

MODIFICATIONS P. 11

SUPERSEDES DECISION

STATE: South Carolina
 COUNTY: Darlington
 DECISION NUMBER: SC79-1044
 DATE: Date of Publication
 Supersedes Decision No.: SC78-1038 dated April 14, 1978 in 43 FR 16108
 DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and garden type apartments up to and including 4 stories).

DECISION #W78-5010 - 2-23-77
 (43 FR 10229 - March 17, 1978)
 Nevada Test Site including Tonopah Test Range in Clark and Nye Counties, Nevada

Change:
 Asbestos Workers
 Electricians; Equipment Operators; Linemen
 Cable Splicers
 Groundman
 Elevator Constructors;
 Elevator Constructor Helper
 Elevator Constructor Helper (Prob.)
 Truck Drivers:
 Group 1
 Group 2
 Group 3
 Group 4
 Group 5

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
\$14.52	\$1.10	\$1.30			
14.22	.98	3% + 1.55			.05
14.55	.98	3% + 1.55			.05
11.58	.98	3% + 1.55			.05
14.53	.895	.69	3% + a		.03
10.17	.895	.69	3% + a		.03
7.265					
10.98	.48	1.12			
11.09	.48	1.12			
11.14	.48	1.12			
11.30	.48	1.12			
11.48	.48	1.12			

DECISION #W78-5129 - 2-23-77 #4
 (43 FR 50344 - October 27, 1978)
 Washoe County, Nevada

Change:
 Bricklayers; Stonemasons;
 Marble Masons
 Torrazzo Workers; Tile Setters

\$12.60	.95	.60			.01
11.85	.95	.60			.01
11.85	.95	.60			.01

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
\$6.85					
9.11					
5.47					
4.98					
4.50					
6.72					
4.50					
7.00					
3.12					
7.12					
7.00					
4.75					
7.00					
6.97					
6.25					
6.83					
5.00					
3.12					
3.35					
6.12					
3.93					

WELDERS - Rate for craft.

OVER EQUIPMENT OPERATORS:

Backhoes
 Cranes, derricks, & draglines
 Trenching machines

[FR Doc. 79-5903 Filed 3-1-79; 8:45 am]

FRIDAY, MARCH 2, 1979

PART III



**DEPARTMENT OF
AGRICULTURE**

**Federal Grain Inspection
Service**



GRAIN STANDARDS

**Registered
Federal
Property**

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

[7 CFR Parts 800, 802, 803]

GRAIN STANDARDS

Proposed Rulemaking

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Proposed Rulemaking.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes regulations to implement the U.S. Grain Standards Act, as amended in 1976 and 1977. Among other provisions, this document sets forth official inspection and weighing requirements; methods and procedures, appeal inspection services and equipment testing; performance requirements for grain inspection equipment and grainhandling equipment and related systems. The implementation of the amendments of the Act is largely dependent on the promulgation of new or revised regulations. Interested persons are invited to submit written comments on the provisions contained in the text of the proposed regulations.

DATES: Written comments on the text of proposed regulations should be submitted by May 1, 1979.

ADDRESS: Written comments or requests for additional copies of the text should be sent in duplicate to the Compliance Division, Room 2405 Auditors Building, 1400 Independence Ave., S.W., Washington, D.C. 20250, where they will be available for public inspection during normal business hours. An approved Draft Impact Analysis is also available from Compliance Division.

FOR FURTHER INFORMATION CONTACT:

Leslie E. Malone, Assistant Deputy Administrator, Program Operations (Staff), USDA, FGIS, Room 1627-S, 1400 Independence Ave., S.W., Washington, D.C. 20250, telephone (202) 447-9166.

SUPPLEMENTARY INFORMATION: The U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*) hereafter referred to as "Act," was amended in 1976 (Pub. L. 94-582) and in 1977 (Pub. L. 95-113). The Act was amended to provide the following:

- Establishment of the Federal Grain Inspection Service (Service).
- Mandatory official inspection and weighing of export grain.
- Mandatory official weighing of other grain at export elevators at export port locations.
- Supervision by the Service of all official inspection and weighing activities.

- Performance by the Service of official inspection and weighing services at export ports and certain other locations.
- Delegation of authority by the Service to certain States to perform official inspection and weighing services at certain export port locations.
- Designation by the Service to agencies to perform official inspection and weighing services at inland locations.
- Triennial termination of designations.
- Permissive official weighing of bulk grain other than at export elevators at export port locations.
- Criteria for determining whether an elevator is eligible to receive official weighing services.
- Testing of equipment used in performing official inspection and weighing services under the Act.
- Licensing of individuals to perform official weighing and related services.
- Triennial termination of licenses.
- Establishment of standards for the recruiting, training, and supervision of official inspection personnel and work production standards for such personnel.
- Refusal of official inspection and weighing services.
- Assessment of civil penalties for certain violations.
- Prohibition of certain conflicts of interest by grain businesses, stockholders of grain businesses, and related entities.
- Retention of records by certain elevators and merchandisers.
- Prohibition with respect to falsely stating the weight of grain.
- Prohibition with respect to preventing any interested person from observing the loading, weighing, sampling, or inspection of grain.
- Increase in criminal penalties for violations of the Act.
- Authority to prescribe conditions for obtaining official inspection or weighing services.
- Registration of certain persons who export grain or who handle, weigh or transport grain.

The implementation of the amendments of the Act is largely dependent on the promulgation of new or revised regulations. Proposed regulations have been prepared by the Service. Included in the proposed Part 800 regulations are provisions contained in the current Subpart A of the Part 26 regulations (7 CFR Part 26). Also included are new Parts 802 (Subpart C)—Official Performance Requirements for Grain Inspection Equipment and Part 803 (Subpart D)—Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems.

The regulations are being prepared and renumbered as Parts 800-809 of the Code of Federal Regulations (7 CFR Part 800-809). The identification of the Parts in Chapter VIII follows:

- Part 800 (Subpart A)—Regulations under the U.S. Grain Standards Act (now 7 CFR, Part 26).
- Part 801 (Subpart B)—Official U.S. Standards for Grain (now 7 CFR, Part 26, Subpart B).

- Part 802 (Subpart C)—Official Performance Requirements for Grain Inspection Equipment (new).
- Part 803 (Subpart D)—Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems (new).
- Part 804 (Subpart E)—Official Standards for the Recruiting, Training, and Supervision of Official Personnel and Work Production Standards for Such Personnel (new).
- Parts 805-807 (Subparts F, G, and H)—are reserved for use under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*).
- Part 808 (Subpart I)—Rules of Practice Governing Informal Proceedings under the U.S. Grain Standards Act.
- Part 809 (Subpart J)—Safety (new).

STATEMENT OF CONSIDERATIONS

The Service published in the FEDERAL REGISTER (43 FR 33612-33643) on Monday, July 31, 1978, a summary of the study draft to update the Subpart A (Part 800) regulations under the Act. The notice also informed interested parties that they could request copies of the study draft and requested interested parties to submit written comments on the summary or study draft by September 29, 1978. In response to requests from interested parties for additional time to file comments because of the nature and length of the summary and study draft, the comment period was extended to October 29, 1978, and notice was published in the FEDERAL REGISTER (43 FR 33641-33642) Friday, August 18, 1978. At that time, it was concluded that Subpart C (Part 802), the Official Performance Requirements for Grain Inspection Equipment, and Subpart D, (Part 803) the Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems, should be included in the summary. Accordingly, a summary of the Subparts C and D was included in the August 18 notice of extended comment period.

Following the publication of the summary of Subparts A, C, and D, representatives of the Service conducted informal meetings at Washington, D.C.; New Orleans, Louisiana; Houston, Texas; Portland, Oregon; Chicago, Illinois; and Kansas City, Missouri, to explain the provisions in the study draft and the summary.

Service representatives also met with the U.S. Grain Standards Act Advisory Committee to discuss and solicit recommendations on the provisions of the summary and study draft. In addition, Service representatives conducted other meetings at the request of interested groups to discuss the summary and study draft of the regulations.

In response to the July 31 and August 18 notices published in the FEDERAL REGISTER, 178 comments re-

garding the provisions of the summary and study draft were filed with the Hearing Clerk during the comment period.

The Service began cataloging comments as they were received; and following the close of the comment period on October 29, 1978, the Service began its review preparatory to re-drafting the Subparts A, C, and D of the regulations before publication as proposed rulemaking. In its review, the Service gave full consideration to the 178 written comments filed with the Hearing Clerk, the recommendations of the U.S. Grain Standards Act Advisory Committee, discussion of the significant issues at the informal meetings across the United States, and information submitted at other meetings with industry and interested groups. In its deliberation, the Service gave consideration to the legislative history of the amended Act, requirements imposed by other Federal laws, the economic importance of U.S. export grain to the balance of payments, and the established marketing procedures for export and domestic grain.

The 178 written comments filed with the Hearing Clerk ranged in length from 1 page to 90 pages. A detailed analysis of each comment on a section-by-section basis is not considered practicable here. The comments ranged in substance from editorial suggestions to deletions of provisions mandated by the Act. (Note: The written comments filed are available for public inspection during the regular business hours at the Office of the Hearing Clerk or the Compliance Division, FGIS.) Following is a numerical listing of the provisions which a large number of commenters addressed and the decision the Service reached regarding each issue after careful review.

1. Section 800.6 *Procedure for prescribing, Amending, or Revoking Regulations*. Some comments indicated disagreement with the provision of § 800.6 which set out the rulemaking procedures to be followed by the Service. The Service has little latitude in the rulemaking process, because the procedures to be followed are specifically prescribed under the Administrative Procedures Act (5 U.S.C. 551 *et seq.*), and other requirements are provided in Section 4 of the Act. Section 800.6 has been rewritten to indicate that the Service will, in the rulemaking process, follow those prescribed procedures set out in the Administrative Procedures Act and Section 4 of the Act.

2. Section 800.16(a) *Designation of Export Elevator*. Many commenters indicated that the study draft of the regulations was too restrictive in its requirements on small exporters, particularly those engaged in bagging op-

erations and rail, truck, and containerized shipments from domestic locations into export. The Service has, for some time, been aware of the impact that the mandatory inspection and weighing requirements have on elevators which ship only a nominal amount of grain into export and those which ship export grain on an irregular basis. After its review, the Service has adopted the recommendation of the Advisory Committee and redefined export elevator (§ 800.16(a)) to be an elevator which exports a minimum of 15,000 metric tons in a calendar year, or has exported such amount the previous calendar year. The impact of this decision is that any elevator may ship up to 15,000 metric tons of grain into export in a calendar year and be exempt from the mandatory inspection and weighing requirements if it did not export 15,000 metric tons the previous year. However, if such elevator requests official inspection or weighing services with regard to those shipments, then the elevator must meet all the requirements for obtaining those official services.

3. Section 800.29 *Recordkeeping by Grain Firms*. A large number of comments opposed the recordkeeping provisions which apply to grain elevators and handling facilities. Those opposing the recordkeeping provisions indicated that the provisions placed an undue burden on small country elevators and, further, was an intrusion into private business. The Service recognizes that elevators should be required to maintain only those records necessary for the effective implementation of the recordkeeping provisions under the Act. Therefore, after reviewing the comments and considering the objectives of the Act, the Service has rewritten Unit IV containing the recordkeeping provisions. Until some future needs warrant additional provisions, the Service will require that domestic elevators and export elevators at export port locations maintain only records of receipts and shipments of grain and all other records for receipts and shipments that are maintained by the elevator in the normal course of good business practices. Such records will be required only if an elevator obtains official inspection or weighing and will be maintained for a minimum of 3 years. Elevators are to continue to maintain such other records as are presently kept by the elevator or facility under current operating procedures and will make those records available to the Service on request. This will not prevent elevators from revising their current recordkeeping procedures.

4. Sections 800.30-800.44 *Registration*. In the study draft, the Service proposed to exempt from registration those export elevators that exported

less than 1,000 metric tons of grain in a calendar year. Four comments, including the comment from the Advisory Committee, suggested that the exemption for registration of export firms should be similar to the metric ton exemption related to the required inspection and weighing of export grain. The 1,000-metric ton exemption was considered too low by many commenters to be effective. The Service agrees that there should be a correlation between the volume exemption for required export inspection and weighing and for registration of export firms. The Service is now proposing to use a 15,000-metric ton figure to effect an exemption from registration for export firms.

5. Section 800.45(d) *Availability of Official Service*. A number of comments suggested that official services should be available as required by the Act at any time or place on request of an applicant. Section 800.45(d) of the proposed regulations does provide that reinspection and appeal inspection services will be available upon request of an interested person, "insofar as practicable." The comments suggested that the phrase "insofar as practicable" gave the Service latitude in providing official services. The Service agrees. However, it must be recognized that events may arise which would not allow the providing of official services; e.g., strikes, national emergencies, or Acts of God. Because of those possibilities, the Service believes that the phrase "insofar as practicable" should remain in the regulations as it pertains to the providing of official services.

6. Section 800.46 *Requirements for Obtaining Official Services—Access to Grain*. Comments received regarding the requirements for obtaining official services indicated that in § 800.46(b)(1) the Service should provide the equipment or assistance to its personnel to make grain accessible by opening barge hatch covers. Also in § 800.46(b)(4) the comments suggested that safety should not be a condition for withholding services because the Office of Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) were responsible for those requirements. The Service recognizes that in certain instances an applicant may not have control of a carrier such as a barge of grain. However, the Service does consider it the responsibility of an applicant to make grain fully accessible, including arrangements to open hatches on barges to inspection personnel in order to obtain official inspection. Therefore, no changes were made in this provision.

In the area of safety for official personnel, the Service recognizes the OSHA and EPA requirements and con-

trol in the area of safety. It also recognizes that the Service and official agencies have primary responsibilities for safety of their personnel in the performance of duties related to inspection and weighing activities. The Service also is preparing to draft and publish a Part 809 (Subpart J). This Part 809 will set out the safety requirements for official personnel, which will be consistent with OSHA regulations. Until the Part 809 is completed and published, the Service believes the safety provisions with regard to loading and unloading conditions should remain in the Part 800 (Subpart A) regulations. No change is contemplated at the present time in this provision.

7. Sections 800.60-800.69 *Deceptive Practices*. Included in the summary of the regulations as Unit VIII is a list of examples describing circumstances which would constitute certain deceptive practices. The examples were intended to be used by field personnel as guidelines in determining when a deceptive practice had been committed and would be helpful as guidelines to all interested parties. Several comments objected to the inclusion of those examples in the regulations and suggested that such detail would more properly be placed in an instruction. The Service believes that the showing in the regulations of those acts which would constitute a deceptive practice would be helpful to field personnel and all interested parties. The Service does agree that the unit should be revised to delete unnecessary wording and to identify the items as specific violations. The unit has been redrafted with this thought in mind.

8. Section 800.70(a) *Evaluation of Fees and Charges*. Commenters suggested that the Service should evaluate and adjust its fees as needed to maintain a fee schedule in line with the costs of providing inspection and weighing services. The Service agrees with those comments and published on December 3, 1978, a revised fee schedule which reduces certain inspection and weighing charges. The Service is continuing to evaluate its fees and charges and expects to complete evaluation of other inspection and weighing costs by March 1979. Further revisions may be made in the fee schedule dependent on the results of the evaluation.

9. Section 800.71 *Schedule of Service Fees and Charges*. Other comments from the Grain Elevator and Processing Society, the North American Export Grain Association, and the Advisory Committee suggested that the Service's schedule of fees and charges need not be published as part of the draft regulations. The Service agrees, based on the consideration that the Service's fees and charges were pub-

lished in the December 8, 1977, FEDERAL REGISTER and were further revised by publication in the December 3, 1978, FEDERAL REGISTER. The Service's schedule of fees and charges will continue to be published in the FEDERAL REGISTER with each amendment of the schedule, but it will not be included in these proposed draft regulations to avoid duplicate publication.

10. Sections 800.76(f)(1) and 800.77(f)(1) *Performance of Stowage Examination Shown on Inspection or Weighing Certificate*. Several comments indicated that the provision for showing on an inspection certificate whether a stowage examination had been performed on the carrier containing a lot of grain was not needed. The Service believes that it is needed but plans to include it as part of the instructions for official certificates rather than include it as part of the regulations.

11. Section 800.84 *Sampling Requirements*. In the study draft, the Service proposed that all export lots of grain and all "OUT" waterborne shipments of grain be sampled by means of a diverter-type (D/T) mechanical sampler. Comments on these subparagraphs suggested that the Service allow a condition inspection by means of probe sampling, because there are occasions when an applicant needs to verify that after loading the condition of a lot of grain has not changed. The Service agrees that a condition inspection basis probe sampling is needed and has made such provision in these subparagraphs. The initial provision requiring D/T mechanical sampling for export and "OUT" waterborne lots is unchanged; however, 6 months additional time has been allowed for approval and installation of D/T mechanical samplers where required.

12. Section 800.87(f)(1) *Weevily Shipment Grain*. Under present regulations, an applicant has several options regarding a material portion of weevily grain loaded aboard a ship. The applicant may accept a separate "weevily" certificate for the material portion, or unload the weevily portion, or fumigate the weevily portion loaded aboard a bulk carrier under certain procedures and receive a weevil-free certificate for the lot; or if loaded aboard a ship other than a bulk carrier (e.g., tanker or 'tween decker), fumigate the weevily portion subject to subsequent examination for infestation and receive a certificate based on the results of that examination.

In the study draft, it was proposed that if an applicant elected to unload a material portion of weevily grain, then all grain in common stowage with the weevily portion would be required to be unloaded. The intent of this provision was to assure that all grain that was commingled with the weevily por-

tion would be removed from the ship. Insects possess the ability to freely move through all grain in a shiphold, and the time to remove the infested grain from the shiphold varies depending on the amount of grain infested and the method of removal. For these reasons, insects could infiltrate an entire shiphold of grain. Comments received regarding this provision indicated that the requirement was too restrictive and harsh and would result in increased costs due to unloading much more grain than was necessary. After reviewing the comments and evaluating the effects of this provision, FGIS has decided to develop criteria for such unloading depending on the circumstances and type of vessel in each case. Because of the amount of detail needed, it has been determined that the details of those requirements will be covered in instructions developed by the Service.

13. Sections 800.126(d) and 800.136(d) *Advance Request for Reinspection, Appeal Inspection, or Review of Weighing*. A large number of comments opposed the provision which would not allow a request for a reinspection, appeal, or review of weighing until after receiving the results of the original inspection or weighing. The Service believes that many requests for a reinspection or appeal inspection are the result of tradition, historical contract requirements, or the desire of an applicant to obtain a USDA certificate. The Service has the same interest as grain industry firms in eliminating needless duplication of inspection and weighing costs and will continue to encourage that applicants for service obtain only such additional inspections or weighings which are needed to effectively market their grain. The Service does recognize that there are valid reasons why an applicant may need to make an advance request for service. For this reason, the Service decided it will not prohibit advance requests for service.

14. Section 800.161(b)(13) *Carrier Identification on Submitted Sample Certificates*. A majority of the comments received were opposed to the restriction which would prevent the showing of carrier identification on submitted sample certificates. The Service intended to use this prohibition to prevent certain grade shipping abuses and maintain the possibility that receivers of such certificates may be misled as to what the certificates represent; i.e., the submitted sample certificate represents only the grain in the sample submitted for inspection and not a container or lot of grain. A study of marketing procedures indicates that trading in grain in several major domestic markets is handled through use of the submitted sample certificate containing carrier identifi-

cation. It appears that prohibiting the use of carrier identification on submitted sample certificates would disrupt established marketing practices at major domestic markets. Based on a review of the information developed and the comments received, including the recommendation of the Advisory Committee, the Service plans to continue to allow the showing of carrier identification on submitted sample certificates but will revise the certificates so that receivers of submitted sample certificates will clearly understand what the certificates represent.

15. *Corn Loaded by Mechanical Trimmers or Spouted Against the Bulkhead of a Ship.* In the study draft, the Service proposed that export certificates for shiplots of corn which were loaded by means of a mechanical trimmer or were spouted against a metal bulkhead during loading would contain a statement indicating that the quality or condition of the corn may have changed as a result of the method of loading. Comments received regarding this provision indicated that qualifying the export certificate in the manner proposed would affect the "certificate final" status of official export certificates and directly affect the orderly marketing of export grain. The comments further indicated that in many instances the shipper does not have control of the persons or firms loading the corn aboard a vessel. After reviewing the comments and other available information, the Service has decided to delete this provision at this time until further tests and research can be conducted to determine what effects certain export loading equipment and methods have on grain loaded aboard a vessel.

16. Section 800.165 *Correction of Certificate After Issuance.* Several comments were opposed to the provision which allowed official certificates to be corrected after issuance with no time limitations, because allegedly this provision would destroy the "certificate final" quality of official certificates. The comments suggested that some specific time period should be provided so that orderly marketing practices may be maintained. The Service agrees that buyers and sellers of grain should have a definite time cutoff with regard to correcting errors in official certificates in order to trade effectively. The Service is now proposing a 1-year time limit for correcting errors on official certificates.

17. Section 800.173 *Examinations and Reexaminations for FGIS Personnel.* Several comments indicated that Service personnel and licensees employed by official agencies should be given the same examination and reexamination for competency to perform official functions. The Service recognizes the practicality of the sugges-

tions. However, the Service is governed in this area by the Civil Service requirements for Federal personnel. Such requirements restrict the amount and kind of test which can be administered to Federal personnel for promotion or reexamination for proficiency. For these reasons, testing procedures for Federal personnel is being addressed but not in these regulations.

18. Section 800.208 *Approved Personnel.* A majority of the comments were opposed to the concept of approved personnel, the concept being that the Service would approve all non-Service personnel involved in the official weighing and scale testing processes. The rationale of the commenters was that such personnel would be elevator employees and the Service should not be issuing direct instructions to those persons. The Service has determined that only weighers and scale testing organizations are to be approved. The requirement to approve weighing technicians and scale testers has been deleted from the draft of the regulations, and the responsibility for the duties performed by those persons will be placed on the management of the employing firm. Elevator employees who weigh will be approved and will receive minimal instructions from the Service to assure that they are complying with the provisions of the Act and regulations.

19. Sections 800.1000-800.1013 *Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems.* Comments received regarding the performance requirements for official weighing equipment generally recommended that the requirements of the "Specifications, Tolerances, and other Technical Requirements for Commercial Weighing and Measuring Devices" adopted by the National Conference on Weights and Measures and published by the U.S. Department of Commerce, National Bureau of Standards, as Handbook (HB) 44 be adopted and implemented with regard to grain scales. The major concern in the comments was the difference in tolerances and minimum graduation sizes between HB 44 with the two exceptions noted above. The tolerances and minimum graduation sizes proposed by the Service are a compromise between the requirements of HB 44 and the more rigid requirements of some State organizations. In developing our proposed requirements for grain weighing equipment, the Service considered many factors in the grain weighing program throughout the United States. Among the factors considered were the following: (1) The amended Act of 1976 gave the Service a unique responsibility compared to other scale regulatory bodies; e.g., the Service must certify the accuracy of grain

scales and also certify the weight of grain officially weighed over such scales; (2) The tolerances listed in HB 44 are not law; rather, they are tolerances recommended by the National Conference on Weights and Measures and are not uniformly applied because different regulatory bodies implement the tolerance requirements at different locations throughout the United States; (3) Unlike commercial scales, grain scales are used almost exclusively for weighing grain, and many such scales are designed specifically to weigh grain; (4) In total dollar value, the amount of grain passing through grain scales is unequaled by any other commodity sold on the basis of weight; (5) Grain scales historically have been tested to more stringent tolerances than commercial scales; and (6) The Scale Manufacturing Association has assured the Service that present grain scales used for official weighing of grain under the Act meet the requirements proposed in these regulations.

The Service also considered the increasing importance of grain as an export commodity from the United States. With the export of grain in mind, it is reasonable to assume that the long-range goal for grain weighing in the United States should be aimed toward the various requirements of the international weights and measures community represented as Organization Internationale de Metrologie Legale, and with which organization the United States began its membership in 1973. The Service believes the proposed requirements for grain weighing equipment are a good compromise with the different philosophy and approach of the international weights and measures organization and the various requirements presently applied under HB 44. These proposed requirements also are within the present capabilities of scale manufacturing. After giving consideration to the comments submitted and to all other information available, the Service believes the proposed requirements should be uniformly implemented.

The preceding items are considered significant by the Service because of the number and content of the comments received regarding each item. Numerous other changes were incorporated into the text in response to the comments but are not itemized here because it is not considered practicable to do so.

Following is the complete text of Parts 800, 802, and 803 (Subparts A, C, and D) regulations as they are being proposed. Comments by interested parties are invited on these proposed parts in order that the Service may further evaluate them. All comments received will be reviewed and evaluated by the Service before Parts 800,

802, and 803 are published as final rulemaking.

It is proposed to amend 7 CFR by establishing a new "Chapter VIII, Federal Grain Inspection Service, Department of Agriculture" and adding Parts 800, 802, and 803 to read as follows:

PART 800—REGULATIONS

DEFINITIONS

Sec.

- 800.0 Terms defined in the Act.
800.1 Meaning of terms.

ADMINISTRATION

- 800.2 Objectives of the Act.
800.3 Nondiscrimination—policy and provisions.
800.4 Filing petitions for administrative actions.
800.5 Filing complaints and reports of alleged violations.
800.6 Procedures for establishing regulations, grain standards, official criteria, performance requirements for equipment, and rules of practice.
800.7 Provisions governing the rules of practice.
800.8 Publication of regulations, grain standards, performance requirements for equipment, and rules of practice.
800.9 General waiver authority.
800.10 Information about the Service, the Act, and the regulations.
800.11-800.14 [Reserved]

OFFICIAL INSPECTION AND OFFICIAL WEIGHING REQUIREMENTS

- 800.15 Who is responsible for achieving compliance with the official inspection and official Class X weighing requirements.
800.16 Determinations, "export elevator" and "export port location".
800.17 Certification requirements for export grain.
800.18 Special inspection and weighing requirements for sacked export grain.
800.19 Waivers of the official inspection and official Class X weighing requirements.
800.20-800.24 [Reserved]

REGISTRATION

RECORDKEEPING AND ACCESS TO FACILITIES

- 800.25 Elevator and merchandising records required to be kept.
800.26 Access to records and facilities.
800.27-800.29 [Reserved]
800.30 Meaning of terms.
800.31 Who must register.
800.32 When to register.
800.33 How to register.
800.34 Registration fees.
800.35 Review of applications.
800.36 Issuance and possession of certificates of registration.
800.37 Notice of change in information.
800.38 Termination of certificate of registration.
800.39 Suspension or revocation of certificates of registration for cause.
800.40 Surrender of certificate of registration.
800.41-800.44 [Reserved]

CONDITIONS FOR OBTAINING OR WITHHOLDING OFFICIAL SERVICES

- 800.45 Availability of official services.

- 800.46 Requirements for obtaining official services.
800.47 Withdrawal of requests for official services.
800.48 Dismissal of request for official services.
800.49 Conditional withholding of official services.
800.50 Refusal of official services.
800.51 Official services not to be denied.
800.52-800.54 [Reserved]

RESTRICTIONS ON REPRESENTATIONS

- 800.55 Restrictions with respect to descriptions of grain by grade.
800.56 Restrictions with respect to official forms.
800.57 Restrictions with respect to official marks.
800.58-800.59 [Reserved]

DECEPTIVE PRACTICES

- 800.60 Deceptive actions and practices.
800.61 Sampling and inspection.
800.62 Weighing.
800.63 Inspection and weighing.
800.64-800.69 [Reserved]

FEES

- 800.70 Fees for official services performed by agencies.
800.71 Fees for official services performed by the Service.
800.72 Explanation of Service fees and additional fees.
800.73 Computation and payment of Service fees; general fee information.
800.74 [Reserved]

KINDS OF OFFICIAL SERVICES

- 800.75 Kinds of official services; general.
800.76 Kinds of official inspection services.
800.77 Kinds of official weighing services.
800.78 Prohibited services; restricted services.
800.79 [Reserved]

INSPECTION METHODS AND PROCEDURES

- 800.80 Objective of inspection services.
800.81 Methods and order of performing official inspection services.
800.82 Sample requirements; general.
800.83 Sampling provisions by level of service.
800.84 Sampling provisions by kind of movement.
800.85 Inspection of bulk grain in land carriers and barges in single lots.
800.86 Inspection of grain in combined lots.
800.87 Inspection of shiplot grain in single lots.
800.88 New inspection.
800.89 When identity of grain or container is considered lost.
800.90-800.94 [Reserved]

WEIGHING PROVISIONS AND PROCEDURES

- 800.95 Objective of weighing services.
800.96 Methods and order of performing official weighing services.
800.97 Weighing procedures.
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AUTHORITY: Pub. L. 94-582, 90 Stat. 2867; Pub. L. 95-113, 91 Stat. 1024 (7 U.S.C. 71 et seq.).

DEFINITIONS

§ 800.0 Terms defined in the Act.

For definitions of the following terms, see sections 3, 11, and 17A of the Act (7 U.S.C. 75, 87, 87f-1).

Term and Subsection

Administrator.....	3(z)
control relationship.....	17A(b)(2)
deceptive loading, handling, weighing, or sampling.....	3(u)
Department of Agriculture.....	3(b)
export elevator.....	3(v)
export grain.....	3(h)
export port location.....	3(w)
false, incorrect, and misleading.....	3(t)
grain.....	3(g)
interested person.....	3(r)
interstate or foreign commerce.....	3(f)
lot.....	3(q)
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official certificate.....	3(n)
official form.....	3(n)
official grade designation.....	3(l)
official inspection.....	3(i)
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official mark.....	3(k)
official sample.....	3(o)
official sampling.....	3(o)
official weighing.....	3(x)
officially inspected.....	3(l)
officially weigh.....	3(x)
officially weighed.....	3(x)
person.....	3(c)
Secretary.....	3(a)
Service.....	3(aa)
ship.....	3(s)
State.....	3(e)
submitted sample.....	3(p)
supervision of weighing.....	3(y)
United States.....	3(d)
use of official inspection service.....	11(b)(3)

§ 800.1 Meaning of terms.

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

(b) *Definitions.* For the purpose of this Part, unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given for them below. For ease in use, the terms are shown in alphabetical order. For additional definitions see §§ 800.25, 800.30, 800.60, 800.80, 800.95; also Parts 802 and 803 of this Chapter.

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

(2) *Agency.* A delegated agency or a designated agency, as appropriate.

(3) *Applicant.* An interested person who requests an official inspection service or an official Class X or Class Y weighing service, and is assessed the fee, if any, for the service.

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

(5) *Approved weigher.* A person who is employed by, at, or in a weighing facility and approved by the Service to physically perform or supervise the performance of all or specified official Class X or Class Y weighing functions.

(6) *Approved weighing equipment.* Any weighing device and related equipment that is approved by the Service for the performance of official Class X or Class Y weighing functions.

(7) *Approved weighing facility.* An elevator, warehouse, or other storage or handling facility that is approved by the Service for the performance of official Class X or Class Y weighing functions.

(8) *Assigned area of responsibility.* A geographical portion of the United States assigned under the regulations to an agency, or to a field office, for the conduct of all or specified official inspection functions or official Class X or Class Y weighing functions. An assigned area contains one or more specified service points.

(9) *Board appeal inspection service.* An official review performed, upon request, by the Board of Appeals and Review of the results of a field appeal inspection service.

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

(11) *Business day.* A regular workday, 6:00 a.m. to 6:00 p.m. local time, or the hours established in the approved fee schedule by an agency.

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

(13) *Carrier.* A container used in transporting bulk or sacked grain.

(14) *Circuit.* A geographical portion of the United States assigned to a field office. (A circuit includes one or more assigned areas of responsibility.)

(15) *Container.* A truck, trailer, truck/trailer combination, railroad car, barge, ship, or other carrier; or a bin, other storage space, bag, box, or other receptacle for grain.

(16) *Contractor.* A person who enters into a contract with the Service for the performance of specified official inspection functions, official Class X or Class Y weighing functions, or official monitoring functions.

(17) *Date of official inspection function or official Class X or Class Y weighing function.* The day on which an official inspection function or an official Class X or Class Y weighing

function is completed, as shown in the detailed work records specified in § 800.154. For certification purposes, a day shall be deemed in all cases to end at midnight, local time.

(18) *Delegated agency.* A State agency delegated authority under the Act to perform official inspection functions and official Class X or Class Y weighing functions at one or more export port locations in the State.

(19) *Department.* The United States Department of Agriculture.

(20) *Designated agency.* A State or local governmental agency, or person designated by the Service to perform all or specified official inspection functions or official Class X or Class Y weighing functions at locations other than export port locations.

(21) *Elevator.* Any elevator, and any grain warehouse, storage, or handling facility used primarily for receiving, storing, and shipping grain. Grain warehouse, storage, and handling facilities that are located adjacent to and are operated primarily as adjuncts of a grain processing facility, such as a flour mill, vegetable-oil processing plant, or distillery, shall not be deemed to be an elevator. In a facility that it used primarily for receiving, storing, and shipping grain, all parts of the main facility, and all annexes operated as part of the main facility, shall be deemed to be a part of the elevator, despite the fact that the parts or annexes may be used for special storage or handling purposes.

(22) *Exporter.* The person who causes grain to be shipped or delivered for shipment from the United States.

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

(24) *Field appeal inspection service.* An official review performed, upon request, by a field office of the results of an original inspection service or a reinspection service.

(25) *Field office.* An office of the Service designated by the Administrator as the headquarters of a circuit to perform and supervise official inspection functions and official Class X or Class Y weighing functions.

(26) *Grain.* Barley, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, triticale, and wheat.

(27) *Instructions.* The Notices, Instructions, and Handbooks issued by the Service.

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

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

(30) *Monitoring.* Reviewing activities performed under or subject to the Act

for adherence to the Act and the regulations, standards, and instructions issued thereunder, and preparing reports of findings.

(31) *Offgrade grain.* In a shiplot or combined-lot inspection service, a quantity of grain that is lower in quality than the contract grade.

(32) *Official Class X weighing function (or service).* Any weighing, monitoring, or examining operation or procedure by official personnel or by approved weighers under the complete supervision of official personnel in determining the weight of grain; in monitoring the discharge of grain into or out of an elevator or carrier; in determining the suitability of a carrier or container, or the suitability of a stowage area in a carrier or container, to receive or store grain insofar as the suitability may affect the quantity of the grain; or in certifying the results of such operations or procedures.

(33) *Official Class Y weighing function (or service).* Any weighing, monitoring, or examining operation or procedure performed by approved weighers under the partial or complete supervision of official personnel in determining the weight of grain; in monitoring the discharge of grain into or out of an elevator or a carrier; in determining the suitability of a carrier or a container, or the suitability of a stowage area in a carrier or a container, to receive or store grain insofar as the suitability may affect the quantity of the grain; and in reporting the results to official personnel for certification purposes.

(34) *Official Class X and Class Y weighing procedures.* The methods and procedures for the official Class X or Class Y weighing of grain as set forth in §§ 800.95 through 800.104.

(35) *Official criteria.* A test or measure, other than an official factor, that describes or quantifies a physical or chemical property of grain and is approved by the Service for use in determining the quality or condition of grain, or other facts relating to grain.

(36) *Official factor.* A test or measure that describes or quantifies a physical or chemical property of grain and functions as a grading factor in the official standards and official criteria for grain.

(37) *Official inspection equipment testing function.* Any operation or procedure performed by official personnel in determining the accuracy of equipment used, or to be used, in the performance of official inspection functions, in accordance with the Official Performance Requirements for Grain Inspection Equipment set forth in Part 802 of this chapter.

(38) *Official inspection function (or service).* Any sampling, laboratory, or stowage examination function; or any testing or grading operation or procedure;

or any other operation or procedure performed by official personnel in determining the kind, class, quality, or condition of grain or other facts relating to grain in accordance with the Official U.S. Standards for Grain or in determining the suitability of a carrier or container to receive or store grain insofar as the suitability may affect the quality or condition of the grain, or in certifying the results of such operations or procedures.

(39) *Official inspection procedures.* The methods and procedures for the inspection of grain as set forth in §§ 800.80 through 800.89.

(40) *Official inspection technician.* Any official personnel who perform or supervise specified official inspection functions and certify the results thereof, other than certifying the grade of the grain.

(41) *Official inspector.* Any official personnel who perform or supervise all or specified official inspection functions and certify the results thereof.

(42) *Official Performance Requirements for Grain Inspection Equipment.* The Official Performance Requirements for Grain Inspection Equipment set forth in Part 802 of this chapter.

(43) *Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems.* The Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems set forth in Part 803 of this chapter.

(44) *Official personnel.* An individual who is licensed or authorized to perform or supervise official inspection or official Class X or Class Y weighing functions. For the purpose of the regulations, the term shall not include approved weighers or warehouse samplers.

(45) *Official sampler.* Any official personnel who perform or supervise all or specified official sampling functions and certify the results thereof.

(46) *Official sampling function (or service).* Any sampling or examining operation or procedure or any other operation or procedure performed by official personnel in obtaining an official sample of a lot of grain or in officially determining the odor, infestation, or other condition of a lot of grain, or in officially certifying the results of such operations or procedures.

(47) *Official stowage examination function (or service).* Any examining operation or procedure or any other operation or procedure performed by official personnel in determining the suitability of a carrier or container to receive or store grain, insofar as the suitability may affect the results of such operations or procedures.

(48) *Official stowage examiner.* Any official personnel who perform or supervise official stowage examination

functions and certify the results thereof.

(49) *Official tolerance.* A statistical allowance prescribed by the Service, on the basis of expected variation, for use in performing or supervising official inspection and official weighing equipment testing functions, reinspection functions, appeal inspection function, and in supervising results of original inspection functions.

(50) *Official U.S. Standards for Grain.* The Official U.S. Standards for Grain set forth in Part 801 of this chapter.

(51) *Official weigher.* Any official personnel who perform or supervise all or specified official Class X or Class Y weighing functions and certify the results thereof.

(52) *Official weighing equipment testing function.* Any operation or procedure performed by approved scale testing organizations, approved scale testers, or official personnel in determining the accuracy of the equipment used, or to be used, in the performance of official Class X or Class Y weighing functions in accordance with the Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems set forth in Part 803 of this chapter.

(53) *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.

(54) *Original inspection service.* An initial official inspection of grain.

(55) *Region.* A geographical portion of the United States assigned to a regional office. (A region includes one or more circuits.)

(56) *Regional office.* An office of the Service designated by the Administrator as the headquarters of a region.

(57) *Regulations.* The regulations in this chapter.

(58) *Reinspection service.* An official review of the results of an original inspection service performed, upon request, by the same agency or field office that performed the original inspection service.

(59) *Respondent.* In an inspection or weighing service, an interested person other than the applicant. In an administrative proceeding, the party proceeded against.

(60) *Review of weighing service.* An official review of the results of a Class X or Class Y weighing service performed, upon request, by the same agency or field office that issued the certificate for the Class X or Class Y weighing service.

(61) *Service.* The Federal Grain Inspection Service of the United States Department of Agriculture.

(62) *Shipper's Export Declaration.* The Shipper's Export Declaration, au-

thorized by the U.S. Department of Commerce, Bureau of Census.

(63) *Specified service point.* A city, town, or other location specified by an agency or field office for the conduct of all or specified official inspection functions or official Class X or Class Y weighing functions, and within which the agency or the field office, as applicable, or one or more of its official licensed or authorized inspectors or weighers, is located.

(64) *Supervision.* Directing and coordinating the performance of official activities under the Act; training official and approved personnel in the performance of official activities; reviewing the performance of official activities for adherence to the Act and the regulations, standards and instructions issued thereunder; and effecting needed remedial or commendatory action.

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

(66) *Warehouse sampler.* An elevator employee licensed under a contract with the Service to obtain samples of grain for a warehouseman's sample-lot inspection service.

ADMINISTRATION

§ 800.2 Objectives of the Act.

The objectives and purposes of the Act are shown in Section 2 of the Act (7 U.S.C. 74).

§ 800.3 Nondiscrimination—policy and provisions.

(a) *Policy.* In implementing, administering, and enforcing the U.S. Grain Standards Act, and the regulations in this Chapter, it is and shall be the policy of the Service to support and promote adherence to the provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

(b) *Nondiscrimination in employment.* Agencies and other persons performing inspection, weighing, or equipment testing functions under the Act pursuant to delegations, designations, contracts, or other authorizations by the Service are deemed subject to the equal employment provisions of the Civil Rights Act of 1964. No employee or applicant for employment of such agency or person shall be discriminated against because of race, color, religion, sex, age, or national origin.

(c) *Nondiscrimination in services.* All functions under the Act, shall be accomplished without discrimination because of race, color, religion, sex, age, or national origin by the Service and by agencies and other persons licensed or otherwise authorized to perform all or specified inspection, weighing, or equipment testing functions under the Act.

§ 800.4 Filing petitions for administrative actions.

Any interested person desiring to file a petition pursuant to the provisions of Section 553(e) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), for the issuance, amendment, or revocation of a regulation, standard, procedure, or instruction issued under the Act, may file the petition with the Administrator. All such petitions shall be given prompt consideration, and petitioners will be promptly notified of the disposition of their petitions.

