. These standards may cover (but are not limited to) terms, classes, quality levels, performance criteria, and inspection requirements. Procedures contained in this part set forth the process which GIPSA will follow in developing, issuing, revising, suspending, or terminating the U.S. standards for Beans, Whole Dry Peas, Split Peas, and Lentils. Communications about GIPSA standards in general should be addressed to the Administrator, GIPSA, USDA, 1400 Independence Avenue, S.W., Washington, D.C. 20250-3601.

§ 868.102 Procedures for establishing and revising grade standards.

(a) GIPSA will develop, revise, suspend, or terminate grade standards if it determines that such action is in the public interest. GIPSA encourages interested parties to participate in the review, development, and revision of grade standards. Interested parties include growers, producers, processors, shippers, distributors, consumers, trade associations, companies, and State or Federal agencies. Such persons may at any time recommend that GIPSA develop, revise, suspend, or ter-

minate a grade standard. Requests for action should be in writing, and should be accompanied by a draft of the suggested change, as appropriate.

(b) GIPSA will:

(1) Determine the need for new or revised standards;

(2) Collect technical, marketing, or other appropriate data;

(3) Conduct research regarding new or revised standards, as appropriate; and

(4) Draft the proposed standards.

(c) If GIPSA determines that new standards are needed, existing standards need to be revised, or the suspension or termination of existing standards is justified, GIPSA will undertake the action with input from interested parties.

§ 868.103 Public notification of grade standards action.

(a) After developing a standardization proposal, GIPSA will publish a notice in the FEDERAL REGISTER proposing new or revised standards or suspending or terminating existing standards. The notice will provide a sufficient comment period for interested parties to submit comments.

(b) GIPSA will simultaneously issue a news release about these actions, notifying the affected industry and general public. GIPSA will also distribute copies of proposals to anyone requesting a copy or to anyone it believes may be interested, including other Federal, State, or local government agencies.

(c) All comments received within the comment period will be made part of the public record maintained by GIPSA, will be available to the public for review, and will be considered by GIPSA before final action is taken on the proposal.

(d) Based on the comments received, GIPSA's knowledge of standards, grading, marketing, and other technical factors, and any other relevant information, GIPSA will decide whether the proposed actions should be implemented.

(e) If GIPSA concludes that the changes as proposed or with appropriate modifications should be adopted, GIPSA will publish the final changes in

the FEDERAL REGISTER as a final notice. GIPSA will make the grade standards and related information available in printed form and electronic media.

(f) If GIPSA determines that proposed changes are not warranted, or otherwise are not in the public interest, GIPSA will either publish in the FEDERAL REGISTER a notice withdrawing the proposal, or will revise the proposal and again seek public input.

Subpart C—United States Standards for Rough Rice

NOTE TO THE SUBPART: Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

SOURCE: 42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, unless otherwise noted.

TERMS DEFINED

§ 868.201 Definition of rough rice.

Rice (*Oryza sativa* L.) which consists of 50 percent or more of paddy kernels (see § 868.202(i)) of rice.

[34 FR 7863, May 17, 1969. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

§ 868.202 Definition of other terms.

For the purposes of these standards, the following terms shall have the meanings stated below:

(a) *Broken kernels.* Kernels of rice which are less than three-fourths of whole kernels.

(b) *Chalky kernels.* Whole or large broken kernels of rice which are one-half or more chalky.

(c) *Classes.* The following four classes:
Long Grain Rough Rice
Medium Grain Rough Rice
Short Grain Rough Rice
Mixed Rough Rice

Classes shall be based on the percentage of whole kernels, large broken kernels, and types of rice.

(1) “Long grain rough rice” shall consist of rough rice which contains more than 25 percent of whole kernels and which after milling to a well-milled degree, contains not more than 10 percent of whole or broken kernels of medium or short grain rice.

(2) “Medium grain rough rice” shall consist of rough rice which contains

more than 25 percent of whole kernels and which after milling to a well-milled degree, contains not more than 10 percent of whole or large broken kernels of long grain rice or whole kernels of short grain rice.

(3) “Short grain rough rice” shall consist of rough rice which contains more than 25 percent of whole kernels and which, after milling to a well-milled degree, contains not more than 10 percent of whole or large broken kernels of long grain rice or whole kernels of medium grain rice.

(4) “Mixed rough rice” shall consist of rough rice which contains more than 25 percent of whole kernels and which, after milling to a well-milled degree, contains more than 10 percent of “other types” as defined in paragraph (h) of this section.

(d) *Damaged kernels.* Whole or broken kernels of rice which are distinctly discolored or damaged by water, insects, heat, or any other means, and whole or large broken kernels of parboiled rice in non-parboiled rice. “Heat-damaged kernels” (see paragraph (e) of this section) shall not function as damaged kernels.

(e) *Heat-damaged kernels.* Whole or large broken kernels of rice which are materially discolored and damaged as a result of heating, and whole or large broken kernels of parboiled rice in non-parboiled rice which are as dark as, or darker in color than, the interpretive line for heat-damaged kernels.

(f) *Milling yield.* An estimate of the quantity of whole kernels and total milled rice (whole and broken kernels combined) that are produced in the milling of rough rice to a well-milled degree.

(g) *Objectionable seeds.* Seeds other than rice, except seeds of *Echinochloa crusgalli* (commonly known as barnyard grass, watergrass, and Japanese millet).

(h) *Other types.* (1) Whole kernels of: (i) Long grain rice in medium or short grain rice, (ii) medium grain rice in long or short grain rice, (iii) short grain rice in long or medium grain rice, and (2) Large broken kernels of long grain rice in medium or short grain rice and large broken kernels of medium or short grain rice in long grain rice.

NOTE: Broken kernels of medium grain rice in short grain rice and large broken kernels of short grain rice in medium grain rice shall not be considered other types.

(i) *Paddy kernels*. Whole or broken unhulled kernels of rice.

(j) *Red rice*. Whole or large broken kernels of rice on which there is an appreciable amount of red bran.

(k) *Seeds*. Whole or broken seeds of any plant other than rice.

(l) *Smutty kernels*. Whole or broken kernels of rice which are distinctly infected by smut.

(m) *Types of rice*. The following three types:

Long grain
Medium grain
Short grain

Types shall be based on the length-width ratio of kernels of rice that are unbroken and the width, thickness, and shape of kernels of rice that are broken as prescribed in FGIS instructions.

(n) *Ungelatinized kernels*. Whole or large broken kernels of parboiled rice with distinct white or chalky areas due to incomplete gelatinization of the starch.

(o) *Whole and large broken kernels*. Rice (including seeds) that (1) passes over a 6 plate (for southern production), or (2) remains on top of a 6 sieve (for western production).

(p) *Whole kernels*. Unbroken kernels of rice and broken kernels of rice which are at least three-fourths of an unbroken kernel.

