

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

§ 800.217

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) 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

7 CFR Ch. VIII (1-1-11 Edition)

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 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.