§ 800.5 Filing complaints and reports of alleged violations.

(a) *Procedure.* Any person desiring to complain of or report an alleged unlawful, arbitrary, capricious, or unwarranted action or violation by official personnel or other alleged discrepancy or abuse in the inspection or weighing of grain or testing of equipment under the Act, or any other problem regarding the administration of enforcement of the Act, or any official activity or transaction with which the Act is concerned, may except as provided in paragraphs (c) and (d) of this section file such complaint or report with the Administrator or the Secretary in accordance with the Rules of Practice Governing Informal Proceedings in Part 808 of this Chapter. A complaint of discrimination in employment shall be investigated by the Department in accordance with the Part 15 regulations of the Office of the Secretary of Agriculture (7 CFR Part 15, Subparts A and B).

(b) *Action on complaints.* Upon receipt of a complaint or report made to the Administrator, an investigation shall be promptly made by the Service and appropriate action will be taken and reports will be made to the Congress in accordance with Sections 16(b) and 17(b) of the Act.

(c) *Reinspection, review, and appeal services.* Complaints involving the results of official inspection or official Class X or Class Y weighing functions shall, to the extent practicable, be submitted as requests for a reinspection service, a review of weighing service, a field appeal inspection service, or a Board appeal inspection service in accordance with §§ 800.125-800.131 and 800.135-800.140.

(d) *Foreign buyer complaints.* Inquiries or complaints from importers or other purchasers in foreign countries involving discrepancies in the quality or weight of U.S. 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)(15) of the regulations of the Office of the Secretary of Agriculture (7 CFR 2.68(a)(15)) and the instructions issued by, or approved in special cases by, the

Foreign Agricultural Service of the Department of Agriculture.

§ 800.6 Procedures for establishing regulations, grain standards, official criteria, performance requirements for equipment, and rules of practice.

Notice of proposals to prescribe, amend, or revoke the wording of the regulations, grain standards, official criteria, performance requirements for equipment, and rules of practice will be published in accordance with applicable provisions of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*). In addition, in accordance with Section 4 of the Act (7 U.S.C. 76), 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 requires that they become effective sooner.

§ 800.7 Provisions governing the rules of practice.

Opportunities for hearings prescribed or authorized by Sections 7(g)(3), 10(d), and 17A(d) of the Act, and opportunities for hearings requested by respondents under Section 9 of the Act and § 800.179 of the regulations, shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under Various Statutes (7 CFR 1.130 through 1.151). Other adjudicatory actions that are made under the Act, regulations, or instructions, and affect the legal rights of one or more persons, shall be subject to review under the Rules of Practice Governing Informal Proceedings in Part 808 of this Chapter, when applicable.

§ 800.8 Publication of regulations, grain standards, performance requirements for equipment, and rules of practice.

The text of the following Parts of this Chapter will be published in the FEDERAL REGISTER and in such other media as the Service deems appropriate for the purpose:

- Part 800—Regulations under the U.S. Grain Standards Act
- Part 801—Official U.S. Standards for Grain
- Part 802—Official Performance Requirements for Grain Inspection Equipment
- Part 803—Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems
- Part 808—Rules of Practice Governing Informal Proceedings under the U.S. Grain Standards Act.

§ 800.9 General waiver authority.

The Administrator may, in specific classes of cases, waive for limited periods any provision of the regulations in Part 800, the grade standards in Part 801, or the Rules of Practice Govern-

ing Informal Proceedings in Part 808 of this Chapter in order to (a) permit appropriate and necessary action in the event of national, regional, or local emergency; or (b) permit experimentation so that new procedures, equipment, and handling techniques may be tested to facilitate the sampling, testing, inspection, weighing, or handling of grain. Waivers issued under this authority shall conform with the objectives and provisions of the Act.

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

Information about the Service, the Act, the regulations, the grain standards, the official criteria, the performance requirements for equipment, the rules of practice, and the instructions under the Act; official inspection, weighing, and equipment testing functions; general waivers under § 800.9; waivers of the mandatory inspection and weighing provisions under § 800.19; and exceptions to the restrictions on performing inspection services under § 800.82(d); and related information may be obtained by calling or writing the U.S. Department of Agriculture, Federal Grain Inspection Service, Washington, D.C. 20250, or any regional office or any field office of the Service, or any agency.

§ 800.11—800.14 [Reserved]

OFFICIAL INSPECTION AND OFFICIAL WEIGHING REQUIREMENTS

§ 800.15 Who is responsible for achieving compliance with the official inspection and official Class X weighing requirements.

(a) *Export grain.* In the case of export grain, the exporter of record, as shown on the completed Shipper's Export Declaration, shall be responsible for achieving compliance with the official inspection, official Class X weighing, and related certification provisions of Section 5(a)(1) of the Act: *Provided, However,* that the official inspection and weighing requirements of Section 5(a)(1) of the Act shall apply only to those persons who (1) exported 15,000 metric tons or more of grain during the preceding calendar year or (2) have exported 15,000 metric tons or more of grain during the current calendar year.

(b) *Grain received or shipped by export elevators at export port locations.* In the case of grain transferred into and grain transferred out of an export elevator at an export port location, the person who operates the export elevator shall be responsible for achieving compliance with the official Class X weighing provisions of Section 5(a)(2) of the Act: *Provided, However,* that the official weighing requirements of Section 5(a)(2) of the Act shall apply only to those persons

who (1) exported 15,000 metric tons or more of grain during the preceding calendar year or (2) have exported 15,000 metric tons or more of grain during the current calendar year.

(c) *Grain in marked containers.* In the case of grain in a container that bears an official grade designation or an official mark, the person who effects the latter of two actions: (1) placing the designation or mark on the container or (2) placing the grain in a container that bears an official grade designation or an official mark, shall be responsible for achieving compliance with the official inspection or official weighing provisions of Section 13(a)(5) of the Act.

(d) *Grain for which representations have been made.* In the case of grain that is represented (1) to have been inspected or weighed under the Act, or (2) to be of a particular kind, class, quality, condition, or weight, as determined by an inspection or weighing under the Act, or (3) to have particular facts established with respect to grain by inspection or weighing under the Act, the person who makes the representation shall be responsible for achieving compliance with the official inspection or official weighing provisions of Sections 13(a)(6) and (a)(12) of the Act.

NOTE.—For restrictions with respect to official forms, official marks, and representations, see §§ 800.55 through 800.57.

§ 800.16 Determinations, "export elevator" and "export port location."

(a) *Export elevator.* For the purpose of Sections 3(v) and 5(a)(2) of the Act, an "export elevator" shall be any grain elevator, warehouse, or other storage or handling facility in the United States (1) which (i) exported 15,000 metric tons or more of grain during the preceding calendar year or (ii) has exported 15,000 metric tons or more of grain during the current calendar year; (2) from which bulk or sacked export grain is loaded aboard a carrier in which the grain is shipped from the United States, or from which bulk or sacked grain is loaded 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; (3) which applies to the Service to be identified and listed as an "export elevator"; and (4) which is an approved weighing facility. (For provisions on approved weighing facilities, see § 800.196.) The person who operates an export elevator shall be responsible for making application to the Service to have the facility identified and listed as an "export elevator." A list of export elevators is available in accordance with § 800.10.

(b) *Export port location.* For the purpose of Sections 3(w) and 5(a)(2) of

the Act, an "export port location" shall be any coastal or border area, location, or site in the United States which (1) contains one or more export elevators as defined in paragraph (a) of this § 800.16 and (2) is identified and listed by the Service as an "export port location." A list of "export port locations" is available in accordance with § 800.10.

§ 800.17 Certification requirements for export grain.

(a) *Restriction.* Official Export Grain Inspection and Weight Certificates, Official Export Grain Inspection Certificates, and Official Export Grain Weight Certificates for bulk export grain will be issued only for export grain loaded by an export elevator.

(b) *Evidence of compliance.* (1) *Inspection.* Only a valid unsuperseded Official Export Grain Inspection and Weight Certificate, or a valid unsuperseded Official Export Grain Inspection Certificate, which shows the official grade of the grain, and is otherwise in compliance with the provisions of § 800.162, shall be deemed evidence of compliance with the official inspection requirements of Section 5(a)(1) of the Act.

(2) *Weighing.* Only a valid unsuperseded Official Export Grain Inspection and Weight Certificate, or a valid unsuperseded Official Export Grain Weight Certificate, which shows the official Class X weight of the grain and is otherwise in compliance with the provisions of § 800.161, shall be deemed evidence of compliance with the Official Class X weighing requirements of Section 5(a)(1) of the Act.

(c) *"Promptly furnished."* An Official Export Grain Inspection and Weight Certificate, an Official Export Grain Inspection Certificate, or an Official Export Grain Weight Certificate shall be deemed to have been "promptly furnished" in compliance with Section 5(a)(1) of the Act if the certificate is forwarded by the shipper, or the shipper's agent, to the consignee not later than 10 business days after the certificate is issued.

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

(a) *General.* Subject to the provisions of § 800.19, sacked export grain must be (1) officially sampled with an approved diverter-type mechanical sampler, (2) officially checkweighed at the time the grain is being sacked, and (3) officially checkloaded at the time the grain is being loaded aboard the export carrier, in accordance with the provisions of paragraphs (b) and (c) of this § 800.18.

(b) *Simultaneous sacking and loading.* If the sacking, official sampling, official checkweighing, loading, and

official checkloading of export grain aboard an export carrier are performed at the same time, official export inspection and weight certificates which show the identification of the export carrier shall be issued.

(c) *Sacking prior to loading.* If the sacking, official sampling, and official checkweighing of export grain are performed prior to the loading and official checkloading of the grain aboard an export carrier, an official "OUT" inspection certificate and an official checkweighing certificate shall be issued for the grain. An official examination for condition and an official checkloading of the grain must then be made as the grain is loaded aboard the export carrier. If the examination for condition and the checkloading show that the identification of the grain has not changed, or the condition of the grain has not changed beyond expected variations shown in instructions issued by the Service, an official export inspection certificate and an official export weight certificate shall be issued on the basis of the "OUT" inspection certificate, the checkweighing certificate, and the checkloading. If the identification or the condition of the grain has changed, an official export inspection certificate and an official export weight certificate shall be issued on the basis of the most representative samples, including weight samples, available at the time the grain is loaded aboard the export carrier.

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

NOTE.—A waiver under this § 800.19 is not a waiver of the provisions of Sections 13(a)(5), 13(a)(6), or 13(a)(12) of the Act.

(a) *Seed grain exported for seeding purposes.* The provisions of Section 5(a) of the Act shall not be applicable to sacked seed grain that is exported for seeding purposes provided (1) the seed grain is (i) sold or consigned for sale and invoiced as seed; (ii) labeled with respect to kind, variety, purity, germination, and net weight; and (iii) identified as "Seed for seeding purposes" on the Shipper's Export Declaration; and (2) copies of the sales contract, the invoice, the bill of lading, the Shipper's Export Declaration, and related merchandising and shipping documents are made available, upon request by the Service, for review or copying purposes.

(b) *Grain shipped in bond.* The provisions of Section 5(a) of the Act shall not be applicable to grain that is shipped from a foreign country to a foreign country through the United States in bond in accordance with the provisions of the Part 18 regulations of the United States Customs Service (19 CFR Part 18).

(c) *Grain not sold by grade.* The inspection requirements for any given shipment of export grain that is neither exempted under § 800.19(a) or sold, offered for sale, or consigned for sale by grade shall be waived by the Service on a shipment-by-shipment basis upon request by the shipper or the shipper's agent, if (1) the contract, or the amendments thereto, clearly show that the grain is to be shipped without official inspection; (2) true copies of the contract, and the amendments thereto, if any, are received by the appropriate field office at least 24 hours prior to the start of the loading of the grain; (3) notice of the time and place of loading is furnished by the shipper or the shipper's agent to the appropriate field office at least 24 hours prior to the start of the loading of the grain; (4) the Shipper's Export Declaration, the invoice, if any, the bill of lading, and related shipping documents clearly show the statement "This grain was not officially inspected for grade;" and (5) copies of the invoice, if any, the bill of lading, the Shipper's Export Declaration, and related merchandising and shipping documents are made available, upon request, by the Service for review or copying.

(d) *Service not available.* Upon request by the shipper or the shipper's agent, the official inspection and the official Class X weighing requirements for export grain may be waived by the Service on a shipment-by-shipment basis whenever the Service determines that (1) official personnel are not or will not be available within a 24-hour period to perform needed inspection or weighing services; (2) the Shipper's Export Declaration, the invoice, if any, the bill of lading, and related shipping documents clearly show the statement: "This grain was not officially inspected for grade," or "This grain was not officially weighed," or "This grain was not officially inspected for grade and was not officially weighed," as appropriate; and (3) a true copy of the invoice, if any, the bill of lading, the Shipper's Export Declaration, and each related merchandising and shipping document is made available, upon request by the Service, for review or copying; and (4) the waiver will not impair the objectives of the Act.

§ 800.20—800.24 [Reserved]

RECORDKEEPING AND ACCESS TO FACILITIES

§ 800.25 Elevator and merchandising records required to be kept.

(a) *Definitions.* For the purpose of §§ 800.25 and 800.26, unless the context requires otherwise, the following terms shall be construed, respectively,

to have the meanings given for them below:

(1) *Areas and facilities.* All operational areas, including but not limited to automated data processing facilities that are an integral part of the inspection or weighing operations of an elevator; the loading and unloading docks; the floors in the headhouse and control rooms; all storage areas, including but not limited to the bins, the interstices, the bin floor, and the basement; and all handling facilities, including but not limited to the belts, other conveyors, distributor scales, spouting, mechanical samplers, and electronic controls.

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

(3) *Quantity.* Pounds or kilograms, tons or metric tons, or bushels, as appropriate.

(4) *Each day.* The hours from midnight to midnight, unless specified otherwise in writing by the elevator.

(b) *Elevator recordkeeping.* Every person and every State or political subdivision of a State that (1) owns or operates an elevator that (i) ships cargo grain or (ii) receives or ships grain via railroad; and (2) requests as an applicant or otherwise obtains official inspection or weighing services other than (i) a submitted sample inspection service as prescribed in § 800.76(d), or (ii) a sampling service as prescribed in § 800.76(e), or (iii) a stowage examination service as prescribed in § 800.76(f) shall keep complete and accurate records of all receipts and shipments of grain by the elevator, as specified in paragraph (d) of this § 800.25 and, all other records for receipts and shipments that are maintained by the elevator in the normal course of good business practice.

(c) *Merchandiser recordkeeping requirements.* Every merchandiser of grain who takes legal title to grain but does not take actual possession, or does not own or operate an elevator, and thereafter requests as an applicant or otherwise obtains official inspection or weighing services other than (1) a submitted sample inspection service as prescribed in § 800.76(d), or (2) a sampling service as prescribed in § 800.76(e), or (3) a stowage examination service as prescribed in § 800.76(f) shall keep complete and accurate records of purchases and sales of grain, as specified in paragraph (e) of this § 800.25.

(d) *Records of receipts and shipments.* (1) *Receipts.* The complete record of receipts shall include the quality and quantity (whether officially or unofficially determined) of each

kind of grain unloaded into or received by an elevator, the date the grain was received, the method of transportation, and the identification of the container.

(2) *Shipments.* The complete record of shipments shall include the quality and quantity (whether officially or unofficially determined) of each kind of grain loaded out or shipped or delivered for shipment by an elevator, the date the grain was shipped or delivered for shipment, the method of transportation, and the identification of the carrier or container.

(e) *Records of purchases and sales.*

(1) *Purchases.* The complete record of purchases shall include the quality and quantity (whether officially or unofficially determined) of each kind of grain purchased by the merchandiser, the date the grain was purchased, the method of transportation, and the identification of the container.

(2) *Sales.* The complete record of sales shall include the quality and quantity (whether officially or unofficially determined) of each kind of grain sold by a merchandiser, the date the grain was sold, the method of transportation, and the identification of the container.

(f) *Preparation and keeping of records.* (1) The method and order of keeping the records specified in § 800.25 shall be at the discretion of the elevator or merchandiser and shall facilitate (i) routine use and audit, and (ii) in the case of export elevators at export port locations, a reconciliation of receipts, shipments, and stocks on hand.

(2) However, if it is found by the Administrator that an elevator's or merchandiser's records cannot be followed by normal audit procedures, the Administrator may issue instructions outlining a satisfactory method.

(3) Compliance with these instructions shall be deemed to be a requirement for obtaining service, as prescribed in § 800.46.

(g) *Retention period.* The minimum retention period for the records specified in § 800.25 shall be 3 years after the date of the transaction or activity. This requirement does not supersede or modify any other agreement that an elevator has with another Federal or State agency.

§ 800.26 Access to records and facilities.

(a) *Access to records.* Owners or operators of elevators and merchandisers who are required by paragraphs (b) and (c) of § 800.25 to keep records shall permit authorized representatives of the Secretary and the Administrator to have access to, and to copy, during customary business hours, any records which such owners, operators, or merchandisers are required to keep

under paragraphs (d) and (e) of § 800.25.

(b) *Access to facilities.* Any person who is subject to the provisions of Sections 7A(k) and 13(a)(13) of the Act and any State or political subdivision of a State that is subject to the record-keeping provisions of Section 12(d) of the Act and § 800.25 of this Part shall permit authorized representatives of the Secretary and the Administrator to have access to any and all areas and facilities of the elevator that are used in handling, receiving, shipping, storing, or weighing grain.

§ 800.27—800.29 [Reserved]

REGISTRATION

§ 800.30 Meaning of terms.

For the purpose of §§ 800.31 through 800.40, unless the context requires otherwise, the following terms shall be construed respectively to have the meanings given for them below:

(a) *Foreign commerce grain business.* 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.

(b) *Regularly.* A person (1) who was engaged in foreign commerce grain business to the extent of 15,000 metric tons in the preceding calendar year or (2) who has engaged in foreign commerce grain business to the extent of 15,000 metric tons during the current calendar year.

(c) *Controlled.* Ownership interest of 10 percent or more.

§ 800.31 Who must register.

Each person regularly engaged in foreign commerce grain business must register with the Service. This includes foreign-based firms operating in the United States, but does not include foreign governments or their agents. The Service will, upon request, register persons otherwise not required to register under this § 800.31, if such persons comply with requirements of §§ 800.33 and 800.34.

§ 800.32 When to register.

A person who is required to register pursuant to § 800.31 must file an application for a certificate of registration at least 30 calendar days before regularly engaging in foreign commerce grain business. For good cause shown, the Service may waive this 30-day requirement.

NOTE.—For the purpose of initial implementation of §§ 800.30 through 800.40, no person shall be required to register until 6 months after the effective date of these sections.

§ 800.33 How to register.

(a) *General.* Any person who is required or desires to obtain or renew a

certificate of registration shall file an application in accordance with this § 800.33 and pay fees prescribed by the Service.

(b) *Application requirements.* Applications for a certificate of registration, or a renewal of a certificate of registration, shall be made on a prescribed form furnished by the Service. Each application shall (1) be typewritten or legibly written by hand in English, (2) include all information prescribed by Section 17A of the Act and by the application form, and (3) be signed by the applicant. Upon a showing of urgency by an applicant, the information required by this paragraph (b) may be submitted to the Service via telephone, subject to confirmation in writing.

(c) *Additional information.* Upon request, an applicant shall furnish such additional information as is deemed necessary by the Service for the consideration of the application.

(d) *Withdrawal of application.* An application filed pursuant to this § 800.33 may be withdrawn by an applicant at any time.

§ 800.34 Registration fees.

(a) *Fees.* Fees for certificates of registration or renewals of certificates of registration shall be prescribed by the Service in accordance with the approved fee schedule.

NOTE.—For the purpose of initial implementation of this § 800.34, fees will be prorated to effectuate the certificate termination schedule contained in paragraph (b) of § 800.38.

(b) *Time and manner of payment.* The applicant for registration or renewal of registration shall submit the prescribed fee with the completed application. If an application is dismissed, the registration fee shall be refunded by the Service. No fee or portion of a fee shall be refunded if a certificate is issued and subsequently suspended or revoked under § 800.39.

(c) *Extra copies.* The Service shall charge a fee in accordance with § 800.71 for each additional copy of a certificate of registration requested by an applicant above those provided under § 800.36.

§ 800.35 Review of applications.

(a) *General.* Each application for a certificate of registration, or renewal of a certificate of registration, shall be reviewed to determine whether the application is in compliance with §§ 800.32, 800.33, and 800.34. If it is determined that the application is in compliance and the fee has been paid, a certificate of registration, or a renewal of a certificate of registration, shall be issued, as appropriate.

(b) *Application not in compliance.* If it is determined that an application is not in compliance with §§ 800.32,

800.33, and 800.34 and the noncompliance precludes a satisfactory review by the Service, the applicant shall be provided an opportunity to submit an amended application or to otherwise submit the needed information. If an amended application or the needed information is not or cannot be submitted by the applicant within a reasonable time, as determined by the Service, the application may be dismissed in accordance with paragraph (c) of this § 800.35.

(c) *Dismissal of application.* An application may be dismissed by the Service if it is determined that the application is not in compliance with §§ 800.32, 800.33, and 800.34. If an application is dismissed, the Service shall promptly notify the applicant in writing of the reasons for the dismissal.

§ 800.36 Issuance and possession of certificates of registration.

(a) *Issuing office.* All certificates of registration and renewals of certificates of registration shall be issued by the Service. The Service shall furnish the applicant with an original and three copies of the certificate or renewal. Each certificate shall become effective on the date of issuance.

(b) *Condition for issuance.* (1) *Compliance requirement.* Each certificate of registration is issued on the condition that the person who is registered will, during the term of the certificate, comply with all the provisions of the Act and the regulations under the Act.

(2) *Right of possession.* Each certificate of registration shall be the property of the Service, but each person who is registered shall have the right of possession of the certificate, subject to the provisions of § 800.40.

(c) *Advance notice.* Upon request by an applicant, notice of the issuance of a certificate of registration shall be transmitted to the applicant via telephone.

§ 800.37 Notice of change in information.

Notice of a change in the information submitted on or in relation to an application for a certificate of registration shall, in accordance with Section 17A(c) of the Act, be submitted by the applicant, or the holder of the certificate, as applicable, to the Service within 30 days of the discovery of such information. If the notice is submitted orally, it shall be promptly confirmed by the applicant in writing.

§ 800.38 Termination of certificate of registration.

(a) *Term of certificate of registration.* Except for the purpose of the implementation of §§ 800.30 through 800.40, each certificate of registration shall terminate on December 31 of the year for which it is issued. The termi-

nation date shall be shown on each certificate of registration.

(b) *Renewal notices.* Renewal notices shall be sent by the Service to holders of certificates of registration at least 60 days in advance of the termination date. The notices shall provide instructions for requesting renewal of the certificates. Failure to receive such notice from the Service shall not exempt holders of certificates of registration from the responsibility of having their certificates renewed on or before the expiration date prescribed in this § 800.38. Certificates of registration that are renewed shall (1) retain the same certificate number, (2) show the date of renewal and the word "Renewed," and (3) show a termination date of December 31 of the year for which it is issued.

§ 800.39 Suspension or revocation of certificates of registration for cause.

A certificate of registration is subject to suspension or revocation for causes prescribed in Section 17A(d) of the Act, or if the holder of the certificate has committed forcible assaults against official personnel in relation to the performance of their official duties, persistently committed any other act tending to intimidate or interfere with the performance of official duties by official personnel, or persistently tolerated such action by persons under the holder's control.

(a) *Procedure.* In suspending or revoking a certificate of registration for cause, the person to whom the certificate was issued (hereinafter the "respondent") shall be afforded an opportunity (1) for an informal conference in accordance with the Rules of Practice Governing Informal Proceedings in Part 808 of this Chapter and (2) if post conference procedures are requested by the respondent in accordance with Part 808, for a hearing in full accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 554, 556, and 557), and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR, Part 1, Subpart H).

(b) *Notice of action.* When a certificate of registration is suspended or revoked under paragraph (a) of this § 800.39, the Service shall promptly notify the respondent of the reasons for the action.

§ 800.40 Surrender of certificate of registration.

(a) *General.* Each certificate of registration that is suspended or revoked for cause under § 800.39 shall be promptly surrendered to the Service by the respondent. In the case of death of a holder of a certificate, the certificate should be returned to the Service by the heirs of the deceased or

the administrator or the executor of the estate of the deceased.

(b) *Marking suspended or revoked certificates of registration.* Each suspended or revoked certificate of registration that is surrendered to the Service shall, upon receipt, be marked "Suspended," showing the period of the suspension, or marked "Revoked."

§§ 800.41-800.44 [Reserved]

CONDITIONS FOR OBTAINING OR WITHHOLDING OFFICIAL SERVICES

§ 800.45 Availability of official services.

(a) *Original inspection services; export grain.* Original inspection services on export grain will, insofar as practicable, be available in accordance with subparagraphs (1) and (2) of this paragraph (a), Section 7 of the Act, and §§ 800.115 through 800.120.

(1) *United States.* Original inspection services on bulk or sacked grain being exported from the United States will be available upon request of any interested person at any export elevator in the United States. (For information on export elevators, see § 800.16.)

(2) *Canada.* Original inspection services on U.S. grain in Canadian ports will be available upon request of any interested person at any elevator that is (i) located in Canada and (ii) equipped with approved diverter-type mechanical samplers.

(b) *Weighing services; export grain.* Class X weighing services on export grain will, insofar as practicable, be available in accordance with subparagraphs (1) through (3) of this paragraph (b), Section 7A of the Act, and §§ 800.115 through 800.120.

(1) *United States; bulk grain.* Class X weighing services on bulk grain being exported from the United States will be available upon request of any interested person at any export elevator in the United States. (For information on export elevators, see § 800.16.)

(2) *United States; sacked grain (checkweighing and checkloading).* Class X weighing (checkweighing and checkloading) services on sacked grain being exported from the United States will be available upon request of any interested person at any specified service point or any point conveniently reached therefrom.

(3) *Canada; bulk grain.* Class X weighing services on bulk U.S. grain in Canadian ports will be available upon request of any interested person at any approved weighing facility at a port location in Canada. (c) *Original inspection and Class X and Class Y weighing services, other than export grain.* Original inspection and Class X or Class Y weighing services, on other than export grain will, insofar as practicable, be available in accordance with subparagraphs (1) and (2) of this paragraph (c), Sections 7 and 7A of

the Act, and §§ 800.115 through 800.120.

(1) *Inspection services.* Original inspection services on other than export grain in the United States will be available upon request of any applicant at any specified service point or any point conveniently reached therefrom in accordance with the provisions of Section 7 of the Act and §§ 800.115 through 800.120.

(2) *Weighing services.* Class X or Class Y weighing services on grain, other than export grain, in the United States will be available upon request of an applicant at an approved weighing facility in accordance with the provisions of Section 7A of the Act and §§ 800.115 through 800.120.

(d) *Reinspection, review of weighing, and appeal inspection services.* Reinspection services, review of weighing services, field appeal inspection services, and Board appeal inspection services will be available upon request of any interested person at specified service points conveniently reached therefrom, in accordance with §§ 800.125 through 800.130 and §§ 800.135 through 800.140.

(e) *Requests deemed under Act.* Requests submitted by interested persons to an agency or a field office for inspection or weighing services on grain shall be deemed to be a request under the Act and the regulations unless the request clearly states otherwise.

(f) *Proof of authorization.* If a request for inspection or weighing services is filed by an agent of an applicant, the agency or the field office receiving the request may, if it deems necessary, require written proof of the authority of the agent to submit the request.

(g) *Information on assigned areas, specified service points, agencies, field offices, and approved weighing facilities.* Information may be obtained in accordance with § 800.10 on (1) assigned areas of responsibility and specified service points where inspection and weighing services under the Act are generally available in the United States and Canada, (2) the circuits and regions in which the areas and points are located, (3) the agencies and the field offices that perform services in the areas and at the points, and (4) approved weighing facilities.

§ 800.46 Requirements for obtaining official services.

(a) *Consent and agreement by applicant.* The requirements specified in paragraphs (b) and (c) of this § 800.46 are considered essential to effectuate the purposes and provisions of the Act with respect to the performance of inspection and weighing services under the Act. In submitting requests for inspection and weighing services under the Act and in submitting or offering

grain for inspection or weighing under the Act, the applicants and the owners of the grain shall be deemed to have consented and agreed to each general requirement and to each applicable special requirement specified in paragraphs (b) and (c) of this § 800.46.

(b) *General Requirements.* (1) *Access to grain.* Grain that is to be inspected or weighed under the Act must, except as provided in §§ 800.85, 800.86, 800.98, and 800.99, be made fully accessible by the applicant and the owner of the grain to official personnel and warehouse samplers, as applicable, for the performance of the requested inspection or weighing service and related monitoring and supervision activities. For the purpose of this § 800.46, grain is not "fully accessible" if the grain is offered for inspection or weighing in barges or other carriers that are closed at the time the grain is offered or made available for inspection and the carriers cannot be opened by or for official personnel, or under conditions prescribed in instructions issued by the Service as being unduly hazardous to the health or safety of official personnel. Conditions that are considered "unduly hazardous to the health and safety of official inspection personnel" include but are not limited to conditions at inspection or weighing sites; or the ingress or egress routes to inspection or weighing sites; and storage, stowage, and similar spaces where official services are performed.

(2) *Working space.* If grain is to be inspected or weighed under the Act at an elevator, adequate space must be provided by the applicant and the owner of the grain for use by official personnel, approved weighers, and warehouse samplers, as applicable, for the performance of (i) the requested inspection or weighing service and (ii) related monitoring and supervision activities. Space will be "adequate" if it meets the space, location, and safety requirements specified in instructions issued by the Service.

(3) *Notice of changes.* An applicant for inspection or weighing services under the Act must promptly notify the appropriate agency or field office in full detail of changes in the grain handling and weighing facilities, equipment, or procedures at the elevator owned or operated by the applicant that could materially impact upon official inspection or weighing under the Act.

(4) *Loading and unloading arrangements and conditions.* Applicants or owners of grain that is to be inspected or weighed under the Act as the grain is being loaded or unloaded must provide or make provisions for approved loading or unloading arrangements and conditions, as applicable, to facilitate the accurate inspection or weighing of the grain, to maintain the qual-

ity or quantity of the inspected or weighed grain, and to protect the health and safety of official personnel. The arrangements and conditions include but are not limited to arrangements and conditions in (i) the loading and unloading areas and the truck and railroad holding areas at an elevator; (ii) the gallery and other grain conveying areas; (iii) the elevator legs, distributor, and spouting areas; (iv) the pier or dock areas; (v) the deck or storage areas in the ship or other container; and (vi) the arrangements and equipment used in loading or unloading the carrier or in handling the grain.

(5) *Timely arrangements.* If a request is made for official services that are to be performed other than during a business day, the request shall be made in a timely manner by the applicant with the appropriate agency or field office. Otherwise, official personnel may not be available to provide the requested service. For the purpose of this subparagraph (5), "timely manner" shall mean not later than 2 p.m. of the preceding business day.

(6) *Observation of activities.* Applicants for service under the Act must permit any person (or the person's agent) who has a financial interest in the grain an opportunity to observe the sampling, weighing, loading, or unloading, as applicable, of the grain in accordance with Section 16 of the Act. Appropriate areas shall be mutually defined by the Service and facility operator. The areas shall be safe, 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 (or their agent).

(7) *Payment of bills.* Applicants for inspection or weighing services under the Act must pay bills for the services promptly upon request.

(8) *Written confirmations.* Applicants for inspection or weighing services under the Act must, upon request by an agency or field office, promptly submit written confirmations for requested inspection or weighing services.

(9) *Keeping of records.* Each applicant that is subject to the recordkeeping requirements of § 800.25 must keep the records in accordance with § 800.25.

(10) *Access to facilities.* Each applicant that is subject to the provisions of Section 7A(k) of the Act and each applicant that is subject to the recordkeeping provisions of § 800.25 must permit authorized representatives of the Secretary or Administrator access to any elevator area used by the applicant, in accordance with § 800.26. Before entering the elevator, the authorized representative of the Secretary or the Administrator will contact

or otherwise notify the elevator manager, his representative, or a security guard and furnish proof of identity and authority. While in the elevator, the authorized representative of the Secretary or the Administrator will abide by the safety regulations in effect at the elevator.

(c) *Special requirements.* (1) *Weighing services.* Official Class X or Class Y weighing services for bulk grain will be available only at approved weighing facilities and in accordance with the requirements of § 800.115(b).

(2) *Suitable carriers.* Official inspection or official Class X weighing services on outbound shipments which are sampled or weighed prior to loading will be available only if the carriers in which the grain is to be loaded are suitable for the loading, storing, or transportation of grain.

(3) *Bulk export grain.* Official inspection or weighing services on bulk export grain will be available only for grain loaded through an elevator that is identified and listed as an "export elevator" under § 800.16(a).

(4) *Sampling requirements.* For sampling requirements, see § 800.18(a) and §§ 800.82 through 800.84 of this Part.

(5) *Surveillance equipment.* Owners and operators of elevators shall provide, upon a finding of need by the Administrator, surveillance equipment and facilities including but not limited to closed-circuit television or other electronic equipment to monitor grain loading, unloading, handling, sampling, weighing, inspection, and related activities. Such a finding of need will be based primarily on manpower need and efficiency considerations.

(6) *Posting of signs at export port locations.* Owners and operators of export elevators at export port locations shall permit the Service to post conspicuous identification, directional, or warning signs, as deemed appropriate by the Service, at specified locations in or around the elevator, including but not limited to the truck, barge, and ship unloading, the truck, barge, and ship loading, and the sampling, inspection, and weighing areas. (For provisions on export port locations, see § 800.16.)

(7) *Names and addresses of respondents.* Applicants for inspection or weighing services under the Act must show on applications for reinspection, review of weighing, field appeal inspection, and Board appeal inspection services the name and address of each known respondent of record. (Failure to show the name and address of a known respondent of record shall be a violation of Section 13(a)(10) of the Act.)

(8) *Surrender of superseded certificates.* Applicants for inspection or weighing services under the Act must, upon request by an agency or a field

office, promptly surrender superseded inspection or weighing certificates that are in the applicant's possession or custody. (The false use of a superseded certificate shall be deemed to be a violation of Section 13(a)(6) of the Act.)

§ 800.47 Withdrawal of request for official services.

(a) *General.* Requests for inspection or weighing services under the Act may be withdrawn by applicants at any time prior to (1) the release by official personnel of some or all of the results of the requested inspection or weighing services, or (2) when the results have otherwise become known to the applicants or to the respondents, or (3) the issuance of the official certificates for the requested inspection or weighing services.

(b) *Expenses of agency or field office.* Expenses, if any, incurred by an agency or field office with respect to a request that has been withdrawn by an applicant under this § 800.47 shall be payable by the applicant in accordance with the schedule of fees published by the agency or the Service, as applicable. For good cause shown, the requirement of this paragraph (b) may be waived by the chief inspector of the agency or the supervisor in charge of the field office.

§ 800.48 Dismissal of request for official services.

(a) *Conditions for dismissal.* Requests for inspection or weighing services under the Act shall be dismissed by an agency, or field office, or Board of Appeals and Review, as applicable, (1) if the requests are for prohibited services identified in § 800.78; or (2) if the requests are obviously frivolous or not substantial; or (3) if the agency, or the field office, or the Board of Appeals and Review, as applicable, lacks jurisdiction under the Act or the regulations to handle the requests; or (4) if sufficient evidence is not available upon which to make an accurate and true determination; or (5) if grain at rest in a carrier is officially sampled and the grain in the bottom compartment of the grain probe is the equivalent of two or more grades lower in quality than the grain in the remainder of the carrier; or (6) if the performance by official personnel of the requested service is clearly not practicable; or (7) for the reasons specified in §§ 800.117, 800.127, and 800.137.

(b) *Procedure for dismissal.* When an agency, or field office, or Board of Appeals and Review proposes to dismiss a request for inspection or weighing services under the Act, the agency, the field office, or the Board of Appeals and Review, as appropriate, shall inform the applicant of the proposed action and afford the applicant an op-

portunity, within a reasonable time as determined by the agency, the field office, or the Board of Appeals and Review, as applicable, to achieve compliance, if possible, with the conditions of paragraph (a) of this § 800.48, or to demonstrate to such agency, field office, or Board of Appeals and Review that the applicant has complied with such conditions. Thereafter the agency, field office, or Board of Appeals and Review, as applicable, shall determine whether the request should be dismissed. When a request for services that are required under the Act is dismissed, notice of the dismissal shall be given in accordance with §§ 800.117, 800.127, or 800.137, as appropriate. An informal complaint seeking review of a dismissal or a request for service may be filed by an interested party in accordance with § 800.5 and the Rules of Practice Governing Informal Proceedings in Part 808 of this chapter.

(c) *Expenses of agency, field office, or Board of Appeals and Review.* Expenses, if any, incurred by an agency, a field office, or the Board of Appeals and Review with respect to a request that has been dismissed under this § 800.48 by an agency, a field office, or the Board of Appeals and Review shall be payable by the applicant in accordance with § 800.47(b).

§ 800.49 Conditional withholding of official services.

(a) *Conditional withholding.* Inspection and weighing services under the Act shall be conditionally withheld by an agency, a field office, or the Board of Appeals and Review for failure of the applicant or owner of the grain to meet any requirements prescribed in § 800.46.

(b) *Procedure for withholding.* When an agency, field office, or Board of Appeals and Review proposes to conditionally withhold inspection or weighing services under this § 800.49, the agency, the field office, or the Board of Appeals and Review, as applicable, shall inform the applicant of the proposed action and the reasons for the proposal and afford the applicant an opportunity within a reasonable time as determined by the agency, the field office, or the Board of Appeals and Review, as applicable, to achieve compliance with the requirements in § 800.46, or to demonstrate to such agency, field office, or Board of Appeals and Review that the applicant or owner has complied with such requirements. Thereafter, the agency, field office, or Board of Appeals and Review, as applicable, shall determine whether the requests for inspection or weighing services shall be conditionally withheld. When request for services that are required by the Act are withheld, notice of the withholding shall be given to the applicant by the

agency, the field office, or the Board of Appeals and Review, as appropriate, in writing. An informal complaint seeking review of a withholding of inspection or weighing services under this § 800.49 may be filed by an applicant in accordance with § 800.50 and the Rules of Practice Governing Informal Proceedings in Part 808 of this chapter.

(c) *Expenses of agency, field office, or Board of Appeals and Review.* Expenses, if any, incurred by an agency, a field office, or the Board of Appeals and Review with respect to a conditional withholding of inspection or weighing services under the Act shall be paid by the applicant in accordance with § 800.47(b).

§ 800.50 Refusal of official services.

(a) *Grounds for refusal.* Any or all inspection or weighing services under the Act may be refused, either temporarily or otherwise, by the Service (1) for causes prescribed in Section 10 of the Act or (2) if the applicant has (i) committed acts tending to intimidate or interfere with the performance of official duties by official personnel or (ii) tolerated such actions by persons under the applicant's control.

(b) *Procedure for temporary refusal.* (1) *Provision for temporary refusal.* Whenever the Service has reason to believe there is cause for a temporary refusal of inspection or weighing services in accordance with Section 10 of the Act, it may temporarily refuse to provide, or may temporarily refuse to authorize, the performance of any or all inspection or weighing services under the Act for an applicant for such services without first affording the applicant, hereafter referred to in this § 800.50 as the "respondent," an opportunity for a hearing.

(2) *Notice and effective date of temporary refusal.* Notice of a temporary refusal shall be promptly given to the respondent and to the agencies and field offices providing inspection or weighing services to the respondent, in accordance with paragraph (d) of this § 800.50. The temporary refusal shall be effective upon receipt of the notice by the respondent.

(3) *Termination of temporary refusal.* Within 7 business days following the issuance of a notice of temporary refusal, the Service shall (1) afford the respondent an opportunity for a hearing under paragraph (c) of this § 800.50 and continue the temporary refusal if arrangements satisfactory to the Service will not or cannot be effected by the respondent pending a final determination under paragraph (c) of this § 800.50; or (2) afford the respondent an opportunity for a hearing under paragraph (c) of this § 800.50 and terminate the temporary action if arrangements satisfactory to the Service

can be and are effected by the respondent; or (3) terminate the temporary action with a suitable written notice or warning under Section 14(b) of the Act; or (4) terminate the temporary action without prejudice. The Service shall promptly notify the respondent and the agencies and the field offices that provide services for the respondent of the action under this subparagraph (b)(3).

(c) *Procedure for other than temporary refusal.* Except as provided in paragraph (b) of this § 800.50, in refusing to provide inspection or weighing services under the Act, the respondent shall be afforded an opportunity for a hearing in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 554, 556, and 557) and the Rules of Practice Governing Formal Adjudicatory Proceedings instituted by the Secretary Under Various Statutes (7 CFR Part 1, Subpart H). If, as a result of the hearing or ancillary procedures, it is determined that there is a basis for refusal of service with respect to a respondent, the order refusing service shall be restricted to the particular location found in violation or to a particular type of service, as the facts may warrant.

(d) *Notice of action.* When inspection or weighing services are refused for any cause, the service shall promptly notify the respondent in writing, and the agencies and the field offices that provided services for the respondent, of the reason for the refusal. The notice shall clearly identify (1) the services that are refused, (2) the location where the services are refused, and (3) the time periods that the services are refused.