(q) *6 sieve*. A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0938 ($\frac{3}{32}$) inch in diameter.

(r) *6 plate*. A laminated metal plate 0.142-inch thick, with a top lamina 0.051-inch thick, perforated with rows of round holes 0.0938 ($\frac{3}{32}$) inch in diameter, and a bottom lamina 0.091-inch thick, without perforations.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989; 54 FR 51344, Dec. 14, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

§ 868.203 Basis of determination.

The determination of seeds, objectionable seeds, heat-damaged kernels, red rice and damaged kernels, chalky

kernels, other types, color, and the special grade Parboiled rough rice shall be on the basis of the whole and large broken kernels of milled rice that are produced in the milling of rough rice to a well-milled degree. When determining class, the percentage of (a) whole kernels of rough rice shall be determined on the basis of the original sample, and (b) types of rice shall be determined on the basis of the whole and large broken kernels of milled rice that are produced in the milling of rough rice to a well-milled degree. Smutty kernels shall be determined on the basis of the rough rice after it has been cleaned and shelled as prescribed in FGIS instructions, or by any method that is approved by the Administrator as giving equivalent results. All other determinations shall be on the basis of the original sample. Mechanical sizing of kernels shall be adjusted by handpicking as prescribed in FGIS instructions, or by any method that is approved by the Administrator as giving equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.204 Interpretive line samples.

Interpretive line samples showing the official scoring line for factors that are determined by visual examinations shall be maintained by the Federal Grain Inspection Service, U.S. Department of Agriculture, and shall be available for reference in all inspection offices that inspect and grade rice.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982. Redesignated at 54 FR 21403, May 18, 1989, and 60 FR 16364, Mar. 30, 1995]

§ 868.205 Milling requirements.

In determining milling yield (see § 868.202(f)) in rough rice, the degree of milling shall be equal to, or better than, that of the interpretive line sample for "well-milled" rice.

[42 FR 40869, Aug. 12, 1977. Redesignated at 54 FR 21413, May 18, 1989. Further redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

§ 868.206 Milling yield determination.

Milling yield shall be determined by the use of an approved device in accordance with procedures prescribed in FGIS instructions. For the purpose of this paragraph, “approved device” shall include the McGill Miller No. 3 and any other equipment that is approved by the Administrator as giving equivalent results.

NOTE: Milling yield shall not be determined when the moisture content of the rough rice exceeds 18.0 percent.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; Redesignated and amended at 54 FR 21403, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.207 Moisture.

Water content in rough rice as determined by an approved device in accordance with procedures prescribed in the FGIS instructions. For the purpose of this paragraph, “approved device” shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982. Redesignated at 54 FR 21403, May 18, 1989; 54 FR 51344, Dec. 14, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.208 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 8.34 as 8.3 and 1.22 as 1.2.

(b) *Recording.* All percentages, except for milling yield, are stated in whole and tenth percent to the nearest tenth percent. Milling yield is stated to the nearest whole percent.

[54 FR 21403, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.209 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090-6454, or any field office or cooperator.

[54 FR 21404, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 868.210 Grades and grade requirements for the classes of Rough Rice. (See also § 868.212.)

Grade	Maximum limits of—						Color requirements ¹ (minimum)	
	Seeds and heat-damaged kernels			Red rice and damaged kernels (singly or combined) (Percent)	Chalky kernels ^{1,2}			Other types ³ (Percent)
	Total (singly or combined) (Number in 500 grams)	Heat-damaged kernels and objectionable seeds (singly or combined) (Number in 500 grams)	Heat-damaged kernels (Number in 500 grams)		In long grain rice (Percent)	In medium or short grain rice (Percent)		
U.S. No. 1	4	3	1	0.5	1.0	2.0	1.0	Shall be white or creamy. May be slightly gray.
U.S. No. 2	7	5	2	1.5	2.0	4.0	2.0	

Grade	Maximum limits of—							Color requirements ¹ (minimum)
	Seeds and heat-damaged kernels			Red rice and damaged kernels (singly or combined) (Percent)	Chalky kernels ^{1 2}		Other types ³ (Percent)	
	Total (singly or combined) (Number in 500 grams)	Heat-damaged kernels and objectionable seeds (singly or combined) (Number in 500 grams)	Heat-damaged kernels (Number in 500 grams)		In long grain rice (Percent)	In medium or short grain rice (Percent)		
U.S. No. 3	10	8	5	2.5	4.0	6.0	3.0	May be light gray.
U.S. No. 4	27	22	15	4.0	6.0	8.0	5.0	May be gray or slight rosy.
U.S. No. 5	37	32	25	6.0	10.0	10.0	10.0	May be dark gray or rosy.
U.S. No. 6	75	75	75	⁴ 15.0	15.0	15.0	10.0	May be dark gray or rosy.
U.S. Sample grade	U.S. Sample grade shall be rough rice which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 6, inclusive; (b) contains more than 14.0 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; or (e) is otherwise of distinctly low quality.							

¹ For the special grade Parboiled rough rice, see § 868.212(b).
² For the special grade Glutinous rough rice, see § 868.212(d).
³ These limits do not apply to the class Mixed Rough Rice.
⁴ Rice in grade U.S. No. 6 shall contain not more than 6.0 percent of damaged kernels.

[56 FR 55978, Oct. 31, 1991. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

§868.211 Grade designation.

(a) The grade designation for all classes of rough rice, except Mixed Rough Rice, shall include in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade," as warranted; (3) the words "or better" when applicable and requested by the applicant prior to inspection; (4) the class; (5) each applicable special grade (see §868.213); and (6) a statement of the milling yield.

(b) The grade designation for the class Mixed Rough Rice shall include, in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade," as warranted; (3) the words "or better," when applicable and requested by the applicant prior to inspection; (4) the class; (5) each applicable special grade (see §868.213); (6) the percentage of whole kernels of each type in the order of predominance; (7) the percentage of large broken kernels of each type in the order of predominance; (8) the percent of material removed by the No. 6 sieve or the No. 6 sizing plate; (9) when appli-

cable, the percentage of seeds; and (10) a statement of the milling yield.

NOTE: Large broken kernels other than long grain, in Mixed Rough Rice, shall be certificated as "medium or short grain."

[42 FR 40869, Aug. 12, 1977, as amended at 54 FR 51344, Dec. 14, 1989. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§868.212 Special grades and requirements.

A special grade, when applicable, is supplemental to the grade assigned under §868.210. Such special grades for rough rice are established and determined as follows:

(a) *Infested rough rice.* Tolerances for live insects for infested rough rice are defined according to sampling designations as follows:

(1) *Representative sample.* The representative sample consists of the work portion, and the file sample if needed

and when available. The rough rice (except when examined according to paragraph (a)(3) of this section will be considered infested if the representative sample contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice or five or more other live insects injurious to stored rice.

(2) *Lot as a whole (stationary).* The lot as a whole is considered infested when two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice, or 15 or more live Angoumois moths or other live moths injurious to stored rice are found in, on, or about the lot.

(3) *Sample as a whole during continuous loading/unloading.* The minimum sample size for rice being sampled during continuous loading/unloading is 500 grams per each 100,000 pounds of rice. The sample as a whole is considered infested when a component (as defined in FGIS instructions) contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice.

(b) *Parboiled rough rice.* Parboiled rough rice shall be rough rice in which the starch has been gelatinized by soaking, steaming, and drying. Grades U.S. No. 1 to U.S. No. 6 inclusive, shall contain not more than 10.0 percent of ungelatinized kernels. Grades U.S. No. 1 and U.S. No. 2 shall contain not more than 0.1 percent, grades U.S. No. 3 and U.S. No. 4 not more than 0.2 percent, and grades U.S. No. 5 and U.S. No. 6 not more than 0.5 percent of nonparboiled rice. If the rice is: (1) Not distinctly colored by the parboiling process, it shall be considered "Parboiled Light"; (2) distinctly but not materially colored by the parboiling process, it shall be considered "Parboiled"; (3) materially colored by the parboiling process, it shall be considered "Parboiled Dark." The color levels for "Parboiled Light," "Parboiled," and "Parboiled Dark" rice shall be in accordance with the interpretive line samples for parboiled rice.

NOTE: The maximum limits for "Chalky kernels," "Heat-damaged kernels," "Kernels

damaged by heat," and the "Color requirements" shown in §868.210 are not applicable to the special grade "Parboiled rough rice."

(c) *Smutty rough rice.* Smutty rough rice shall be rough rice which contains more than 3.0 percent of smutty kernels.

(d) *Glutinous rough rice.* Glutinous rough rice shall be special varieties of rice (*Oryza sativa* L. *glutinosa*) which contain more than 50 percent chalky kernels. Grade U.S. No. 1 shall contain not more than 1.0 percent of nonchalky kernels, grade U.S. No. 2 not more than 2.0 percent of nonchalky kernels, grade U.S. No. 3 not more than 4.0 percent of nonchalky kernels, grade U.S. No. 4 not more than 6.0 percent of nonchalky kernels, grade U.S. No. 5 not more than 10.0 percent of nonchalky kernels, and grade U.S. No. 6 not more than 15.0 percent of nonchalky kernels.

NOTE: The maximum limits for "Chalky kernels" in §868.210 are not applicable to the special grade "Glutinous rough rice."

(e) *Aromatic rough rice.* Aromatic rough rice shall be special varieties of rice (*Oryza sativa* L. scented) that have a distinctive and characteristic aroma; e.g., basmati and jasmine rice.

[42 FR 40869, Aug. 12, 1977, as amended at 54 FR 21406, May 18, 1989; 56 FR 55978, Oct. 31, 1991; 58 FR 68016, Dec. 23, 1993. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

§868.213 Special grade designation.

The grade designation for infested, parboiled, smutty, glutinous, or aromatic rough rice shall include, following the class, the word(s) "Infested," "Parboiled Light," "Parboiled," "Parboiled Dark," "Smutty," "Glutinous," or "Aromatic," as warranted, and all other information prescribed in §868.211.

[58 FR 68016, Dec. 23, 1993. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

Subpart D—United States Standards for Brown Rice for Processing

NOTE TO THE SUBPART: Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

SOURCE: 42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, unless otherwise noted. Redesignated at 60 FR 16364, Mar. 30, 1995.

TERMS DEFINED

§ 868.251 Definition of brown rice for processing.

Rice (*Oryza sativa* L.) which consists of more than 50.0 percent of kernels of brown rice, and which is intended for processing to milled rice.

§ 868.252 Definition of other terms.

For the purposes of these standards, the following terms shall have the meanings stated below:

(a) *Broken kernels.* Kernels of rice which are less than three-fourths of whole kernels.

(b) *Brown rice.* Whole or broken kernels of rice from which the hulls have been removed.

(c) *Chalky kernels.* Whole or broken kernels of rice which are one-half or more chalky.

(d) *Classes.* There are four classes of brown rice for processing.

Long Grain Brown Rice for Processing.
Medium Grain Brown Rice for Processing.
Short Grain Brown Rice for Processing.
Mixed Brown Rice for Processing.

Classes shall be based on the percentage of whole kernels, broken kernels, and types of rice.

(1) "Long-grain brown rice for processing" shall consist of brown rice for processing which contains more than 25.0 percent of whole kernels of brown rice and not more than 10.0 percent of whole or broken kernels of medium- or short-grain rice.

(2) "Medium-grain brown rice for processing" shall consist of brown rice for processing which contains more than 25.0 percent of whole kernels of brown rice and not more than 10.0 percent of whole or broken kernels of long-grain rice or whole kernels of short-grain rice.

(3) "Short-grain brown rice for processing" shall consist of brown rice for processing which contains more than 25.0 percent of whole kernels of brown rice and not more than 10.0 percent of whole or broken kernels of long-grain rice or whole kernels of medium-grain rice.

(4) "Mixed brown rice for processing" shall be brown rice for processing

which contains more than 25.0 percent of whole kernels of brown rice and more than 10.0 percent of "other types" as defined in paragraph (i) of this section.

(e) *Damaged kernels.* Whole or broken kernels of rice which are distinctly discolored or damaged by water, insects, heat, or any other means (including parboiled kernels in nonparboiled rice and smutty kernels). "Heat-damaged kernels" (see paragraph (f) of this section) shall not function as damaged kernels.

(f) *Heat-damaged kernels.* Whole or broken kernels of rice which are materially discolored and damaged as a result of heating and parboiled kernels in nonparboiled rice which are as dark as, or darker in color than, the interpretive line for heat-damaged kernels.

(g) *Milling yield.* An estimate of the quantity of whole kernels and total milled rice (whole and broken kernels combined) that is produced in the milling of brown rice for processing to a well-milled degree.

(h) *Objectionable seeds.* Whole or broken seeds other than rice, except seeds of *Echinochloa crusgalli* (commonly known as barnyard grass, watergrass, and Japanese millet).

(i) *Other types.* (1) Whole kernels of: (i) Long grain rice in medium or short grain rice and medium or short grain rice in long grain rice, (ii) medium grain rice in long or short grain rice, (iii) short grain rice in long or medium grain rice, (2) broken kernels of long grain rice in medium or short grain rice and broken kernels of medium or short grain rice in long grain rice.

NOTE: Broken kernels of medium grain rice in short grain rice and broken kernels of short grain rice in medium grain rice shall not be considered other types.

(j) *Paddy Kernels.* Whole or broken unhulled kernels and whole or broken kernels of rice having a portion or portions of the hull remaining which cover one-half (1/2) or more of the whole or broken kernel.