§ 800.51 Official services not to be denied.

Subject to the provisions of §§ 800.49 and 800.50, whenever official services, including but not limited to original services, reinspection services, review of weighing services, field appeal inspection services, or Board Appeal inspection services, are required or desired under the Act and the regulations, no person entitled to such services shall be denied or deprived of his 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.

§ 800.52-800.54 [Reserved]

RESTRICTIONS ON REPRESENTATIONS

§ 800.55 Restrictions with respect to descriptions of grain by grade.

(a) *Description by grade.* The provisions of Section 6(a) of the Act prohibit the description of grain in any sale, offer for sale, or consignment for sale

by any grade other than an official grade. This includes description of the 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. For the purpose of this paragraph (a), a description by grade includes the use of the following terms: "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 U.S. Standards for Grain.

(b) *Proprietary brand names or trademarks.* The provisions of Section 6(a) of the Act generally permit the description of grain by a proprietary brand name or a trademark that does not resemble an official grade. For the purposes of Section 6(a) of the Act, a proprietary brand name or trademark that contains, singly or in combination, any of the terms referenced in paragraph (a) of this § 800.55 shall be deemed to resemble an official grade designation.

(c) *False description.* The provisions of Section 6(b) of the Act prohibit any false or misleading description, whether by official grade or otherwise, of grain in any sale, offer for sale, or consignment for sale in foreign commerce.

§ 800.56 Restrictions with respect to official forms.

The provisions of Sections 13(a)(1) through 13(a)(3) of the Act contain certain prohibitions with respect to official forms. For the purpose of Sections 13(a)(1) through 13(a)(3), the term "official form" shall include official licenses, authorizations, and approvals (§ 800.174); official certificates (§ 800.160); official pan tickets, official inspection logs, official export weight logs, weight sheets, shipping bin weight loading logs, and official equipment testing reports (§ 800.154); official certificates of registration (§ 800.36); and such other official forms as may be issued or approved by the Service or by an agency that show the name of the Service or the agency and a form number. The unauthorized use of such forms shall be deemed to be in violation of the provisions of Sections 13(a)(1) through 13(a)(3) of the Act.

§ 800.57 Restrictions with respect to official marks.

NOTE: The provisions of paragraph (a) with respect to the terms "official weighing," "officially weighed," and "official weight" shall become effective May 1, 1980.

(a) *Official marks.* The provisions of Sections 13(a)(1) and 13(a)(2) of the Act contain certain prohibitions with respect to official marks. For the purpose of Sections 13(a)(1) and 13(a)(2), the terms "official certificate," "official grade," "officially sampled," "offi-

cially inspected," "official inspection," "U.S. inspected," "loaded under continuous official inspection," "official weighing," "officially weighed," "official weight," "official Class X weight," "official Class Y weight," "Class X weight," "Class Y weight," "official supervision of weighing," "loaded under continuous official weighing," and "officially tested" are deemed to be official marks. The unauthorized use of such marks shall be deemed to be in violation of the provisions of Sections 13(a)(1) and 13(a)(2) of the Act.

(b) *Designations, marks, and representations.* The provisions of Sections 13(a)(5), 13(a)(6), and 13(a)(12) of the Act contain certain prohibitions with respect to official grade designations, official marks, and representations with respect to grain.

(1) The showing with respect to grain of an official grade designation, with or without factor information, or the official criteria information or the showing of the term "official grain standards" shall not, in the absence of additional information, be deemed a representation that the grain has been officially inspected.

(2) The showing with respect to grain of the term "official certificate" shall be deemed to be a representation that the certificate was issued under the Act, unless the term is correctly qualified to clearly show that the certificate was issued under the U.S. Warehouse Act.

(3) The showing with respect to grain of the terms "official grade," "officially sampled," and "U.S. inspected," singly or collectively, shall be deemed to be a representation that the grain has been sampled or inspected under the Act. The showing of the terms "officially inspected" and "official inspection" shall be deemed to be a representation that the grain has been inspected under the Act, unless the terms are correctly qualified to clearly show that the inspection was performed under the U.S. Warehouse Act.

(4) The showing with respect to grain of the term "loaded under continuous official inspection" shall be deemed to be a representation that the bulk grain in a ship or in a combined lot was loaded in a continuous operation and was officially sampled and officially inspected throughout the loading.

(5) The showing with respect to grain of the terms "official Class X weighing," "official Class Y weighing," "Class X weighing," "Class Y weighing," and "official supervision of weighing," or "officially supervised weight" shall be deemed to be a representation that the grain has been weighed under the Act. The showing of the terms "officially weighed" and "official weight" shall be deemed to be

a representation that the grain has been weighed under the Act, unless the terms are correctly qualified to clearly show that the weighing was performed under the U.S. Warehouse Act.

(6) The showing of the term "loaded under continuous official weighing" shall be deemed to be a representation that the bulk grain in a ship or in a combined lot was loaded in a continuous operation and was officially Class X weighed throughout the loading.

(7) The showing with respect to grain inspection and weighing equipment of the term "officially tested" shall be deemed to be a representation that the inspection or weighing equipment has been tested under the Act, unless the term is correctly qualified to show that the equipment was tested under a State statute.

(8) The prohibited use of the designations, marks, and representations identified in subparagraphs (2) through (7) of this § 800.57 shall be deemed to be in violation of the provisions of Sections 13(a)(5), 13(a)(6), and 13(a)(12) of the Act.

§§ 800.58—800.59 [Reserved]

DECEPTIVE PRACTICES

§ 800.60 Deceptive actions and practices.

(a) *General.* If committed knowingly, in the absence of adequate notice to appropriate official personnel, any action or practice, including the loading, weighing, handling, or sampling of grain, that 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 (a), adequate notice is written or oral notice given to an official 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.

(b) *Meaning of terms.* For the purpose of §§ 800.61 and 800.62, unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given for then below:

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

(2) *Handling.* Unloading, elevating, storing, binning, mixing, blending, drying, aerating, screening, cleaning, washing, treating, fumigating or otherwise preparing grain.

(3) *Weighing.* Determining and recording the weight of grain, monitoring the discharge of grain into an elevator or carrier, and delivering or offering grain for a determination of weight.

(4) *Sampling.* Obtaining a sample of grain or delivering of grain so that it may be sampled.

§ 800.61 Sampling and inspection.

(a) *General.* Each of the actions and practices identified in paragraphs (b) and (c) of this § 800.61 is deemed deceptive, as prescribed in paragraph (a) of § 800.60.

(b) *Actions and practices that bias or destroy the accuracy of official sampling.* No person who requests, as an applicant, or otherwise obtains or seeks to obtain official inspection services under the Act may:

(1) In loading grain that will be officially sampled with a probe while the grain is at rest in a container, place or load economically inferior grain or economically superior grain in the container in such a manner that a true average sample of the grain in the container cannot be obtained when the grain is sampled in accordance with the methods and procedures described in instructions issued by the Service. For the purposes of this subparagraph (1), economically inferior grain is any nongrain material or any kind, quality, or condition of grain that, if blended, would adversely affect the quality or grade of the remainder of the grain in a container; and economically superior grain is any kind, quality, or condition of grain that, if blended, would enhance the quality or grade of the remainder of the grain in a container;

(2) In loading grain that is officially sampled before the grain is loaded, or will be officially sampled with a probe while the grain is at rest in a container, load grain into a container that (i) contains fertilizer or other nongrain material; or (ii) is infested with live insects injurious to stored grain; or (iii) contains grain that is different in kind, quality, or condition than the grain being loaded; or (iv) has a commercially objectionable foreign odor; or

(3) Otherwise undertake any action or engage in any practice that will bias or destroy the accuracy of official sampling under the Act, except as provided for in paragraph (a) of § 800.60.

(c) *Actions and practices that bias or destroy the representativeness of an official sample.* No person who requests, as an applicant, or otherwise obtains or seeks to obtain official inspection services under the Act may:

(1) Shunt grain around an official sampling device or an official sampler; or, without prior approval from official personnel, manipulate the rate of

flow of grain being sampled by an official sampling device or an official sampler; or manipulate the manner in which grain is presented to an official sampling device or an official sampler;

(2) Substitute, in whole or in part, an unofficial sampling device or sample delivery system for an official device or system; or, without prior approval from official personnel, alter the construction or operation of or otherwise manipulate an official sampling device or official sample delivery system;

(3) Add or remove grain or other material from an official sample, or dry, clean, or otherwise process the grain in the sample;

(4) Add any insecticide or other material that masks, or tends to mask, the true odor, class, grade, quality, or condition of the grain; or

(5) Otherwise undertake any action or engage in any practice that will bias or destroy the representativeness of an official sample, except as provided for in paragraph (a) of § 800.60.

§ 800.62 Weighing.

(a) *General.* Each of the actions and practices identified in paragraphs (b) and (c) of this § 800.62 is deemed deceptive, as prescribed in paragraph (a) of § 800.60.

(b) *Actions and practices that bias or destroy the accuracy of official weighing.* No person who requests, as an applicant, or otherwise obtains or seeks to obtain official weighing services under the Act may:

(1) Falsely represent that a weighing device, a weight-recording device, a weight ticket, a weight tape, or a weight sample is an official weighing device, an official weight sample, as applicable, or otherwise falsely represent that a weighing device, a weight-recording device, a weight ticket, or a weight tape has been approved, issued, or obtained under the Act;

(2) Without prior approval from official personnel, manipulate an official weighing device or official weight-recording device;

(3) Falsely decrease or increase the tare weight or the gross weight of a container or the grain in a container, or otherwise falsely decrease or increase the net weight of grain;

(4) Offer loads that exceed the nominal or marked capacity of the scale on which the loads are being or are to be officially weighed;

(5) Misrepresent to official personnel the quantity of grain in a container by using a container with a false floor, or false walls, or false partitions, or otherwise misrepresent the quantity of grain in a container; or

(6) Otherwise undertake any action or engage in any practice that will bias or destroy the accuracy of an official

weighing under the Act, except as provided for in paragraph (a) of § 800.60.

(c) *Actions and practices that bias or destroy the representativeness of an official weight sample.* No person who requests, as an applicant, or otherwise obtains or seeks to obtain official weighing services under the Act may:

(1) Substitute, in whole or in part, an unofficial weight sample for an official weight sample; or otherwise represent that an unofficial weight sample is an official weight sample;

(2) Falsely add grain or other material to an official weight sample or falsely remove grain or other material from an official weight sample or otherwise manipulate an official weight sample; or

(3) Otherwise undertake any action or engage in any practice that will bias or destroy the representativeness of an official weight sample under the Act, except as provided for in paragraph (a) of § 800.60.

§ 800.63 Inspection and weighing.

(a) *General.* Each of the actions and practices identified in paragraph (b) of this § 800.63 is deemed deceptive, as prescribed in paragraph (a) of § 800.60.

(b) *Actions and practices that bias or destroy the accuracy of official inspection and official weighing.* No person who requests, as an applicant, or otherwise obtains or seeks to obtain official inspection or official weighing services under the Act may:

(1) In loading grain that has been officially inspected or weighed under the Act, divert part or all of the grain away from the container in which the grain is to be loaded; or substitute for the grain other grain that has not been officially inspected or weighed; or otherwise fail to deliver to the container all of the grain which has been officially inspected or weighed;

(2) In unloading grain that will be officially inspected or weighed under the Act, divert part or all of the grain so that the grain will not be officially inspected or weighed; or substitute other grain for the grain which is to be officially inspected or weighed; or fail to make reasonable efforts to remove all of the grain from the container; or otherwise fail to deliver the grain to official personnel for official inspection or weighing;

(3) After outbound grain has been officially inspected or weighed under the Act, remove grain or other material from the grain; add grain or other material to the grain; or otherwise alter in any manner the quality or quantity of the grain by removing or adding grain or other material unless the removal or addition is physically monitored by official personnel and is noted by such personnel on the appropriate inspection or weight certificate: *Provided, However, that nothing in*

this paragraph (3) shall prohibit the routine removal of airborne dust from the grain as specified in instructions issued by the Service;

(4) Present or offer a portion of a bin lot or other lot and represent that it is the entire lot; or represent or offer grain from one bin or lot and represent that it is from another bin or lot; or otherwise misrepresent in any manner the identification or the quantity of the grain;

(5) Present or offer a container for a stowage examination and misrepresent the identification of the stowage area; or present or offer a container that has been treated with a material that masks, or tends to mask, but does not destroy an objectionable odor in the stowage area; or otherwise mislead official personnel in the performance of their assigned stowage examination duties; or

(6) Otherwise undertake any action or engage in any practice that will bias or destroy the accuracy of an official inspection or an official weighing under the Act, except as provided for in paragraph (a) of §§ 800.60.

§ 800.64—800.69 [Reserved]

FEES

§ 800.70 Fees for official services performed by agencies.

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

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

(b) *Approval required.* (1) *Restriction.* Except as provided in subparagraph (2) of this paragraph (b), only fees and charges that are specifically approved by the Service as reasonable and nondiscriminatory may be charged by an agency.

(2) *Waiver.* Fees and charges that were in effect on the effective date of this § 800.70 shall be deemed to have been approved by the Service. This waiver shall not bar a later disapproval by the Service upon a determination that the fees and charges are not reasonable or are discriminatory.

(c) *Reasonable fees.* Fees and charges shall be considered reasonable if they:

- (1) cover the estimated total cost to the agency of (i) official inspection,
- (ii) official Class X or Class Y weigh-

ing, or (iii) inspection equipment testing functions, and (iv) related supervision and monitoring functions performed by the agency;

(2) are reasonably consistent with the fees and charges assessed by adjacent agencies for similar services; and

(3) are assessed on the basis of (i) the average cost of performing the same services at all locations served by the agency (e.g., the average cost per bushel, ton, hour, or carrier for performing "IN" trucklot, "OUT" carlot, or "LOCAL" binlot inspection services) or (ii) the average cost of performing like services at all locations served by the agency (e.g., the average cost per bushel, ton, hour, or carrier for performing all trucklot, carlot, bargelot, shiplot, binlot, or submitted sample inspections).

(d) *Nondiscriminatory fees.* Fees and charges shall be considered nondiscriminatory if they are assessed and collected from all applicants for official services in a fair and impartial manner in accordance with the approved fee schedule. Charges for time and travel costs incurred in providing service at a location away from the service point may be assessed in accordance with the approved fee schedule.

(e) *Schedule of fees and charges to be established.* (1) Each agency shall establish a schedule of fees and charges for the official services performed by the agency. The schedule shall be in a format approved by the Service and shall include a fee or charge for each kind of official service or other service, if any, performed by the agency, including but not limited to services (i) performed on a regular basis or (ii) on a contract basis (sometimes called a guaranteed station basis).

(2) The schedule shall be published or otherwise made available by the agency to the users of the service.

(3) A copy of each schedule shall be retained in accordance with § 800.152.

(f) *Application for approval of fees and charges.* (1) *Time requirement.* An application for approval of a fee or charge, or a change in a fee or charge, shall be submitted to the Service not less than 60 days in advance of the proposed date of the fee, charge, or change. The Service, however, may grant exceptions on a case-by-case basis. Failure to submit an application within the prescribed time period may be considered grounds for postponement or rejection of the request.

(2) *Contents of application.* Each application shall show (i) the present fee or charge, if any; (ii) the proposed fee or charge, together with data showing in detail how the proposed fee or charge or the proposed change was developed; and (iii) the proposed date of the fee, charge, or change.

(g) *Review of application.* (1) *Approval action.* If upon review it is

found that the application and the financial data support the fee or charge, or support the proposed change in a fee or charge, the application will be marked "approved" and returned to the agency.

(2) *Denial action.* If it is determined that the application or the data do not support the fee or charge or the proposed change, approval of the application will be withheld pending receipt of supportive data from the agency. If the supportive data are not submitted within a reasonable period, as determined by the Service, the application shall be denied. In the case of a denial of an application, the agency shall be notified of the reason for denial.

(h) *Failure to obtain approval or to publish.* The assessment or collection of fees or charges that have not been approved by the Service, or have not been published in accordance with the requirements of this § 800.70 shall be deemed to be a violation of the regulations.

§ 800.71 Fees for official services performed by the Service. [Reserved]

§ 800.72 Explanation of Service fees and additional fees.

(a) *Costs included in fees.* Fees for official inspection, weighing, and related services include: (1) the cost of per diem or subsistence during travel and the cost of transportation to perform the service requested; (2) callback payments to Service employees; (3) postage and other delivery costs; and (4) except as provided in subparagraph (b)(2) of this § 800.72, the cost of certification. The fees for official inspection services and nonregular workday weighing services in the United States and for nonregular workday official inspection and weighing services in Canada also include the cost of overtime.

(b) *Fees in addition to unit and hourly fees.* (1) Fees for standby shall be assessed in all cases, except no fee shall be assessed for standby performed under a service contract for (i) official weighing services in the United States or (ii) for official inspection and weighing services in Canada.

(2) The original and three copies of each original, divided-lot, reinspection, field appeal inspection, or Board appeal inspection certificate shall be issued to the applicant of record or to the applicant's order. For a field appeal inspection service or a Board appeal inspection service, a copy of each certificate or divided-lot certificate shall also be issued to each respondent of record or to the respondent's order. The fee for additional copies furnished on request of an applicant or a respondent shall be \$2.50 per copy.

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

(a) *When hourly rates begin.* Hourly rates shall begin when the Service representative arrives at the point of service and is available to perform service and shall end when the representative departs from the point of service, computed to the nearest quarter hour (less meal time, if any).

(b) *Computing standby.* Standby shall be computed whenever a Service representative: (1) has been requested by an applicant to perform a service at a specified time and location; (2) is on duty and is ready to perform the service requested; and (3) is unable to perform the service requested because of a delay by the applicant for any reason. Standby shall be computed to the nearest quarter hour (less meal time, if any). Standby shall not be applicable under contract services.

(c) *Definitions relating to fees.* The following definitions shall apply to terms used in §§ 800.72 and 800.73.

(1) "Regular workday" shall mean the hours of 6 a.m. to 6 p.m., local time, any Monday, Tuesday, Wednesday, Thursday, or Friday, that is not a "holiday."

(2) "Nonregular workday" shall mean any "holiday" and any other time that is not included in a "regular workday."

(3) "Holiday" shall mean 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 deemed to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be deemed to be the holiday.

(4) "Service representative" shall mean an authorized salaried employee of the Service; or a person licensed by the Administrator under a contract with the Service.

(5) "Contract service" shall mean an inspection or weighing service performed pursuant to a contract between an applicant and the Service.

(d) *To whom fees are assessed.* Fees for inspection, weighing, and related services performed by Service representatives, including fees for standby and fees for extra copies of certificates, shall be assessed to and paid by the applicant for the services.

(e) *Form and time of payment.* Bills for fees assessed under the regulations for Federal inspection and weighing services will be issued by the Service at 4-week intervals. Payment of bills shall be made by check, draft, or

money order payable to the Federal Grain Inspection Service. Payment shall be made within 30 calendar days after the due date shown on the bill.

(f) *Advance payment.* If required by the Administrator, fees shall be paid in advance. Any fees paid in excess of the amount due shall be refunded or offset on future billings.

(g) *Fees when an application for service is withdrawn or service is refused.* If an application for service is withdrawn or a service is refused pursuant to the regulations, the person who made the application for the service shall pay only such expenses as were incurred in connection with the service prior to the withdrawal or refusal.

(h) *Revolving fund.* Fees collected by the Service shall be deposited in a fund which shall be available without fiscal year limitation for the expenses of the Service incident to providing services under the Act.

(i) *Material error.* Except as provided in § 800.72(b)(1), no fees shall be assessed for reinspection services by the Service, review of weighing services, field appeal inspection services, or Board appeal inspection services, if it is found that there was a material error in the inspection or weighing services in question. A "material error" shall be an error in the results of an official inspection function that exceeds the official tolerance, or any error in the results of an official Class X or Class Y weighing function.

§ 800.74 [Reserved]

KINDS OF OFFICIAL SERVICES

§ 800.75 Kinds of official services; general.

For provisions on the kinds of official inspection and weighing services authorized by the Act, see §§ 800.76 and 800.77. For provisions on the levels of official inspection and weighing services authorized by the Act, see §§ 800.115-800.120, 800.125-800.131, and 800.135-800.140. For provisions on the availability of official inspection and weighing services, and conditions for obtaining and withholding official inspection and weighing services, see §§ 800.45 through 800.51.

§ 800.76 Kinds of official inspection services.

(a) *General.* The kinds of official inspection services available under the Act and the basis for performing the services are shown in paragraphs (b) through (f) of this § 800.76. If the grain is inspected for official grade and grading factors, or for official factors, the inspection shall be made in accordance with the Official U.S. Standards for Grain. If the grain is inspected for official criteria, the inspection

shall be made in accordance with instructions issued by the Service.

(b) *Official sample-lot inspection service.* This inspection service consists of official personnel (1) sampling an identified lot of grain; (2) inspecting the grain in the sample for official grade and grading factors, or for official factors, or for official criteria, or any combination thereof, in accordance with the regulations, the instructions, and the request for inspection; and (3) issuing one or more official inspection certificates in accordance with § 800.160.

(c) *Warehouseman's sample-lot inspection service.* This inspection service consists of (1) the sampling with an approved diverter-type mechanical sampler of an identified lot of grain by a warehouse sampler; (2) the submitting of the sample and a completed sampling report on a form approved by the Service, by or for the applicant, to official personnel; (3) the inspecting of the grain in the sample by official personnel for official grade and grading factors, or for official factors, or for official criteria, or any combination thereof in accordance with the regulations, the instructions, and the request for inspection; and (4) the issuing by official personnel of one or more official inspection certificates in accordance with § 800.160.

(d) *Submitted sample inspection service.* This inspection service consists of (1) the submitting of a clearly identified sample of grain by or for an applicant to any agency or field office; (2) the inspecting of the grain in the sample by official personnel for official grade and grading factors, or for official factors, or for official criteria, or any combination thereof, in accordance with the regulations, the instructions, and the request for inspection; and (3) issuing by official personnel of one or more official certificates in accordance with § 800.160.

(e) *Official sampling service.* This service consists of official personnel (1) sampling an identified lot of grain; (2) dividing the sample into two or more representative portions, as requested by the applicant, and sealing the portions in a manner prescribed in instructions issued by the Service; (3) issuing an official certificate in accordance with § 800.160; and (4) forwarding the portions of the sample, together with a copy of the certificate, in accordance with the request of the applicant.

(f) *Official stowage examination service (for fitness to load or store grain).* (1) *Procedure.* This service consists of official personnel (i) visually determining whether an identified container is clean, dry, and free of odor and infestation and is otherwise suitable to receive or store grain, insofar as the suitability may affect the

quality or condition of the grain and (ii) issuing an official certificate in accordance with § 800.160.

(2) *Requirements and restrictions.* An official stowage examination may be obtained as a separate kind of official inspection service, or it may be obtained in conjunction with one or more other kinds of official inspection service. An official stowage examination and approval of the stowage space are required for an official sample-lot inspection service on (i) export grain and (ii) other lots of outbound grain that are officially sampled, inspected, or Class X weighed at the time of loading.

§ 800.77 Kinds of official weighing services.

(a) *General.* The kinds of official weighing services available under the Act and the basis of performing the services are shown in paragraphs (b) through (e) of this § 800.77.

(b) *Official Class X weighing service.* (1) *Procedure.* This service consists of official personnel (i) physically performing or completely supervising the loading or the unloading, as applicable, of an identified lot of bulk or sacked grain; (ii) physically weighing or completely supervising the weighing of the grain; and (iii) issuing an official weight certificate in accordance with § 800.160.

(2) *Requirements and restrictions.* Official personnel must completely supervise the loading, unloading, and weighing of the grain, and the weighing must be physically performed by approved weighers or official personnel.

(c) *Official Class Y weighing service.* This service consists of (1) the physical weighing by approved weighers of each identified lot of bulk or sacked grain; (2) the recording by approved weighers of the weight information and the forwarding by approved weighers of the weight information to official personnel; (3) the partial or complete supervision, as specified by the Service by official personnel, of the loading or the unloading, the weighing, and the recording and forwarding of the weight information; and (4) the issuing by official personnel of a weight certificate for each identified lot of bulk or sacked grain weighed by the approved weighers, in accordance with § 800.160.

(d) *Checkweighing service (sacked grain).* This service consists of official personnel (1) physically obtaining or completely supervising the obtaining of an official weight sample; (2) physically weighing or completely supervising the physical weighing of the official weight sample; (3) determining the estimated total gross, tare, and net weights, or the estimated average gross or net weight per filled sack, in

accordance with the regulations, the instructions, and the request by the applicant; and (4) issuing an official certificate in accordance with § 800.160.

(e) *Checkloading service (sacked grain).* This service consists of official personnel (1) performing a stowage examination service in accordance with paragraph (f) of this § 800.77; (2) counting or computing the number of filled sacks of grain as they are loaded aboard an identified carrier; (3) if practicable, affixing or completely supervising the affixing of door seals to the railroad car or other carrier; and (4) issuing an official certificate in accordance with § 800.160.

(f) *Stowage examination service (for fitness to carry grain).* (1) *Procedure.* This service consists of official personnel (i) visually determining whether an identified carrier is suitable for carrying grain, insofar as the suitability may affect the quantity of grain and (ii) issuing an official certificate in accordance with § 800.160(b)(25).

(2) *Requirements and restrictions.* A stowage examination may be obtained as a separate kind of official weighing service, or it may be obtained in conjunction with one or more other kinds of official weighing service. An official stowage examination and approval of the stowage space are required for an official Class X weighing service on (i) export grain and (ii) other lots of outbound grain that are officially sampled, inspected, or Class X weighed at the time of loading.

§ 800.78 Prohibited services; restricted services.

(a) *Prohibited services.* The following services shall not be performed by or obtained from agencies or field offices: The inspection or weighing of grain on the basis of (1) unofficial standards, (2) unofficial procedures, (3) unofficial factors, or (4) unofficial criteria.

(b) *Restricted services.* (1) *Not standardized grain.* If an inspection or weighing service is requested under the Act on a sample or a lot of grain that does not meet the requirements for that grain as set forth in the Official U.S. Standards for Grain, an official inspection certificate showing the statement "Not Standardized Grain" shall be issued by official personnel in accordance with instructions issued by the Service.

(2) *Grain screenings.* The inspection or weighing of grain screenings may be obtained from field offices in accordance with instructions issued by the Service and may be available from agencies.

§ 800.79 [Reserved]

INSPECTION METHODS AND PROCEDURES

§ 800.80 Objective of inspection services.

(a) *Objective.* The objective of the official inspection service is to provide, upon request, impartial and accurate information about grain quality and grain containers in a timely and efficient manner so that grain may be marketed in an orderly and timely manner and trading in grain may be facilitated.

(b) *Definitions.* For the purpose of this § 800.80, unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given them below.

(1) *Impartial information.* Inspection information shall be considered "impartial" if the information is developed independently by official personnel or, if it is not, the inspection certificate clearly indicates that fact.

(2) *Accurate information.* Inspection information shall be considered "accurate" if the information (i) is repeatable within expected variations set forth in instructions issued by the Service; (ii) is developed in accordance with the methods and procedures prescribed in § 800.81; and (iii) truly reflects the quality of the grain, or the fitness of the container, at the time the information was developed.

§ 800.81 Methods and order of performing official inspection services.

(a) *Methods.* (1) *General.* All sampling, testing, grading, stowage examination, and other official inspection services performed under the Act shall be performed in accordance with the methods and procedures prescribed in the regulations and instructions issued by, or approved in specific cases by, the Service.

(2) *Lot inspection services.* Determinations that are based on a sampling and examination of the grain in a lot shall be based on a proportionate or random sampling and examination of the grain in the entire lot, except as provided in § 800.85(f) or (g), and an accurate analysis of the grain in the samples.

(3) *Stowage examination service.* Determinations that are based on an examination of a carrier or container, or a stowage area in a carrier or container, shall be based on a thorough and accurate examination of the carrier, container, or stowage area in accordance with such procedures as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(4) *Submitted sample inspection service.* The analysis of the grain in a submitted sample shall be of sufficient size as prescribed in instructions issued by the Service, to enable official

personnel to perform an accurate analysis for complete grade. If an accurate analysis cannot be made because of an inadequate sample size or other conditions, the inspection request shall be dismissed, or a partial inspection certificate shall be issued, in accordance with instructions issued by the Service.

(5) *Reinspection and appeal inspection service.* Determinations in a reinspection service, a field appeal inspection service, or a Board appeal inspection service shall be based on an independent and accurate redetermination of the official grade information, the official factor information, or other information consistent with the scope of the original inspection service. The results of previous determinations shall not be used in making and recording the initial redetermination in a reinspection service, field appeal inspection service, or Board appeal inspection service but shall be considered in verifying the accuracy of the redetermination and shall be used in applying the statistical tolerances provided for in §§ 800.129 and 800.139.

(b) *Order of service.* Official inspection services shall be performed insofar as consistent with good management in the order in which the request for the services is received. Precedence shall be given when necessary for the mandatory inspections specified in Section 5 of the Act. Precedence may be given to other kinds of inspection services under the Act with the approval of the Service.

(c) *Recording receipt of documents.* Each document submitted by or for an applicant for inspection service shall be promptly stamped or similarly marked by the agency, field office, or Board of Appeals and Review, as applicable, to show the date the document was received.

(d) *Conflicts of interest.* No official personnel shall perform or participate in performing an official inspection service on grain, or on a grain container, in which they have a direct or indirect financial interest. (For other restrictions on official personnel, see §§ 800.187 and 800.188.)

(e) *Certificate required.* As required by § 800.160, an official inspection certificate shall be issued for each official inspection service performed under the Act.

§ 800.82 Sample requirements; general.

(a) *Samples for lot inspection services.* (1) *Original lot inspection service.* To be considered official for original lot inspection purposes, a sample must be (i) physically obtained from the grain in the lot that is represented by the sample; (ii) obtained by a licensed or authorized person; (iii) representative of the grain in the lot, as specified in paragraph (b) of this

§ 800.82; (iv) protected from manipulation, substitution, and improper or careless handling, as specified in paragraph (c) of this § 800.82; and (v) obtained within prescribed geographical boundaries, as specified in paragraph (d) of this § 800.82. Warehouseman's samples, submitted samples, and other samples that do not meet the requirements of this paragraph (a) are not considered official samples.

(2) *Lot reinspection service performed by agency.* To be considered official for a lot reinspection service performed by an agency, a sample, including an official file sample, must (i) be obtained by official personnel and (ii) otherwise meet the requirements of clauses (i) through (v) in subparagraph (1) of this paragraph (a).

(3) *Lot reinspection service and appeal lot inspection service performed by the Service.* To be considered official for a lot reinspection service, a field appeal lot inspection service, or a Board appeal lot inspection service performed by the Service, a sample, other than an official file sample, must (i) be obtained by an authorized employee of the Service or a licensed sampler, other than an employee of an agency and (ii) otherwise meet the requirements of clauses (i) through (v) in subparagraph (1) of this paragraph (a).

(4) *Mandatory inspections.* Samples for the inspections specified in Section 5 of the Act may not be obtained by warehouse samplers or any person other than official personnel.

(b) *Representative sample.* No sample shall be deemed representative of a lot of grain unless the sample (1) is of the size prescribed in instructions issued by the Service and (2) has been obtained, handled, and submitted in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service. A sample which fails to meet the requirements of this paragraph (b) may, upon request of the applicant, be inspected as a submitted sample, in accordance with § 800.76(d).

(c) *Protecting samples.* (1) *Official samples.* Official agencies, field offices, the Board of Appeals and Review, official personnel, and other persons employed by or assigned to official agencies, field offices, or the Board of Appeals and Review shall protect official samples from manipulation, substitution, and improper or careless handling which might deprive the samples of their representativeness from the time of sampling until the inspection services are completed and the file samples have been discarded.

(2) *Warehouseman's samples and submitted samples.* Official agencies; field offices; the board of Appeals and Review; official personnel; and other

persons employed by or assigned to official agencies, field offices, or the Board of Appeals and Review shall protect warehouseman's samples and submitted samples from manipulation, substitution, or improper or careless handling which might change the physical or chemical properties of the grain in the samples from the time the samples are received by the official agencies, field offices, or the Board of Appeals and Review until the inspection services are completed and the file samples have been discarded.

(d) *Restriction on official sampling.* No official agency or field office shall perform an original lot inspection service or a lot reinspection service on an official sample or a warehouseman's sample unless the grain from which the sample was obtained was physically located within the area of responsibility assigned to the agency or field office at the time the sample was obtained. Upon request and the showing of need, the Administrator may grant an exception to this rule on a case-by-case basis. Information on the exceptions may be obtained in accordance with § 800.10.

(e) *Disposition of samples.* (1) *Excess grain.* In sampling grain in lots, any grain that is obtained in excess of the quantity (i) specified in the instructions or approved in specific cases by the service for official samples for the requested inspection service, (ii) needed for the file samples prescribed by § 800.154(b)(4), and (iii) needed for samples requested by interested persons shall be returned to the lot from which the excess grain was obtained or to the owner of the lot or to his designated agent.

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

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

(ii) Samples obtained by, for, or submitted to agencies may be returned, upon request of the applicant, to the applicant or to the applicant's order at the applicant's expense, or may be sold, donated, destroyed, or otherwise disposed of by such agencies. A complete and accurate record of the disposition shall be maintained by each agency as prescribed in § 800.150(c).

(iii) Samples obtained by, for, or submitted to field offices or the Board of Appeals and Review shall become the property of the Service and may be disposed of in accordance with procedures prescribed in instructions issued by the Service.

§ 800.83 Sampling provisions by level of service.

(a) *Original inspection services.* (1) *Lot inspection services.* Each original

inspection service to determine the kind, class, grade, quality, or condition of a lot of grain shall be made on the basis of one or more samples obtained from the grain in the lot. In the case of an official sample-lot inspection service, the samples must be obtained and sent to the appropriate agency or field office by official personnel. In the case of a warehouseman's sample-lot inspection service, the samples must be obtained and sent to the appropriate agency or field office by a warehouse sampler.

(2) *Submitted sample services.* Each original submitted sample inspection service to determine the kind, class, grade, quality, or condition of a sample of grain shall be made on the basis of the grain in the sample as submitted for inspection.

(b) *Reinspection services and field appeal inspection services.* (1) *Lot inspection services.* Each reinspection service and each field appeal inspection service to determine the kind, type, class, quality, or condition of the grain in a lot shall be made on the basis of the most representative official samples available or that can be obtained at the time of the reinspection service or the field appeal inspection service. In performing reinspection and appeal inspection services, (i) a sample obtained with a probe shall generally be considered the most timely and the most representative with respect to heating, musty, sour, insect infestation, and other condition and odor factors and (ii) a sample obtained with an approved diverter-type mechanical sampler or with a pelican sampler shall generally be considered the most representative with respect to quality factors and official criteria. The determination as to which samples shall be deemed most representative shall be made by the official personnel performing the reinspection service or the field appeal inspection service if it is practicable to obtain new samples and new samples would generally be deemed more representative of the grain.

(2) *Warehouseman's sample services.* Each reinspection service and each field appeal inspection service to determine the kind, class, grade, quality, or condition of the grain in a warehouseman's sample shall be made on the basis of the relevant official file sample.

(3) *Submitted sample services.* Each reinspection service and each field appeal inspection service to determine the kind, class, grade, quality, or condition of the grain in a submitted sample shall be made on the basis of the relevant official file sample.

(c) *Board appeal inspection services.* Each Board appeal inspection service performed to determine the kind, class, grade, quality, or condition of

the grain in a lot, or a warehouseman's sample, or a submitted sample shall be made on the basis of the relevant file samples.

(d) *Use of file samples.* (1) *Requirements for use.* File samples that are retained by agencies and field offices in accordance with the regulations and the procedures prescribed in instructions, or approved in specific cases by the Service, may be deemed representative for reinspection services, field appeal inspection services, and Board appeal inspection services, subject to the following conditions: (i) the file samples must have remained at all times in the custody and control of the agency or the field office that performed the inspection service; and (ii) the official personnel who performed the inspection service in question, and the official personnel who are to perform the reinspection service, the field appeal inspection service, or the Board appeal inspection service must believe the samples were representative of the grain at the time of the inspection service in question and that the quality or condition of the grain in the samples has not changed since the time of the inspection service in question.

(2) *Certificate statement.* When a reinspection service, a field appeal inspection service, or a Board appeal inspection service is based, in whole or in part, on a file sample, the certificate for the reinspection service, the field appeal inspection service, and the Board appeal inspection service shall show the statement "Results based on official file sample."

§ 800.84 Sampling provisions by kind of movement.

(a) *"IN" movements.* (1) *Bulk cargo shipments.* *Note:* For effective date, see paragraph (e) of this § 800.84. Except as may be approved by the Administrator on a shipment-by-shipment basis in an emergency, each lot inspection for official grade, official factor, or official criteria on an "IN" or an enroute cargo shipment of bulk grain (see § 800.16(b)(8)) shall be based on samples obtained from the grain (i) as the grain is being unloaded from the carrier, (ii) immediately after the initial elevation and as near as necessary to initial elevation to obtain a representative sample and to protect the grain flow, and (iii) by means of diverter-type mechanical samplers approved by and operated in accordance with instructions issued by the Service: *Provided,* That nothing in this subparagraph (a)(1) shall preclude the applicant from requesting that official personnel determine the condition, prior to unloading, on the basis of a probe sample. For the purpose of this subparagraph (a)(1), the condition shall be deemed to include only the

factors heating, musty, sour, and weevily. Information on exceptions to these provisions may be obtained in accordance with § 800.10.

(2) *Other movements.* Each lot inspection on an "IN" or an enroute movement of grain (see § 800.16(b)(8)) other than a bulk cargo movement shall be based on official samples obtained while the grain is at rest in the container, or during unloading, or after unloading, and immediately after the initial elevation, in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *"OUT" movements (export and cargo movements).* (1) *Bulk grain.* *Note:* For effective date, see paragraph (e) of this § 800.84. Except as may be approved by the Administrator on a shipment-by-shipment basis in an emergency, each lot inspection for official grade, official factor, or official criteria on an export shipment or an "OUT" cargo shipment of bulk grain (see § 800.16(b)(8)) shall be based on samples obtained (i) from the grain 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 (unless representative samples can be obtained before the grain reaches the final loading spout); and (iii) by means of diverter-type mechanical samplers approved by and operated in accordance with instructions issued by the Service: *Provided,* That nothing in this subparagraph (b)(1) shall preclude the applicant from requesting that official personnel determine the condition on cargo shipments (except ships) after loading, on the basis of a probe sample. For the purpose of this subparagraph (b)(1), condition shall be deemed to include only the factors heating, musty, sour, and weevily. An official certificate shall be issued in accordance with § 800.160 showing the results of the condition examination. However, the certificate for the condition examination shall not supersede any outstanding certificate. Information on exceptions to these provisions may be obtained in accordance with § 800.10.

(2) *Sacked grain.* Except as may be approved by the Administrator on a shipment-by-shipment basis in an emergency, each lot of sacked export and sacked cargo grain shall be sampled in accordance with the provisions of § 800.18 and instructions issued by, or approved in specific cases by, the Service.

(c) *"OUT" movements (other than export and cargo movements).* Each lot inspection on an "OUT" movement of grain (see § 800.16(b)(8)) other than export and cargo movements shall be based on official samples ob-

tained (1) from the grain as the grain is being loaded aboard a carrier or (2) while the grain is at rest in the carrier, in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(d) *"LOCAL" inspection.* Each lot inspection on a "LOCAL" movement of grain (see § 800.161(b)(8)) shall be based on official samples obtained while the grain is at rest in the container, or during unloading, or while the grain is being transferred, in accordance with procedures prescribed in instructions issued by, or otherwise approved in specific cases by, the Service.

(e) *Time requirements for installing samplers.* The provision of subparagraphs (a)(1) and (b)(1) of this § 800.84 will require the installation or relocation by certain elevators of diverter-type mechanical samplers. Although provision is made for granting exceptions to the requirement on an emergency basis, each elevator that desires official inspection services should review its operations and, as needed, install or relocate diverter-type mechanical samplers as soon as practicable. Where installation or relocation is required, the final date for submitting plans to the service for the installation and relocation of the samplers shall be January 1, 1980, and the final date for completing the installation or relocation shall be January 1, 1981.

§ 800.85 Inspection of grain in land carriers and barges in single lots.

(a) *General.* The lot inspection of bulk or sacked grain loaded aboard, or being loaded aboard, or discharged from a single truck, trailer, truck/trailer combination, railroad car, river barge (including barges designed to be loaded aboard oceangoing ships or oceangoing barges), or bay boats, and grain in a bin, warehouse, or similar container (excluding ships and oceangoing barges) shall be conducted in accordance with the provisions in this § 800.85 and such procedures as may be prescribed in instructions issued by, or approved in specific cases, by the Service.

(b) *Single and multiple grade procedure.* (1) *Single grade.* If the grain in a container is offered for official 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 (b), condition shall be deemed to include only the factors heating, musty, and sour.