(k) *Red rice.* Whole or broken kernels of rice on which the bran is distinctly red in color.

(l) *Related material.* All by-products of a paddy kernel, such as the outer glumes, lemma, palea, awn, embryo, and bran layers.

(m) *Seeds.* Whole or broken seeds of any plant other than rice.

(n) *Smutty kernels.* Whole or broken kernels of rice which are distinctly infected by smut.

(o) *Types of rice.* There are three types of brown rice for processing:

- Long grain
- Medium grain
- Short grain

Types shall be based on the length/width ratio of kernels of rice that are unbroken and the width, thickness, and shape of kernels of rice that are broken as prescribed in FGIS instructions.

(p) *Ungelatinized kernels.* Whole or broken kernels of parboiled rice with distinct white or chalky areas due to incomplete gelatinization of the starch.

(q) *Unrelated material.* All matter other than rice, related material, and seeds.

(r) *Well-milled kernels.* Whole or broken kernels of rice from which the hulls and practically all of the embryos and the bran layers have been removed.

(s) *Whole kernels.* Unbroken kernels of rice and broken kernels of rice which are at least three-fourths of an unbroken kernel.

(t) *6 plate.* A laminated metal plate 0.142-inch thick, with a top lamina 0.051-inch thick, perforated with rows of round holes 0.0938 (6/64) inch in diameter, and a bottom lamina 0.091-inch thick, without perforations.

(u) *6½ sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.1016 (6½/64) inch in diameter.

[13 FR 9479, Dec. 31, 1948, as amended at 44 FR 73008, Dec. 17, 1979; 47 FR 34516, Aug. 10, 1982; 54 FR 21403, 21406, May 18, 1989; 54 FR 51344, Dec. 14, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

§ 868.253 Basis of determination.

The determination of kernels damaged by heat, heat-damaged kernels, parboiled kernels in nonparboiled rice, and the special grade Parboiled brown rice for processing shall be on the basis of the brown rice for processing after it has been milled to a well-milled degree. All other determinations shall be on the basis of the original sample. Mechanical sizing of kernels shall be ad-

justed by handpicking as prescribed in FGIS instructions, or by any method which gives equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.254 Broken kernels determination.

Broken kernels shall be determined by the use of equipment and procedures prescribed in FGIS instructions, or by any method which gives equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989. Redesignated at 54 FR 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.255 Interpretive line samples.

Interpretive line samples showing the official scoring line for factors that are determined by visual observation shall be maintained by the Federal Grain Inspection Service, U.S. Department of Agriculture, and shall be available for reference in all inspection offices that inspect and grade rice.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989. Redesignated at 54 FR 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.256 Milling requirements.

In determining milling yield (see § 868.252(g)) in brown rice for processing, the degree of milling shall be equal to, or better than, that of the interpretive line sample for “well-milled” rice.

[42 FR 40869, Aug. 12, 1977. Redesignated at 21406, May 18, 1989. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

§ 868.257 Milling yield determination.

Milling yield shall be determined by the use of an approved device in accordance with procedures prescribed in FGIS instructions. For the purpose of this paragraph, “approved device” shall include the McGill Miller No. 3 and any other equipment that is approved by the Administrator as giving equivalent results.

NOTE: Milling yield shall not be determined when the moisture content of the

Grain Inspection, Packers and Stockyard Admin. (FGIS), USDA

§ 868.261

brown rice for processing exceeds 18.0 percent.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989. Redesignated at 54 FR 21406, May 18, 1989. Further redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.258 Moisture.

Water content in brown rice for processing as determined by an approved device in accordance with procedures prescribed in FGIS instructions. For the purpose of this paragraph, "approved device" shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989. Redesignated at 54 FR 21406, May 18, 1989. Further redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.259 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or

equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure, e.g., report 8.34 as 8.3 and 1.22 and 1.2.

(b) *Recording.* All percentages, except for milling yield, are stated in whole and tenth percent to the nearest whole percent. Milling yield is stated to the nearest whole percent.

[54 FR 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.260 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090-6454, or any field office or cooperator.

[54 FR 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 868.261 Grade and grade requirements for the classes of brown rice for processing. (See also § 868.263.)

Grade	Maximum limits of—									
	Paddy kernels		Seeds and heat-damaged kernels			Red rice and damaged kernels (singly or combined) (percent)	Chalky kernels ^{1,2} (percent)	Broken kernels removed by a 6 plate or a 6½ sieve ³ (percent)	Other types ⁴	Wellmilled kernels (percent)
	Percent	Number in 500 grams	Total (singly or combined) (number in 500 grams)	Heat-damaged kernels (number in 500 grams)	Objectionable seeds (number in 500 grams)					
U.S. No. 1	—	20	10	1	2	1.0	2.0	1.0	1.0	1.0
U.S. No. 2	2.0	—	40	2	10	2.0	4.0	2.0	2.0	3.0
U.S. No. 3	2.0	—	70	4	20	4.0	6.0	3.0	5.0	10.0
U.S. No. 4	2.0	—	100	8	35	8.0	8.0	4.0	10.0	10.0
U.S. No. 5	2.0	—	150	15	50	15.0	15.0	6.0	10.0	10.0
U.S. Sample grade	U.S. Sample grade shall be brown rice for processing which (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5, inclusive; (b) contains more than 14.5 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.2 percent of related material or more than 0.1 percent of unrelated material; (f) contains two or more live weevils or other live insects; or (g) is otherwise of distinctly low quality.									

¹ For the special grade Parboiled brown rice for processing, see § 868.263(a).

² For the special grade Glutinous brown rice for processing, see § 868.263(c).

³ Plates should be used for southern production rice and sieves should be used for western production rice, but any device or method which gives equivalent results may be used.

⁴ These limits do not apply to the class Mixed Brown Rice for Processing.

[56 FR 55979, Oct. 31, 1991. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

§ 868.262 Grade designation.

(a) The grade designation for all classes of brown rice for processing, except Mixed Brown Rice for Processing, shall include in the following order: (1) The letters “U.S.”; (2) the number of the grade or the words “Sample grade,” as warranted; (3) the words “or better,” when applicable and requested by the applicant prior to inspection; (4) the class; and (5) each applicable special grade (see § 868.264).

(b) The grade designation for the class Mixed Brown Rice for Processing shall include in the following order: (1) The letters “U.S.”; (2) the number of the grade or the words “Sample grade,” as warranted; (3) the words “or better,” when applicable and requested by the applicant prior to inspection; (4) the class; (5) each applicable special grade (see § 868.264); (6) the percentage of whole kernels of each type in the order of predominance; and when applicable; (7) the percentage of broken kernels of each type in the order of predominance; and (8) the percentage of seeds, related material, and unrelated material.

NOTE: Broken kernels other than long grain, in Mixed Brown Rice for Processing, shall be certificated as “medium or short grain.”

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§ 868.263 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 868.262. Such special grades for brown rice for processing are established and determined as follows:

(a) *Parboiled brown rice for processing.* Parboiled brown rice for processing shall be rice in which the starch has been gelatinized by soaking, steaming, and drying. Grades U.S. Nos. 1 to 5, inclusive, shall contain not more than 10.0 percent of ungelatinized kernels. Grades U.S. No. 1 and U.S. No. 2 shall

contain not more than 0.1 percent, grades U.S. No. 3 and U.S. No. 4 not more than 0.2 percent, and grade U.S. No. 5 not more than 0.5 percent of non-parboiled rice.

NOTE: The maximum limits for “chalky kernels,” “Heat-damaged kernels,” and “Kernels damaged by heat” shown in § 868.261 are not applicable to the special grade “Parboiled brown rice for processing.”

(b) *Smutty brown rice for processing.* Smutty brown rice for processing shall be rice which contains more than 3.0 percent of smutty kernels.

(c) *Glutinous brown rice for processing.* Glutinous brown rice for processing shall be special varieties of rice (*Oryza sativa* L. *glutinosa*) which contain more than 50 percent chalky kernels. Grade U.S. No. 1 shall contain not more than 1.0 percent of nonchalky kernels, grade U.S. No. 2 not more than 2.0 percent of nonchalky kernels, grade U.S. No. 3 not more than 4.0 percent of nonchalky kernels, grade U.S. No. 4 not more than 6.0 percent of nonchalky kernels, and grade U.S. No. 5 not more than 10.0 percent of nonchalky kernels.

NOTE: The maximum limits for “Chalky kernels” in § 868.261 are not applicable to the special grade “Glutinous brown rice for processing.”

(d) *Aromatic brown rice for processing.* Aromatic brown rice for processing shall be special varieties of rice (*Oryza sativa* L. scented) that have a distinctive and characteristic aroma; e.g., basmati and jasmine rice.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 56 FR 55979, Oct. 31, 1991; 58 FR 68016, Dec. 23, 1993. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

§ 868.264 Special grade designation.

The grade designation for parboiled, smutty, glutinous, or aromatic brown rice for processing shall include, following the class, the word(s) “Parboiled,” “Smutty,” “Glutinous,” or “Aromatic,” as warranted, and all other information prescribed in § 868.262.

[58 FR 68016, Dec. 23, 1993. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

Subpart E—United States Standards for Milled Rice

NOTE TO THE SUBPART: Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

SOURCE: 42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, unless otherwise noted. Redesignated at 60 FR 16364, Mar. 30, 1995.

TERMS DEFINED

§ 868.301 Definition of milled rice.

Whole or broken kernels of rice (*Oryza sativa* L.) from which the hulls and at least the outer bran layers have been removed and which contain not more than 10.0 percent of seeds, paddy kernels, or foreign material, either singly or combined.

[48 FR 24859, June 3, 1983. Redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.302 Definition of other terms.

For the purposes of these standards, the following terms shall have the meanings stated below:

(a) *Broken kernels.* Kernels of rice which are less than three-fourths of whole kernels.

(b) *Brown rice.* Whole or broken kernels of rice from which the hulls have been removed.

(c) *Chalky kernels.* Whole or broken kernels of rice which are one-half or more chalky.

(d) *Classes.* There are seven classes of milled rice. The following four classes shall be based on the percentage of whole kernels, and types of rice:

Long Grain Milled Rice.
Medium Grain Milled Rice.
Short Grain Milled Rice.
Mixed Milled Rice.

The following three classes shall be based on the percentage of whole kernels and of broken kernels of different size:

Second Head Milled Rice.
Screenings Milled Rice.
Brewers Milled Rice.

(1) "Long grain milled rice" shall consist of milled rice which contains more than 25.0 percent of whole kernels of milled rice and in U.S. Nos. 1 through 4 not more than 10.0 percent of whole or broken kernels of medium or short grain rice. U.S. No. 5 and U.S. No.

6 long grain milled rice shall contain not more than 10.0 percent of whole kernels of medium or short grain milled rice (broken kernels do not apply).

(2) "Medium grain milled rice" shall consist of milled rice which contains more than 25.0 percent of whole kernels of milled rice and in U.S. Nos. 1 through 4 not more than 10.0 percent of whole or broken kernels of long grain rice or whole kernels of short grain rice. U.S. No. 5 and U.S. No. 6 medium grain milled rice shall contain not more than 10.0 percent of whole kernels of long or short grain milled rice (broken kernels do not apply).

(3) "Short grain milled rice" shall consist of milled rice which contains more than 25.0 percent of whole kernels of milled rice and in U.S. Nos. 1 through 4 not more than 10.0 percent of whole or broken kernels of long grain rice or whole kernels of medium grain rice. U.S. No. 5 and U.S. No. 6 short grain milled rice shall contain not more than 10.0 percent of whole kernels of long or medium grain milled rice (broken kernels do not apply).

(4) "Mixed milled rice" shall consist of milled rice which contains more than 25.0 percent of whole kernels of milled rice and more than 10.0 percent of "other types" as defined in paragraph (i) of this section. U.S. No. 5 and U.S. No. 6 mixed milled rice shall contain more than 10.0 percent of whole kernels of "other types" (broken kernels do not apply).

(5) "Second head milled rice" shall consist of milled rice which, when determined in accordance with § 868.303, contains:

(i) Not more than (a) 25.0 percent of whole kernels, (b) 7.0 percent of broken kernels removed by a 6 plate, (c) 0.4 percent of broken kernels removed by a 5 plate, and (d) 0.05 percent of broken kernels passing through a 4 sieve (southern production); or

(ii) Not more than (a) 25.0 percent of whole kernels, (b) 50.0 percent of broken kernels passing through a 6½ sieve, and (c) 10.0 percent of broken kernels passing through a 6 sieve (western production).

(6) “Screenings milled rice” shall consist of milled rice which, when determined in accordance with §868.303, contains:

(i) Not more than (a) 25.0 percent of whole kernels, (b) 10.0 percent of broken kernels removed by a 5 plate, and (c) 0.2 percent of broken kernels passing through a 4 sieve (southern production); or

(ii) Not more than (a) 25.0 percent of whole kernels and (b) 15.0 percent of broken kernels passing through a 5½ sieve; and more than (c) 50.0 percent of broken kernels passing through a 6½ sieve and (d) 10.0 percent of broken kernels passing through a 6 sieve (western production).

(7) “Brewers milled rice” shall consist of milled rice which, when determined in accordance with §868.303, contains not more than 25.0 percent of whole kernels and which does not meet the kernel-size requirements for the class Second Head Milled Rice or Screenings Milled Rice.