(2) *Multiple grade.* If the grain in a container is offered for official inspection as one lot and the grain is found to be not uniform in condition by reason of the presence therein of portions of grain which are heating,

musty, or sour, the grain in each portion shall 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 container, and the grade of the grain in each portion, in accordance with procedures prescribed in the instructions issued by, or approved in specific cases by, the Service.

(3) *Weevily grade.* If any portion of the grain in a lot is found to be "weevily," as defined in the Official U.S. Standards for Grain, the entire lot shall be graded "weevily."

(c) *One certificate per container; exceptions.* Except as provided in this paragraph (c), one official certificate shall be issued for the inspection of the grain in each truck, trailer, railroad car, barge, or similarly sized carrier or container. The requirements of this paragraph (c) shall not be applicable to (1) grain inspected in a combined lot under § 800.86 or (2) grain inspected under paragraph (d) of this § 800.85.

(d) *Bulkhead lots.* If the grain in a carrier is offered for inspection service 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 as a separate lot in accordance with paragraphs (a) and (b) of this § 800.85. 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 grades of the grain in the lot in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(e) *Bottom not sampled.* If bulk grain offered for inspection service is at rest in a container and is fully accessible for sampling in an approved manner, except that the grain is in such a condition or of such depth that the bottom of the container is not reached with each probe, the grain shall be sampled as thoroughly as possible with a probe approved by the Service. The grain in the resulting samples shall be inspected, graded, and certificated in accordance with the provisions of paragraphs (a) through (d) of this § 800.85, except that each certificate shall show the following completed statement: "Top ——— feet sampled. Bottom not sampled." A "Bottom not sampled" inspection does not meet the mandatory inspection requirements of Section 5 of the Act.

(f) *Partial inspection—heavily loaded.* (1) *General.* If bulk or sacked grain is (i) offered for inspection at rest in a container and is loaded in

such a manner that it is possible to secure only door probe, shallow probe, door-sack probe, or surface-sack probe samples of, the lot or (ii) the grain is not trimmed or does not otherwise have a reasonably level surface, the container shall be considered to be "heavily loaded." If the request is for the inspection of an "IN" or "LOCAL" movement of grain, a partial inspection shall be made. If the request is for the inspection of an "OUT" movement of grain, the request shall be dismissed in accordance with § 800.48(a)(4).

(2) *Certification procedure.* If a partial inspection is made, the grain shall be sampled as thoroughly as possible with a probe approved by the Service and shall be inspected, graded, and certificated in accordance with the provisions of paragraphs (a) through (d) of this § 800.85, except that a "partial inspection—heavily loaded" certificate shall be issued. The certificate shall show the statement "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," "shallow probe," "door-sack probe," or "surface-sack probe" samples, as appropriate. In the case of sacked grain, the approximate number of sacks accessible for sampling shall be stated.

(3) *Reinspection and appeal inspection procedure.* A request for a reinspection service or a field appeal inspection service on grain in a container that is certificated as "partial inspection—heavily loaded" shall be dismissed in accordance with § 800.48(a)(4) unless the grain is found to be fully accessible for sampling.

(4) *Definitions.* For the purpose of this paragraph (f), the following terms shall be construed as shown below:

(i) *Door-probe sample.* A sample taken with an approved bulk-grain 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 only in the grain in the vicinity of the tailgate or hatch of the truck or trailer, the door or hatch of the railroad car, the hatch of the barge, or in a similarly restricted opening or area in the carrier in which the grain is located.

(ii) *Shallow-probe sample.* A sample taken with an approved bulk grain 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 issued by the Service.

(iii) *Door-sack probe sample.* A sample taken with an approved sack grain probe from a lot of sacked grain that is loaded so close to the top of the

carrier that it is possible to insert the probe only in the grain in the sacks in the vicinity of the tailgate or hatch of the truck or trailer, the door or hatch of the railroad car, the hatch of the barge, or in a similarly restricted opening or area in the carrier in which the sacks are located.

(iv) *Surface-sack probe sample.* A sample taken with an approved sack-grain probe from a lot of sacked grain that is so loaded or placed that it is possible to insert the probe only in the grain in the sacks in the upper portion, sides, or ends of the lot.

(5) *Restriction.* No "partial inspection—heavily loaded" inspection certificate shall be issued for any inspection other than the inspections described in this paragraph (f) and §§ 800.86(i)(2) and 800.87(i)(3).

(g) *Part-lots.* (1) *General.* If a portion of the grain in a container is removed, the grain that is removed and the grain remaining in the container shall, for the purpose of the regulations, be considered separate lots. If an inspection service is requested on either portion, the grain shall be sampled, inspected, graded, and certificated in accordance with paragraphs (a) through (e) of this § 800.85, except that a "part-lot" inspection certificate shall be issued.

(2) *Grain remaining in carrier.* The certificate for the grain remaining in the carrier shall show (i) the following completed statement "Partly unloaded; results based on portion remaining in (show carrier identification)," (ii) the term "Part-lot" following the quantity information, (iii) the identification of the carrier or container, and (iv) the estimated size and location of the part-lot substantially as follows: "Est. ¼ Car, Brake End."

(3) *Grain unloaded from carrier.* If the grain is sampled by official personnel as the grain is unloaded from the carrier, the certificate for the grain that is unloaded shall show the completed statements (i) "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 as the grain is unloaded from the carrier or container, 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 ——" as applicable; 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 a part of a compartmented railroad car shall, in the absence of readily visible markings on the car, be stated in terms of the location of the grain in a compart-

ment or bay, with the first bay at the brake end of the car being identified as B-1, and the remaining compartments or bays being numbered consecutively towards the no-brake end of the car.

§ 800.86 Inspection of grain in combined lots.

(a) *General.* The inspection for grade of bulk or sacked grain loaded aboard, or being loaded aboard, or discharged from two or more carriers as a combined lot shall be in accordance with the provisions of this § 800.86 and such procedures as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *Definitions.* For purposes of this § 800.86, unless the context requires otherwise, the following terms shall be construed as shown below:

(1) *Combined lot.* Grain loaded aboard, or being loaded aboard, or discharged from two or more carriers (including barges designed for loading aboard a ship) and grain in two or more lots loaded aboard a ship.

(2) *Contract grade (contract quality).* The official grade, official factors, and official criteria specified in the sale or purchase confirmation or sale or purchase contract for the grain; or if there is no sale or purchase confirmation or sale or purchase contract, the official grade, official factors, and official criteria specified by the applicant for inspection.

(3) *Equivalent of one or more grades.* A quality difference involving special grades, dockage, official factors, and official criteria that is deemed equal by the Service to a difference of one or more grades as prescribed in instructions issued by, or approved in specific cases by, the Service.

(4) *Material portion.* A portion that is considered significant under a sampling plan prescribed in instructions issued by, or approved in specific cases by, the Service. If an applicant has been informed by official personnel or otherwise knows the quality of grain prior to the loading of the grain in a combined lot, any portion of grain that is offgrade by one or more grades or the equivalent of one or more grades shall be deemed to be a material portion.

(5) *Reasonably continuous operation.* In a given location, a loading or unloading operation that does not include inactive intervals in excess of 88 consecutive hours.

(6) *Uniform in quality.* A lot of grain in which no material portion is offgrade by one or more grades or the equivalent of one or more grades.

(c) *Application procedure.* (a) *For inspection during loading, or unloading, or at rest.* Applications for the inspection of grain in a combined lot that is to be inspected during loading, or un-

loading, or at rest shall (i) be filed in accordance with § 800.116(d); (ii) show the estimated quantity of grain that is to be certificated as one lot; (iii) show the contract grade for the grain; (iv) identify each truck, trailer, railroad car, barge, or other carrier in which the grain is being loaded or from which the grain is being unloaded.

(2) *For inspection recertification service.* Applications for the recertification of grain in lots that have been inspected and certificated as single lots shall (i) be filed within a reasonable time, not to exceed 2 business days after the latest inspection date of the individual lots and (ii) show the information specified in subparagraph (1) of this paragraph (c). For recertification provisions, see subparagraph (i) (5) of this § 800.86.

(d) *Inspection procedure; general.* (1) *Inspection during loading, or unloading, or at rest.* Grain in land carriers and barges that is to be inspected as a combined lot during loading, or during unloading, or at rest shall be inspected in accordance with the following procedure: (i) the grain must be sampled in one location in one reasonably continuous operation; (ii) representative samples must be obtained from the grain in each truck, trailer, railroad car, barge, or other carrier, unless otherwise specified in instructions issued by, or approved in specific cases by, the Service; and (iii) the grain loaded into, or unloaded from, or at rest in each carrier or container must be inspected and graded in accordance with the procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(2) *Inspection recertification service.* Grain that has been inspected and certificated as single lots may be recertificated as a combined lot in accordance with the following procedure: (i) the grain in each component lot must have been sampled in one location in one reasonably continuous operation; (ii) the originals of the official inspection certificates issued for the component lots must be surrendered to the appropriate agency or field office; (iii) representative file samples of the component lots must be available; (iv) the grain in the component lots must be of one grade and quality; and (v) the official personnel who issued the inspection certificates for the component lots and the official personnel who issued the inspection certificates for the combined lot must believe that the samples that were used as a basis for the component inspections were representative of the grain at the time of the inspections, that the quality or condition of the grain in the samples has not changed since the time of the component inspections, and that the quality or condition of the grain meets the uniformity requirements of the in-

spection plan for grain in combined lots.

(e) *Weighted average.* The official factor information and official criteria information shown on certificates for grain in a combined lot shall, subject to the provisions of subparagraphs (f) through (h) of this § 800.86, be based on the weighted averages of the analysis of the sublots in the lot and shall be determined in accordance with instructions issued by, or approved in specific cases by, the Service.

(f) *"Weevily" grain.* If the grain in a combined lot is offered for inspection as it is being loaded aboard the carriers for the lot and the grain, or a portion of the grain, is found to grade "weevily" because of insect infestation, the applicant shall be promptly notified and may exercise those options specified in instructions issued by the Service.

(g) *Grain uniform in quality.* The grain in each combined lot offered for inspection shall be sampled in a continuous manner and the resulting samples examined for uniformity of quality. If the grain in the samples is found to be uniform in quality and the grain in the carriers is loaded aboard or is unloaded from the carriers in a reasonably continuous operation, the grain in the lot shall be inspected, graded, and certificated as one lot. (The requirements of this paragraph (g) and paragraph (d) of this § 800.86 with respect to reasonably continuous loading or unloading shall not apply to grain which is at rest in carriers when the grain is offered for inspection.)

(h) *Grain not uniform in quality.* If the grain in 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 the grain which is loaded or unloaded at different times, shall be sampled, inspected, graded, and certificated as separate lots.

(i) *Special certification procedures.*
(1) *Grain not uniform in quality.* If the grain in a combined lot is found to be not uniform in quality under paragraph (h) of this § 800.86, the inspection certificate for each portion of different quality shall show (i) the grade, identification, and approximate quantity of the grain and (ii) such other information as may be required by the instructions issued by, or approved in specific cases by, the Service.

(2) *Partial inspection.* If an inbound movement of bulk or sacked grain is offered for inspection as a combined lot as the grain is at rest in the carriers and the grain is not fully accessible for sampling in a manner prescribed in instructions issued by the Service, a "partial inspection—heavily loaded" certificate shall be issued. Such certification shall be deemed not to meet the

mandatory inspection requirements of Section 5 of the Act. (If a partial inspection service is requested on an outbound movement of grain in a combined lot, the request shall be dismissed in accordance with § 800.48(a)(4) on the ground a representative sample cannot be obtained.)

(3) *Official mark.* If the grain in a combined lot is inspected for grade as the grain is being loaded aboard the carriers for the lot, upon request by the applicant, the following mark shall be shown on the inspection certificate: "Loaded under continuous official inspection" or, when applicable, "Loaded under continuous official inspection and weighing." (See § 800.57.)

(4) *Combined-lot certification; general.* Each 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 lot" shall be shown on the inspection certificate in the space provided for remarks. The identification and the seal information, if any, 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) *Inspection recertification service.* (For provisions on applying for an inspection recertification service, see subparagraph (c)(2) of this § 800.86.) If the request for a combined-lot inspection service is filed after the grain in the component lots has been inspected and certificated, the combined-lot inspection certificate shall show:

(i) The date of inspection of the grain in the combined lot (if the component 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 inspection certificates that are to be superseded;

(iii) The location of the grain, if at rest, or the names or warehouses 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 as follows: "This Combined-Lot certificate supersedes certificates Nos. _____, dated _____." (The numbers shown in the statement shall in all the cases include the lettered prefix); and

(vi) If, at the time of issuing the combined-lot inspection certificate, the superseded certificates are not in the custody of the applicable 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 applicable agency or field office, the superseded certificates shall be marked "Void" in a clear and conspicuous manner. Official personnel shall exercise such other precautions as may be found necessary to prevent the fraudulent or unauthorized use of the superseded certificates.

(j) *Further combining.* After a combined-lot inspection certificate has been issued in accordance with this § 800.86, there shall be no further combining and no dividing of the certificate at a later date.

(k) *Limitation.* No combined-lot inspection certificate shall be issued (1) for any inspection service other than as described in this § 800.86 or (2) which shows a quantity of grain in excess of the quantity in the individual lots.

(l) *Reinspection service and appeal inspection service on combined lots.* A reinspection service or an appeal inspection service may be obtained on a combined lot or one or more sublots in a combined lot in accordance with §§ 800.125 through 800.130 and 800.135 through 800.140.

(m) *Other certification requirements.* For additional provisions governing the certification of grain in combined lots, see § 800.160 through 800.162.

§ 800.87 Inspection of shiplot grain in single lots.

(a) *General.* The inspection for grade of bulk or sacked grain loaded aboard, or being loaded aboard, or unloaded from a ship as a single lot shall be in accordance with the provisions of this § 800.87 and such procedures as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *Definitions.* For the purposes of this § 800.87 unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given for them in § 800.86(b):

Combined lot
Contract grade (contract quality)
Equivalent of one or more grades
Material portion
Reasonably continuous operation
Uniform in quality

The term "shiplot grain" shall mean grain loaded aboard, or being loaded aboard, or discharged from oceangoing vessels, including barges, lake vessels, and other vessels of similar or large capacity.

(c) *Application procedure.* Applications for the inspection of shiplot

grain that is to be inspected during loading, or unloading, or at rest as a single lot shall (1) be filed in accordance with § 800.116(d); (2) show the estimated quantity of grain that is to be certificated as one lot; (3) show the contract grade for the grain; and (4) identify the carrier and the stowage area in which the grain is being loaded, or from which the grain is being unloaded, or in which the grain is at rest.

(d) *Inspection procedure; general.* Shipment grain that is to be inspected as a single lot during loading, or during unloading, or at rest shall be inspected in accordance with the following procedure: (1) the grain must be sampled in one inspection location in one reasonably continuous operation; (2) representative samples must be obtained from the grain in each portion that is submitted for inspection as a lot unless otherwise specified in instructions issued by, or approved in specific cases by, the Service; and (3) the grain loaded into or unloaded from, or at rest in each lot must be inspected and graded in accordance with the procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(e) *Weighted average.* The official factor information and official criteria information shown on certificates for shipment grain in single lots shall, subject to the provisions of paragraphs (f) through (h) of this § 800.87, be based on the weighted averages of the analysis of the sublots in the single lots, and shall be determined in accordance with instructions issued by, or approved in specific cases by, the Service.

(f) *"Weevily grain."* (1) *Available Options.* If the grain in a single shipment is offered for inspection as it is being loaded aboard a ship or other carrier and the grain, or a portion of the grain, is found to grade "weevily" because of insect infestation, the applicant shall be promptly notified and have the option of (i) unloading that portion of grain designated "weevily" from the lot and an additional amount of other grain in common stowage with the weevily grain as prescribed in instructions issued by the Service; or (ii) completing the loading and treating the grain in the lot, or portion of the lot, in accordance with instructions issued by the Service; or (iii) treating the grain which graded "weevily" for the purpose of destroying the insects, subject to subsequent examination by official personnel, after a time interval prescribed in the instructions issued by the Service; or (iv) continue loading without treating the grain that graded "weevily," in which event all of the weevily grain in the lot and all other grain in common stowage areas

coming into physical contact with the weevily grain shall be certificated as "weevily," in accordance with instructions issued by the Service.

(2) *With treatment.* If the grain is treated with a fumigant(i) in accordance with instructions issued by the Service and (ii) under the supervision of official personnel, the sampling, inspection, grading, and certification of the lot shall continue in the same manner as though the "weevily" condition did not exist.

(g) *Single lot inspection; grain uniform in quality.* The grain in each shipment offered for inspection shall be sampled in a continuous manner and the resulting samples examined for uniformity of quality. If the grain in the samples is found to be uniform in quality and the grain in the lot is loaded aboard or is unloaded from a ship or other carrier in a reasonably continuous operation, the grain in the lot shall be inspected, graded, and certificated as one lot. (The requirements of this paragraph (g) and paragraph (d) of this § 800.87 with respect to reasonably continuous loading or unloading shall not apply to grain which is at rest in a ship or other carrier when the grain is offered for inspection.)

(h) *Single lot inspection; grain not uniform in quality.* If the grain in a shipment 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 the grain which is loaded or unloaded at different times, shall be sampled, inspected, graded, and certificated as separate lots.

(i) *Special certification procedures.* (1) *Single-lot inspection; grain not uniform in quality.* If the grain in a single shipment is found to be not uniform in quality under paragraph (h) of this § 800.87, the inspection certificate for each different portion shall show (i) a statement that the grain has been loaded on board with grain of other quality; (ii) the grade, location, or other identification and approximate quantity of the grain in the portions; and (iii) such other information as may be required by the regulations and the instructions issued by, or approved in specific cases by, the Service. (The requirements of clause (i) shall not apply to grain that is inspected as it is unloaded from a ship or to portions that are loaded in separate stowage space.)

(2) *Common stowage.* (1) *Without separation.* If the grain in a shipment is offered for inspection as it is loaded aboard a ship and is loaded without separation in a stowage area with other grain or another commodity, the inspection certificate for the grain in each lot in the stowage area 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.* If separations are laid between the adjacent lots, the 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 requirements of this subparagraph (i)(2) shall not be applicable to the first lot in the stowage area unless a second lot has been loaded, in whole or in part, in the stowage area prior to the issuance of the official inspection certificate for the first lot.

(3) *Partial inspection.* If an inbound movement of bulk or sacked grain is offered for inspection as a single lot as the grain is at rest in a ship and the grain is not fully accessible for sampling in a manner prescribed in instructions issued by the Service, a "partial inspection—heavily loaded" certificate shall be issued. A "partial inspection" certification (i) shall be deemed not to meet the mandatory inspection requirements of Section 5 of the Act and (ii) if requested on an outbound movement of shipment grain, the requests shall be dismissed in accordance with § 800.48(a)(4).

(4) *Part-lot.* If a part of a lot of grain in an inbound carrier or container is removed and a part is left in the carrier or container, the grain shall be inspected and certificated in accordance with the provisions of § 800.85(g).

(5) *Official mark.* If the grain in a single shipment is inspected for grade as the grain is being loaded aboard a ship or other carrier or container, upon request by the applicant, the following mark shall be shown on the inspection certificate: "Loaded under continuous official inspection." (See § 800.57.)

(j) *Reinspection service and appeal inspection service on a shipment.* A reinspection service or an appeal inspection service may be obtained on a shipment or one or more sublots in a shipment in accordance with §§ 800.125 through 800.130 and 800.135 through 800.140.

(k) *Other certification requirements.* For additional provisions governing the certification of grain in a shipment, see §§ 800.160 through 800.162. For provisions for the issuance of divided-lot inspection certificates, see § 800.163.

§ 800.88 New inspection.

(a) *Identity lost.* If an original inspection service, reinspection service, field appeal inspection service, or Board appeal inspection service has been performed on an identified lot of grain or container in an agency's or field office's assigned area of responsibility and thereafter the identity of the grain or container is deemed lost, a new original inspection may be requested.

(b) *Identity not lost.* If the identity of the grain or the container is not deemed lost, no new original inspection may be performed on the same identified lot of grain or container in the same specified service point within 5 business days after the last inspection without securing, in advance, the approval of the appropriate field office supervisor.

§ 800.89 When identity of grain or container is deemed lost.

(a) *Lots.* For the purposes of §§ 800.88, 800.126(d), and 800.136(d), the identity of a lot of grain or container shall be deemed 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; (2) a portion of grain or other material, including an insecticide or fumigant, is added to the lot after the original inspection was performed (but see the last sentence of this paragraph (a)); or (3) the stowage area is cleaned, treated, fumigated, or fitted after the original inspection was performed; or (4) the identification of the containers is changed after the original inspection was performed. At the option of the official personnel performing a reinspection service, or field appeal inspection service, or Board appeal inspection service, the identity of grain in a closed carrier or container may also be deemed lost if the carrier or container is not sealed, or if the seal record is incomplete. The provision of subparagraph (2) in this paragraph (a) shall not be applicable to grain treated with a fumigant in accordance with the provisions of this § 800.87(f)(2).

(b) *Submitted samples.* The identity of a submitted sample of grain shall be deemed lost (1) when the identifying number, mark, or symbol for the sample is lost or destroyed or (2) when the sample has not been retained and protected by official personnel in the manner prescribed in § 800.82(c)(2) and in instructions issued by, or approved in specific cases by, the Service.

§§ 800.90-800.94 [Reserved]

WEIGHING PROVISIONS AND PROCEDURES

§ 800.95 Objective of weighing services.

(a) *Objective.* The objective of the official weighing service under the Act is to provide, upon request, impartial and accurate weight information about grain and impartial and accurate quality information about grain carriers and containers in a timely and efficient manner so that grain may be marketed in an orderly and timely manner and trading in grain may be facilitated.

(b) *Definitions.* For the purpose of this § 800.95, unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given for them below:

(1) *Impartial information.* Weighing information shall be considered "impartial" if the information is developed independently by official personnel or, if it is not, the weight certificate clearly indicates that fact.

(2) *Accurate information.* Weighing information shall be considered "accurate" if the information (i) is developed in accordance with the methods and procedures prescribed in §§ 800.96 through 800.105 and (ii) truly reflects the quantity of the grain, or the fitness of the carrier or container, at the time the information was developed.

§ 800.96 Methods and order of performing official weighing services.

(a) *Methods.* (1) *General.* All weighing, checkweighing, checkloading, stowage examination, and other weighing services performed under the Act shall be performed with approved weighing equipment in accordance with the procedures prescribed in §§ 800.96 through 800.103 and in the instructions issued by, or approved in specific cases by, the Service.

(2) *Bulk grain.* Except as provided in §§ 800.98(e), 800.99(g)(2), and 800.100(e)(4), weight determinations on the bulk grain in, or to be loaded in, a carrier or container, or a stowage area in a carrier or container, shall be based on an accurate weighing of all of the grain in, or to be loaded, in the carrier, container, or stowage area.

(3) *Sacked grain.* Checkweighing determinations that are based on a sampling and weighing of the grain in an official weight sample shall be based on a proportionate or random sampling of the grain in the entire lot and an accurate weighing of the grain in the sample. If the entire lot is not available or accessible at the time of sampling, the request shall be withheld until the entire lot is available or accessible, or a part-lot certificate shall be issued in accordance with §§ 800.98(e) and 800.100(e).

(4) *Review of weighing.* Determinations in a review of weighing service shall be based on an independent review of the weighing information and procedures. Any difference in results shall be deemed to be a material error and warrant the issuance of a corrected certificate of weight. No administrative, statistical, or other tolerance shall be used or applied in performing a review of weighing service.

(b) *Order of service.* Weighing services under the Act shall be performed insofar as consistent with good management in the order in which the request for the services is received. Pre-

cedence shall be given when necessary to requests for mandatory weighings specified in Section 5 of the Act. Precedence may be given to other kinds of weighing services under the Act with the approval of the Service.

(c) *Recording receipt of documents.* Each document submitted by or for an applicant for weighing service shall be promptly stamped or similarly marked by the agency or field office, as applicable, to show the date the document was received.

(d) *Conflict of interest.* (1) *Official personnel.* No official personnel shall perform or participate in performing a weighing service on grain, or a stowage examination on a grain carrier or container, in which they have a direct or indirect financial interest.

(2) *Approved weighers.* Approved weighers may perform specified official Class X and Class Y weighing functions in accordance with Sections 7A and 11(a) of the Act.

§ 800.97 Weighing procedures.

(a) *General.* All balancing of scales, weighing of grain or grain containers, recording of weights, stowage examinations, and related activities shall be performed in accordance with applicable regulations in this Part and instructions issued by, or approved in specific cases by, the Service.

(1) *Official Class X weighing.* Official Class X weighing functions shall be performed in accordance with the provisions of § 800.77(b) and §§ 800.96 through 800.105 and instructions issued by the Service. The functions may be performed by official personnel or may be performed, in part, by approved weighers or other persons employed by, at, or in an approved weighing facility. If the functions are not performed in whole by official personnel, those functions must be completely supervised by official personnel.

(2) *Official Class Y weighing.* Official Class Y weighing functions shall be performed in accordance with the provisions of § 800.77(c) and §§ 800.96 through 800.105 and instructions issued by the Service, and shall be partially or completely supervised by official personnel as specified by the Service.

(b) *Spills of grain.* (1) *Estimating spills.* When feasible, the weight of a grain spill or leak shall be determined by retrieving and weighing the grain; otherwise, the weight shall be determined by (i) using standard estimating formulas for grain volumes or (ii) such other methods as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(2) *Spills of outbound grain that are replaced.* If a spill occurs in the handling and loading of outbound grain and the spilled grain has retained its

quality and is retrieved, or is replaced in kind and quality, 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, a certificate may be issued by the agency or the field office, as applicable, to show the weight of the additional grain that was used to replace a spill.

(3) *Spills of outbound grain that are not replaced.* If a spill occurs in the handling or 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 loaded, excluding the estimated amount of the grain that was spilled. Upon request of the applicant, an additional certificate may be issued showing the estimated estimated amount of grain that was spilled. Further, the applicant may, upon request, have the total amount that was weighed shown on the certificate with the amount of the spill noted in the "Remarks" section of the certificate.

(4) *Spills, or loss of identity of inbound grain.* (i) *Spills.* Except as provided in paragraph (c) of this § 800.97, if a spill or other avoidable loss occurs in the handling of an inbound lot of grain, and is not completely retrieved and weighed as a part of the inbound lot, the weight certificate for the lot shall show the weight of the grain that was actually unloaded from the carrier. A statement shall be placed in the "Remarks" section of the certificate as follows: "The net weight does not include an estimated—pounds that was spilled and not recovered during unloading."

(ii) *Loss of identity.* For the purposes of this § 800.97, the identity of a lot of inbound grain shall be deemed lost if the grain becomes mixed with other grain (other than grain from another identified carrier), related commodities, or other products during the unloading and weighing. When such loss of identity occurs, no amount shall be shown in the "Net Weight" portion of the weight certificate for the lot. If grain from two or more identified carriers or containers becomes mixed, the combined weight of the grain in the carrier or container shall be shown on one certificate.

(c) *Other avoidable losses on inbound grain.* If, after unloading an inbound carrier, quantities of grain remain on the floor that could have been removed with a reasonable effort, the weight of the grain that was actually unloaded from the carrier shall be shown on the weight certificate in accordance with subparagraph (b)(1) of this § 800.97, and a statement shall be placed in the "Remarks" section of the certificate as follows: "The

net weight does not include an estimated—pounds of sound grain which the receiver did not make a reasonable effort to remove from the carrier."

§ 800.98 Weighing of bulk grain in land carriers and barges in single lots.

(a) *General.* The weighing of bulk grain loaded aboard, or being loaded aboard, or unloaded from a single truck, trailer, truck/trailer combination, railroad car, river barge (including barges designed to be loaded aboard oceangoing ships or oceangoing barges) or bay boats, and grain in a bin, warehouse, or similar container (excluding ships) shall be conducted in accordance with the provisions in this § 800.98 and such procedures as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *Single and multiple weighing procedure.* (1) *Single procedure.* If the grain in an inbound carrier or container is offered for inspection service as one lot, and the grain is found to be uniform in condition (see § 800.85(b)(1)), the grain shall be weighed and certificated as one lot. The identification of the carrier or container shall be recorded on the scale tape or scale ticket and the weight certificate.

(2) *Multiple procedure.* If a portion of the grain in an inbound carrier or container is found to be not uniform in condition, and the grain in each portion is unloaded as a separate portion during the same unloading process, the grain in each portion shall be weighed as a separate lot, but the separate lots shall be certificated on one weight certificate. The certificate shall show the weight of each portion, and the location of each portion in the carrier, in accordance with procedures prescribed in the instructions issued by, or approved in specific cases by, the Service. If the grain in each portion is not unloaded as a separate portion, the grain that is unloaded shall be weighed as one lot in accordance with subparagraph (b)(1) of this § 800.98. If only a part of the grain is unloaded, the grain shall be weighed in accordance with paragraph (c) of this § 800.98.

(c) *One certificate per container; exceptions.* Except as provided in this paragraph (c), one official certificate shall be issued for the weighing of the grain in each truck, trailer, truck/trailer combination, railroad car, barge, or similarly sized carrier or container. The requirements of this paragraph (c) shall not be applicable to (1) grain weighed in a combined lot under § 800.99 or (2) grain weighed under subparagraph (b)(2) and paragraphs (d) and (e) of this § 800.98.

(d) *Bulkhead lots.* If the grain in a carrier or container is offered for weighing service as two or more lots and the lots are separated by bulkheads or other partitions, the grain in each lot shall be weighed as a separate lot in accordance with paragraphs (a) and (b) of this § 800.98. An official certificate shall be issued for each lot weighed. Each certificate shall show the term "Bulkhead Lot," the weight of the grain in the lot, and the location of the lot in the carrier or container in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(e) *Part lots.* (1) *Separate lots.* If a portion of a lot of grain in an inbound carrier or container is unloaded, and a portion is left in the carrier or container or is unloaded at a different time, the portion that is removed and the portion remaining in the carrier or container shall, for the purpose of the regulations, be considered separate lots. If weighing service is requested on either portion, the grain shall be weighed and certificated in accordance with subparagraph (b)(2) of this § 800.98, except that a "part-lot" weight certificate shall be issued.

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

(f) *Identification for compartmented cars.* The identification for a part of a compartmented railroad car shall, in the absence of readily visible markings on the car, be stated in terms of the location of the grain in a compartment or bay, with the first bay at the brake end of the car being identified as B-1, and the remaining compartments or bays being numbered consecutively towards the no-brake end of the car.

§ 800.99 Weighing of 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 in accordance with the provisions of this § 800.99 and such procedures as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *Definitions.* For purposes of this § 800.99, unless the context requires otherwise, the terms "Combined lot," "Reasonably continuous operation," and "Uniform in quality" shall be construed, respectively, to have the meanings given for them in § 800.86(b).

(c) *Application procedure.* (1) *For weighing during loading or unloading.* Applications for the weighing of grain in combined lots that is to be weighed

during loading or unloading shall (i) be filed in advance of the loading or unloading of any of the grain, (ii) show the estimated quantity of grain that is to be certificated as one lot, and (iii) identify each carrier in which the grain is being loaded or unloaded.

(2) *For recertification service.* Applications for the recertification of grain that has been weighed and certificated as single lots shall (i) be filed within a reasonable time, not to exceed 2 business days after the latest date of weighing of the individual lots and (ii) show the information specified in subparagraph (1) of this paragraph (c). (For recertification provisions for a recertification service, see subparagraph (g)(5) of this § 800.99.)

(d) *Weighing procedure; general.* (1) *Single lot weighing.* Grain that is to be weighed as a combined lot during loading or unloading shall be weighed as follows: (i) the grain shall be weighed in one location, (ii) the grain loaded into or unloaded from each carrier or container must be weighed in accordance with the procedures prescribed in instructions issued by, or approved in specific cases by, the Service, and (iii) in the case of sacked grain, a representative weight sample or samples must be obtained from the grain in each carrier or container unless otherwise specified in instructions issued by, or approved in specific cases by, the Service.

(2) *Weighing recertification service.* Grain that has been weighed and certificated as separate lots may be "weighed" for recertification as a combined lot in accordance with the following procedures: (i) the grain in each component lot must have been weighed in one location, (ii) the originals of the official weight certificates issued for the component lots must be surrendered to the appropriate agency or field office, (iii) the official personnel who issued the weight certificates for the component lots, and the official personnel who issued the weight certificate for the combined lot, must believe that the weight of the grain in the lots has not changed since the time of the component weighings; and (iv) in the case of sacked grain, the weight samples that were used as a basis for the component weighings were representative at the time of the weighings.

(e) *Grain uniform in quality.* If the grain in a combined lot is inspected by official personnel and found to be uniform in quality, the grain in the combined lot may, at the request of the applicant, be weighed and certificated as one lot.

(f) *Grain not uniform in quality.* If the grain in a combined lot is inspected by official personnel and found to be not uniform in quality, the grain nevertheless may, at the request of

the applicant, be weighed and certificated as one lot.

(g) *Special certification procedures.* (1) *Grain not accessible.* Any inbound or outbound movement of sacked grain which is offered for weighing must be fully accessible, as required in § 800.46(b)(1).

(2) *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 weighed and certificated in accordance with the provisions in § 800.98(e).

(3) *Official mark.* When grain is weighed as a combined lot in one continuous operation, upon request by the applicant, the following mark shall be shown on the weight certificate: "Loaded under continuous official weighing," or, when applicable, "Loaded under continuous official inspection and weighing." (See § 800.57.)

(4) *Combined-lot certification (general).* Each certificate for a combined-lot weighing service shall show the identification of 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.

(5) *Combined-lot recertification service.* (For provisions on applying for a weighing recertification service, see subparagraph (c)(2) of this § 800.99.) If the request for a combined-lot weighing service is filed after the grain in the component lots has been weighed and recertificated, recertification of the component lots into a combined-lot weighing certificate shall show: (i) the date of weighing the grain in the combined lot (if the component 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 certificates Nos. _____, dated _____." If, at the time of issuing the combined-lot weight certificate, the superseded certificates are not in the custody of the applicable 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 certi-

ates are in the custody of the applicable agency or field office, the superseded certificates shall be marked "Void" in a clear and conspicuous manner. Official personnel shall exercise such other precautions as may be found necessary to prevent the fraudulent or unauthorized use of the superseded certificates.

(h) *Further combining.* After a combined-lot weight certificate has been issued in accordance with this § 800.99, there shall be no further combining and no dividing of the certificate at a later date.

(i) *Limitation.* No combined-lot weight certificate shall be issued (1) for any weighing service other than as described in this § 800.99 or (2) which shows a weight in excess of the weight of the component lots.

(j) *Review of weighing service on combined lots.* A review of weighing service may be obtained on grain in a combined lot in accordance with §§ 800.125 through 800.131.

(k) *Other certification requirements.* For additional provisions governing the certification of grain in a combined lot, see §§ 800.160 through 800.162.

§ 800.100 Weighing of shiplot grain in single lots.

(a) *General.* The weighing of bulk or sacked grain being loaded aboard or unloaded from a ship as a single lot, shall be in accordance with the provisions of this § 800.100 and such procedures as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *Definitions.* For purposes of this § 800.100 unless the context requires otherwise, the terms "Shiplot grain," "Reasonably continuous operation," and "Uniform in quality" shall be construed, respectively, to have the meanings given for them in §§ 800.86(b) and 800.87(b).

(c) *Application procedure.* Applications for the weighing of shiplot grain that is to be weighed during loading or unloading as a single lot shall (1) be filed in advance of the loading or unloading of any of the grain; (2) show the estimated quantity of grain to be certificated as one lot; and (3) identify the carrier and the stowage area in which the grain is being loaded or from which the grain is being unloaded.

(d) *Weighing procedure; general.* Shiplot grain that is to be weighed as a single lot during loading or unloading shall be weighed in accordance with the following procedure: (1) the grain must be weighed in one weighing location, (2) the grain in each lot must be weighed in accordance with the procedures prescribed in instructions issued by, or approved in specific cases by, the Service, and (3) in the case of

sacked grain, a representative weight sample or samples must be obtained from the grain in each portion that is submitted for weighing as a lot unless otherwise specified in instructions issued by, or approved in specific cases by, the Service.

(e) *Certification of shiplot grain.* (1) *Basic requirement.* The certificate shall show (i) if true, a statement that the grain has been loaded aboard with other grain, (ii) the weight, (iii) the stowage or other identification of the grain, and (iv) such information as may be required by the regulations and the instructions issued by, or approved in specific cases by, the Service.

(2) *Common stowage.* (i) *General.* If bulk grain is offered for weighing as it is being loaded aboard a ship, and is loaded in a stowage area with other grain or another commodity, the weight certificate for the grain in each lot in the stowage area shall show the relative location of the grain.

(ii) *With separation.* If separations are laid between the 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) *Without separation.* If separations are not laid between the adjacent lots, the weight certificate for each lot shall show that the lot was loaded on board with other grain or another commodity without separation.

(iv) *Exception.* The requirements of this paragraph (2) shall not be applicable to the first lot in the stowage area unless a second lot has been loaded, in whole or in part, in the stowage area prior to the issuance of the weight certificate for the first lot.

(3) *Not accessible grain; sacked grain.* Except as provided in subparagraph (4) of this paragraph (e), if an inbound or outbound movement of sacked grain is offered for weighing and the grain is not fully accessible, the request for weighing service shall be dismissed in accordance with § 800.46(b)(1) on the ground that all the grain is not accessible for weighing.

(4) *Part lot.* If a part of a lot of grain in an inbound carrier or container is unloaded and a part is left in the carrier or container, the grain shall be weighed and certificated in accordance with the provisions of § 800.98(e).

(5) *Official mark.* If the grain in a single shiplot is weighed as the grain is being loaded aboard a ship or other carrier or container, and is weighed in one reasonably continuous operation, upon request by the applicant, the following mark shall be shown on the weight certificate: "Loaded under continuous official weighing." (See § 800.57.)

(f) *Review of weighing service on single shiplots.* A review of weighing service may be obtained on grain in accordance with §§ 800.125 through 800.131.

(g) *Other certification requirements.* For additional provisions governing the certification of grain, see §§ 800.160 through 800.162. For provisions for the issuance of divided-lot weight certificates, see § 800.163.

§ 800.101 Official weight sample provisions for checkweighing sacked grain.

(a) *Official weight sample.* (1) *Requirements for weight sample.* A weight sample must be (i) selected from the sacked grain in the lot by official personnel; (ii) representative of the grain in the lot, as specified in paragraph (b) of this § 800.101; (iii) protected from manipulation, substitution, and improper or careless handling, as specified in paragraph (c) of this § 800.101; and (iv) obtained within prescribed geographic boundaries, as specified in paragraph (d) of this § 800.101. Samples that do not meet the requirements of this paragraph (a) shall not be considered official weight samples.

(2) *Prohibitions.* Official weight samples for weighing specified in Section 5 of the act may not be obtained by warehouse samplers or any person other than a licensed or an authorized person.

(b) *Representative sample.* No weight sample shall be deemed representative of a lot of sacked grain unless the sample (1) is of the size prescribed in instructions issued by the Service; (2) has been obtained and weighed in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service; and (3) is otherwise representative of the sacked grain in the lot.

(c) *Protecting samples and data.* Official personnel and other persons employed by agencies or field offices shall protect official weight samples and data from manipulation, substitution, and improper and careless handling which might deprive the sample date of their representativeness.

(d) *Restriction on weighing.* No agency or field office shall checkweigh under the Act any lot of sacked grain unless at the time of obtaining the official weight sample the grain from which the sample was obtained was physically located within the assigned area of responsibility to the agency or field office. Upon request, and a showing of need, the Administrator may grant an exception to this rule on a shipment-by-shipment basis. Information on the exceptions may be obtained in accordance with § 800.10.

(e) *Equipment and labor.* The applicants shall provide the necessary labor for obtaining weight samples and plac-

ing them in a position for weighing and shall supply suitable weighing equipment approved by the Service.

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

§ 800.102 Checkweighing sampling provisions by level of service.

(a) *Original weighing services.* Each original 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 in accordance with instructions issued by, or approved in specific cases by, the Service.

(b) *Review of checkweighing services.* Each review of checkweighing service performed on a lot of sacked grain shall be made in accordance with the provisions of §§ 800.129 through 800.131.

§ 800.103 Checkweighing sampling provisions by kind of movement.

(a) *"IN" movements.* Each checkweighing on an "IN" movement of grain (see § 800.161(b)(8)) shall be based on an official weight sample obtained while the grain is at rest in the carrier or container, or during unloading, in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *"OUT" movements (export).* Each checkweighing of sacked export grain shall be based on an official weight sample obtained (1) as the grain is being loaded aboard the final carrier, (2) as the grain is being sacked, or (3) while the grain is at rest in a warehouse or holding facility in accordance with instructions issued by the Service.

(c) *"OUT" movements (other than export).* Except as provided in paragraph (b) of this § 800.103, each checkweighing of an "OUT" movement of sacked grain (see § 800.161(b)(8)) shall be based on an official weight sample obtained (1) from the grain as the grain is being loaded aboard the carrier, or (2) while the grain is at rest in the carrier, or (3) while the grain is at rest in a warehouse or holding facility, in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(d) *"LOCAL" inspection.* Each checkweighing of a warehouse lot or "LOCAL" movement of grain (see § 800.161(b)(8)) shall be based on an official weight sample obtained while the grain is at rest in the container, or during unloading, or while the grain is

being transferred, in accordance with procedures prescribed in instructions issued by, or otherwise approved in specific cases by, the Service.