(e) *Damaged kernels.* Whole or broken kernels of rice which are distinctly discolored or damaged by water, insects, heat, or any other means, and parboiled kernels in nonparboiled rice. “Heat-damaged kernels” (see paragraph (g) of this section) shall not function as damaged kernels.

(f) *Foreign material.* All matter other than rice and seeds. Hulls, germs, and bran which have separated from the kernels of rice shall be considered foreign material.

(g) *Heat-damaged kernels.* Whole or broken kernels of rice which are materially discolored and damaged as a result of heating and parboiled kernels in nonparboiled rice which are as dark as, or darker in color than, the interpretive line for heat-damaged kernels.

(h) *Objectionable seeds.* Seeds other than rice, except seeds of *Echinochloa crusgalli* (commonly known as barnyard grass, watergrass, and Japanese millet).

(i) *Other types.* (1) Whole kernels of: (i) Long grain rice in medium or short grain rice, (ii) medium grain rice in long or short grain rice, (iii) Short grain rice in long or medium grain rice, and (2) broken kernels of long grain rice in medium or short grain rice and broken kernels of medium or short

grain rice in long grain rice, except in U.S. No. 5 and U.S. No. 6 milled rice. In U.S. No. 5 and U.S. No. 6 milled rice, only whole kernels will apply.

NOTE: Broken kernels of medium grain rice in short grain rice and broken kernels of short grain rice in medium grain rice shall not be considered other types.

(j) *Paddy Kernels.* Whole or broken unhulled kernels of rice; whole or broken kernels of brown rice, and whole or broken kernels of milled rice having a portion or portions of the hull remaining which cover one-eighth ($\frac{1}{8}$) or more of the whole or broken kernel.

(k) *Red rice.* Whole or broken kernels of rice on which there is an appreciable amount of red bran.

(l) *Seeds.* Whole or broken seeds of any plant other than rice.

(m) *Types of rice.* There are three types of milled rice as follows:

Long grain.
Medium grain.
Short grain.

Types shall be based on the length-width ratio of kernels of rice that are unbroken and the width, thickness, and shape of kernels that are broken, prescribed in FGIS instructions.

(n) *Ungelatinized kernels.* Whole or broken kernels of parboiled rice with distinct white or chalky areas due to incomplete gelatinization of the starch.

(o) *Well-milled kernels.* Whole or broken kernels of rice from which the hulls and practically all of the germs and the bran layers have been removed.

NOTE: This factor is determined on an individual kernel basis and applies to the special grade Undermilled milled rice only.

(p) *Whole kernels.* Unbroken kernels of rice and broken kernels of rice which are at least three-fourths of an unbroken kernel.

(q) *5 plate.* A laminated metal plate 0.142-inch thick, with a top lamina, 0.051-inch thick, perforated with rows of round holes 0.0781 ($\frac{5}{64}$) inch in diameter, $\frac{5}{32}$ inch from center to center, with each row staggered in relation to the adjacent rows, and a bottom lamina 0.091-inch thick, without perforations.

(r) *6 plate.* A laminated metal plate 0.142-inch thick, with a top lamina 0.051-inch thick, perforated with rows of round holes 0.0938 ($\frac{6}{64}$) inch in diameter, $\frac{5}{32}$ inch from center to center,

with each row staggered in relation to the adjacent rows, and a bottom lamina 0.091-inch thick, without perforations.

(s) *2½ sieve*. A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0391 (2½/64) inch in diameter, 0.075-inch from center to center, with each row staggered in relation to the adjacent rows.

(t) *4 sieve*. A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0625 (¼) inch in diameter, ⅛ inch from center to center, with each row staggered in relation to the adjacent rows.

(u) *5 sieve*. A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0781 (5/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows.

(v) *5½ sieve*. A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0859 (5½/64) inch in diameter, ¼ inch from center to center, with each row staggered in relation to the adjacent rows.

(w) *6 sieve*. A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0938 (6/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows.

(x) *6½ sieve*. A metal sieve 0.032-inch thick, perforated with rows of round holes 0.1016 (6½/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows.

(y) *30 sieve*. A woven wire cloth sieve having 0.0234-inch openings, with a wire diameter of 0.0153 inch, and meeting the specifications of American Society for Testing and Materials Designation E-11-61, prescribed in FGIS instructions.

[13 FR 9479, Dec. 31, 1948, as amended at 44 FR 73008, Dec. 17, 1979; 47 FR 34516, Aug. 10, 1982; 54 FR 21403, 21406, May 18, 1989; 54 FR 51345, Dec. 14, 1989. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

§ 868.303 Basis of determination.

All determinations shall be on the basis of the original sample. Mechan-

ical sizing of kernels shall be adjusted by handpicking, as prescribed in FGIS instructions, or by any method which gives equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.304 Broken kernels determination.

Broken kernels shall be determined by the use of equipment and procedures prescribed in FGIS instructions or by any method which gives equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989. Redesignated at 54 FR 21406, May 18, 1989 and 60 FR 16364, Mar. 30, 1995]

§ 868.305 Interpretive line samples.

Interpretive line samples showing the official scoring line for factors that are determined by visual observation shall be maintained by the Federal Grain Inspection Service, U.S. Department of Agriculture, and shall be available for reference in all inspection offices that inspect and grade rice.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982. Redesignated at 54 FR 21406, May 18, 1989 and 60 FR 16364, Mar. 30, 1995]

§ 868.306 Milling requirements.

The degree of milling for milled rice; i.e., "well milled," "reasonably well milled," and "lightly milled" shall be equal to, or better than, that of the interpretive line samples for such rice.

[42 FR 40869, Aug. 12, 1977. Redesignated at 54 FR 21406, May 18, 1989 and 60 FR 16364, Mar. 30, 1995]

§ 868.307 Moisture.

Water content in milled rice as determined by an approved device in accordance with procedures prescribed in FGIS instructions. For the purpose of this paragraph, "approved device" shall include the Motomco Moisture Meter and any other equipment that is

§ 868.308

approved by the Administrator as giving equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989. Redesignated at 54 FR 21406, May 18, 1989 and 60 FR 16364, Mar. 30, 1995]

§ 868.308 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure, e.g., report 8.34 as 8.3 and 1.22 and 1.2.

(b) *Recording.* The percentage of broken kernels removed by a 5 plate in U.S. Nos. 1 and 2 Milled Rice and the

7 CFR Ch. VIII (1–1–99 Edition)

percentage of objectionable seeds in U.S. No. 1 Brewers Milled Rice is reported to the nearest hundredth percent. The percentages of all other factors are recorded to the nearest tenth of a percent.

[54 FR 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

§ 868.309 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090-6454, or any field office or cooperator.

[54 FR 21407, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 868.310 Grade and grade requirements for the classes Long Grain Mixed Rice, Mixed Grain Miller Rice, Short Grain Miller Rice, and Mixed Miller Rice. (See also § 868.315.)

Grade	Maximum limits of—										Color require-ments ¹	Minimum mill-ing require-ments ⁵	
	Seeds, heat damaged, and paddy kernels (singly or com-bined)		Red rice and damaged kernels (sin-gly or com-bined)		Chalky ker-nels ^{1, 2}		Broken kernels			Other types ⁴			
	Total (Num-ber in 500 grams)	Heat-dam-aged kernels and objection-able seeds (Num-ber in 500 grams)	In long grain rice (per-cent)	In me-dium or short grain rice (per-cent)	Total (per-cent)	Re-moved by a 5 plate ³ (per-cent)	Re-moved by a 6 plate ³ (per-cent)	Through a 6 Sieve ³ (per-cent)	Whole kernels (per-cent)	Whole bro-ken kernels (per-cent)			
U.S. No. 1	2	1	1.0	2.0	4.0	0.04	0.1	0.1	—	1.0	Shall be white or creamy.	Well milled.	
U.S. No. 2	4	2	2.0	4.0	7.0	0.06	0.2	0.2	—	2.0	May be slightly gray.	Well milled.	
U.S. No. 3	7	5	4.0	6.0	15.0	0.1	0.8	0.5	—	3.0	May be light gray.	Reasonably well milled.	
U.S. No. 4	20	15	6.0	8.0	25.0	0.4	2.0	0.7	—	5.0	May be gray or slightly rosy.	Reasonably well milled.	
U.S. No. 5	30	25	10.0	10.0	35.0	0.7	3.0	1.0	10.0	—	May be dark gray or rosy.	Lightly milled.	
U.S. No. 6	75	75	15.0	15.0	50.0	1.0	4.0	2.0	10.0	—	May be dark gray or rosy.	Lightly milled.	

U.S. Sample grade: U.S. Sample grade small be milled rice of any of these classes which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 6, in-clusive; (b) contains more than 15.0 percent of moisture; (c) is musty or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.1 percent of foreign material; (f) contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; or (g) is otherwise of distinctly low quality.

¹For the special grade Parboiled milled rice, see §868.315(c).

²For the special grade Glutinous milled rice, see §868.315(e).

³Plates should be used for southern production rice; and sieves should be used for western production rice, but any device or method which gives equivalent results may be used.

⁴These limits do not apply to the class Mixed Milled Rice.

⁵For the special grade Undermilled milled rice, see §868.315(d).

⁶Grade U.S. No. 6 shall contain not more than 6.0 percent of damaged kernels.

§ 868.311

7 CFR Ch. VIII (1–1–99 Edition)

[56 FR 55979, Oct. 31, 1991. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

§ 868.311 Grades and grade requirements for the class Second Head Milled Rice. (See also § 868.305.)

Grade	Maximum limits of—				Color requirements ¹	Minimum milling requirements ²
	Seeds, heat-damaged, and paddy kernels (singly or combined)		Red rice and damaged kernels (singly or combined) (percent)	Chalky kernels ^{1,3} (percent)		
	Total (Number in 500 grams)	Heat-damaged kernels and objectionable seeds (Number in 500 grams)				
U.S. No. 1	15	5	1.0	4.0	Shall be white or creamy.	Well milled.
U.S. No. 2	20	10	2.0	6.0	May be slightly gray ..	Well milled.
U.S. No. 3	35	15	3.0	10.0	May be light gray	Reasonably well milled.
U.S. No. 4	50	25	5.0	15.0	May be gray or slightly rosy.	Reasonably well milled.
U.S. No. 5	75	40	10.0	20.0	May be dark gray or rosy.	Lightly milled.
U.S. Sample grade						

U.S. Sample grade shall be milled rice of this class which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5, inclusive; (b) contains more than 15.0 percent of moisture; (c) is musty or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.1 percent of foreign material; (f) contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; or (g) is otherwise of distinctly low quality.

¹ For the special grade Parboiled milled rice, see § 868.315(c).
² For the special grade Undermilled milled rice, see § 868.315(d).
³ For the special grade Glutinous milled rice, see § 868.315(e).

[56 FR 55980, Oct. 31, 1991. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

§ 868.312 Grades and grade requirements for the class Screenings Milled Rice. (See also § 868.315.)

Grade	Maximum limits of—			Color requirements ¹	Minimum milling requirements ²
	Paddy kernels and seeds		Chalky kernels ^{1,3} (percent)		
	Total (singly or combined) (number in 500 grams)	Objectionable seeds (number in 500 grams)			
U.S. No. 1 ^{4,5}	30	20	5.0	Shall be white or creamy.	Well milled.
U.S. No. 2 ^{4,5}	75	50	8.0	May be slightly gray ..	Well milled.
U.S. No. 3 ^{4,5}	125	90	12.0	May be light gray or slightly rosy.	Reasonably well milled.
U.S. No. 4 ^{4,5}	175	140	20.0	May be gray or rosy ..	Reasonably well milled.
U.S. No. 5	250	200	30.0	May be dark gray or very rosy.	Lightly milled.
U.S. Sample grade—					

U.S. Sample grade shall be milled rice of this class which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5, inclusive; (b) contains more than 15.0 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; (e) has a badly damaged or extremely red appearance; (f) contains more than 0.1 percent of foreign material; (g) contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; or (h) is otherwise of distinctly low quality.

¹ For the special grade Parboiled milled rice, see § 868.315(c).
² For the special grade Undermilled milled rice, see § 868.315(d).
³ For the special grade Glutinous milled rice, see § 868.315(e).
⁴ Grades U.S. No. 1 to U.S. No. 4, inclusive, shall contain not more than 3.0 percent of heat-damaged kernels, kernels damaged by heat and/or parboiled kernels in nonparboiled rice.
⁵ Grades U.S. No. 1 to U.S. No. 4, inclusive, shall contain not more than 1.0 percent of material passing through a 30 sieve.

[56 FR 55981, Oct. 31, 1991. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

§868.313 Grades and grade requirements for the class Brewers Milled Rice. (See also §868.315.)

Grade	Maximum limits of—Paddy kernels and seeds		Color requirements ¹	Minimum milling requirements ²
	Total (singly or combined) (Per-cent)	Objectionable seeds (Per-cent)		
U.S. No. 1 ^{3,4}	0.5	0.05	Shall be white or creamy	Well milled.
U.S. No. 2 ^{3,4}	1.0	0.1	May be slightly gray	Well milled.
U.S. No. 3 ^{3,4}	1.5	0.2	May be light gray or slightly rosy	Reasonably well milled.
U.S. No. 4 ^{3,4}	3.0	0.4	May be gray or rosy	Reasonably well milled.
U.S. No. 5	5.0	1.5	May be dark gray or very rosy	Lightly milled.