§ 800.104 Restricted weighing activities.

In addition to the activities that are restricted or prohibited by Section 13 of the Act with respect to the weighing of grain, the following activities are also restricted or prohibited:

(a) *Misuse of equipment.* Grain weighing equipment and grain handling systems that relate to the grain weighing operation shall not be operated except in accordance with instructions supplied by the manufacturer of the equipment and instructions issued by the Service.

(b) *Modification of equipment.* Modifications or changes in grain weighing equipment and grain handling systems that relate to the grain weighing operation shall not be made without approval of the appropriate agency or field office in advance of the modification.

(c) *Processing of weighed grain.* (1) *General prohibition.* Except as noted in subparagraph (2) of this paragraph (c), outbound grain that has been weighed under the Act shall be routed directly from the scale to the carrier or container and shall not be cleaned, dried, or otherwise processed to remove or add material en route to the carrier. Inbound grain that is to be weighed under the Act shall be routed directly from the carrier or container to the scale and shall not be cleaned, dried, or otherwise processed to remove or add material en route to the scale.

(2) *Exception.* (i) *Insecticides.* An insecticide may be added to outbound grain after the grain has been weighed under the Act, and may be added to inbound grain before the grain has been weighed under the Act, provided the addition of the insecticide is monitored by official personnel and is noted by such personnel on the appropriate weight documents.

(ii) *Dust.* The routine removal of airborne dust during the handling of grain shall not be deemed to be a removal of material.

(d) *Minimum load.* A motor-vehicle scale shall not be used for weighing any load smaller than 1,000 pounds gross.

(e) *Size requirement.* A motor-vehicle scale shall not be used for weighing a vehicle that is not entirely borne by the scale load-receiving device. If a vehicle is attached to another vehicle, both vehicles must be entirely borne by the load receiving device at the time of weighing.

§§ 800.105-800.114 [Reserved]

ORIGINAL SERVICES

§ 800.115 Who may request original services.

(a) *General.* Original inspection services and Class X and Class Y weighing services may be requested by any interested person who desires the services. (For provisions on the kind of available services, see §§ 800.75 through 800.78. For provisions on obtaining services, see §§ 800.45 and 800.46.)

(b) *Regular service.* (1) *Inspection.* A request for original inspection services may be made for (i) one or more identified lots or submitted samples; or (ii) a definite or indefinite number of lots or submitted samples to be shipped from or to a specified location during a specified or indefinite period; or (iii) all lots shipped from or to a specified location, or from or to a specified person.

(2) *Class X weighing.* A request for official Class X weighing services may be made for (i) one or more identified lots; or (ii) a definite or indefinite number of lots to be shipped from or to a specified location during a specified or unspecified period; or (iii) all lots shipped from or to a specified location, or from or to a specified person.

(3) *Class Y weighing.* A request for official Class Y weighing services shall be made for a period of 6 months or longer for (i) all lots shipped from or to a specified location or (ii) all lots shipped from or to a specified location in a specified type of carrier.

(c) *Contract service.* If a contract-type arrangement (sometimes referred to as "guaranteed station") is offered by an agency or the Service, an applicant may enter into the contract-type arrangement with the agency or the Service, as appropriate, for a specified period, whereby (i) the applicant agrees to pay a specified amount as shown in an approved fee schedule and (ii) the agency or the Service, as appropriate, agrees to perform original inspection or Class X or Class Y weighing services during the specified period, as requested by the applicant.

§ 800.116 How to request original services.

(a) *Where to file.* (1) For grain in the United States, a request for an original inspection service other than a submitted sample inspection shall be filed with the inspection agency or the authorized field office that is assigned the area where the grain will be sampled. A request for a weighing service shall be filed with the weighing agency or the authorized field office that is assigned the area where the grain will be weighed.

(2) For U.S. grain in Canadian ports, a request for original inspection or Class X or Class Y weighing service shall be filed with the field office, either in Montreal, P.Q., or at the location where the grain will be sampled or weighed, as applicable.

(b) *Written confirmation.* If a written confirmation is requested by the agency or the field office, as appropriate, the confirmation shall be signed by the applicant or the applicant's agent, and shall, except as provided in paragraph (c) of this § 800.116, show or be accompanied by the following information: (1) the identification, quantity, and the specific location of the grain (if known); (2) the name and mailing address of the applicant; (3) the kind and scope of original inspection service or original weighing service desired; and (4) such other information as may be required in specific cases by the agency or the field office, as appropriate. (Copies of original service request forms will be furnished by an agency or an authorized field office upon request.)

(c) *Delayed information.* If the information specified in paragraph (b) of this § 800.116 is not available at the time of filing the request, the applicant shall submit the information, or cause it to be submitted, as soon as it is available. At the discretion of the agency or the field office, as appropriate, action on the request for original service may be withheld pending the receipt of the required information.

(d) *When to file.* When a request for extensive original inspection service or extensive weighing service is planned, the request should be filed as far in advance of the effective date of the request as possible to permit the agency or the field office, as appropriate, to plan and effect its staffing needs. For grain that is to be inspected or Class X weighed during loading, unloading, or handling, the request must be filed sufficiently in advance of the loading, unloading, or handling to enable official personnel to be present. For grain that is to be inspected at rest in a container, and for a submitted sample, the request may be filed on or prior to the effective date of the request.

(e) *Recording the date of filing.* A request for an original inspection service or a weighing service shall be deemed filed when the request is received by the agency or the field office that will perform the original service. *Provided,* That if no oral or written request is received by the agency or the field office, as appropriate, before the grain is presented or offered for inspection or weighing, the date of filing a request for original inspection service shall be the date the grain is made available for sampling; and the date of filing a request for weighing service shall be the date the grain is made

available for weighing. If a request is made orally, a written record should be made by the receiving agency or field office. Each record of a request shall be stamped or similarly marked by the agency or the field office, as applicable, to show the date the request was filed. A copy of a railroad manifest shall be deemed to meet the requirements of this paragraph (e) for original inspection service on inbound grain in railroad cars.

§ 800.117 Dismissal of requests for original services.

(a) *Grounds for dismissal.* A request for an original inspection service or a weighing service (1) shall be dismissed for the reasons specified in § 800.48 and (2) may be dismissed if the requested original inspection service or the requested weighing service cannot be performed, in whole or in part, within 24 hours after the grain is presented or offered for inspection or weighing.

(b) *Notification.* When a request for an original inspection service or a weighing service is dismissed, the agency or the field office, as appropriate, shall promptly notify the applicant orally or in writing of the reason or reasons for the dismissal.

§ 800.118 Who shall perform original services.

(a) *United States.* Original inspection services in the United States shall be performed by the agency or the field office, as appropriate, that is assigned the area in which the grain will be sampled. Weighing service in the United States shall be performed by the agency or the field office, as appropriate, that is assigned the area in which the grain will be weighed. A list of the assigned areas of responsibility and the agency or the field office that is authorized to perform original inspection service or weighing service in each area may be obtained in accordance with the provisions of § 800.10.

(b) *Canada.* Original inspection services and weighing services with respect to United States grain in Canadian ports shall be performed by the field office that is assigned the area where the grain will be sampled or weighed.

§ 800.119 Issuance and distribution of original service certificates.

For each original inspection service and each weighing service, other than a review of weighing service (see § 800.131), one or more official certificates shall be issued in accordance with § 800.160. The certificate for an original inspection service shall show the term "Original Inspection." The original and a minimum of one copy of each certificate shall be issued to the applicant of record or to the applicant's order; and one copy shall be

filed with the agency or the field office, as appropriate, that issued the certificate.

§§ 800.120—800.124 [Reserved]

REINSPECTION SERVICES AND REVIEW OF WEIGHING SERVICES

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

(a) *General.* Subject to the limitations in paragraph (c) of this § 800.125, reinspection services or review of weighing services may be requested by any interested person who desires the services. (For provisions on the kind and scope of services, see §§ 800.75 through 800.78. For provisions on obtaining and withholding inspection and weighing services, see §§ 800.45 through 800.51. For provisions and penalties on using false or misleading means in making or filing an application for inspection or weighing services, see Sections 13 and 14 of the Act.)

(b) *Kind and scope of request.* The kind and scope of a reinspection service or a review of weighing service shall be limited to the kind and scope of the original inspection service or the Class X or Class Y weighing service on the grain except for inspection services for official criteria which are determined separately from but concurrently with the grading process. However, a reinspection service for official grade shall include a review of all official factors that (1) may determine the grade; or (2) are shown on the certificate for the original inspection service, except as indicated in the provision in this paragraph (b); and (3) are required to be shown on a certificate of grade (see § 800.162). If a request for a reinspection service specifies a different kind or different scope of inspection service than the original service, the request shall be dismissed in accordance with the provisions of § 800.127, or may, with the concurrence of the applicant, be filed as a request for an original inspection service: *Provided*, That reinspection services for official criteria may be considered independent of official factors when determining the kind and scope of the inspection service. Requests for reinspection services for official grade or results for official criteria when the results of both are combined on the certificate may be handled separately if specified in the request by the applicant. A reinspection certificate shall be issued showing the results of the reinspection service along with all results not subject to the reinspection service, in accordance with § 800.130.

(c) *Other limitations.* A reinspection service on a lot or a submitted sample of grain or a review of weighing service on a lot of grain may be requested by one or more interested persons; but only one reinspection service or one

review of weighing service may be obtained on a given original inspection service or a weighing service, as applicable. If duplicate requests for a reinspection service or a review of weighing service are filed by two or more interested parties, the first party to file shall be deemed to be the applicant of record. No reinspection service may be obtained on a reinspection service or on an original inspection service on which an appeal inspection service has been performed. No review of weighing service may be obtained on a review of weighing service.

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

(a) *Where to file.* A request for a reinspection service or a review of weighing service shall be filed with the agency or with the field office that performed the original service. Oral requests shall be confirmed in writing in accordance with paragraph (b) of this § 800.126.

(b) *Written confirmation.* If a written confirmation is requested by the agency or the field office, as appropriate, the confirmation shall be signed by the applicant or the applicant's agent and shall, except as provided in paragraph (c) of this § 800.126, show or be accompanied by the following information or documents: (1) the name and mailing address of the applicant; (2) the names and addresses of the known respondents, if any (if there are no known respondents, the word "None" shall be shown in the space for the names and addresses of the respondents); (3) the identification, quantity, and the specific location of the grain; (4) the original inspection certificate; (5) a statement showing whether a request for a field appeal inspection service on the grain has been filed with the Service and, if such a request has been filed, the place of filing; and (6) such other information as may be required in specific cases by the agency or the field office that performs the reinspection service or a review of weighing service. (Copies of a reinspection service or a review of weighing service request form will be furnished by an agency or a field office upon request.)

(c) *Delayed information.* (1) *Action by applicant.* If the information or documents specified in paragraph (b) of this § 800.126 are not available at the time of the request by the agency or the field office, the applicant shall submit the information or documents, or cause them to be submitted, as soon as they are available. At the discretion of the agency or the field office, as applicable, action on a request for a reinspection service or a review of weighing service may be withheld pending the receipt of the information or documents.

(2) *Record of findings.* In no case shall a reinspection certificate be issued unless the information and documents required by paragraph (b) of this § 800.126 are filed with the agency or field office, or it is found by the agency or field office that some of the information or documents are not available but sufficient information is available to perform the reinspection service. If it is found that any of the required information or documents are not available, a record of the findings shall be included in the record of the reinspection service or the review of weighing service.

(d) *Filing requirements.* (1) *Reinspection service.* A request for a reinspection service shall be filed (i) before the grain or container has left the specified service point where the grain or container was located when the original service was performed; (ii) as promptly as possible but not later than the close of business on the second business day following the date of the original service; and (iii) before the identity of the grain or container has been lost, as specified in § 800.89. (If a representative file sample, as prescribed in § 800.83, is available, the agency or field office, as applicable, that performs the reinspection service may, upon request by the applicant or the respondents, waive the requirements of clauses (i), (ii), and (iii) of this subparagraph (1). The requirement in clause (ii) of this subparagraph (1) may be waived by the agency or the field office, as appropriate, upon a satisfactory showing by an interested person of fraud, or that because of distance or other good cause, the time allowed for filing was not sufficient. A record of each waiver action must be included by the agency or the field office in the record of the reinspection service.)

(2) *Review of weighing service.* A request for a review of weighing service shall be filed as promptly as possible but not later than 90 days after the date of the weighing service.

(e) *Multiple request.* A request for a reinspection service may cover one or more identified lots or samples. A request for a review of weighing service may cover one or more identified lots.

(f) *Recording the date of filing.* A request for a reinspection service or a review of weighing service shall be deemed filed when the request is received by the agency or field office, as applicable. If a request is made orally, a written record shall be made by the receiving agency or field office. Each record of a request shall be stamped or similarly marked by the agency or the field office, as applicable, to show the date the request was filed.

§ 800.127 When a request for reinspection services or review of weighing services shall be dismissed.

(a) *Grounds for dismissal.* (1) *Reinspection service.* A request for a reinspection service shall be dismissed by an agency or a field office, as applicable, if (i) the kind and scope of the requested reinspection service (see §§ 800.76 through 800.77) are different than the kind and scope of the original inspection service on the grain; (ii) the condition of the grain has undergone a material change since the original inspection service on the grain; (iii) a representative file sample of the grain is not available; (iv) the applicant for the reinspection service requests that a new sample be obtained as a part of the reinspection service, and a new and representative sample cannot be obtained; or (v) a field appeal inspection service has been requested or performed on the original inspection; and (vi) for any of the reasons specified in § 800.48. A request for a reinspection service may be dismissed if the reinspection service cannot be performed, in whole or in part, within 5 business days of the original inspection service.

(2) *Review of weighing service.* A request for a review of weighing service shall be dismissed by an agency or a field office, as applicable, if (i) the request is filed before the results of the weighing service on the grain have been released, (ii) the request is filed more than 90 days after the date of the weighing service, and (iii) for any of the reasons specified in § 800.48.

(b) *Notification.* When a request for a reinspection service or for a review of weighing service is dismissed, the agency or the field office, as appropriate, that dismissed the request shall (1) promptly notify the applicant orally or in writing of the reason for the dismissal and (2) return or release to the applicant or the applicant's agent the original inspection certificate.

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

A reinspection service or a review of weighing service shall be performed by the agency or the field office that performed the original inspection service or the Class X or Class Y weighing service, as applicable.

§ 800.129 Provisions governing reinspection services and review of weighing services.

NOTE: For provisions on official inspection and weighing methods and procedures, see §§ 800.80 through 800.89 and 800.95 through 800.104.

(a) *Tolerances.* (1) *Inspection.* For the purpose of this § 800.129 official tolerances for expected variations between inspection services shall be ap-

plied to the results of a reinspection service in determining whether the results of the original inspection service on the lot or sample were materially in error. The official tolerances shall in all cases be those set forth in the instructions issued by the Service.

(2) *Weighing.* For the purpose of this § 800.129 any error found as a result of the review of weighing service shall be deemed a material error.

(b) *Conflict of interest.* No official personnel shall perform, or participate in performing or issue a certificate for a reinspection service involving the correctness of an original inspection service performed or certificated by them. However, this restriction may be waived by a regional office if there is only one licensed or one authorized person available at the time and place the reinspection service is performed. A record of each waiver action shall be included by the agency or the field office, as applicable, in the record of the reinspection service.

§ 800.130 Issuance and distribution of reinspection certificates.

(a) *General.* For such each reinspection service, a reinspection certificate shall be issued in accordance with § 800.160. The original and a minimum of one copy of each reinspection certificate shall be issued to the applicant of record or to the applicant's order, one copy shall be delivered or mailed to each respondent of record or to the respondent's order, and one copy shall be filed with the agency or the field office that issued the certificate.

(b) *Showing results.* (1) *Results within tolerance.* If the results of a reinspection service indicate that none of the corresponding results of the original inspection service is materially in error, the results of the original inspection service and the results of the reinspection service shall be averaged, and the resulting averages shall be shown on the reinspection certificate.

(2) *Results not within tolerance.* If the results of a reinspection service indicate that all the results of the original inspection service on the grain are materially in error, only the results of the reinspection service shall be shown on the reinspection certificate.

(3) *Mixed results.* If the results of the reinspection service indicate that some of the results of the original inspection service were not materially in error and that some of the results were materially in error, the results that were not materially in error shall be shown in accordance with subparagraph (1) of this paragraph (b), and the results that were materially in error shall be shown in accordance with subparagraph (2) of this paragraph (b).

(c) *Required statements.* (1) *Standard statements.* Each inspection certificate shall clearly show, in accordance with § 800.161, the term "Reinspection" and one of the following statements in completed form: (i) "This certificate supersedes Certificate No. —, dated —." The above statement shall be shown when the scope of the original inspection service provides for (A) an inspection for grade and official factors (without official criteria), (B) an inspection for one or more official factors (without grade and official criteria), (C) an inspection for one or more official criteria (without grade and official factors), or (D) an inspection for grade, official factors, and official criteria combined; or (ii) "This certificate supersedes Certificate No. —, dated —," followed by one of these applicable statements: (A) "Official criteria results based on the reinspection service; all other results are those of the original inspection service"; or (B) "(Grade and/or official factor) results based on the reinspection service; all other results are those of the original inspection service."

(2) *Other statements.* If, at the time of issuing a reinspection certificate the superseded certificate is in the custody of the issuing agency or field office, the superseded certificate shall be marked "Void" in a clear and conspicuous manner. If the superseded original inspection service certificate is not in the custody of the agency or the field office, as applicable, the following statement shall be clearly shown on the reinspection certificate immediately beneath the statement specified in subparagraph (1) of this paragraph (c): "The superseded certificate has not been surrendered." Official personnel shall diligently exercise such other precautions as may be necessary to prevent the fraudulent or unauthorized use of a superseded certificate.

(d) *Use of superseded certificate prohibited.* As of the date of issuance of the reinspection certificate, the superseded original inspection service certificate shall be considered null and void and shall not thereafter be used to represent any grain.

§ 800.131 Reporting results of review of weighing services.

(a) *Correct results.* If the results of a review of weighing service indicate that the results of the weighing service that was in question were correct, the applicant shall be notified in writing that the requested review of weighing service was performed and the results of the weighing service that was in question were found to be correct.

(b) *Incorrect results.* If the results of a review of weighing service indicate

that the results of the weighing service that was in question were incorrect, a corrected certificate shall be issued in accordance with the provisions of § 800.165.

§§ 800.132—800.134 [Reserved]

APPEAL INSPECTION SERVICES

§ 800.135 Who may request appeal inspection services.

(a) *General.* Subject to the limitations of paragraph (c) of this § 800.135, a field appeal inspection service or a Board appeal inspection service may be requested by an interested person who desires the service. For provisions and penalties on using false or misleading means in making or filing an application for official inspection or weighing services, see Section 13 and 14 of the Act.

(b) *Kind and scope of request.* (1) *Field appeal inspection service.* A field appeal inspection service shall be limited to the kind and scope of the original inspection service on the grain except for inspection services for official criteria which are determined separately from but concurrently with the grading process. However, a field appeal inspection service for official grade shall include a review of all official factors that (i) may determine the grade; or (ii) are shown on the certificate for the original inspection or reinspection service, as applicable, except as indicated in the provisions in this paragraph (b); and (iii) are required to be shown on a certificate of grade (see § 800.162). If a request for a field appeal inspection service specified a different kind or different scope of inspection service then the original inspection or reinspection service as applicable, the request shall be dismissed in accordance with the provisions of § 800.137: *Provided*, That field appeals for official criteria may be considered independent of official factors when determining the kind and scope of the inspection service. Request for field appeal inspection services for official grade or results for official criteria when the results of both are combined on the certificate may be handled separately if specified in the request by the applicant. A field appeal inspection certificate shall be issued showing the results of the field appeal inspection service along with all results not subject to the field appeal inspection service, in accordance with § 800.140.

(2) *Board appeal inspection service.* A Board appeal inspection service shall be based on a review of file samples and shall be limited to the kind and scope of the field appeal inspection service on the grain except for inspection services for official criteria which are not determined during the grading process. However, a Board

appeal inspection service for official grade shall include a review of all official factors that (i) may determine the grade; or (ii) are shown on the certificate for the field appeal inspection service, except as indicated in the provisions in this paragraph (b); and (iii) are required to be shown on a certificate of grade (see § 800.162). If a request for a Board appeal inspection service specified a different kind or different scope of inspection service than the field appeal inspection service, the request shall be dismissed in accordance with the provisions of § 800.137: *Provided*, That a Board appeal inspection service for official criteria may be considered independent of official factors when determining the kind and scope of the inspection service. A request for a Board appeal inspection service for official grade or results of official criteria when the results of both are combined on the certificate may be handled separately if specified in the request by the applicant. A Board appeal inspection certificate shall be issued showing the results of the Board appeal inspection service along with all results not subject to the field appeal inspection service, in accordance with § 800.140. A Board appeal inspection service shall not be available on a storage examination service.

(c) *Other limitations.* (1) *Field appeal inspection service.* A field appeal inspection service on a lot, or a submitted sample of grain, may be requested by one or more interested persons, but only one field appeal inspection service may be obtained on an original inspection service or a reinspection service.

(2) *Board appeal inspection service.* A Board appeal inspection service on a lot, or submitted sample of grain, may be requested by one or more interested persons, but only one Board appeal inspection service may be obtained on a field appeal inspection service.

(3) *Duplicate requests.* If duplicate requests for a field appeal inspection service or a Board appeal inspection service are filed by two or more interested parties the first party to file shall be deemed to be the applicant of record.

(4) *Superseded service.* No appeal inspection service may be performed on an original inspection service or on a reinspection service if the certificate for the original inspection service or the reinspection service has been superseded by another certificate.

§ 800.136 How to request appeal inspection services.

(a) *Where to file.* A request for a field appeal inspection service shall be filed with the field office in the circuit in which the original inspection service or the reinspection service was per-

formed. A request for a Board appeal inspection service shall be filed with the Board of Appeals and Review or with the field office that performed the field appeal inspection service. If the request is made orally, it shall be confirmed in writing, in accordance with paragraph (b) of this § 800.136.

(b) *Written confirmation.* Each request for an appeal inspection service shall be in writing, shall be signed by the applicant or the applicant's agent, and shall, except as provided in paragraph (c) of this § 800.136, show or be accompanied by the following information or documents: (1) the name and mailing address of the applicant; (2) the name and mailing address of each known respondent (If there are no respondents, the word "None" shall be shown in the space for the names and addresses of the respondents.); (3) the identification, quantity, and specific location of the grain; (4) the applicable original inspection, reinspection, or field appeal inspection certificate for the grain; and (5) such other information as may be requested by the field office or the Board of Appeals and Review. (Copies of an appeal inspection service request form will be furnished by a field office upon request.)

(c) *Delayed documents.* (1) *Action by applicant.* If the information or documents specified in paragraph (b) of this § 800.136 are not available at the time of filing a request, the applicant shall submit the information or documents, or cause them to be submitted, as soon as they are available. At the discretion of the field office or the Board of Appeals and Review, as applicable, action on a request for an appeal inspection service may be withheld pending the receipt of the information or documents.

(2) *Record of findings.* In no case shall an appeal inspection certificate be issued unless the information and documents required by paragraph (b) of this § 800.136 are filed in the field office or in the Board of Appeals and Review, as applicable, or it is found by the field office or the Board of Appeals and Review, as applicable, that some of the information or documents are not available but sufficient information is available to perform the appeal inspection service. If it is found that any of the required information or documents are not available, a record of the findings shall be included in the record of the appeal inspection service.

(d) *Filing requirements.* A request for a field appeal inspection service or a Board appeal inspection service shall be filed (1) before the grain or container has left the specified service point where the grain or container was located when the original inspection service, reinspection service, or field

appeal inspection service was performed; (2) as promptly as possible, but not later than the close of business on the second business day following the date of the applicable original service, reinspection service, or field appeal inspection service; and (3) before the identity of the grain or the container has been lost, as provided in § 800.89. (If a representative file sample, as prescribed in § 800.83, is available, the field office or the Board of Appeals and Review, as applicable, that performs the appeal inspection service may, upon written request by the applicant, or the respondents, waive the requirement of subparagraphs (1), (2), and (3) of this paragraph (d). The requirement in subparagraph (2) of this paragraph (d) may also be waived by the field office or the Board of Appeals and Review, as appropriate, upon a satisfactory showing by any interested person of fraud, or that on account of distance or other good cause, the time allowed for filing was not sufficient. A record of each waiver action shall be included by the field office or the Board of Appeals and Review, as applicable, in the record of the appeal inspection service.)

(e) *Multiple request.* A request for an appeal inspection service may cover one or more identified lots, samples, or containers. However, upon request of the field office or the Board of Appeals and Review, a separate request shall be filed for each lot or sample.

(f) *Recording the date of filing.* A request for an appeal inspection service shall be deemed filed when the request is received by the field office or by the Board of Appeals and Review. If a request is made orally, a written record shall be made by the receiving field office or the Board of Appeals and Review. Each record of a request shall be stamped or similarly marked by the field office or the Board of Appeals and Review to show the date the request was filed.

§ 800.137 When a request for appeal inspection service shall be dismissed.

(a) *Grounds for dismissal.* A request for an appeal inspection service shall be dismissed by a field office or the Board of Appeals and Review if (1) the kind and scope of the requested appeal inspection service (see § 800.76) is different than the kind and scope of the applicable original inspection service, reinspection service, or appeal inspection service; (2) the condition of the grain has undergone a material change since the applicable original inspection service, reinspection service, or appeal inspection service; (3) a representative file sample of the grain is not available; (4) the applicant for the field appeal inspection service requests that a new sample be obtained as a

part of the field appeal inspection service, and a new and representative sample cannot be obtained; or (5) for any of the reasons specified in § 800.48. A request for an appeal inspection service may be dismissed if the appeal inspection service cannot be performed, in whole or in part, within 5 business days of the date of the applicable original inspection service, reinspection service, or field appeal inspection service.

(b) *Notification.* When a request for an appeal inspection service is dismissed, the field office or the Board of Appeals and Review, as applicable, shall (1) promptly notify, or cause to be notified, the applicant orally or in writing of the reasons for the dismissal; and (2) return or release to the applicant or the applicant's agent the applicable original inspection service, reinspection service, or appeal inspection service certificate. When a request for a Board appeal inspection is dismissed, the notice may be issued for the Board of Appeals and Review by the field office that performed the field appeal inspection.

§ 800.138 Who shall perform appeal inspection services.

(a) *Field appeal.* A field appeal inspection service shall be performed by the field office in the circuit in which the original inspection service or reinspection service was performed on the grain.

(b) *Board appeal.* A Board appeal inspection service shall be performed by the Board of Appeals and Review. The field office that performed the field appeal inspection service shall act as a liaison between the Board and the applicant that requests a Board appeal inspection service. The field office shall promptly forward to the Board all available samples, documents, and other information pertaining to the inspection of the grain.

§ 800.139 Provisions governing appeal inspection services.

NOTE.—For provisions on official inspection and weighing methods and procedures, see §§ 800.80 through 800.89.

(a) *Tolerances.* For the purpose of this § 800.139, official tolerances for expected variations between inspection services shall be applied to the results of an appeal inspection service in determining whether the results of the applicable original inspection service, reinspection service, or field appeal inspection service on the lot or sample were or were not materially in error. The official tolerances shall in all cases be those set forth in the instructions issued by the Service.

(b) *Conflict of interest.* No official personnel shall perform, or participate in performing, or issue a certificate for

an appeal inspection service involving the correctness of an original inspection service, a reinspection service, or a field appeal inspection service performed or certificated by them. However, this restriction may be waived by the Service if there is only one authorized person available at the time and place the appeal inspection service is performed. A record of each waiver action shall be included by the field office or the Board of Appeals and Review, as applicable, in the record of the field appeal inspection service or the Board appeal inspection service.

§ 800.140 Issuance and distribution of appeal inspection service certificates.

(a) *General.* For each appeal inspection service, an appeal inspection certificate shall be issued in accordance with § 800.160. The original and a minimum of three copies of each appeal inspection certificate shall be issued to the applicant of record or to the applicant's order; one copy shall be delivered or mailed to each respondent of record or to the respondent's order; one copy shall be delivered to the agency or the field office that performed the original inspection or reinspection service; and one copy shall be filed in the field office or the Board of Appeals and Review, as applicable.

(b) *Showing results.* (1) *Results within tolerance.* If the results of an appeal inspection service indicate that none of the corresponding results of the inspection service in question are materially in error, the results of the inspection service in question and the results of the appeal inspection service shall be averaged, and the resulting averages shall be shown on the appeal inspection certificate.

(2) *Results not within tolerance.* If the results of an appeal inspection service indicate that all the results of the original inspection service, reinspection service, or field appeal inspection service on the lot or sample are materially in error, only the results of the appeal inspection service shall be shown on the appeal inspection certificate.

(3) *Mixed results.* If the results of the appeal inspection service indicate that some of the results of the inspection service in question were not materially in error and that some of the results were materially in error, the results that were not materially in error shall be shown in accordance with subparagraph (1) of this paragraph (b), and the results that were materially in error shall be shown in accordance with subparagraph (2) of this paragraph (b).

(c) *Required statements.* (1) *Standard statements.* Each appeal inspection certificate shall clearly show, in accordance with § 800.161; (i) the term

"Field Appeal," or "Board Appeal," as appropriate; and (ii) one of the following statements in completed form: (A) "This certificate supersedes Certificate No. —, dated —," The above statement shall be shown when the scope of the original inspection, reinspection, or field appeal inspection, as applicable, provides for (1) an inspection for grade and official factors (without official criteria), (2) an inspection for one or more official factors (without grade and official criteria), (3) an inspection for one or more official criteria (without grade and official factors), or (4) an inspection for grade, official factors, and official criteria combined; or (B) "This certificate supersedes Certificate No. —, dated —," followed by one of these applicable statements: (1) "Official criteria results based on the (field appeal inspection or Board appeal inspection); all other results are those of the original inspection, reinspection, or field appeal inspection service"; or (2) "(Grade and/or official factor) results based on the (field appeal inspection or Board appeal inspection) service; all other results are those of the (original inspection, reinspection, or field appeal) inspection service."

(2) *Other statements.* (i) If, at the time of issuing an appeal inspection service certificate, the superseded certificate is in the custody of the field office or the Board of Appeals and Review, the superseded certificate shall be marked "Void" in a clear and conspicuous manner.

(ii) If the superseded original inspection service, reinspection service, or field appeal inspection service certificate is not in the custody of the issuing field office or the Board of Appeals and Review, the following statement shall be clearly shown on the appeal inspection certificate immediately beneath the statement specified in subparagraph (1) of this paragraph (c): "The superseded certificate has not been surrendered." Field office and Board of Appeals and Review personnel shall exercise such other precautions as may be necessary to prevent the fraudulent or unauthorized use of a superseded certificate.

(d) *Use of superseded certificate prohibited.* As of the date of issuance of the field appeal or the Board appeal inspection service certificate, as applicable, the superseded original inspection service, reinspection service, or field appeal inspection service certificate shall be considered null and void and shall not thereafter be used to represent any grain.

(e) *Finality of Board appeal inspection service.* A Board appeal inspection service shall be the final appeal inspection service under the Act.

§§ 800.141—800.144 [Reserved]

**OFFICIAL RECORDS AND FORMS
(GENERAL)**

§ 800.145 Official records that are required to be kept.

(a) *Agencies.* Subject to the provisions of paragraph (g) of this § 800.145, each agency shall keep and make available to each of its licensees a complete file and record of (1) the Act, the regulations, the standards, and the instructions issued to the agency by the Service, as specified in § 800.148; (2) the delegation or designation of authority issued to the agency by the Service, as specified in § 800.149; (3) the organization and staffing; (4) the licenses issued to the employees of the agency or to the warehouse samplers in the areas of responsibility assigned to the agencies, and a listing of approved weighing facilities and approved weighers in the areas of responsibility assigned to the agencies, as specified in § 800.151; (5) the agency's schedules of fees, as specified in § 800.152; (6) the space and equipment used by the agency, as specified in § 800.153; (7) each inspection, weighing, and equipment testing function performed by the agency or by the agency's employees under the Act, as specified in § 800.154; and (8) related information as may be required in instructions issued by the Service, as specified in § 800.155.

(b) *Field offices.* Each field office shall keep and make available to each of its authorized employees a complete file and record of (1) the Act, the regulations, the standards, and the instructions issued to the field office by the Service, as specified in § 800.148; (2) the current fee schedule issued by the Service; (3) the position descriptions or other authorizations of the employees assigned to the field office, a copy of the licenses issued to licensees in the field office's circuit, and a listing of approved weighers in the field office's circuit, as specified in § 800.151; (4) each inspection, weighing, equipment testing, and monitoring function performed by the field office or by employees assigned to the field office, as specified in § 800.154; and (5) related information as may be required in instructions issued by the Service, as specified in § 800.155.

(c) *Contractors.* Each contractor shall keep a complete record of (1) the Act, the regulations, the standards, and the instructions issued to the contractor by the Service, as specified in § 800.148; (2) the contract with the Service, as specified in § 800.149; (3) the licenses issued to the contractor or to the contractor's employees by the Service, as specified in § 800.151; (4) each inspection, weighing, and equipment testing function performed by the contractor or by the contractor's

employees, as specified in § 800.154; and (5) related information as may be required in instructions issued by the Service, as specified in § 800.155.

(d) *Approved scale testing organizations.* Each approved scale testing organization shall keep a complete file and record of (1) the Act, the regulations, and the instructions issued to the organization by the Service, as specified in § 800.148; (2) the notice of approval issued to the organization by the Service, as specified in § 800.149; (3) the scale testers employed by the organization, as specified in § 800.151; (4) each scale testing function performed by the organization on equipment used in weighing under the Act, as specified in § 800.154; and (5) related information as may be required in instructions issued by the Service, as specified in § 800.155.

(e) *Licenses.* Each licensee shall (1) have ready access to a complete file and record of the Act, the regulations, instructions, and such other information as may be required and (2) keep the license issued to the individual by the Service.

(f) *Authorized employees.* Each authorized employee assigned to a field office shall keep those records specified by the Service.

(g) *Preparation and keeping of records.* The records specified in paragraph (a) through (f) of this § 800.145 shall be prepared and kept in such manner and in such order as will facilitate (1) the daily use of records in the administration and enforcement of the Act and in the performance of services under the Act and (2) the review and audit of the records to determine compliance with the Act, the regulations, the standards, and the instructions under the Act.

§ 800.146 Retention periods for official records.

(a) *Regular retention periods.* Except as provided in paragraph (b) of this § 800.146, the records specified in § 800.145 shall be retained in accordance with the following schedule:

KIND OF RECORD AND MINIMUM RETENTION PERIOD

(1) The Act, the regulations, the standards, and instructions issued by the Service (§ 800.148).—Until superseded or revoked, whichever is earlier.

(2) Delegations and designations, contracts, and approvals of scale testing organizations (§ 800.149).—Until superseded, terminated, revoked, or canceled.

(3) Organization, staffing, and budget (§ 800.150).—5 years after the applicable year or 5 years after being superseded, whichever is earlier.

(4) Licenses and authorizations (§ 800.151).—The tenure of the employee.

(5) Fee schedules (§ 800.152).—5 years after the schedule was last used as a basis for assessing fees.

(6) Space and technical equipment (§ 800.153).—5 years after the space was vacated or the equipment was last used.

(7) Inspection, weighing, and equipment testing and monitoring records (other than file samples) (§ 800.154).—5 years after the inspection, weighing, equipment testing, or monitoring function was completed (but see paragraph (b) of this § 800.146).

(8) File samples (by type of carrier or container) (§ 800.154).—Minimum retention period (calendar days) after the official function was completed (but see paragraph (b) of this § 800.146).

- (i) Trucks: In 3; Out 5.
- (ii) Railcars: In 5; Out 10.
- (iii) Barges (river): In 5; Out 25.
- (iv) Ships and Barges (lake or ocean): In 5; Out (domestic) 25; Export (sublot samples) 60.
- (v) Bins and tanks 3.
- (vi) Submitted samples 3.

For good cause shown, upon request by an agency and with the approval of the Service, specified file samples or classes of file samples may be retained for agreed shorter periods of time.

(9) Related information (§ 800.164).—5 years after the last applicable year.

(b) *Special retention periods.* (1) *Mandatory.* In specific instances, the Administrator may require an agency, field office, contractor, or approved scale testing organization to retain (i) file samples for a period of not more than 90 days or (ii) other records for a period of not more than 3 years in addition to the 5-year retention period. Notice of such longer retention periods will be given by the Administrator to the appropriate agency, field office, contractor, or approved scale testing organization.

(2) *Permissive.* Records, including file samples, may be kept for longer periods of time than the prescribed retention period at the option of the agency, the field office, the contractor, the approved scale testing organization, or the individual maintaining the records.

§ 800.147 Availability of official records.

(a) *Availability to officials.* Each agency, field office, contractor, approved scale testing organization, licensee, and authorized employee of the Service 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 which such agency, field office, contractor, approved scale testing organization, licensee, and authorized employee of the Service is required to maintain under § 800.145.

(b) *Availability to the public.* (1) *General records.* The following official records will be available, upon request by any person, for inspection and copying during customary business hours: (i) copies of the Act, the regula-

tions, the standards, and instructions issued by the Service under the Act as specified in § 800.148; (ii) the delegation, designation, contract, and approval records specified in § 800.149; (iii) the organization and staffing records specified in § 800.150; (iv) the licenses, authorizations, and approval records specified in § 800.151; and (v) the schedule of fee records specified in § 800.152.

(2) *Records of the Service.* Records of the Service, other than the records identified in this paragraph (b), are available for inspection and copying in accordance with (i) the regulations of the Secretary of Agriculture, Title 7, Part 1, Subpart A, of the Code of Federal Regulations (7 CFR 1.1-1.16) and Appendix A thereto, and (ii) the Freedom of Information Act (5 U.S.C. 552(a)(3)).

(c) *Locations where records may be examined or copied.* (1) *Agency, contractor, and approved scale testing organization records.* Records of agencies and their licensed employees, contractors, and approved scale testing organizations that are available for public inspection may be inspected and copied during regular working hours at the principal place of business of the agency, contractor, or scale testing organization.

(2) *Service records.* Records of the Service that are available for public inspection and copying may be inspected and copied in the applicable field office, regional office, or headquarters office of the Service, U.S. Department of Agriculture (USDA), at 14th and Independence Avenue, S.W., Washington, D.C. 20250, during regular working hours, Monday through Friday, except holidays.

§ 800.148 Records on the Act, regulations, standards, and instructions issued by the Service under the Act.

(a) *The Act.* The complete record of the Act consists of a copy of the wording of the Act, with amendments, if any.

(b) *The regulations.* The complete record of the regulations consists of a copy of the wording of (1) the regulations as set forth in Parts 800, 802, and 803 of this chapter; (2) the Rules of Practice Governing Informal Proceedings, as set forth in Part 808 of this chapter; and (3) all amendments issued thereto.

(c) *The standards.* The complete record of the standards consist of a copy of the wording of (1) the Official U.S. Standards for Grain as set forth in Part 801 of this chapter and (2) all amendments issued thereto.

(d) *The instructions.* The complete record of the instructions consists of a copy of (1) each current notice, instruction, or handbook issued by the Service and (2) a current checklist

showing the current notices, instructions, and handbooks.

§ 800.149 Records on delegations, designations, contracts, and approvals of scale testing organizations.

(a) *Delegations.* The complete record of a delegation under Sections 7 or 7A of the Act consists of a copy of the current delegation and all amendments thereto.

(b) *Designations.* The complete record of a designation for the conduct of official functions under Sections 7 or 7A of the Act consists of a copy of the current designation and all amendments thereto.

(c) *Contracts.* The complete record of a contract consists of a copy of the current contract with the Service and all amendments thereto.

(d) *Approvals.* The complete record of an approval of a scale testing organization under Section 7B of the Act consists of a copy of notice of approval from the Service.

§ 800.150 Records on organization, staffing, and budget.

(a) *Organization.* The complete record of the organization of an agency or contractor must show the current information specified in § 800.198.

(b) *Staffing.* The complete record of staffing must show (1) the name of each current employee, (2) the employee's principal duty, (3) the employee's principal duty station, (4) the training that the employee has received in accordance with Section 8(g) of the Act, and (5) related information that may be required by the Service.

(c) *Budget.* The complete record of the budget must show for the current year the actual income and the actual expenses. Complete accounts for the receipts for inspection, weighing, equipment testing, and related services; the sale of grain samples; and the disbursements from such receipts and such other records as may be needed shall be available for use in establishing or revising fees for inspection, weighing, and equipment testing services under the Act. The records shall include such other information on the disposition of grain samples obtained under the Act as may be prescribed in instructions issued by the Service.

§ 800.151 Records on licenses, authorizations, and approvals.