U.S. Sample Grade shall be milled rice of this class which: (a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5 inclusive; (b) contains more than 15.0 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; (e) has a badly damaged or extremely red appearance; (f) contains more than 0.1 percent of foreign material; (g) contains more than 15.0 percent of broken kernels that will pass through a 2½ sieve; (h) contains two or more live or dead weevils or other insects, insect webbing or insect refuse; or (i) is otherwise of distinctly low quality

¹ For the special grade Parboiled milled rice, see §868.315(c).
² For the special grade Undermilled milled rice, see §868.315(d).
³ Grades U.S. No. 1 to U.S. No. 4, inclusive, shall contain not more than 3.0 percent of heat-damaged kernels, kernels damaged by heat and/or parboiled kernels in nonparboiled rice.
⁴ Grades U.S. No. 1 to U.S. No. 4, inclusive, shall contain not more than 1.0 percent of material passing through a 30 sieve. This limit does not apply to the special grade Granulated brewers milled rice.

[42 FR 40869, Aug. 12, 1977, as amended at 54 FR 21407, May 18, 1989. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

§868.314 Grade designations.

(a) The grade designation for all classes of milled rice, except Mixed Milled Rice, shall include in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade", as warranted; (3) the words "or better," when applicable and requested by the applicant prior to inspections; (4) the class; and (5) each applicable special grade (see §868.316).

(b) The grade designation for the class Mixed Milled Rice shall include, in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade", as warranted; (3) the words "or better," when applicable and requested by the applicant prior to inspection; (4) the class; (5) each applicable special grade (see §868.316); (6) the percentage of whole kernels of each type in the order of predominance and when applicable; (7) the percentage of broken kernels of each type in the order of predominance; and (8) the percentage of seeds and foreign material.

NOTE: Broken kernels other than long grain, in Mixed Milled Rice, shall be certificated as "medium or short grain."

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§868.315 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under §868.314. Such special grades for milled rice are established and determined as follows:

(a) *Coated Milled Rice.* Coated milled rice shall be rice which is coated, in whole or in part, with substances that are safe and suitable as defined in the regulation issued pursuant to the Federal Food, Drug, and Cosmetic Act at 21 CFR 130.3(d).

(b) *Granulated brewers milled rice.* Granulated brewers milled rice shall be milled rice which has been crushed or granulated so that 95.0 percent or more will pass through a 5 sieve, 70.0 percent or more will pass through a 4 sieve, and

not more than 15.0 percent will pass through a 2½ sieve.

(c) *Parboiled milled rice.* Parboiled milled rice shall be milled rice in which the starch has been gelatinized by soaking, steaming, and drying. Grades U.S. No. 1 to U.S. No. 6, inclusive, shall contain not more than 10.0 percent of ungelatinized kernels. Grades U.S. No. 1 and U.S. No. 2 shall contain not more than 0.1 percent, grades U.S. No. 3 and U.S. No. 4 not more than 0.2 percent, and grades U.S. No. 5 and U.S. No. 6 not more than 0.5 percent of nonparboiled rice. If the rice is: (1) Not distinctly colored by the parboiling process, it shall be considered "Parboiled Light"; (2) distinctly but not materially colored by the parboiling process, it shall be considered "Parboiled"; (3) materially colored by the parboiling process, it shall be considered "Parboiled Dark." The color levels for "Parboiled Light," "Parboiled," and "Parboiled Dark" shall be in accordance with the interpretive line samples for parboiled rice.

NOTE: The maximum limits for "Chalky kernels," "Heat-damaged kernels," "Kernels damaged by heat," and the "Color requirements" in §§ 868.310, 868.311, 868.312, and 868.313 are not applicable to the special grade "Parboiled milled rice."

(d) *Undermilled milled rice.* Undermilled milled rice shall be milled rice which is not equal to the milling requirements for "well milled," "reasonably well milled," and "lightly milled" rice (see § 868.306). Grades U.S. No. 1 and U.S. No. 2 shall contain not more than 2.0 percent, grades U.S. No. 3 and U.S. No. 4 not more than 5.0 percent, grade U.S. No. 5 not more than 10.0 percent, and grade U.S. No. 6 not more than 15.0 percent of well-milled kernels. Grade U.S. No. 5 shall contain not more than 10.0 percent of red rice and damaged kernels (singly or combined) and in no case more than 6.0 percent of damaged kernels.

NOTE: The "Color and milling requirements" in §§ 868.310, 868.311, 868.312, and 868.313 are not applicable to the special grade "Undermilled milled rice."

(e) *Glutinous milled rice.* Glutinous milled rice shall be special varieties of rice (*Oryza sativa* L. *glutinosa*) which contain more than 50 percent chalky kernels. For long grain, medium grain, and short grain milled rice, grade U.S.

No. 1 shall contain not more than 1.0 percent of nonchalky kernels, grade U.S. No. 2 not more than 2.0 percent of nonchalky kernels, grade U.S. No. 3 not more than 4.0 percent of nonchalky kernels, grade U.S. No. 4 not more than 6.0 percent of nonchalky kernels, grade U.S. No. 5 not more than 10.0 percent of nonchalky kernels, and grade U.S. No. 6 not more than 15.0 percent of nonchalky kernels. For second head milled rice, grade U.S. No. 1 shall contain not more than 4.0 percent of nonchalky kernels, grade U.S. No. 2 not more than 6.0 percent of nonchalky kernels, grade U.S. No. 3 not more than 10.0 percent of nonchalky kernels, grade U.S. No. 4 not more than 15.0 percent of nonchalky kernels, and grade U.S. No. 5 not more than 20.0 percent of nonchalky kernels. For screenings milled rice, there are no grade limits for percent of nonchalky kernels. For brewers milled rice, the special grade "Glutinous milled rice" is not applicable.

NOTE: The maximum limits for "Chalky kernels," shown in §§ 868.310, 868.311, and 868.312 are not applicable to the special grade "Glutinous milled rice."

(f) *Aromatic milled rice.* Aromatic milled rice shall be special varieties of rice (*Oryza sativa* L. scented) that have a distinctive and characteristic aroma; e.g., basmati and jasmine rice.

(Secs. 203, 205, 60 Stat. 1087, 1090 as amended; 7 U.S.C. 1622, 1624)

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 48 FR 24859, June 3, 1983; 54 FR 21403, 21407, May 18, 1989; 56 FR 55981, Oct. 31, 1991; 58 FR 68016, Dec. 23, 1993. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

§ 868.316 Special grade designation.

The grade designation for coated, granulated brewers, parboiled, undermilled, glutinous, or aromatic milled rice shall include, following the class, the word(s) "Coated," "Granulated," "Parboiled Light," "Parboiled," "Parboiled Dark," "Undermilled," "Glutinous," or "Aromatic," as warranted, and all other information prescribed in § 868.314.

[58 FR 68016, Dec. 23, 1993. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]