(a) *Licenses.* The complete record of licenses consists of current information showing (1) the name of each licensee; (2) the scope of each license; (3) the termination date of each license; (4) the original license; and (5) related information that may be required by the Service.

(b) *Authorizations.* A complete record of authorizations consists of

current information showing (1) the name of each authorized employee and (2) the position description or other authorization for each employee.

(c) *Approvals.* A complete record of approvals of weighers consists of current information showing the name of each approved weigher employed by, in, or at a specific approved weighing facility.

§ 800.152 Records on fee schedules.

The complete record on fee schedules includes (1) a copy of the current fee schedule as identified in § 800.70; (2) in the case of agencies, data showing how the fees in the schedule were developed; (3) superseded fee schedules as specified in § 800.146; and (4) related information that may be required by the Service.

§ 800.153 Records on space and equipment.

(a) *Space.* The complete record on space must show (1) a description of the space that is occupied or used at each location; (2) the name and address of the owner of the space; (3) the financial arrangements for the space; and (4) related information that may be required by the Service.

(b) *Equipment.* The complete record on equipment must show (1) the description of each piece of equipment used in performing official inspection or official Class X or Class Y weighing functions under the Act, (2) the location of the equipment, (3) the name and address of the owner of the equipment, (4) the schedules for testing the equipment under Section 7B of the Act and § 800.218, (5) a record of the testing and the results of the testing, and (6) related information that may be required by the Service.

§ 800.154 Records on official inspection, weighing, equipment testing, and monitoring functions.

(a) *Detailed work records.* (1) *General.* Detailed work records must be prepared for all inspection, weighing, and equipment testing and monitoring functions performed under the Act. The records must (i) be on standard forms prescribed in the instructions issued by, or approved in specific cases by, the Service; (ii) be written or printed in English; (iii) be concise, complete, accurate, and clearly legible; (iv) show the information and data that are needed for preparing the corresponding official certificate or official report; (v) show the name or initials of the individual who made each of the determinations; (vi) show such additional information as needed by the agency or the Service in performing monitoring, supervision, and regulatory activities; in answering trade inquiries; and in investigating trade com-

plaints; and (vii) show related information that may be required by the Service.

(2) *Use of work records.* Work records shall be used by official personnel (i) as a basis for issuing official certificates or official forms; (ii) in approving or not approving the use of inspection and weighing equipment for the performance of official inspection or official Class X or Class Y weighing functions; (iii) in performing monitoring, supervision, and regulatory activities; (iv) in answering inquiries from interested persons; (v) in processing trade and other complaints; (vi) for billing and accounting, and (vii) for related purposes. The records may be used in reporting the results of official inspection or weighing functions in writing in advance of, or in addition to, the issuance of official certificates.

(3) *Furnishing standard forms.* The following standard forms are required and will be furnished by the Service at no cost to an agency: Official Export Grain Inspection and Weight Certificates, Official Export Grain Inspection Certificates, official inspection logs, official weight loading logs, official scale testing reports, and official volume of work reports. All other forms used by an agency in the performance of official functions, including certificate forms, will be furnished by the agency. All forms used by field offices will be furnished by the Service.

(b) *Inspection work records.* (1) *Pan tickets.* The record for each kind of official inspection service identified in § 800.76 shall, in addition to the official certificate, include one or more pan tickets as prescribed in instructions issued by the Service. (A sample pan ticket form may be obtained from any field office.) Activities which during the course of inspection are performed in a series, such as sampling and grading, may be recorded on one pan ticket or on separate pan tickets, as convenient. However, if the request for inspection has been withdrawn or dismissed, no pan ticket shall be issued or released to the applicant. The original pan ticket shall be retained by the agency or the field office that performed the inspection.

(2) *Inspection logs.* In addition to the pan ticket identified in subparagraph (1) of this paragraph (b), the record for official inspection services that are performed on grain in a combined lot (see § 800.86) and on shiplot grain (see § 800.87) must include the official inspection log as prescribed in instructions issued by the Service. (Copies of the inspection log may be retained by the agency or field office.) The original inspection log shall be retained by the agency or field office that performed the inspection. If the inspection is performed by an agency,

two copies of the inspection log shall be promptly sent to the appropriate field office.

(3) *Other forms.* Each detailed test, including but not limited to official factor and official criteria determinations which cannot be completely recorded on a pan ticket or an inspection log, shall be recorded in a concise, complete, accurate, and clearly legible manner on such other forms as may be prescribed in instructions issued by, or approved in specific cases by, the Service. 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, abbreviations may be used. (A list of approved abbreviations may be obtained, upon request, from any field office.)

(4) *File samples.* (i) *General.* The record for official inspection services that are based, in whole or in part, on an examination of the grain in a sample includes one or more file samples, as prescribed in instructions issued by the Service.

(ii) *Size.* Each file sample consists of an unworked portion. Each file sample shall be of such size as will permit a reinspection, field appeal inspection, field monitoring inspection, Board appeal inspection, or Board monitoring 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 for inspection, the entire sample shall be retained.)

(iii) *Method.* Each sample shall be retained in such manner as will retain 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 in accordance with the instructions issued by the Service.

(iv) *Uniform system.* To facilitate the use of file samples, agencies and field offices shall establish and maintain a uniform file sample system in accordance with instructions issued by the Service. The instructions may prescribe the kind and size of the file sample containers, the method of identification, and methods for retaining the representativeness of the samples.

(v) *Forwarding samples.* Upon request by a field office or the Board of Appeals and Review, a file sample retained by an agency or by a field office shall be furnished to the requesting field office or to the Board of Appeals and Review for a field appeal inspection, a field monitoring inspection, a Board appeal inspection, or a Board monitoring inspection. If a sample is forwarded by an agency to a field office, or by a field office to the Board of Appeals and Review, no portion of

the sample need be retained by the agency or the field office that forwarded the sample. The cost of locating the sample shall be borne by the forwarding agency or field office. The cost of containers and mailing shall be borne by the Service. When a file sample is used for a field appeal inspection, or a field monitoring inspection, the field office or the Board of Appeals and Review, as applicable, shall thereafter have the responsibility for maintaining the sample.

(c) *Weighting work records.* (1) *Scale ticket, scale tape, or other weight record.* The record for each official Class X or Class Y weighing service identified in § 800.77 shall, in addition to the official certificate, include a scale ticket, a scale tape, or other weight record as prescribed in instructions issued by the Service.

(2) *Weighting logs.* In addition to the scale tickets, scale tape, or other weight record identified in subparagraph (1) of this paragraph (c), the record for official Class X or Class Y weighing services that are performed on bulk grain in a combined lot (see § 800.99) and bulk shiplot grain (see § 800.100) shall include official weighting logs as prescribed in instructions issued by the Service.

(d) *Equipment testing work records.* The record for each official equipment testing function shall include an official equipment testing report prescribed in instructions issued by the Service. Upon completion of an official equipment test, one or more copies of the completed testing report may, upon request of the owner or operator of the equipment, be issued to the owner or operator or to the owner's or operator's order. The testing report must show (1) the date the test was made; (2) the name of the organization that performed the test; (3) the names of the personnel who performed the test; (4) the names of the Service personnel who monitored the performance of the test; (5) the identification of the equipment that was tested; (6) the results of the test; (7) the names of the interested persons who were informed of the results of the test; (8) the number or other identification of the approval tag or label, or the noncompliance tag or label that was affixed to the equipment; and (9) other information that may be required by the Service.

(e) *Monitoring records.* The complete record on monitoring shall show (1) the names of the official personnel who performed the monitoring, (2) the time and place of the monitoring, (3) the kind of official function that was monitored, (4) the names of the official or approved personnel whose work was monitored, (5) the results of the monitoring function, and (6) related

information that may be required by the Service.

§ 800.155 Related official records.

(a) *Volume of work report.* Each agency and each field office shall prepare a periodic report showing the kind and the volume of inspection and weighing services performed by the agency or the field office, as applicable. The report shall be prepared and copies shall be submitted to the Service in accordance with instructions issued by the Service.

(b) *Record of withdrawals and dismissals.* Each agency and each field office shall maintain a complete record of (1) the requests for inspection or weighing services that are withdrawn by an applicant pursuant to § 800.47, (2) the requests for inspection or weighing services that are dismissed by the agency or field office pursuant to § 800.48, and (3) the requests for inspection or weighing services that are conditionally withheld by the agency or field office pursuant to § 800.49. The record shall be prepared and maintained in accordance with instructions issued by the Service.

(c) *Certificate record.* Each agency and each field office shall maintain a complete record of the certificates that are (1) received by the agency or field office; (2) the special design certificates, if any, that are printed for use by the agency or field office; and (3) the certificates that are issued by the agency or the field office. The record shall show the serial numbers of the certificates that are on hand and shall include a copy of each certificate that is issued, voided, or otherwise used. The record shall show related information that may be required by the Service.

(d) *Warehouse samplers' record.* Each warehouse sampler shall maintain the records prescribed in § 800.145(e) and other records and reports pertaining to the warehouse sampler functions that may be required by the Service.

§§ 800.156—800.159 [Reserved]

OFFICIAL CERTIFICATES

§ 800.160 Official certificates; issuance and distribution.

(a) *Required issuance; individual certificates.* Subject to the provisions of §§ 800.76(f)(2) and 800.77(f)(2) and paragraph (b) of this § 800.160, an official inspection certificate shall be issued to show the results of each kind and each level of inspection service, and an official weight certificate shall be issued to show the results of each kind of Class X or Class Y weighing service performed under the Act.

(b) *Permissive issuance; combination certificates for export cargo grain.*

(1) *Issuance.* Upon request by an applicant and subject to the provisions of subparagraph (2) of this paragraph (b), a combination export inspection and weight certificate may be issued for an original official sample-lot inspection service (of any scope) and an official Class X weighing service for a given lot of export cargo grain, provided the inspection and weighing services are performed by one agency or one field office at one location and at one time.

(2) *Surrender of combination certificates.* If a reinspection service or a field appeal inspection service is requested with respect to any of the inspection results shown on a combination certificate for export cargo grain, (i) the combination certificate for export cargo grain shall be surrendered to the issuing agency or to the issuing field office; (ii) a new export inspection certificate shall be issued by the agency or the field office, as applicable, for the official sample-lot inspection service; (iii) a new export weight certificate shall be issued for the official Class X weighing service; and (iv) each of the new certificates shall clearly show the following statement in completed form: "This certificate supersedes, in part, export certificate No. _____, dated _____."

(3) *Marking surrendered certificate.* If at the time of issuing the new export certificates the superseded combination certificate for export cargo grain in the custody of the agency or the authorized field office, as applicable, the superseded combination certificate shall be marked "Void" in a clear and conspicuous manner.

(4) *Statement to be shown on new certificates.* If the superseded combination certificate for export cargo grain is not in the custody of the agency or the authorized field office, as applicable, the following statement shall be clearly shown on the new export certificate immediately beneath the statement specified in subparagraph (3) of this paragraph (b): "The superseded export certificate has not been surrendered." Official personnel shall diligently exercise such other precautions as may be necessary to prevent the fraudulent or unauthorized use of a superseded export certificate.

(5) *Use of superseded combination certificate for export cargo grain prohibited.* As of the date of the issuance of the new export certificates, the superseded combination certificate for export cargo grain shall be considered null and void and shall not thereafter be used to represent any grain.

(c) *Distribution; general.* (1) *General.* (i) *Nonexport.* The original and a minimum of one copy of each official certificate shall, except as provided in subparagraphs (2) and (3) of this para-

graph (c), be delivered or mailed to the applicant of record or to the applicant's order, and one copy shall be retained by the issuing office that performed the inspection or the weighing service. In the case of a reinspection, field appeal inspection, or Board appeal inspection, one copy of each certificate shall also be delivered or mailed to each respondent of record or to the respondent's order.

(ii) *Export.* The original and three copies of each official certificate shall, except as provided in subparagraph (3) of this paragraph (c), be delivered or mailed to the applicant of record or to the applicant's order, and one copy shall be retained by the issuing office that performed the inspection or the weighing service. In the case of a reinspection, field appeal inspection, or Board appeal inspection, one copy of each certificate shall also be delivered or mailed to each respondent of record or to the respondent's order. A copy of each Board appeal inspection certificate shall be delivered to the agency or the field office that performed the original inspection service or the reinspection service.

(2) *Trucklot grain.* In the case of inbound trucklot grain, the official Class X or Class Y weight certificate, as applicable, shall be delivered or mailed to the applicant of record or to the applicant's order. A copy of the weight certificate shall be delivered by the applicant to the driver of the truck or mailed to the person who owned the grain at the time of delivery.

(3) *Additional copies.* Upon request, additional copies of an official certificate shall be furnished to the applicant, a respondent, or other interested person. Fees for extra copies may be established by an agency in accordance with § 800.70. Fees for extra copies furnished by a field office of the Board of Appeals and Review shall be in accordance with § 800.72.

(d) *Prompt issuance.* (1) *General requirement.* The original of each certificate and the copies for the respondents, if any, shall, except as provided in subparagraphs (2) and (3) of this paragraph (d), be issued on the date the inspection or the weighing service, as applicable, was performed. If a combination inspection and weight certificate is issued for export cargo grain, the original and the copies of the certificate shall be issued on the date the inspection and the weighing services were completed.

(2) *Exception when results have been reported.* If the results of an inspection or weighing service have been reported or released to an applicant on or before the date prescribed in subparagraph (1) of this paragraph (c), the certificate and the copies may be issued not later than the close of business on the next business day follow-

ing the date prescribed in subparagraph (1) of this paragraph (d). Upon request by an agency or a field office, the requirements of this subparagraph (2) may be waived by the Service on a case-by-case basis.

(3) *Exception when divided-lot certificates have been requested.* In the case of export cargo grain, the distribution of the original and the copies of an export certificate shall be withheld if a request for a divided-lot certificate is received by the issuing agency, field office, or Board of Appeals and Review before the issuance of the export certificate.

(e) *Who may issue official certificates.* Subject to the provisions of paragraph (f) of this § 800.160:

(1) *Authority.* Certificates for inspection or weighing services performed under the Act may, except as provided in subparagraph (2) of this paragraph (e), be issued by official personnel who are licensed or authorized to perform and to certify the results of the service reported on the certificates.

(2) *Restriction.* Only an official inspector may issue an official certificate which shows an official grade determination. Only an official weigher may issue an official certificate which shows an official Class X or Class Y weight.

(3) *Prohibition.* No person shall issue an official certificate unless he/she is licensed or authorized to do so.

(f) *Who should issue certificates.* (1) *General.* The licensed or authorized person who is in the best position to know whether an inspection or a weighing service has been performed in an approved manner and whether the final determinations are accurate and true should issue the certificate for the service. For example, if an inspection or a weighing service is performed, in whole or in part, by one licensed or one authorized person, the certificate should be issued by that person.

(2) *Team activities.* If an inspection or a weighing service is performed by two or more official personnel, the certificate should be issued by the person who made the final inspection or the final weighing determination.

(3) *Issuance by supervisory personnel.* Nothing in this paragraph (f) shall preclude a supervisory inspector, supervisory weigher, chief inspector, chief weighmaster, or field office supervisor from issuing an official certificate if the person is licensed or authorized to do so and has determined that the facts stated on the certificate are true.

(g) *Name requirement.* (1) *General.* The name or the signature of the person who issues an official certificate shall, except as specified in subparagraph (2) of this paragraph (g), be shown on the original of each certifi-

cate. The name shall be shown on each copy.

(2) *Exception.* Both the name and the signature of the person who issues an export certificate shall be shown on the original of the export certificate. Upon request of an applicant, both the name and the signature of the person who issues a certificate other than an export certificate shall be shown on the original of the certificate.

(3) *Copies.* If the original of a certificate is signed, either the name or a facsimile of the signature shall be shown on each copy of the certificate.

(h) *Authorizations to affix names.*

(1) *Requirements for authorizations.* The name, the signature, or both, of a licensed or authorized person may, subject to the provisions of paragraph (g) of this § 800.160, be affixed to official certificates by a duly authorized agent if (i) the agent is employed by the agency or the Service; (ii) the agent has been designated by an agency or a field office as an authorized agent for the affixing of names or signatures, or both; (iii) a power of attorney authorizing the affixing of a name or signature has been issued to each agent by the licensed or authorized person whose name or signature, or both, are affixed by the agent; (iv) if the agent is employed by an agency, the original or a true copy of the designation, and of the power of attorney, are on file in the office of the agency, and true copies are on file in the appropriate field office; (v) if the agent is employed by the Service, the original or a true copy of the designation by the field office, and of the power of attorney, are on file in the field office; and (vi) each certificate prepared by an agent is prepared from an official work record which has been personally signed or initialed by the licensed or the authorized person whose name or signature is shown on the certificate.

(2) *Initialing.* When a name or signature, or both, of a licensed or an authorized person is affixed to an official certificate by an authorized agent, the initials of the given names and surname of the authorized agent shall be shown on the certificate immediately below or following the name or signature, or both, of the licensed or authorized individual.

(i) *Advance information.* Upon request of an applicant, all or any part of the contents of an official certificate may be telecopied, telegraphed, or telephoned to the applicant, or to the applicant's order, at the applicant's expense. Upon request of a respondent or other interested person, all or any part of the contents of an official certificate may be telecopied, telegraphed, or telephoned to the respondent, or to the respondent's order, or to the other interested person at

the respondent's or the other person's expense, as applicable.

(j) *Certification, when prohibited.* No official certificate shall be issued after the corresponding request for an inspection or weighing service under the Act has been withdrawn by the applicant or dismissed by an agency, a field office, or the Board of Appeals and Review.

§ 800.161 Official certificates: general requirements.

(a) *General.* Official certificates shall, except as provided in subparagraph (d)(2) of this § 800.161, (1) be on standard printed forms prescribed in instructions issued by the Service; (2) be in English; (3) be typewritten or handwritten in ink and be clearly legible; (4) show the results of inspection or weighing services in a uniform, accurate, and concise manner; (5) show the information required by §§ 800.161 through 800.166; and (6) show only such other information and statements of fact as are shown in instructions issued by, or approved in specific cases by, the Service.

(b) *Required statements and information.* Each original and each copy of an official certificate shall show the following statements or information, as appropriate:

(1) *Captions.* (i) *Combination certificate for export cargo grain.* The caption "Official Export Grain Inspection and Weight Certificate" for a combination certificate that shows the results of an official sample-lot inspection service and an official Class X weighing service on export cargo grain.

(ii) *Combination domestic certificate.* The caption "Official Grain Inspection and Weight Certificate" for a combination certificate that shows the results of an official sample-lot inspection service and an official Class X weighing service on domestic grain.

(iii) *Export inspection.* The caption "Official Export Grain Inspection Certificate" for a certificate that shows the results of an official sample-lot inspection service on export grain.

(iv) *Export or domestic weighing.* The caption "Official Grain Weight Certificate" for a certificate that shows the results of an official Class X weighing service.

(v) *Domestic Class Y weighing.* The caption "Supervision of Grain Weight Certificate" for a certificate that shows the results of an official Class Y weighing service, including an official checkweighing service or an official checkloading service on other than export grain.

(vi) *Domestic inspection.* The caption "Official Grain Inspection Certificate" for a certificate that shows the results of an official sample-lot inspection

service on other than export grain.

(vii) *Warehouseman's sample inspection.* The caption "Official Certificate—Warehouseman's Sample-Lot Inspection" for a certificate that shows the results of a warehouseman's sample-lot inspection service.

(viii) *Submitted sample inspection.* The caption "Official Certificate—Submitted Sample Inspection" for a certificate that shows the results of a submitted sample inspection service.

(ix) *Sampling service.* The caption "Official Sample Certificate" for a certificate for an official sample service.

(x) *Stowage examination.* The caption "Official Stowage Examination Certificate" for a certificate that shows the results of a stowage examination or a carrier condition report.

(2) *Name.* The name of the issuing agency, field office, or Board of Appeals and Review, as applicable, and the name "Federal Grain Inspection Service" if the certificate is issued by a delegated agency, field office, or Board of Appeals and Review.

(3) *Kind and level of service.* Information showing whether the certificate represents an original inspection, reinspection, field appeal inspection, Board appeal inspection, Class X weighing, or Class Y weighing service.

(4) *Original or copy.* Information showing whether each original and each copy of a certificate is an original or a copy. (See paragraph (d) of this § 800.161.)

(5) *Certificate number.* The serial number of the certificate, together with the lettered prefix assigned by the Service to (i) the designated agency, (ii) the delegated agency, or (iii) the Service. The prefix and the number shall, except on divided-lot, duplicate, and corrected certificates, be preprinted on the certificate. The requirement with respect to the lettered prefix may be waived by the Service for special design weight certificates. (See paragraph (d) of this § 800.161.)

(6) *Location of issuing office.* The name of the city, town, port, or other location, and the State where the certificate is prepared and issued.

(7) *Date of service.* The date the inspection or weighing service was performed, in accordance with § 800.1(b). No certificate shall be predated or postdated.

(8) *Kind of movement.* Information showing whether the certificate represents an "IN", "OUT", or "LOCAL" movement. (This requirement is not applicable to certificates which represent submitted sample inspection, sampling, or stowage examination services.) An "IN" movement shall be deemed to be a movement of grain into an elevator, or into or through a city, town, port, or other location

without a loss of identity. An "OUT" movement shall be deemed to be a movement of grain out of an elevator, or out of a city, town, port, or other location. A "LOCAL" movement shall be deemed to be a bin run or similar in-house movement. Grain at rest in bins, tanks, or similar containers shall be considered to be a "LOCAL" movement.

(9) *Certification.* A statement showing that the certificate is issued under the authority of the United States Grain Standards Act, as follows:

(i) For a combination export certificate that shows the results of an official sample-lot inspection service and an official Class X weighing service for export cargo grain: "I certify that I am licensed or authorized under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) to inspect and weigh the kind of grain covered by this certificate, and that on the above date, the following identified grain was inspected and weighed under the Act, with the following results:"

(ii) For a certificate that shows the results of official inspection services other than official sample-lot inspections: "I certify that I am licensed or authorized under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) to perform the inspection service covered by this certificate, and that on the above date, the following identified service was performed under the Act, with the following results:"

(iii) For a certificate that shows the results of an official Class X weighing service: "I certify that I am licensed or authorized under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) to weigh the kind of grain covered by this certificate, and that on the above date, the following identified grain was weighed under the act, with the following results:"

(iv) For a certificate that shows the results of an official Class Y weighing service: "I certify that I am licensed or authorized under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) to perform official supervision of weighing service, and that the grain elevator, warehouse, storage, or handling facility which weighed the identified grain has suitable grain-handling equipment, accurate scales, and approved weighers."

(10) *Location of grain.* The location of the grain at the time it was sampled or weighed under the Act, or the location of the carrier or container at the time it was examined under the Act in terms of (i) a railroad yard, pier, elevator, or other specific place; and (ii) the name of the city and the State, if different than the name of the city and State shown in accordance with subparagraph (6) of this paragraph (b).

(11) *Date and method of sampling.* The dates the grain was sampled and

the method of sampling the grain. (This subparagraph (11) is not applicable to export, submitted sample, stowage examination, or official Class X weight or official Class Y weight certificates.)

(12) *Seal record.* Upon request of the applicant, (i) for hopper cars, whether bottom seals are intact or missing and (ii) for all other containers, the identification of the seals, if any.

(13) *Identification of container.* For an inspection certificate, or a weight certificate, or a combination certificate that shows the results of an official sample-lot inspection service and an official Class X weighing service, the identification of the container in terms of (i) the State or municipality license number of, or other identification assigned by official personnel to, a truck or trailer, and when necessary to identify an individual truck, trailer, truck/trailer combination, or railroad car, the approximate time of sampling or weighing, or the scale ticket number or the bill of lading number; (ii) the railroad car initials and numbers; (iii) the name or other designation of the ship, barge, or other carrier, and the number or other designation of the hold or other place of stowage; or (iv) the name or other designation of an elevator and bin or compartment.

For an inspection certificate that shows the results of a submitted sample inspection, the applicant's mark, number, or other identification or such identification as the official personnel who issue the submitted sample certificate may deem necessary: *Provided*, That nothing in this subparagraph (13) shall preclude the true showing by an applicant of the identification of the means of conveyance transporting the grain.

(14) *Quantities.* For a lot inspection certificate, the approximate quantity of grain in the lot, stated in terms of truckload, trailerload, carload, bargeload, part truckload, part trailerload, part carload, part bargeload, or by official weight.

(15) *Grade.* The grade and the kind of grain covered by an inspection certificate, except that if a grade is not shown, the word "grade" shall be deleted or otherwise not shown on the certificate. (This subparagraph (15) is not applicable to a certificate for an official sample or an official stowage examination.)

(16) *Results of service.* Information showing the results of the inspection or weighing service, in accordance with the kind, scope, and level of service requested by the applicant.

(17) *Remarks.* The word "Remarks," together with space for statements required by the Service, or other statements requested by an applicant and

permitted by paragraph (f) of this §800.161.

(18) *Land carriers and barges (single lots).* For grain in land carriers and barges in single lots, the statements required by §§800.85(d), (e), (f), (g), and (h), and 800.98(d) and (e).

(19) *Combined lots.* For grain in land carriers, barges, and ships in combined lots, the statements required by §§800.86(i) and 800.99(g).

(20) *Shiplot grain (single lots).* For shiplot grain in single lots, the statements required by §§800.87(i) and 800.100(e).

(21) *Superseding statement.* For a certificate for a reinspection service, field appeal inspection service, or Board appeal inspection service, the statements and information required by §§800.130(c) and 800.140(c).

(22) *File sample inspection.* For a certificate for a reinspection service, a field appeal inspection service, or a Board appeal inspection service based, in whole or in part, on file samples, the statement required by §800.83(d).

(23) *Warehouseman's sample-lot inspection.* For a certificate for a warehouseman's sample-lot inspection service, the name of the licensed employee, the number of the contract entered into by the licensed employee, and the statement "This certification does not meet the inspection requirements of Section 5 of the Act."

(24) *Submitted sample inspection.* For a certificate for a submitted sample inspection service, the following statements: (i) in bold print, "The sample identification and inspection results shown on this certificate are assigned only to the quantity of grain in the sample indicated, and not to any identified carrier from which the sample of grain may have been taken. This certificate does not meet the inspection requirements of Section 5 of the Act."; and (ii) in ghost or shadow type diagonally across the face of the certificate, the words "Not officially sampled."

(25) *Stowage examinations.* (i) *Separate Service.* (A) For a certificate for a stowage examination for inspection purposes, the following statements, as appropriate: "Stowage space examined on the above date and found to be substantially clean, dry, free of insect infestation, and suitable to maintain the quality of the grain," or "Stowage space examined on the above date and found not suitable to maintain the quality of the grain because of _____."

(B) For a certificate for a stowage examination for weighing purposes, the following statements, as appropriate: "Stowage space examined on the above date and found suitable to maintain the quality of the grain," or "Stowage space examined on the above date and found not suitable to

maintain the quality of the grain because of _____."

(C) For a certificate for a stowage examination for both inspection and weighing, the following statements, as appropriate: "Stowage space examined on the above date and found to be substantially clean, dry, free of insect infestation, and suitable to maintain the quality and quantity of the grain," or "Stowage space examined on the above date and found not suitable to maintain the quality and quantity of the grain because of _____."

(ii) *Combined service.* For an inspection or weighing certificate other than shiplot grain, a statement in accordance with the instructions which indicate whether or not a stowage examination was performed.

(26) *Sampling service.* For a certificate for an official sampling service, the statement "Official Sample," the date of sampling, the method of sampling, the name of the sampler, and the quantity of grain in the sample in terms of volume or weight.

(27) *Not standardized grain.* For a certificate for a sample or lot that does not conform to the requirements in the Official U.S. Standards for Grain, the statement required by § 800.78(b).

(28) *Divided lot.* For a divided-lot certificate, the statements and information required by § 800.163.

(29) *Duplicate certificate.* For a duplicate certificate, the statements and information required by § 800.164.

(30) *Corrected certificate.* For a corrected certificate, the statements and information required by § 800.165.

(31) *Name.* The name or the signature, or the name and the signature, of the licensed or authorized person who issued the certificate, stated in accordance with the provisions of § 800.160(g).

(32) *Authority and purpose.* A statement as follows: "This certificate is issued under the authority of the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*), and the regulations thereunder (7 U.S.C. 800.1 *et seq.*). It is issued to show the kind, class, grade, quality, condition, or quantity of grain, or the condition of a carrier or container for the storage or transportation of grain, or other facts relating to grain as determined by official personnel. The statements on the certificate are deemed true at the time and place the inspection or the weighing service was performed. The statements shall not be deemed to be true if the grain is transhipped or is otherwise transferred from the identified carrier or container. If this certificate is not canceled by a superseding certificate, it is receivable by all officers and all courts of the United States as prima facie evidence of the truth of the facts stated therein. This certifi-

cate does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal Law."

(33) *Statement on negotiability.* For a certificate that shows an official Class X or Class Y weight, the term "Not negotiable."

(34) *Warning.* A warning statement as follows: "Warning: Any person who shall knowingly falsely make, issue, alter, forge, or counterfeit this certificate, or participate in any such actions, or otherwise violate provisions in the U.S. Grain Standards Act, the U.S. Warehouse Act, or related Federal laws, is subject to criminal, civil, and administrative penalties."

(35) *Class Y weight.* For a certificate that shows Class Y weight, the statement "This certificate does not meet the requirements of Section 5 of the Act."

(36) *Reference.* A reference statement as follows: "Please refer to this certificate by its number, including the lettered prefix, if any, and date."

(c) *Statements to be shown on face of certificate.* (1) *General.* Except as shown in subparagraph (2) of this paragraph (c), the statements and information required by paragraph (b) of this § 800.161 and the statements and information permitted by paragraph (g) of this § 800.161 shall be shown on the face of the certificate.

(2) *Exceptions.* The following required or permissive statements and information may be shown on the back of a certificate, other than a certificate for export grain: (i) the abbreviations and the meaning of the abbreviations for official factors or official criteria, as specified in paragraph (e) of this § 800.161; (ii) the statement "Partial inspection—heavily loaded," as specified in § 800.85(f); and (iii) the identification of the carriers or containers in a combined lot, together with the identification of the seals, if any, applied to the carriers or containers, as specified in § 800.86.

(d) *Format and color requirements for certificates.* (1) *General.* Except as provided in subparagraph (2) of this paragraph (d), official certificates for similar kinds and levels of inspection and weighing services shall be uniform in size, shape, color, and format, as specified in instructions issued by the Service. All original certificates (see subparagraph (a)(4) of this § 800.161) and all copies issued to interested persons shall be on white paper, except as follows:

Caption on Certificate	Color of Original Certificate	Color of Copy
Official Certificate—Warehouseman's Sample—Lot Inspection.	yellow	yellow
Official Certificate—Submitted Sample Inspection.	pink	pink
Official Supervision of Weight Certificate.	yellow	yellow

(2) *Special design weight certificates.* Upon request of an applicant and with the approval of the Service, weight certificates that are specially designed may be used by an agency or an authorized field office, as applicable, at an approved weighing facility, subject to the following requirements: (i) the certificates shall show the results of an official Class X weighing service or an official Class Y weighing service on inbound grain or an outbound grain, except export grain; (ii) controls for the printing, storing, and issuance of the certificates must be established and maintained by the agency or the field office that performs weighing services at the facility; (iii) except for the design, the certificates must comply with the provisions of §§ 800.160, 800.161, 800.164, and 800.165; and (iv) the certificates must otherwise conform with instructions issued by the Service.

(3) *Related information.* Special design weight certificates may, at the option of the applicant, include related merchandising information provided the information (i) is shown in a lightly shaded area that is clearly separated by a heavy black line from the remainder of the certificate; (ii) shown in the lightly shaded area is in one location on the certificate; and (iii) shown in the lightly shaded area contains a caption that clearly indicates the information in the shaded area is not a part of the official Class X weighing information or the official Class Y weighing information, substantially as follows: "Note: Information shown in shaded area is not part of this official certificate."

(e) *Showing official factor or official criteria identification.* Official factor identifications and official criteria identifications, if printed on inspection certificates, shall be shown in block form. No abbreviations for factors or criteria may be shown on certificates for export grain. When space on certificates, other than certificates for export grain, does not permit showing the full identification for an official factor or an official criteria, an abbreviation approved by the Service may be used if (1) the abbreviation and the meaning of the abbreviation are shown on the back of the certificate and (2) the statement "See reverse side for abbreviations" is shown

on the face of the certificate in the space provided for remarks. (A list of approved abbreviations may be obtained from any field office.)

(1) *Permissive statements and information.* (1) *Requested statements.* Statements requested by an applicant but not required by the regulations or by instructions issued by the Service may be shown on a certificate if the statements (i) have been approved in instructions issued by the Service or (ii) are approved in specific cases by the Administrator. A list of approved statements may be obtained from any agency or field office.

(2) *Other requested information.* Other information requested by an applicant may be shown on a certificate if the information (i) is known to be true by the person issuing the certificate, or (ii) is a type of information approved by the Service as useful in the merchandising of U.S. grain, and (iii) is not inconsistent with the Act, the regulations, or instructions issued by the Service. The information may include, but is not limited to contract, loading order, or purchase authorization numbers, and letter of credit identifications, and in the case of sacked grain, the kind and condition of the sacks, and the markings, if any, on the sacks.

(g) *Letterhead statements and information.* The permissive statements and information prescribed in paragraphs (f) and (g) of this § 800.161 may be shown on designated agency or Service letterhead stationery in lieu of official certificates if (1) space does not permit showing the statements or information on the official certificates, or when letterhead stationery is found by the issuing agency or field office to be more suitable than a certificate; (2) the identification of the corresponding certificates is referenced on the letterhead stationery; and (3) the letterhead statements are issued and distributed in accordance with § 800.160 and instructions issued by the Service. If letterhead statements are issued by delegated agencies for export grain or export grain carriers, the statements shall be issued on Service letterhead stationery.

§ 800.162 Certificates of grade; special requirements.

(a) *General.* Each official certificate that shows an official grade determination shall show (1) the grade in accordance with the Official U.S. Standards for Grain; (2) the test weight of the grain; (3) the moisture content of the grain; (4) the information for any official factor identified in paragraph (b) of this § 800.162 for which an official determination is made during the course of the grade determination; (5) if the grain is graded other than No. 1, the certificate shall show the informa-

tion for each of the official factors that determined the grade, including the factors commercially objectionable foreign odor, distinctly low quality, heating, musty, or sour; and (6) all official factor information requested by the applicant.

(b) *Cargo certificates.* Each certificate of grade that represents a cargo shipment of a given kind of grain shall show the information for each of the following official factors for the grain, in addition to the information required by paragraph (a) of this § 800.162;

BARLEY: SIX-ROWED MALTING AND SIX-ROWED BLUE MALTING

Black barley; Foreign material; Other grains; Plump barley; skinned and broken kernels; sound barley; Thin barley; Suitable malting type.

MIXED GRAIN

Damaged kernels; foreign materials; Heat-damaged kernels.

OATS

Foreign material; heat-damaged kernels; sound cultivated oats; Wild oats.

BARLEY: TWO-ROWED MALTING

Black barley; foreign material; Plump barley; skinned and broken kernels; sound barley; thin barley; wild oats; Suitable malting type.

BARLEY: SIX-ROWED AND TWO-ROWED (OTHER THAN MALTING) AND BARLEY

Black barley; Broken kernels; Damaged kernels; foreign material; heat-damaged kernels (major); Sound barley; Thin barley.

CORN

Broken corn and foreign material; Damaged kernels (total); heat-damaged kernels.

FLAXSEED

Damaged flaxseed (total); Heat-damaged flaxseed.

WHEAT: DURUM

Contrasting classes; Damaged kernels (total); Defects (total); foreign material; Heat-damaged kernels; Shrunken and broken kernels; NOTE: Wheat of other classes; (total shall not be shown).

RYE

Damaged kernels (total); Foreign material (total); foreign matter other than wheat; heat-damaged kernels.

SORGHUM

Broken kernels, foreign material, and other grains; Damaged kernels (total); heat-damaged kernels.

SOYBEANS

Brown, black, and/or bicolored soybeans in yellow or green soybeans; Damaged kernels (total); foreign material; heat-damaged kernels; splits

TRITICALE

Damaged kernels (total); defects (total); foreign material (total); Heat-damaged ker-

nels; Material other than wheat or rye; Shrunken and broken kernels.

WHEAT: HARD RED SPRING, HARD RED WINTER, SOFT RED WINTER, AND WHITE

Contrasting classes; Damaged kernels (total); Defects (total); foreign material; Heat-damaged kernels; Shrunken and Broken kernels; Wheat of other classes (total).

WHEAT: UNCLASSIFIED

Damaged kernels (total); Defects (total); foreign material; Heat-damaged kernels; Shrunken or broken kernels; Wheat of other classes (total).

WHEAT: MIXED

Damaged kernels (total); Defects (total); foreign material; Heat-damaged kernels; shrunken and broken kernels.

(c) *Additional information.* A certificate of grade may contain any other official factor information that the person issuing the certificate deems necessary to correctly describe the grain.

(d) *application of term "official factor."* For the purpose of this § 800.162, the term "official factor" shall be deemed to include each official factor defined in the Official U.S. Standards for Grain, including but not limited to damaged kernels, moisture, and test weight, and each other official factor identified in the official standards, including but not limited to commercially objectionable foreign odor, distinctly low quality, musty, heating, and sour.

§ 800.163 Divided-lot certificates.

The provisions of this § 800.163 shall be applicable to all kinds and all levels of export cargo grain inspections including original inspection service, reinspection service, field appeal inspection service, Board appeal inspection service, and Class X weighing service.

(a) *Availability of divided certificates.* Subject to the provisions of paragraphs (b) through (g) of this § 800.163, an applicant for official inspection or official class X weighing service on export cargo grain may, upon request, exchange an inspection or weight certificate for an export cargo shipment or an inspection or weight certificate for a combination export cargo shipment for two or more divided-lot certificates.

(b) *Application for divided-lot certificates.* A request for divided-lot certificates must be filed (1) in writing; (2) by the applicant who filed the request for the official inspection or weighing service on the export cargo shipment; (3) with the agency, the field office, or the Board of Appeals and Review that issued the last outstanding certificates for the export cargo shipment inspection or weighing service; (4) at the time the inspection or weighing serv-

ice was performed or within 5 business days after the date of the last outstanding certificate for the official inspection or the official Class X weighing service; except that, upon a showing of good cause, the agency, the field office, or the Board of Appeals and Review may waive the requirement of this paragraph (b); and (5) before the identity of the grain has been lost.

(c) *General requirements.* (1) *Inspected grain.* To be eligible for divided-lot inspection certificates, the grain in an export cargo shipment must (i) have been offered for inspection as one lot; (ii) have been found to be uniform in quality in accordance with § 800.87(g); (iii) have been certificated as one lot; and (iv) not have been commingled in a stowage area (see § 800.87(i)) with other grain of different kind or quality, or another commodity.

(2) *Weighed grain.* To be eligible for divided-lot weight certificates, the grain in an export cargo shipment must (i) have been offered for weighing as one lot and have been certificated as one lot under § 800.100; (ii) if inspected, be found uniform in quality in accordance with § 800.87(g) and be certificated for inspection purposes under this § 800.163; and (iii) not have been commingled in a stowage area (see § 800.87(i)) with other grain of different kind or quality, or another commodity.

(3) *Quantity restrictions.* No divided-lot inspection or Class X weight certificates shall show in the aggregate a quantity of grain different from the quantity shown on the applicable superseded inspection or weight certificate.

(4) *Surrender of export cargo shipment certificate.* The export cargo shipment certificate that is to be superseded by a divided-lot certificate must (i) be in the custody of the agency or the Service, (ii) be marked "Void—Surrendered for Divided-Lot Certificate", and (iii) show the identification of the divided-lot certificates.

(d) *Certification requirements.* The same information and statements that were shown on the export cargo shipment certificate, including the statements and information authorized by § 800.161(f), shall be shown on each divided-lot certificate except (1) the original and all copies of the divided-lot certificate shall show in the space provided for remarks the following completed statement: "This grain was officially (inspected) (weighed) (inspected and weighed) as an undivided lot of — (pounds) (kilograms) (metric tons). No part of the lot was officially (inspected) (weighed) (inspected and weighed) as a separate unit."; (2) the original of the divided-lot certificate shall show the term "Divided Lot—Original" and the copies

shall show the term "Divided Lot—Copy"; (3) the divided-lot certificate shall show the same serial number as shown on the superseded certificate, except each divided-lot certificate shall show a serially numbered suffix (e.g., 1764-1, 1764-2, 1964-3, etc.); and (4) the quantity of grain shown on each divided-lot certificate shall be in accordance with the request for the certificate. No divided-lot certificate shall be issued which shows a statement or information that is not authorized or permitted by the regulations.

(e) *Issuance and distribution.* Divided-lot certificates shall be (1) issued as promptly as possible after the request for the certificate is received by the agency, field office, or Board of Appeals and Review, but not later than the close of business on the next following business day and (2) distributed in accordance with the provisions of § 800.160(c). Upon request by an agency or a field office, the requirements of this paragraph (e) may be waived by the Service on a case-by-case basis.

(f) *Limitations.* (1) *General.* No divided-lot certificate shall be issued (i) for the grain in any shipment other than an export cargo shipment, (ii) for an export certificate that has been superseded by another certificate, or (iii) in any manner other than as prescribed in this § 800.163.

(2) *Use of superseded certificate prohibited.* As of the date of issuance of a superseding divided-lot certificate, the superseded certificate shall be considered null and void and shall not thereafter be used to represent any grain.

(3) *No combining or redividing.* After divided-lot certificates have been issued in accordance with the provisions of this § 800.163, there shall be no combining or further dividing of the divided-lot certificates at a later date except as may be approved in specific cases by the Service.

(g) *Other certification requirements.* For general provisions governing the certification of export cargo grain, see §§ 800.87 (f) through (i), 800.100(e), and 800.160(b).

§ 800.164 Duplicate certificates

The provisions of this § 800.164 shall be applicable to all kinds and all levels of certificates, including certificates for original inspection services, reinspection services, field appeal inspection services, Board appeal inspection services, and weighing services. If an official certificate has been lost or destroyed and has not been superseded, a duplicate certificate may, upon request by the applicant for the service covered by the certificate, be obtained in accordance with the following procedure;

(a) *Application for duplicate certificates.* A request for a duplicate certificate must be filed (1) in writing; (2) by the applicant who filed the request for the inspection or weighing service covered by the certificate; and (3) with the agency, field office, or Board of Appeals and Review that performed the inspection or weighing service.

(b) *Certification requirements.* The same information and statements that were shown on the lost or destroyed certificate, including the statements and information authorized by § 800.161(f), shall be shown on the duplicate certificate except (1) the original of the duplicate certificate shall show the term "Duplicate Original"; (2) the copies of the duplicate certificate shall show the term "Duplicate Copy"; and (3) the original and all copies shall show, in the space provided for remarks, the following completed statement: "This duplicate certificate is issued in lieu of a (lost) (destroyed) certificate."

(c) *Issuance.* A duplicate certificate shall be (1) issued as promptly as possible after a request for a duplicate original has been received and (2) distributed in accordance with the provisions of § 800.160(d).

(d) *Limitations.* No duplicate certificate shall be issued (1) for a certificate that has been superseded by another certificate or (2) in any manner other than as prescribed in this § 800.164.

§ 800.165 Corrected certificates.

(a) *General.* (1) *Verification of information.* The accuracy of the statements and information shown on an official certificate shall be verified by the official personnel whose name or signature is shown on the certificate. If technical or clerical errors are found during verification or at a later date, corrections shall be made in accordance with the provisions of this § 800.165.

(2) *Applicability.* The provisions of this § 800.165 shall apply to all kinds and all levels of certificates, including certificates for original inspection services, official Class X or Class Y weighing services, reinspection services, field appeal inspection services, and Board appeal inspection services.

(b) *Who may correct.* No correction, erasure, addition, or other change shall be made on an official certificate by any individual other than official personnel or authorized agents of such personnel.

(c) *Corrections prior to issuance.* (1) *Export certificates.* No correction, erasure, addition, or other change shall be made or shown on an export inspection or export weight certificate. If errors are found on such a certificate before issuance, the original certificate shall be marked "Void" and no copies shall be issued.

(2) *Other than export certificates.* If errors are found prior to the issuance of a certificate other than an export certificate, the errors may be corrected by issuing another certificate or by making corrections on the incorrect certificate, provided (i) the corrections are neat and legible, (ii) the corrections are initialed by the authorized individual who corrects the certificate, and (iii) the corrections and initials are shown on the original and all copies of the corrected certificate.

(d) *Corrections after issuance.* (1) *General.* Subject to the provisions of paragraph (e) of this § 800.165, and except as provided in paragraph (d) of § 800.126, if errors are found anytime up to a maximum of 1 year after the issuance of an official certificate, the errors shall be corrected by obtaining the incorrect certificate, if possible, and replacing it with a corrected certificate, or if the incorrect certificate cannot be obtained, superseding the incorrect certificate with a corrected certificate.

(2) *Standard statements.* The replacement or superseding corrected certificate shall show the same information and statements that were shown on the incorrect certificate except (i) the correct statement or information shall be shown instead of the incorrect or omitted statement or information; (ii) the corrected certificate shall show the term "Corrected Original," and the copies shall show the term "corrected copy"; (iii) a new serial number shall be shown; and (iv) the original and the copies shall show, in the space provided for remarks, the following completed statement: "This certificate is corrected as to — and supersedes Certificate No. —, dated —." (The number shown in the statement shall be accompanied by the lettered prefix, if any.)

(3) *Other statements.* If the incorrect certificate is obtained, the certificate shall be marked "Void" in a clear and conspicuous manner. If the incorrect certificate cannot be obtained, the statement "The superseded certificate identified herein has not been surrendered" shall be clearly shown in the space provided for remarks on the corrected certificate. Official personnel shall exercise such other precautions as may be necessary to prevent the fraudulent and unauthorized use of the incorrect certificate.

(e) *Limitations.* No corrected certificate shall be issued (1) for a certificate that has been superseded by another certificate, or (2) on the basis of a subsequent analysis of the grain, or (3) in any manner other than as prescribed in this § 800.165.

(f) *Use of superseded certificate prohibited.* As of the date of issuance of a superseded corrected certificate, the superseded certificate shall be consid-

ered null and void and shall not thereafter be used to represent any grain.

§ 800.166 Reproducing certificates.

Holders of official certificates may make photocopies or similarly reproduced copies of the certificates.

§§ 800.167—800.169 [Reserved]

LICENSES AND AUTHORIZATIONS (FOR INDIVIDUALS ONLY)

§ 800.170 When a license or authorization is required.

(a) *General.* (1) *Requirement.* Any individual who performs, or represents that he or she is licensed or authorized to perform, any or all inspection, weighing, or equipment testing functions under the Act must be licensed or authorized by the Service to perform each function.

(2) *30-day waiver.* A prospective applicant for a sampler's, inspection technician's, or weighing technician's license may, under the provision of this § 800.170, for a period of time not to exceed 30 calendar days, help perform official sampling, inspection, or weighing functions for which the applicant desires to be licensed under the direct physical supervision of an individual who is licensed to perform such functions. The supervising individual shall be fully responsible for the sampling, laboratory, and weighing functions performed by the prospective applicant and shall initial any work form prepared by the prospective applicant.

(3) *No fee by Service.* Except as specified in subparagraph (4) of this paragraph (a), no fee or charge will be assessed by the Service for the licensing or authorizing of an individual employed by an agency or contractor.

(4) *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. Such fee shall be paid by the applicant or by the grain elevator or warehouse that employs the applicant.

(b) *Excepted activities.* A license or authorization under the Act and the regulations is not required for (1) the opening or closing of a carrier or container of grain, or the transporting or filling of official samples, or similar laboring functions; (2) the typing or filing of official inspection or weighing certificates or other official forms or similar clerical functions; (3) the performance of official equipment testing functions with respect to official inspection equipment; (4) the performance of inspection, weighing, or scale testing functions that are not conducted for the purposes of the Act; or (5) the performance of scale testing functions by a State or municipal agency or by the employees of such agencies.

800.171 Who may be licensed or authorized.

(a) *Prohibitions.* Except as specified in paragraph (b) of this § 800.171, no person may be licensed or authorized who (1) has a conflict of interest specified in Section 11 of the Act, or (2) has a conflict of interest prohibited by § 800.187, or (3) is engaged in any of the activities specified in § 800.187 as involving a conflict of interest.

(b) *Exceptions to prohibitions.* (1) *Conflict by agency.* An employee of an agency that has a conflict of interest that is excepted by the Administrator pursuant to the provisions of Section 11(b)(5) of the Act may be licensed if the employee has no conflict of interest other than the agency's conflict of interest.

(2) *Warehouse samplers.* A qualified employee of a grain elevator or warehouse may be licensed to perform specified sampling functions under the Act in accordance with the provisions of § 800.174(c).

(c) *General qualifications.* (1) *Inspection and weighing.* To obtain a license to perform inspection or weighing functions under the Act (other than appeal functions), an individual must be employed by an agency to perform such functions and otherwise be found competent in accordance with this § 800.171 and § 800.173.

(2) *Specified technical functions.* To obtain a license to perform specified sampling, laboratory testing, weighing, and similar functions under the Act, an individual must (i) be employed by an agency to perform such functions, or (ii) enter into or be employed under a contract with the Service under § 800.200 to perform such functions, and (iii) otherwise be found competent in accordance with §§ 800.171 and 800.173.

(3) *Warehouse sampler.* To obtain a warehouse sampler's license, an applicant must be employed by an elevator or warehouse to perform sampling functions and otherwise be found competent in accordance with this § 800.171 and § 800.173.

(4) *Requirements.* To be deemed competent, an individual must (i) have been found, in accordance with § 800.173, to possess the proper qualifications; and (ii) have available the necessary equipment and facilities for performing the functions for which the individual is to be licensed. Upon showing of good cause, the recruiting requirements may be waived by the Service in specific cases.

(d) *Competency determinations.* (1) *Agency samplers and technicians.* The competency of an applicant for a sampler's, inspection technician's, or weighing technician's license 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 areas in which the elevator that employs the sampler is located, and (ii) the appropriate field office supervisor.

(2) *Inspectors, weighers, contract samplers and technicians.* The competency of an applicant for an inspector's or weigher's license, or a sampler's, inspection technician's, or weighing technician's license under the terms of a contract with the Service shall be determined by the Service.

(3) *Examinations.* The determinations of competency of applicants for licenses shall include an evaluation of the results of examinations or reexaminations, if any, under § 800.173.

(e) *Meaning of "employed."* For the purposes of paragraph (c) of this § 800.171, an individual shall be deemed to be "employed" if (1) the individual is actually employed or (2) the individual's employment is being withheld pending the receipt by the individual of the license required by the Act or the regulations.

§ 800.172 Applications for licenses.

(a) *General.* Applications for licenses, renewals of licenses, or for the return of suspended licenses shall be made to the Service on forms prescribed and furnished by the Service. Each application shall (1) be in English, (2) be legibly typewritten or written in ink, (3) include all information prescribed in the application form, and (4) except for applications for approvals, be signed by the applicant in the applicant's own handwriting.

(b) *Additional information.* Upon request, an applicant shall furnish such additional related information as is deemed necessary by the Service for the 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 are in compliance with this § 800.172 and Sections 8, 9, and 11 of the Act.

(2) *Application and applicant in compliance.* If it is determined that the application and the applicant are in compliance with the Act and the regulations and the requested action is consistent with the objectives of the Act, the requested license shall be granted.

(3) *Application not in compliance.* If it is determined that an application is not in compliance with this § 800.172 and the noncompliance precludes a satisfactory review by the Service, the applicant shall be provided an opportunity to submit the needed information. If the needed information is not or cannot be submitted by the appli-

cant within a reasonable time, as determined by the Service, the application may be dismissed.

(4) *Applicant not in compliance.* If it is determined that (i) an applicant is not in compliance with the provisions of Sections 8 and 9 of the Act and §§ 800.171 and 800.173 at the time of submitting the application or will not be in compliance during the period that would be covered by a license; or (ii) the requested action is not consistent with the objectives of the Act; or (iii) the applicant has a conflict of interest that is prohibited by Section 11 of the Act or § 800.187, the applicant shall be provided an opportunity to achieve compliance or to terminate or otherwise resolve a conflict of interest. If the applicant cannot achieve compliance within a reasonable period of time, as determined by the Service, or if the conflict of interest is not or cannot be resolved by the applicant, the application shall be dismissed.

(e) *Procedure for dismissal.* If 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 applicant's employer, if any, of the reasons for the dismissal.

§ 800.173 Examinations and reexaminations.

(a) *General.* Applicants for a license and individuals who are licensed or authorized to perform official inspection or official Class X or Class Y weighing shall, whenever deemed warranted by the Service, submit to examinations or reexaminations to determine their competency to perform any or all official inspection, or weighing, or equipment testing functions for which they desire to be, or are, licensed or authorized. In the case of an employee of any agency, the determination by the Service shall be made in consultation with the appropriate chief inspector or chief weighmaster, as applicable. In the case of an employee assigned to a field office, the determination by the Service shall be made in consultation with the appropriate field office supervisor.

(b) *Time and place of examinations and reexaminations.* Examinations or reexaminations under this § 800.173 shall be conducted by official personnel designated by the Service. The examinations and reexaminations shall be held at a reasonable time and place and in a reasonable manner, in accordance with instructions issued by the Service.

(c) *Scope of examinations and reexaminations.* Examinations or reexaminations may include but are not limited to color-vision tests, onsite or

other performance tests, or oral written tests and may be based, in whole or in part, 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, and instructions issued by the Service.

(d) *Competency standards.* (1) *Inspection.* In determining competency, an individual may be deemed not competent to perform all or specified official inspection functions if the individual (i) has a serious color-vision deficiency; (ii) cannot meet the physical requirements of some or all of the official 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, smut, or other conditions which could have a direct impact on the merchantability or storability of grain; (iv) does not have or cannot demonstrate a technical ability to operate grain sampling, testing, and grading equipment; (v) does not have working knowledge of the 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 the English language.

(2) *Weighing.* An individual may be deemed not competent to perform all or specified official Class X or Class Y weighing functions if the individual (i) does not meet the requirements of clauses (ii), (v), (vi), and (vii) of subparagraph (1) of this paragraph (d) or (ii) does not have or cannot demonstrate a technical ability to operate grain weighing equipment.

(3) *Equipment testing.* An individual may be deemed not competent to perform all or specified official equipment testing functions if the individual (i) does not meet the requirements of clauses (ii), (v), (vi), and (vii) of subparagraph (1) of this paragraph (d) or (ii) does not have or cannot demonstrate a technical ability to operate and test weighing equipment.

§ 800.174 Issuance and possession of licenses and authorizations.

(a) *Form of license and authorization.* Licenses shall be on forms prescribed for the purpose and furnished by the Service. Authorizations shall be in the form of approved position descriptions issued by the Service.

(b) *Kinds of licenses and authorizations.* Licenses and authorizations will be issued on the basis of the functions performed by an individual, as follows:

License (LI) or Authorization (AU) and primary function

Sampler (LI) (AU)—Sampling grain

Inspection technician (LI) (AU)—Testing grain (non-interpretive functions only)
Inspector (LI) (AU)—Grading grain
Weighing technician (LI) (AU)—Grain handling
Weigher (LI) (AU)—Weighing grain
Scale tester (AU)—Testing weighing equipment.

An eligible individual may be licensed or authorized to perform one or more functions, but only one license or authorization will be issued per individual.

(c) *Scope of licenses and authorizations.* Subject to the provisions of § 800.171 and paragraph (b) of this § 800.174, eligible individuals may be licensed or authorized, as appropriate, to perform one or more functions as specified in subparagraphs (1) through (6) of this paragraph (c).

(1) *Official samplers.* Samplers employed by the Service, an agency, or employed under the terms of a contract with the Service may be licensed or authorized, as appropriate, to perform or supervise the performance of stowage examinations, grain sampling, and related technical functions and to issue official certificates for the functions performed by them.

(2) *Licensed warehouse samplers.* Elevator or warehouse employees who enter into a contract with the Service may be licensed to sample grain and perform stowage examinations pursuant to the contract and to issue reports for the functions performed by them. However, no grain elevator or warehouse employee shall be licensed to (i) sample export grain for inspection under the Act, (ii) test grain, (iii) grade grain, or (iv) certify the results of any official inspection function under the Act.

(3) *Official inspection technicians.* Inspection technicians employed by the Service, an agency, or employed under the terms of a contract with the Service may be licensed or authorized, as appropriate, to perform or supervise the performance of stowage examinations, grain sampling, or all or specified non-interpretive laboratory-testing functions and to issue official certificates for the functions performed by them.

(4) *Official inspectors.* Inspectors employed by the Service or an agency may be licensed or authorized, as appropriate, to perform and supervise the performance of stowage examinations, sampling, laboratory testing, grading, and related functions and to issue official certificates for the functions performed by them. No person other than a licensed or authorized inspector may issue under the Act an official certificate which shows an official grade.

(5) *Official weighing technicians.* Weighing technicians who are employed by the Service, an agency, or employed under the terms of a contract

with 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, as appropriate, to perform and supervise the performance of grain handling and stowage examination functions and to issue official certificates for the functions performed by them.

(6) *Official weighers.* Weighers employed by the Service, an agency, or employed under the terms of a contract with the Service may be licensed or authorized, as appropriate, to perform and supervise the performance of grain handling, stowage examination, Class X and Class Y weighing and related functions and to issue official certificates for the functions performed by them. No person other than a licensed or authorized weigher may issue under the Act an official Class X or Class Y weight certificate.

(d) *Issuing office.* All licenses and authorizations shall be issued by the Service.

(e) *Condition for issuance.* (1) *Compliance with Act.* Each license is issued on the condition that the licensee will, during the term of the license, comply with the applicable provisions of the Act, the regulations, and the instructions issued by the Service.

(2) *Possession of license.* Each license shall be the property of the Service, but each licensee shall have the right to possess his/her license subject to the provisions of subparagraph (g) of this § 800.174 and §§ 800.173, 800.186, and 800.187.

(f) *Duplicate license.* Upon satisfactory proof of the loss or destruction of a license, a duplicate will be issued by the Service.

(g) *Retention of licenses.* Each license shall be retained by the holder of the license in such manner that the license can be promptly examined upon request by official 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 § 800.175. 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: *Provided*, That upon request of a licensee and for good cause shown, the termination date may be delayed by the Administrator for a period not to exceed 60 days.

(b) *Termination schedule.* (1) *Licenses.* Subject to the provisions of paragraph (a) of this § 800.175, licenses shall terminate on the last day of the month shown in the following schedule:

Surnames beginning with	Termination date (last day of month shown)
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.* Notices of termination shall be issued to licensees and to their employers by the Service at least 60 days in advance of the termination date. The notices shall (1) provide detailed instructions for requesting renewal of licenses (2) state whether an examination or reexamination will be required; and (3) if an examination or reexamination will be required show the nature and scope of the examination or reexamination. Failure to receive a notice from the Service shall not exempt licensees from the responsibility of having their license renewed on or before the expiration date prescribed in paragraph (b) of this § 800.175.

(d) *Renewal of licenses.* Licenses that are renewed shall show the licensee's 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 automatic suspension by change in employment, shall not affect the termination date of the license. If a licensee makes timely and sufficient application for the renewal of his/her license prior to the termination date, it 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 not renewed, suspended, or revoked for cause under the provisions of § 800.179 shall be promptly surrendered to the appropriate field office by the employing agency or by the licensee.

(g) *Marking terminated, canceled, or revoked licenses.* Each terminated, canceled, or revoked license surrendered to the Service shall, upon receipt, be marked "Canceled" and retained in the licensee's file.

§ 800.176 Voluntary suspension or cancellation of licenses.

(a) *General.* Licenses may, upon the request of the licensee, be suspended or canceled by the Service in accordance with paragraphs (b) and (c) of this § 800.176.

(b) *When a license may be voluntarily canceled or suspended.* Upon re-

quest by a licensee, a license may be voluntarily canceled, or may, upon a showing of good cause, be voluntarily suspended for a period of time not to exceed 1 year. Requests for voluntary cancellation or suspension, or applications for the return of a voluntarily suspended license, shall be submitted in accordance with § 800.172.

(c) *Cancellation after suspension.* If a license has been voluntarily suspended for a period of 1 year and no request has been received for the return of the license, or a request for the return of the license has been dismissed in accordance with the provisions of § 800.172, the license shall be summarily canceled by the Service at the expiration of 1 year, in accordance with the provisions of § 800.178.

(d) *Return of voluntarily suspended licenses.* Licenses that are surrendered for voluntary suspension shall be returned by the Service to the licensee, only upon request, in accordance with the provisions of § 800.172.

§ 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 employed by the agency or by a comparable agency within 1 year of the suspension date and the license has not expired or been canceled in the interim, upon request of the licensee, the license will be reinstated subject to the provisions of § 800.173.

§ 800.178 Summary revocation of licenses.

Licenses may be summarily revoked by the Service upon a finding that the licensee has (a) been convicted of any offense prohibited by Section 13 of the Act, or (b) been convicted of any offense proscribed by Title 18 of the United States Code with respect to the performance of official functions under the Act, or (c) been imprisoned for a period in excess of 1 year.

§ 800.179 Refusal of renewal, or suspension, or revocation of licenses for cause.

NOTE: For provisions on refusal of renewal, or suspension, or revocation of licenses for cause, see Section 9 of the Act (7 U.S.C. 85).

(a) *Procedure for temporary action.*
(1) *Provision for temporary action.* Whenever the Service has reason to believe there is cause for temporary action and deems such action to be in the best interest of the inspection and weighing system, a license may be temporarily suspended, or the renewal of a license may be temporarily refused, or the return of a suspended license may be temporarily refused without first affording the licensee,

hereafter referred to in this § 800.179 as the "respondent," an opportunity for a hearing.

(2) *Notice and effective date of temporary action.* Notice of a temporary action shall be given to the respondent and to the respondent's employer, in accordance with paragraph (c) of this § 800.179. The temporary action shall be effective upon receipt of the notice by the respondent.

(3) *Termination of temporary action.* Within 30 business days following the receipt of a notice of temporary action, the Service shall (i) afford the respondent an opportunity for a hearing under paragraph (b) of this § 800.179 and shall continue the temporary action if it is found by the Service that (A) alternative employment arrangements satisfactory to the Service will not or cannot be effected for the respondent by the employer of the respondent pending a final determination under paragraph (b) of this § 800.179 or (B) the public health, interest, or safety require a continuation of the temporary action; or (ii) afford the respondent the opportunity for a hearing under paragraph (b) of this § 800.179, and shall terminate the temporary action if it is found that (A) alternative employment arrangements satisfactory to the Service can be and are effected for the respondent by the employer of the respondent and (B) the public health, interest, and safety do not require a continuation of the temporary action; or (iii) terminate the temporary action with a suitable written notice or warning under Section 14(b) of the Act; or (iv) terminate the temporary action without prejudice. The Service shall promptly notify the respondent and the employer of the respondent of the action under this subparagraph (a)(3).

(b) *Procedure for other than temporary action.* Except as provided in paragraph (a) of this § 800.179, in refusing to renew a license, in suspending or revoking a license, and in refusing to return a suspended license, the respondent shall be afforded an opportunity for (1) an informal conference in accordance with the Rules of Practice Governing Informal Proceedings in Part 808 of this chapter, or (2) a hearing, at the request of the licensee, in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 554, 556, and 557) and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR Part 1, Subpart H).

(c) *Notice of action.* When a license is suspended, revoked, or not renewed or when a license is not returned under paragraph (b) of this § 800.179, the Service shall promptly notify the respondent and the employer of the respondent of the reasons for the

action in accordance with the provisions of the Rules of Practice Governing Informal Proceedings in Part 808 of this chapter.

§ 800.180 Summary cancellation of licenses.

Licenses may be summarily canceled by the Service when (a) the license has been under (1) voluntary suspension for 1 year or (2) automatic suspension for 1 year; or (b) the licensee (1) has died or (2) fails to surrender the license in accordance with the provisions of § 800.175(f); or (c) no official functions have been performed under the license for a period of 1 year. Before a license is canceled pursuant to paragraph (c) of this § 800.180, written notice of proposed cancellation shall be given to the licensee and the employing agency at least 30 business days in advance of the proposed date of cancellation. Thereafter, if official functions authorized by the license are performed by the licensee and notice thereof is given to the Service prior to the proposed date of cancellation, the cancellation shall not be made effective. If official functions authorized by the license are not performed by the licensee prior to the proposed date, the license shall be summarily canceled by the Service. Notices of licenses that are summarily canceled shall be promptly forwarded by the Service to the licensee.

§§ 800.181—800.184 [Reserved]

DUTIES AND CONDUCT OF LICENSEES AND AUTHORIZED PERSONNEL

§ 800.185 Duties of official personnel and warehouse samplers.

(a) *General.* Official personnel and warehouse samplers shall be responsible for performing the duties specified in the Act, the regulations, the applicable instructions, and paragraphs (b) through (i) of this § 800.185.

(b) *Inspection and weighing functions.* Official personnel shall perform requested official inspection and official Class X and Class Y weighing functions (1) without discrimination, except as authorized in § 800.81(b); (2) as soon as practicable; (3) upon reasonable terms; and (4) in accordance with methods and procedures prescribed in the instructions issued by the Service.

(c) *Sealing carriers or containers.* Upon request of the Service, 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 inspected or weighed under the Act and (2) show seal records on certificates and other official forms in accordance with subparagraph (b)(12) or § 800.161.

(d) *Scope of operations.* Except as provided in this paragraph (d), official

personnel and warehouse samplers shall (1) operate within the scope of the functions specified on their license or authorization and (2) operate only within the area of responsibility assigned to the applicable agency, field office, or contractor, if any. Official personnel and warehouse samplers may perform official inspection or weighing functions in a different area of responsibility only with the consent of the Service.

(e) *Working materials.* Official personnel and warehouse samplers shall have available for their use and shall familiarize themselves with the applicable provisions of the Act, the regulations, the Official U.S. Standards for Grain, the official methods and procedures for the inspection of grain, the weighing of grain, the testing of equipment, and the instructions issued by the Service.

(f) *Observation of functions.* 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, official Class X or Class Y weighing, or official equipment testing functions performed by them. Appropriate areas in the elevator may be specified by the Service in conjunction with the elevator management for observing each function. The areas shall be safe, shall afford a clear and unobstructed view of the performance of the functions, but shall not permit a close over-the-shoulder type of observation by the interested person or the person's agent.

(g) *Reporting changes.* Licensees and warehouse samplers shall promptly inform the appropriate field office of any change in the scope or sphere of their duties, or of their employment, or any suspension of their inspection or weighing functions that would impair the performance of official inspection or weighing services at the specified service point or other location to which the licensees or samplers are assigned.

(h) *Reporting violations.* Official personnel shall promptly report to their immediate supervisor and warehouse samplers shall promptly report to the appropriate field office (1) information which shows or tends to show a violation of any provision of the Act, the regulations, or the instructions issued by the Service and (2) information of any instructions which have been issued to them by any official personnel or other person which are contrary to, or inconsistent with, the Act, the regulations, or the instructions issued by the Service.

(i) *Related duties.* Official personnel and warehouse samplers shall, to the

extent consistent with their assigned duties, assist in training other employees who desire to become licensed. Upon request of the Service, selected licensees may assist in examining applicants for licenses for competency.

(j) *Instructions by Service.* Official personnel and warehouse samplers shall execute diligently all instructions issued to them by the Service, either in writing or orally, and, upon request, shall inform the Service in full detail regarding inspection, weighing, or testing equipment used by them and inspection, weighing, or equipment testing services performed by them.

§ 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 the confidence of the grain industry and the public in the services performed by them. The public's confidence in the services depends not only on the manner in which the personnel perform their duties and responsibilities, but also on the way the personnel conduct themselves in public.

(b) *Licensees and other personnel.* (1) *Licensees.* Licensees other than warehouse samplers shall be subject to the conflict of interest provisions of Section 11 of the Act and the standards of conduct prescribed by paragraphs (d) through (f) of this § 800.186 and by § 800.187.

(2) *Warehouse samplers.* Except as provided in subparagraphs (d)(7) and (d)(8) of this § 800.186 and subparagraphs (b)(1) and (b)(4) of § 800.187, warehouse samplers shall be subject to the standards of conduct prescribed by paragraphs (d) and (e) of this § 800.186 and § 800.187.

(c) *Authorized employees.* Authorized employees of the Department of Agriculture are subject to the conflict of interest provisions of Section 11 of the Act and the standards of conduct prescribed by (1) paragraphs (d) through (f) of this § 800.186; (2) § 800.187, and (3) Title 7, Part O, Subpart A, of the Code of Federal Regulations covering Federal employee responsibilities and conduct.

(d) *Prohibited conduct—general.* Except as provided in subparagraph (8) of this paragraph (d), official personnel and warehouse samplers are specifically prohibited from:

(1) Performing official inspection, weighing, or weighing equipment-testing functions unless they are licensed or authorized by the Service to perform such functions.

(2) Engaging in criminal, dishonest, or notoriously disgraceful conduct, or other conduct prejudicial to the De-

partment of Agriculture or the Service.

(3) Reporting for duty in an intoxicated or drugged condition, or consuming intoxicating beverages or incapacitating drugs while on duty.

(4) Smoking in prohibited areas in elevators or other grain-handling facilities, or otherwise performing official functions in an unsafe manner which could endanger other persons working in or about the premises.

(5) Making unwarranted criticisms or accusations against other official personnel, warehouse samplers, or employees of the Department of Agriculture.

(6) Refusing to give testimony or respond to questions in connection with official inquiries or investigation.

(7) Soliciting contributions from other official personnel or warehouse samplers for, or making a donation for a gift to, an employee of the Service. Nothing in this subparagraph (7) shall preclude the occasional voluntary giving or acceptance of gifts of nominal value on special occasions such as retirement.

(8) Taking any action, whether or not specifically prohibited by this paragraph (d), which might result in, or create the appearance of (i) losing the individual's complete independence or impartiality or (ii) adversely affecting the confidence of the public in the integrity of the inspection, weighing, or equipment-testing services performed by the individuals. Warehouse samplers shall not be deemed to be in violation of the restrictions in this subparagraph (d)(8) or § 800.187 solely because of their employment.

(9) Violating any provision of Section 13 of the Act or, subject to the exceptions specified in § 800.186(d)(8), any provision of §§ 800.186, 800.187, and 800.188.

(e) *Outside (nonofficial) work or activities.* Official personnel shall not engage in any outside (nonofficial) work or activity if:

(1) The efficiency of the personnel may be impaired by the performance of the outside work; for example, where the outside work is of such onerous or fatiguing nature as to injure the health or prevent the personnel from doing their best work during their official hours;

(2) The work or activity consists, in whole or in part, of the performance of nonofficial sampling, stowage examination, laboratory testing, equipment testing, inspection, or weighing functions similar to the official functions for which an agency may be designated as defined in § 800.1, or if the work or activity may otherwise be construed by the public to be the official acts of official personnel;

(3) The business interests to be established or the property interests to be acquired may result in a conflict of interest under Section 11 of the Act or a conflict of duties between the private duties and the official duties of the official inspection personnel; or

(4) The work or activity may otherwise tend to bring criticism on or cause embarrassment to the Department or the Service.

(f) *Activities with farm organizations.* (1) *Restrictions.* It is the policy of the Department that it shall deal fairly with all farm organizations and deal with each upon the same basis. In accordance with this policy and subject to the provisions of subparagraph (2) of this paragraph (f), it is not permissible for official personnel to:

(i) Participate in activities concerned with establishing any general or specialized farm organization, such as the national, regional, State, and local organizations of the American Farm Bureau Federation, the Farmers' Union, The National Association of Soil Conservation Districts, the National Council of Farmer Cooperatives, the National Farmers Organization, the National Grange, the National Rural Electric Cooperative Association, and breed and commodity organizations;

(ii) Act as organizer for any general or specialized farm organization or hold any office therein;

(iii) Act as financial or business agent for any general or specialized farm organization;

(iv) Participate in any way in any membership campaign or other activity designed to recruit members for any general or specialized farm organization;

(v) Accept the use of free office space or contributions for salary or traveling expense from any general or specialized farm organization;

(vi) Advocate that any particular general or specialized farm organization is better adapted for representing the interests of farmers than any other organization or individual; or

(vii) Advocate or recommend that the responsibilities of any agency of the Department of Agriculture or the responsibilities of any other Federal, State, or local agency should be carried out through any particular general or specialized farm organization.

(2) *Exceptions.* The restrictions set forth in this paragraph (f) do not:

(i) Preclude membership in general or specialized farm organizations, such as cow-testing organizations; or

(ii) Prohibit official personnel from participating in the organization or operation of local groups that conduct Federal, State, or local government-authorized programs; for example, local Rural Electrification Association, and similar groups determined by the

Service to be involved in conducting Federal, State, or local government-authorized programs.

800.187 Conflicts of interest.

(a) *Definitions.* For the purpose of this § 800.187, unless the context requires otherwise, the following terms shall be construed respectively to have the meanings given for them below:

(1) *Gratuity.* Any favor, entertainment, gift, tip, loan, payment for unauthorized or fictitious work, unusual discount, or anything of monetary value. The term shall not be deemed to include (i) the occasional exchange of a cup of coffee or similar social courtesies of similar nominal value in a business or work relationship if the exchange is wholly free of any embarrassing or improper implications; (ii) 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 (iii) 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.

(2) *During the term of the license, authorization, or employment.* The period an individual is licensed, authorized, or employed, including any period of suspension, whether the suspension is voluntary or for cause.

(b) *Conflicts.* In addition to the conflicts of interest prohibited by Section 11 of the Act, the activities specified in subparagraphs (b)(1) through (b)(6) of this § 800.187 shall also be deemed to involve a conflict of interest if engaged in by official personnel or other persons subject to Section 11 of the Act. No official personnel shall:

(1) Knowingly perform, or participate in performing, an inspection or weighing service on grain in which they have a direct or indirect financial interest.

(2) Be engaged in 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); or in the business of cleaning, treating, or fitting of 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 equipment (other than buying or selling by official personnel

of such equipment for use in the performance of their official functions).

(3) Seek or hold any appointive or elective office or position in a national, regional, State, or local grain industry group, organization, or association. This provision is not applicable to national, regional, or local organizations of inspectors or weighers including, but not limited to the National Association of Chief Grain Inspectors and the Terminal Grain Weighmasters National Association.

(4) 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 functions under circumstances in which such acceptance could result, or create the appearance of resulting, in (i) the use of their office or position for undue private gain, (ii) giving undue preferential treatment to any group or any person, or (iii) the loss of complete independence or impartiality in the performance of official inspection or weighing functions.

(5) Participate, directly or otherwise, 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 such action might interfere or tend to interfere with the proper and impartial performance of official inspection or weighing functions, or bring discredit upon the Department or the Service. Subject to the provisions of this § 800.187, official personnel are not prohibited from (i) producing grain as a grower and selling the grain (but see subparagraph (b)(1) of this § 800.187); (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 to finance a home mortgage loan or similar proper and usual personal activities.

(6) Coerce or give the appearance of coercing any person to provide special or undue benefits to official personnel, approved weighers, or warehouse samplers.

(c) *Reports of interests.* Official personnel and warehouse samplers shall report such information regarding their employment or other business or financial interests as may be required by the Service.

(d) *Avoiding conflicts of interest.* Official personnel and warehouse samplers shall at all times avoid acquiring any financial interest or engaging 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 § 800.187, 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.

(e) *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 or an authorization and official personnel and warehouse samplers shall take immediate action to end the conflict of interest and inform the Service of the action taken.

(2) *Hardship cases.* Applicants, official personnel, or warehouse samplers 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 and (ii) an employee of the Service to disciplinary action.

§ 800.188 Other prohibited actions by official personnel.

(a) *General.* In addition to the prohibitions or restrictions prescribed in the Act of §§ 800.186 and 800.187, official personnel shall be subject to the prohibitions in paragraphs (b) through (f) of this § 800.188.

(b) *Instructions by supervisors.* No chief inspector, chief weighmaster field office supervisor, or other supervisory official personnel shall issue to official personnel, approved weighers, or warehouse samplers under their supervision any instructions inconsistent with the Act, the regulations, or the written instructions issued by the Service.

(c) *Crop year, variety, and origin statements.* No official personnel shall certify or otherwise state in writing (1) the year of production of grain; e.g., by use of terms such as "new crop" or "old crop;" (2) the place or geographical area where the grain was grown; or (3) the variety of grain.

(d) *Issuing superseded certificates.* Except with the approval of the appropriate field office, no official personnel shall issue, or permit to be issued over their signature or name, an official certificate which has been superseded by another certificate.

(e) *Application of tolerances.* In issuing certificates under the Act, no official personnel shall apply any administrative, statistical, or other tolerance to their official determinations other than the tolerances prescribed in §§ 800.129, 800.130, 800.139, and 800.140 or the performance requirements for equipment in Parts 802 and 803 of this Chapter.

(f) *Right of inspection.* No official personnel shall prevent or attempt to prevent any interested person from exercising the right to request any inspection or weighing service. The dismissal of a request for an inspection or weighing service, or a discussion with an interested person of a dismissal or conditional withholding of an inspection or weighing service, shall not be deemed to be in violation of this § 800.188.

§ 800.189 Corrective actions for violations.

(a) *Criminal prosecution.* Official personnel, other Department 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 this paragraph (b) and Section 9 of the Act.

(2) *Service employees.* In addition to possible criminal prosecution, employees of the Service are subject to administrative action, including but not limited to changes in assigned duties and disciplinary action in accordance with the law.

§§ 800.190—800.194 [Reserved]

DELEGATIONS, DESIGNATIONS, APPROVALS, AND CONTRACTUAL ARRANGEMENTS

§ 800.195 Restrictions on performance of official functions.

(a) *Export port locations.* (1) *General restriction.* Only the Service or certain State agencies delegated authority by the Service under § 800.200 may perform official original inspection, official reinspection, official Class X or Class Y weighing, or official review of weighing functions at export port locations. (Information on export port locations and on the inspection and weighing arrangements at a given export port location may be obtained in accordance with § 800.10.)

(2) *Inspection by Service; weighing by Service.* If official original inspection functions are performed by the Service at an export port location, only the Service may perform official Class X or Class Y weighing functions at that location.

(3) *Inspection by State; weighing by State or by Service.* If official original inspection functions are performed by a State at an export port location, only the State, or the Service, may perform official Class X or Class Y weighing functions at that location.

(b) *Other than export port locations.* If official original inspection functions are performed at a given location by a designated inspection agency, official Class X or Class Y weighing functions at that location may be performed only by the designated inspection agency, if the agency is found qualified by the Service and is available to perform official Class X or Class Y weighing functions. If the designated inspection agency is found not qualified or is not available, the official Class X or Class Y weighing functions may be performed by an inspection or weighing agency that is found qualified by the Service and is available, or the functions may be performed by the Service.

(c) *One inspection and one weighing agency per location.* Only one agency, or the Service, may be operative at one time at a given location or area for the performance of official original inspection functions. Subject to the provisions of paragraphs (b) and (d) of this § 800.195, only one agency, or the Service, or one agency and the Service may be operative at one time at a given location or area for the performance of official Class X or Class Y weighing functions.

(d) *Interim authority.* (1) *By agency.* An agency may perform official original inspection or official Class X or Class Y weighing functions in specified areas on an interim basis.

(2) *By Service.* Official original inspection or Class X or Class Y weighing functions may be performed by the Service at locations other than export port locations on an interim basis in accordance with Sections 7(h) and 7A(c) of the Act.

§ 800.196 Delegation, designation, approval, or contractual arrangement; conflict of interest provisions.

(a) *Delegations.* Under Sections 7 and 7A of the Act, only the States of Alabama, California, Florida, Minnesota, Mississippi, South Carolina, Virginia, Washington, and Wisconsin have been delegated authority by the Administrator to perform official inspection or official Class X or Class Y weighing functions at export port locations.

(b) *Designations.* Any State or local governmental agency or any person may, as provided in Sections 7 and 7A of the Act, file an application with the Service for (1) a designation, (2) a renewal of a designation, (3) the suspension or cancellation of a designation, (4) the return of a suspended designa-

tion, or (5) the amendment of a designation to operate as an official agency and to perform official inspection and reinspection functions and official Class X or Class Y weighing functions at locations other than export port locations (see § 800.16(b)) in the United States.

(c) *Approvals.* (1) *Scale testing organization.* Any scale testing organization may file an application with the Service for an approval to operate as a scale testing organization under the Act.

(2) *Weighing facility.* Any State or local governmental agency or person who operates an elevator, warehouse, or other grain storage, handling, or weighing facility in the United States, and any Province or local governmental agency or person who operates an elevator, warehouse, or other grain storage, handling, or weighing facility in Canada that stores, handles, or weighs United States export grain transshipped through Canadian ports, may apply to the Service for approval to operate as a weighing facility under the Act.

(d) *Contractual arrangements.* (1) *United States and foreign ports.* Subject to the provisions of subparagraph (3) of this paragraph (d), any State or local governmental agency or person may, as provided in Sections 8 and 11 of the Act, file an application with the service for a contract to perform (i) specified official sampling, laboratory testing, Class X or Class Y weighing, and similar technical functions involved in the performance of official inspection and reinspection functions and official Class X and Class Y weighing functions in the United States; (ii) monitoring activities in foreign ports, including Canadian ports, with respect to export grain that has been inspected and officially weighed under the Act.

(2) *Canada.* The administrator may enter into a cooperative arrangement with the Canada Department of Agriculture, or other Canadian governmental agency for the performance by employees of the Canada Department of Agriculture, or other Canadian governmental agency of specified official sampling, laboratory testing, Class X or class Y weighing, and similar technical functions involved in the performance of official inspection and reinspection functions and official Class X and Class Y weighing functions, other than appeal functions, on United States grain being transshipped through Canadian ports.

(3) *Restrictions on eligibility.* (i) *General.* Except as provided in clause (iii) of this subparagraph (3), no state or local governmental agency, or person who has a conflict of interest specified in Section 11 of the Act or § 800.187, shall be deemed eligible to

enter into a contract with the service for the performance of services identified in this paragraph (d).

(ii) *Appeal services.* Agencies or employees of agencies are not eligible to enter into a contract with the Service to obtain samples for, or to perform other non-interpretive functions involved in, field appeal inspection services or Board appeal inspection services. This clause (d)(3)(ii) shall not preclude agencies from forwarding file samples to the Service in accordance with § 800.154(b)(4)(v).

(iii) *Warehouseman's sample-lot inspection services.* Only employees of an elevator that has a diverter-type mechanical sampler approved by the Service are eligible to enter into a contract with the service to obtain samples for warehouseman's sample-lot inspection services.

(iv) *Laboratory testing services.* Only the operator or a bona fide testing laboratory is eligible to enter into a contract with the Service for the testing of grain for official factors or official criteria.

(v) *Monitoring services.* Agencies and employees of agencies, organizations and employees of organizations, and other persons that regularly provide services to persons who export grain from the United States are eligible to enter into a contract with the Service for the performance of monitoring services on export grain in foreign ports if the agencies, organizations, and employees are under the direct supervision of employees of the Service during monitoring activities.

(e) *Conflicts of interest provisions.*

(1) *General.* (i) *Prohibited conflicts of interest.* The interests and relationships identified in subparagraph (3) of this paragraph (e) are prohibited conflicts of interest and, except as provided in subparagraph (4) of this paragraph (e), if present, will render (A) an agency ineligible for a delegation or a designation to operate as an official agency; and (B) a contractor ineligible to enter into a contract with the Service.

(ii) *Exemptions.* Exemptions to the conflict of interest provisions are shown in subparagraph (4) of this paragraph (e).

(2) *Meaning of terms.* (i) The term "grain business," when used in this paragraph (d), shall include, but not be limited to, boards of trade, chambers of commerce, grain exchanges, and other trade groups that are composed, in whole or in part, of entities that are engaged in the commercial transportation, storage, handling, or merchandising of grain, 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 the 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 such equipment for their exclusive use in the performance of their official inspection or official Class X or Class Y weighing functions); and the commercial use of official inspection and official Class X or Class Y weighing functions. The producing of grain and the subsequent sale of the grain by a producer shall not be deemed to be a "grain business."

(ii) The term "interest," when used with respect to an individual, shall include the interest of a spouse, minor child, or blood relative who is a resident of the immediate household of the individual.

(iii) The term "related entity" means an entity that owns or controls, in whole or in substantial part, another entity, or is owned or controlled, in whole or in substantial part, by another entity; or two or more entities that are owned or controlled, in whole or in substantial part, by another entity.

(3) *Prohibited conflicts of interest.* Subject to any determination by the Administrator of the Service under Section 11(b)(5) of the Act, the following interests are prohibited conflicts of interest.

(i) *By agencies, contractors, and field offices.* No agency, contractor, or field office shall be employed in, or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any grain business or related entity; or give or accept any gratuity, as defined in § 800.187, to or from any grain business, any related entity, or any member, director, officer, or employee of any grain business or related entity, or otherwise have any conflict of interest specified in § 800.187.

(ii) *By grain businesses.* No grain business shall operate, or be employed by, or directly or indirectly have any stock or other financial interest in, an agency or related entity; or give or accept any gratuity, as defined in § 800.187, to or from any agency, contractor, or field office, any related entity, or any member, director, officer, or employee of an agency, contractor, or field office, or related entity.

(iii) *By agency or contractor entities.* No entity that owns or controls an agency or contractor, and no entity related to such an entity, shall be employed in, or otherwise engaged in, or directly or indirectly have any stock or

other financial interest in, a grain business; or give or accept any gratuity, as defined in § 800.187, to or from any grain business, or any member, director, officer, or employee of any grain business or related entity.

(iv) *By grain business entities.* No entity that owns or controls a grain business, and no entity related to such an entity, shall operate, or be employed by, or directly or indirectly have any stock or other financial interest in an agency, contractor, or related entity; or give or accept any gratuity, as defined in § 800.187, to or from any agency, contractor, or related entity, or to or from any member, director, officer, or employee of an agency, contractor, or field office, or related entity.

(v) *By officers or employees of agencies, contractors, or field offices.* No member, director, officer, or employee of an agency, contractor, field office, or related entity, shall be employed in, or otherwise engaged in, or directly or indirectly have any stock or other financial interest in a grain business or related entity; give or accept any gratuity, as defined in § 800.187, to or from any grain business or related entity, or otherwise have a conflict of interest identified in § 800.187(b).

(vi) *By officers or employees of grain businesses.* No member, director, officer, or employee of a grain business or related entity shall operate, or be employed by, or directly or indirectly have any stock or other financial interest in, an agency, contractor, or field office, or related entity; or give or accept any gratuity, as defined in § 800.187, to or from any agency, contractor, or field office, or related entity, or to or from any member, director, officer, or employee of an agency, contractor, or field office, or related entity.

(vii) *By stockholders in an agency or contractor.* No stockholder in an incorporated agency, or contractor, or related entity shall be employed in, or otherwise engaged in, or be a substantial stockholder in any incorporated grain business or related entity; or directly or indirectly have any other kind of financial interest in a grain business or related entity; or give or accept any gratuity, as defined in § 800.187, to or from any grain business or related entity, or any member, director, officer, or employee of any grain business or related entity.

(viii) *By stockholders in a grain business.* No substantial stockholder in an incorporated grain business or related entity 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 agency, contractor, or field office or related entity; or give or accept any gratuity, as defined in § 800.187, to or

from any agency, contractor, field office or related entity, or to or from any member, director, officer, or employee of an agency, contractor, field office, or related entity.

(4) *Exempt conflicts of interest.* (i) *By agencies, contractors, and field offices* (including related entities, members, directors, officers, or employees of agencies, contractors, or field offices, and related entities; and stockholders of agencies, contractors, and related entities, as prescribed in clauses (3)(iii), (v), and (vii) of this paragraph (e)).

(A) Using laboratory or office space or related facilities, owned or controlled, in whole or in part, by a grain business or related entity when the use of the space is deemed appropriate by the Service for the performance of onsite inspection or weighing services requested by an applicant, including but not limited to the inspection or weighing of bulk grain loaded aboard a ship, or for the performance of supervision or monitoring activities by the agency, contractor, or field office.

(B) Using inspection, weighing, transportation, and office equipment that is owned or controlled, in whole or in part, by a grain business or related entity when the use of the equipment is deemed appropriate by the Service for the performance of onsite inspection or weighing services requested by an applicant, including but not limited to the inspection or weighing of bulk grain loaded aboard a ship, or for the performance of supervision or monitoring activities by the agency, contractor, or field office.

(C) Bona fide financial institutions that have a financial relationship with one or more grain businesses or related entities shall not be precluded from having a financial relationship with an agency, contractor, or related agency.

(ii) *By grain businesses* (including related entities, members, directors, officers, or employees of grain businesses and related entities, and substantial stockholders in grain businesses and related entities, as prescribed in clauses (3) (iv), (vi), and (viii) of this paragraph (e)).

(A) Furnishing or providing laboratory or office space or related facilities to, or for use by, an agency, contractor, or field office, for the performance of onsite inspection or weighing services requested by an applicant, or for the performance of supervision or monitoring activities by an agency, contractor, or field office.

(B) Furnishing or providing inspection, weighing, transportation, or office equipment to, or for use by, an agency, contractor, or field office, for the performance of onsite inspection or weighing services requested by an applicant, or for the performance of

supervision or monitoring activities by the agency, contractor, or field office.

§ 800.197 When and where to apply.

(a) *Delegations.* Applications from delegated States (see § 800.196) for authority to perform official inspection or official Class X or Class Y weighing functions at new export port locations (i.e., locations that become export port locations after May 20, 1978), shall be filed with the Service not less than 90 days before the State contemplates performing such functions.

(b) *Designations.* Applications for (1) authority to operate as a designated official agency; (2) a renewal of a designation; (3) a change in designation; (4) the suspension or cancellation of a designation; or (5) the return of a designation that has been voluntarily suspended, or suspended for cause, should be filed with the Service not less than 90 days before the effective date of the requested action.

(c) *Approvals.* (1) *Scale testing organization.* Applications for approval to operate as a scale testing organization should be filed with the Service not less than 90 days before the effective date of the requested action.

(2) *Weighing facility.* Applications for approval to operate as a weighing facility under the Act should be filed with the Service as far in advance of the effective date of the request as possible to permit the Service time to determine whether the application and the applicant are in compliance with the provisions of Section 7A(f) of the Act and §§ 800.196 through 800.198 of the regulations.

(d) *Contractual arrangements.* Applications for (1) a contract to perform specified official inspection, official Class X or Class Y weighing, or weighing equipment testing functions; (2) a renewal of a contract; and (3) a change in a contract should be filed with the Service not less than 90 days before the effective date of the requested action, or as applicable, in accordance with the invitation to bid issued by the Department.

§ 800.198 How to apply.

(a) *General.* State or local governmental agencies, or other persons who desire to file an application for an action involving a designation, approval, or contractual arrangement, should submit a completed application to the Service on a form prescribed for the purpose and furnished by the Service. Each application shall (1) be typewritten or legibly written in English; (2) show the name and address of the applicant; (3) include the information required by the form and this § 800.198; (4) for applications for a designation or contractual arrangement, show whether the applicant, or any of its members, directors, officers, or em-

employees, or any substantial stockholder, or any related entity, or any grain business, member, director, officer or employee of a grain business, or any substantial stockholder in a grain business or in a related entity, has any conflict of interest prohibited by § 800.196(e) so far as the applicant is aware; and (5) be signed by the applicant.

(b) *Applications for authority to operate as a delegated state agency at new locations, or a change in delegation of functions.* (1) *Application for authority to operate as a delegated State agency at new locations.* An application to operate as a delegated State agency at a new export port location, or for a change in delegation, should contain or show, or be accompanied by documents which contain or show, the following information; (i) whether the State is willing to provide official inspection and official Class X and Class Y weighing services at all export port locations; (ii) the official inspection and the official Class X or Class Y weighing functions the State desires to perform; (iii) the export port locations where the State desires to perform the functions; (iv) the period of time the state desires to perform the functions; (v) the expected annual volume of trucklot, carlot, bargelot, shiplot, and submitted sample inspections and weighings which the applicant estimates will be performed at each export port location in the State; (vi) the schedule of fees the State proposes to assess and a statement whether it would be necessary for users of the official service to agree to pay a yearly aggregate minimum amount; and (vii) a statement that, if the delegation is granted, the State will (A) comply in full with the provisions of the act, the regulations in this Part 800, the standards in Part 801 of this Chapter, and the instructions under the Act; (B) permit representatives of the Department or the Service to audit any or all of the applicant's operations; (C) not knowingly employ, retain in its employ, and assign to duties related to inspection or weighing of grain, any person who has been or is hereafter convicted of any violation of the Act or any offense proscribed by other Federal law involving the handling, weighing, or inspection of grain, and will immediately suspend any such employee upon the return of an indictment or the filing of a criminal information against the employee alleging any such offense; (D) specify to supervisory inspectors and weighers that their performance of all duties related to official inspection and official Class X or Class Y weighing functions is subject to the supervision of the Service; (E) submit to the Service such reports as may be requested by the service with respect

to the management, staffing, budget, and operations of the agency; and (F) authorize their managers and supervisory inspectors and weighers to attend such meetings as may be held from time to time by the regional office for the managers and supervisory inspectors and weighers in the applicable region.

(2) *Application for a change in delegation.* An application for a change in a delegation of functions, including the deletion of some or all of the delegated functions at one or more export port locations, shall (i) specify the change that is desired in the delegation, (ii) show the reason for desiring the change, (iii) specify the time period during which the change is to be effective, and (iv) show or be accompanied by information that shows the need for the change.

(c) *Applications for a designation, or a change in designation, to operate as a designated official agency.* (1) *Application for authority to operate as a designated official agency, or a renewal of a designation.* An application for authority to operate as a designated official agency, for a renewal of a designation, for an amendment of a designation to include additional locations or additional responsibilities, or for the return of a designation that has been suspended either voluntarily or for cause should contain or show, or be accompanied by documents which contain or show, the following information:

(i) Whether the applicant is a governmental organization, business organization, or an individual;

(ii) If it is a governmental organization, whether it is an agency of a State, county, or other political subdivision of the United States;

(iii) If it is a business organization, the location of its principal office, if it is a corporation, a copy of the articles of incorporation, the names and addresses of the current corporate officers and directors, and the names and addresses of the substantial stockholders (as defined in Section 11 of the Act); if it is a partnership or unincorporated association, the names and addresses of the current officers and members; if it is an individual, the individual's place of residence; and, if it is sponsored by a trade organization, the nature and function of the trade organization, the names and addresses of the member firms, the managerial and technical controls that the trade organization exercises over the activities of the agency and over the agency's personnel, and the operating procedure for exercising managerial and technical controls (e.g., management by a grain committee that employs and directs the inspection and weighing personnel);

(iv) Whether the applicant is currently providing inspection or weighing services at any location and, if so, where;

(v) If the applicant is a State organization, whether it is willing to provide official inspection, weighing, or supervision of weighing services at all important grain markets in the State;

(vi) The official inspection or official Class X or Class Y weighing functions the applicant desires to perform;

(vii) The area and locations where the applicant desires to perform the functions;

(viii) The period of time the applicant desires to perform the functions;

(ix) The expected annual volume of trucklot, carlot, bargelot, shiplot, and submitted sample inspections and weighings that the applicant estimates will be performed in the area and at each location in the area;

(x) The names and addresses of the principal producers, merchandisers, processors, and other entities that desire official inspection or official Class X or Class Y weighing services on grain shipped from or to such locations;

(xi) A summary showing the inspection and weighing equipment and inspection and weighing facilities that the applicant would have, or have access to, at each such location;

(xii) The name of each licensee who would be located at each location, if known;

(xiii) The hours when service would be available at each location and whether "24-hour per day" service would be provided if requested by the users of the service;

(xiv) The schedule of fees the applicant proposes to assess and a statement showing whether it would be necessary for users of the official services to agree to pay a yearly aggregate minimum amount; and

(xv) A statement that if the designation is granted, the applicant will (A) comply in full with the provisions of the Act, the regulations in this Part 800, the standards in Part 801 of this Chapter, the performance requirements for equipment in Parts 802 and 803 of this Chapter, and the instructions under the Act; (B) permit representatives of the Department or the Service to audit any or all of the applicant's operations; (C) not knowingly employ, retain in its employ, and assign to duties related to inspection or weighing of grain, any person who has been or is hereafter convicted of any violation of the Act or any offense prohibited by other Federal law involving the handling, weighing, or inspection of grain; and (D) immediately suspend any such employee upon the return of an indictment or the filing of a criminal information against the employee alleging any such offense.

Each amendment of a designation to include additional locations or additional responsibilities shall be accompanied by the fee prescribed by the Service in accordance with the approved fee schedule. An application may show or be accompanied by information that shows the reasons the applicant is better qualified than other applicants to perform the official inspection, official Class X or Class Y weighing, and equipment testing functions it proposes to perform.

(2) *Application for a change in designation.* An application for a change in authority to operate as a designated official agency, or an amendment of a designation to effect a change in name or ownership, or a reduction in locations or in responsibilities, or for the voluntary suspension of a designation, shall (i) specify the change that is desired in the designation; (ii) show the reason for desiring the change; (iii) specify the time period during which the change is to be effective; and (iv) show or be accompanied by information that shows the need for the change. Each amendment of a designation to effect a change in name or in ownership, or a change or reduction in responsibilities, shall be accompanied by the fees prescribed by the Service in accordance with the approved fee schedule.

(d) *Application for approval to operate as a scale testing organization.* NOTE: The provisions of this paragraph (d) shall not be applicable with respect to State and local governmental scale testing organizations that were operative on September 29, 1977. An application for an approval to operate as a scale testing organization under the Act should contain or be accompanied by documents which show the following information:

(1) Whether the applicant is a governmental organization, business organization, or an individual;

(2) If a governmental organization, whether it is an agency of a State, county, or other political subdivision of the United States;

(3) If a business organization, the location of its principal office; if a corporation, the names and addresses of the current corporate officers and directors; if a partnership or unincorporated association, the names and addresses of the current officers and members; or if an individual, the individual's place of business or residence; and, if sponsored by a trade organization, the nature and function of the trade organization and the names and addresses of members;

(4) Whether the applicant is currently providing scale testing services at any location and, if so, where;

(5) If the applicant is a State organization, whether it is willing to provide

official scale testing services at all important grain markets in the State;

(6) The scale testing functions the applicant desires to perform;

(7) The area and locations where the applicant desires to perform the functions;

(8) The period of time the applicant desires to perform the functions;

(9) The name of each employee who would be performing official scale testing functions and a statement that each such individual (i) is competent in accordance with the provisions of § 800.173(d)(3) and (ii) has a reputation for honesty and integrity;

(10) The hours when scale testing services would be available at each location where the applicant desires to perform scale testing functions and whether "24-hour per day" service would be provided if requested by the users of the service; and

(11) A statement that if the request for approval is granted, the applicant (i) will comply in full with the provisions of the Act, the regulations, and instructions issued under the Act; (ii) will permit representatives of the Department or the Service to audit any or all of the applicant's scale testing operations; (iii) in employing personnel to perform or supervise the performance of official scale testing functions under the Act, will not knowingly employ, retain in its employ and assign to scale testing duties, any person who has been or is hereafter convicted of any violation of the Act or any offense prohibited by other Federal law involving the handling, weighing, or inspection of grain; and (iv) will immediately suspend any such employee upon the return of an indictment, or the filing of a criminal information against the employee alleging any such offense.

Each application for approval to operate as a scale testing organization shall be accompanied by the fee specified by the Service.

(e) *Application for approval to operate as a weighing facility.* (1) A request for approval to operate as a weighing facility under the Act shall include: (i) the name and address of the owner of the facility; (ii) the name and address of the operator of the facility; (iii) the name of each individual who is employed by, at, or in the facility as a weigher and a statement that each such individual (A) has and can demonstrate 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 in the weighing of grain; and (C) the bins, interstices, and other storage arrangements; and (v) the identification of each scale in the

facility that is to be used for the weighing of grain under the Act.

(2) If the facility has an automated data processing system directly related to the handling or weighing of grain, the application shall show or be accompanied by information or documents which show (i) the identification and description of the system in terms of (A) the location, type, and model number of the hardware, including but not limited to the main frame, the terminals, and the printers; (B) a description of the software, including but not limited to a listing of the source language for, and flow charts of, the programs and subroutines (subprograms), and a description, including the formats, of the input, output, and related records; (C) a description of the method for recording changes or modifications in the system; and (D) a description of the procedures for testing the system; for safeguarding the system from the loss, misrepresentation, or manipulation of data; and for performing audit trails; and (ii) the instructions for operating the system including but not limited to (A) an operator's manual or instructions for operating and using the hardware and (B) a user's guide for operating and using the software. Requests for approval to operate as a weighing facility shall also show such related information as may be required by the Service.

(f) *Application for a contractual arrangement.* An application for a contract to perform specified appeal inspection services, warehouseman's sample-lot inspect services, laboratory services, equipment testing services, monitoring services, or other technical services shall (1) specify the services that the applicant desires to perform; (2) specify the period of time the applicant desires to perform the services (all contracts shall terminate annually unless otherwise provided in the contract); (3) state that if the contract is granted, charges for official functions performed for the Service by the applicant will be billed only to the Service (this provision is not applicable to applications for a contract for a warehouseman's sample-lot inspection service); and (4) state that the applicant will comply in full with the requirements of the Act, regulations, and instructions issued under the Act.

(g) *Additional information.* Upon request, an applicant shall furnish such additional related information as is deemed necessary by the Service for the consideration of the application.

(h) *Withdrawal of application.* An application filed pursuant to this § 800.198 may be withdrawn by an applicant at any time.

§ 800.199 Review of applications.

(a) *General.* Each application for a designation, approval, or contractual arrangement identified in § 800.198 shall be reviewed to determine whether the application is in compliance with §§ 800.197 and 800.198, whether the applicant is in compliance with § 800.196 and Sections 7, 7A, and 11 of the Act, and whether the requested action is consistent with the objectives of the Act (see § 800.2) and the need for official services. The review of an application for authority to operate as a designated agency shall include but not be limited to a determination with respect to whether the applicant is better able than any other applicant to provide official services in the proposed area of responsibility. The review of an application for authority to operate as an approved weighing facility shall include but not be limited to an onsite evaluation of 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 grain handling systems. If it is determined the (1) the application and the applicant are in compliance; (2) the fees, if any, prescribed by the Service and § 800.198 have been paid; and (3) the requested action is consistent with the objectives of the Act and the need for official services and the provisions of this § 800.199, the requested delegation, designation, approval, or contractual arrangement may be granted as appropriate.

(b) *Application not in compliance.* If it is determined that an Application is not in compliance with §§ 800.197 and 800.198 and the noncompliance precludes a satisfactory review by the Service, the applicant shall be provided an opportunity to submit the needed information. If the needed information is not or cannot be submitted by the applicant within a reasonable time, as determined by the Service, the application may be dismissed. When an application is dismissed, the Service shall promptly notify the applicant in writing of the reasons for the dismissal.

(c) *Applicant not in compliance.* If it is determined that an applicant is not in compliance with § 800.196 and Sections 7, 7A and 11 of the Act at the time of submitting the application; or will not be in compliance during the applicable period that would be covered by the requested delegation, designation, approval, or contractual arrangement; or that the requested action is not consistent with the objectives of the Act and the need for official services, the application shall be denied. The Service shall promptly notify the applicant of the reasons for the denial.

§ 800.200 Issuance and possession of delegations, designations, approvals, and contracts.

(a) *Issuing office.* All delegations, changes in delegations, designations, changes in designations, and approvals of scale testing organizations and weighing facilities shall be issued by the Service. All contracts shall be issued by the Department.

(b) *Condition for issuance.* Each delegation, designation, and approval and each contract for the performance of specified technical functions is issued on the condition that the State or local governmental agency, or person that is granted the delegation, designation, approval, or contract will, during the term of the delegation, designation, approval, or contract, comply with the applicable provisions of the Act, regulations, and instructions under the Act. All approvals of weighing facilities are issued on the condition that the facility will use only approved weighers or official personnel to perform or supervise the performance of Class X or Class Y weighing functions.

§ 800.201 Termination of delegations, designations, approvals, and contracts.

(a) *Delegations.* A delegation of authority issued by the Service to a State shall have no termination date but shall terminate whenever any of the following events occur: (1) there are no export port locations in the State for a period of 3 consecutive years; (2) the State requests that the delegation of authority be canceled; or (3) upon notice by the Service that the delegation of authority is being revoked by the Service. Notice of revocation by the Service will be given to a State as far as practicable in advance of the effective date of the notice.

(b) *Designations.* (1) *Triennial termination.* Designations of agencies shall terminate at such time as is specified by the Administrator, but not later than 3 years after the effective date of the designation.

(2) *Termination schedule.* Subject to the provisions of subparagraph (1) of this paragraph (b), designations to operate as an official agency shall terminate on the last day of the month shown in the following schedule:

Agency names beginning with	Termination date (last day of month shown)
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.

(3) *Termination notices.* Notices of termination shall be issued by the Service to designated agencies at least 60 days in advance of the termination date. The notices shall provide detailed instructions for requesting renewal of the designations. Failure to receive a notice from the Service shall not exempt designated agencies from the responsibility of having their designations renewed on or before the expiration date prescribed in this paragraph (b).

(4) *Renewal of designations.* Designations that are renewed shall show the date of renewal and the word "renewed."

(c) *Approvals.* (1) *Scale testing organizations.* Note: The provisions of this subparagraph (1) shall not be applicable with respect to State or local governmental scale testing organizations that were operating on September 29, 1977. Approvals of scale testing organizations shall terminate annually in accordance with the termination date shown on the approval: *Provided*, (i) That the approval shall terminate whenever the scale testing organization or any of its employees are convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code or (ii) the scale testing organization fails to comply with any provision of the Act, the regulations, standards, or instructions issued under the Act. Notice of termination shall be issued by the Service to organizations at least 30 days in advance of the termination date.

(2) *Weighing facilities.* Approvals of weighing facilities shall have no termination date but shall terminate whenever any of the following events occur: (i) the facility ceases to operate as a grain storage, handling, or weighing facility; (ii) the facility requests that the approval be terminated; (iii) the facility (A) uses individuals who have not been or no longer are approved by the Service to perform or supervise the performance of functions related to official Class X or Class Y weighing and (B) uses equipment that has not been or no longer is approved by the Service for handling or weighing grain under the Act; (iv) the facility or any of its employees are convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code; or (v) the facility otherwise fails to comply with any provision of the Act, the regulations, standards, or instructions issued under the Act. Reasonable notice of the termination shall be issued by the Service to the facility in advance of the termination.

(d) *Contracts.* Contracts with the Service shall terminate annually

unless otherwise provided in the contract.

§ 800.202 Voluntary cancellation or suspension of a delegation, designation, or contract.

(a) *Delegations, or designations.* A delegation or designation may, upon the request of the State, local governmental agency, or person that is granted the delegation or designation, be canceled or, in the case of a designation, may be suspended for a specified period of time. In the case of a suspension, the specified period cannot exceed the expiration date, if any, of the designation. Requests for a voluntary cancellation of a delegation or designation, or for a voluntary suspension of a designation, or for the return of a voluntarily suspended designation shall be submitted in accordance with § 800.198. A suspension of a designation, whether voluntarily or for cause, shall not affect the expiration date of the designation.

(b) *Contracts.* A contract may, upon the request of the State, local 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.

(c) *Cancellation after suspension.* If a designation has been voluntarily suspended for the remaining period of the designation and no request has been received for the return of the designation, or a request for the return of the designation has been dismissed or denied in accordance with the provisions of § 800.204, the designation shall be summarily canceled by the Service on the expiration date of the designation.

§ 800.203 Summary suspension or cancellation of designations.

(a) *Summary suspensions.* (1) *Designations.* An authority to operate as a designated official agency may be summarily suspended by the Service without a hearing if the designated agency temporarily ceases to operate as an inspection or weighing agency.

(2) *Written notice.* Written notice of a summary suspension shall be given by the Service to the appropriate State or local governmental agency or person at the time of the suspension and is effective upon receipt.

(3) *Reinstatement of suspended designation.* Upon request by a designated agency, a designation that has been summarily suspended pursuant to this § 800.203 may be reinstated by the Service upon finding that (i) the request by the agency was made prior to the expiration date of the designation; (ii) the agency is again operating or capable of operating as an inspection or weighing agency; (iii) the agency is otherwise eligible to be granted a designation; and (iv) the reinstatement is

consistent with the objectives of the Act and the need for official services.

(b) *Summary cancellations of designations.* A designation of an agency may be summarily canceled by the Service without a hearing upon a finding that the agency (i) if an individual, has died or is imprisoned for a period in excess of 3 years; or (ii) if a partnership, has been dissolved; or (iii) if a corporation, has had its charter suspended, canceled, or otherwise terminated; or (iv) if an association or other business entity, has been dissolved or is no longer operational as an association or business entity. If a designation has been voluntarily suspended for the remaining period of the designation and no request has been received for the return of the designation, or a request for the return of the designation has been dismissed or denied in accordance with the provisions of § 800.204, the designation shall be summarily canceled by the Service on the expiration date shown on the designation. Written notice of a summary cancellation shall be given by the Service to the agency at the time of cancellation and is effective upon receipt.

§ 800.204 Revocation of delegation.

(a) *Revocation.* A delegation to a State to perform official inspection or official Class X or Class Y weighing functions at export port locations is subject to revocation in accordance with Section 7(e)(2) of the Act.

(b) *Procedure.* The Administrator may revoke a delegation to a State without a hearing, or at his discretion and at the request of the State, may afford the State an opportunity for an informal conference in accordance with the Rules of Practice in Part 808 of this Chapter.

(c) *Notice of action.* When a delegation is revoked, the Service shall promptly notify the State of the reason for the action. Revoked delegation shall be surrendered or otherwise disposed of in accordance with instructions issued by the Service.

§ 800.205 Refusal of renewal, or suspension, or revocation of designations for cause.

(a) *Cause for refusal or revocation.* A designation issued to an agency is subject to a refusal to renew, or a suspension, or a revocation, either temporarily or otherwise, by the Service (1) for causes prescribed in Section 7(g)(3) of the Act, or (2) if the agency or any of its employees are or have been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code.

(b) *Procedure for temporary suspension or refusal.* (1) *Provision for temporary suspension or refusal.* When-

ever the Service has reason to believe there is cause for a temporary suspension, or a refusal of renewal, and deems such action to be in the best interest of the inspection and weighing system, a designation may be temporarily suspended, or the renewal of a designation may be temporarily refused, or the return of a designation that was suspended for a period that has expired may be temporarily refused, without first affording the agency, hereafter referred to in this § 800.205 as the "respondent," an opportunity for a hearing.

(2) *Notice and effective date of temporary suspension or refusal.* Notice of a temporary suspension or refusal shall be given to the respondent, and to the applicants for official services performed by the respondent, in accordance with paragraph (d) of this § 800.205. The temporary suspension or refusal shall be effective upon receipt of the notice by the respondent.

(3) *Termination of temporary suspension or refusal.* Within 30 business days following the issuance of a notice of temporary suspension or refusal of renewal, the Service shall (1) afford the respondent an opportunity for a hearing, or an informal conference in accordance with the provisions of paragraph (c) of this § 800.205, and shall continue the temporary suspension or refusal of renewal if it is found by the Service that (i) alternative managerial, staffing, financial, or operational arrangements satisfactory to the Service will not or cannot be affected by the respondent pending a final determination under paragraph (c) of this § 800.205 or (ii) the public health, interest, or safety require a continuation of the temporary suspension or refusal of renewal; or (2) afford the respondent the opportunity for a hearing under paragraph (c) of this § 800.205 and shall terminate the temporary suspension or refusal of renewal if it is found that (i) alternative managerial, staffing, financial, or operation arrangements satisfactory to the Service can be and are effected by the respondent and (ii) the public health, interest, and safety do not require a continuation of the temporary suspension or refusal of renewal; or (3) terminate the temporary suspension or refusal of renewal with a suitable written notice or warning under Section 14(b) of the Act; or (4) terminate the temporary action without prejudice. The Service shall promptly notify the respondent, and the applicants for official service performed by the respondent, of the action under this subparagraph (b)(3).

(c) *Procedure for other than temporary suspension or refusal.* Except as provided in paragraph (b) of this § 800.205, in refusing for cause to renew a designation or in suspending

or revoking for cause a designation and in refusing for cause to return a designation that was suspended for a period that has expired, the respondent shall be afforded an opportunity (1) for a hearing in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 554, 556, and 557) and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR, Part 1, Subpart H) or (2) at the request of the respondent, an informal conference in accordance with § 800.2005 of the Rules of Practice Governing Informal Proceedings in Part 808 of this Chapter.

(d) *Notice of action.* When a designation is not renewed, or is suspended or revoked, or is not returned for cause under paragraphs (a) or (b) of this § 800.205, the Service shall promptly notify the respondent, and the applicants for the services performed by the respondent, of the reason for the action. Designations that are not renewed or are revoked shall be surrendered or otherwise disposed of in accordance with instructions issued by the Service.

§ 800.206 Inspection and weighing arrangements during suspension, and following cancellations and revocations of delegations or designations.

(a) *Export port locations.* If a delegation of authority to a State is canceled or revoked, official inspection and weighing services at the export port locations in the State will, upon request by an applicant, be provided by the Service.

(b) *Locations other than export port locations.* (1) *General.* If a designation of an agency is suspended, canceled, or revoked, or the renewal of a designation is refused, the Service shall, upon a finding of demonstrated need, arrange for a replacement agency. Insofar as practicable, the arrangements shall be made in advance of the suspension, cancellation, revocation, or the failure to renew.

(2) *Notice.* Notice of the apparent need and plans for a replacement agency shall be published in the *Federal Register*, and interested persons shall be given an opportunity to present their views. Reasonable notice of the final action designating a replacement agency shall be published in the *FEDERAL REGISTER* in advance of the effective date.

§ 800.207 Assignment of areas of responsibility to agencies; specifying service points; restrictions on services.

(a) *General.* Each delegated State agency, designated inspection agency, designated weighing agency, and field office shall be assigned an area of responsibility by the Service in accordance with the provisions of paragraph

(b) of this § 800.207. Each area shall be identified by geographical or other boundaries. In the case of a State or local governmental agency, the area shall not exceed the jurisdictional boundaries of the State or the local government, as applicable.

(b) *Assigned areas of responsibility.* (1) *Agencies and field offices; export port locations.* At an export port location, the area of responsibility assigned to a delegated State agency or to a field office shall generally be whichever is greater of (i) the switching limits established and published by the railroads for the export port location or (ii) an area within a radius of 25 miles of the approximate center of the export port location.

(2) *Agencies and field offices; other than export port locations.* At a location other than an export port location, the area of responsibility assigned to a designated agency or to a field office shall generally be the area requested by the agency or by the field office, as applicable, except that the area (i) may not include any portion of an assigned area of responsibility involving an export port location or (i) subject to the provisions of § 800.195(b)(2), may not include any portion of an area of responsibility assigned to another agency or to another field office that is performing the same functions.

(c) *Responsibility for providing official services.* In each assigned area of responsibility, the delegated State agency, designated agency, or field office, as applicable, shall be responsible, insofar as practicable, for providing upon request of an applicant for service at any and all locations in the area, including but not limited to specified service points, official original inspection and reinspection services or official Class X or Class Y weighing services, as specified in the delegation, designation, or other authorization issued by the Service.

(d) *Restrictions on providing official services.* (1) *Area restriction, agencies.* Except with the approval of the appropriate field office, no agency may perform official functions at any location, including but not limited to specified service points, outside its assigned area of responsibility.

(2) *Area restriction, field offices.* Except with the approval of the appropriate regional office, no field office may perform official functions at locations, including but not limited to specified service points, outside its assigned area of responsibility.

(3) *Sample restrictions, agencies, and field offices.* Subject to the provisions of § 800.82(d), no agency or field office shall perform original inspection or reinspection functions on any official sample, or on any warehouse-

man's sample unless, at the time the sample was obtained, the grain from which the sample was obtained was physically located within the area of responsibility assigned to the agency or the field office, as applicable. *Note:* There are no jurisdictional restrictions on the original inspection or reinspection of submitted samples.

(e) *Specified service points, agencies, and field offices.* (1) *Export port locations.* In an assigned area of responsibility for a delegated agency and a field office, each export port location in the area shall be deemed to be a specified service point.

(2) *Other than export port locations.* In an assigned area of responsibility for a designated agency and a field office at other than export port locations, each place where a designated agency or a field office, as applicable, is located shall be deemed to be a specified service point. Additional specified service points may be approved by the service on a temporary, seasonal, or permanent basis upon request by an agency or a field office.

(3) *Stationing personnel at specified service points.* Each agency and each field office, as applicable, shall be responsible for the stationing of official personnel at specified service points in accordance with the terms of the designation issued by the Service.

(f) *Procedure for assigning areas, specifying points, and amending or changing assigned areas and specified points.* (1) *Action by agencies.* Applications by agencies for the assignment of areas of responsibility, for specifying service points, or for amending or changing an assigned area of responsibility, or specified service points, shall be made in accordance with §§ 800.197 and 800.198.

(2) *Action by Service.* Applications by agencies shall be reviewed by the Service in accordance with § 800.199, and assignments and amendments shall be made in accordance with § 800.200. In addition, after such consultation with interested persons as deemed warranted and a finding of need to meet the objectives of the Act, the Service may initiate action to assign areas, or specify service points, or amend or change assigned areas of responsibility or specified service points.

(3) *Termination of assignments.* Each assignment of an area of responsibility and each specified service point, shall terminate in accordance with §§ 800.201(b) and (c).

(4) *Suspension, cancellation, and revocation.* Each assignment of an area of responsibility, and each specification of a service point may be suspended, canceled, or revoked and is subject to a refusal to renew in accordance with §§ 800.202 through 800.206.

(5) *Information on assigned areas and specified points.* Notice of the assignment of areas, specification of service points, or amendments and changes in the assignment of areas of responsibility or in the specification of service points, shall be published by the Service in such form as is deemed appropriate. Information about assigned areas and specified service points may be obtained in accordance with § 800.10.

§ 800.208 Duties and responsibilities of agencies and approved weighing facilities.

(a) *General.* Each agency shall be responsible for the performance and the supervision of each of the duties assigned in § 800.185 to its official personnel, each approved weighing facility shall be responsible for the performance and the supervision of each of the duties and standards of conduct assigned in subparagraph (r)(1) of this § 800.208 to its approved weighers. In addition, each agency or facility shall, except as provided in paragraphs (c), (g), (k), (l), (m), (o), (p), (q), and (s), be responsible for the performance and the supervision of the duties shown in paragraphs (b) through (s) of this § 800.208.

(b) *Compliance with conditions for delegation, designation, or approval.* Each agency and approved weighing facility shall comply with the applicable conditions for delegation, designation, or approval under §§ 800.196 and 800.197, respectively.

(c) *Recruiting, training and staffing.* Note: The provision of this paragraph (c) shall not be applicable to approved weighing facilities. Upon request by the service, an agency shall adopt and effectuate an affirmative action plan to achieve compliance with the civil rights Act of 1964 and § 800.3(b).

(d) *Facilities and equipment.* Each agency and each approved weighing facility shall obtain and maintain such facilities and equipment as the Service determines are needed for the official inspection and official Class X or Class Y weighing functions performed by or at the agency or facility under the terms of the applicable delegation, designation, or approval.

(e) *Supervision and monitoring.* Each agency and approved weighing facility shall (1) supervise and monitor the activities shown in §§ 800.216 and 800.217 in accordance with instructions issued by the Service and (2) effect action as is necessary to assure that its employees are (i) not performing prohibited functions and (ii) not involved in any action prohibited by the Act, the regulations and instructions issued thereunder. (3) In addition, each agency shall report to the appropriate field office (i) information which shows or tends to show a viola-

tion of any provision of the Act, the regulations, or the instructions issued by the Service, and (ii) information of any instructions which have been issued to agency personnel by Service personnel or by any other person which are contrary to or inconsistent with the Act, the regulations, or the instructions issued by the Service.

(f) *Corrective action.* Each agency shall effect corrective action, as needed, of its personnel to assure the proper performance of official functions, the maintenance of approved standards of conduct, and the avoidance of actions prohibited by §§ 800.185 through 800.188.

(g) *Testing equipment by agencies and field offices.* (1) *Agencies and field offices.* Each agency and each field office that performs inspection or weighing functions shall, in accordance with instructions issued by the Service, (i) test the equipment that is used for official purposes by the agency or the field office, as applicable; and (ii) test the diverter-type mechanical samplers that are used for official sampling purposes in the area of responsibility assigned to the agency or the field office, as applicable. Tests performed by agencies on equipment used jointly by an agency and a field office may, upon a finding that the tests were conducted in an approved manner, be accepted by a field office in lieu of tests by the field office.

(2) *Exemption.* The provisions of this paragraph (g) shall not be applicable to the complete testing of weighing equipment.

(h) *Obtaining licenses and approvals.* Each agency shall assist its personnel in obtaining needed licenses for the performance of official inspection and official Class X or Class Y weighing functions and needed authorizations for affixing the signatures of their licensees. Each approved weighing facility shall be responsible for securing approval by the Service for each weigher employed by, at, or in the facility to perform or supervise the performance of official Class X or Class Y weighing functions.

(i) *Providing service.* (1) *Agency.* Each agency shall promptly provide, within its assigned area of responsibility, requested official inspection and official Class X or Class Y weighing services, including the prompt issuance of official certificates, in accordance with its delegation or designation and the provisions of § 800.185 and, upon request, help interested persons determine the kind, scope, and level of services they need or desire.

(2) *Approved weighing facilities.* (i) *Official services at request of applicant.* Each approved weighing facility, whether it is operated as a public or a private elevator, upon request by an applicant, shall promptly permit offi-

cial inspection or official Class X or Class Y weighing services to be performed on grain shipped to the facility by the applicant or shipped to the applicant by the facility.

(ii) *Official weighing services at request of Service.* Upon a finding by the Service, an approved weighing facility shall, upon request by the Service, promptly permit official Class X or Class Y weighing services to be performed on all or specified lots of grain shipped to or from the facility during a specified period of time. The costs of the services shall, in such cases, be assessed to and paid by the approved weighing facility.

(j) *Observation of functions.* Each agency and each approved weighing facility must permit any person (or the person's agent) who has a financial interest in the grain that is being inspected or weighed under the Act to observe the sampling, inspection, weighing, loading, or unloading, as applicable, of the grain in accordance with Section 16 of the Act. Appropriate areas shall be mutually defined by the Service and facility operator or agency, as applicable, for the observation of each function. The areas shall be safe, shall afford a clear and unobstructed view of the performance of the functions, but shall not permit a close over-the-shoulder type of observation by the interested person (or the person's agent). Observation activities shall not obstruct, impede, or bias the performance of the official functions.

(k) *Changes in service.* Each agency shall promptly notify the appropriate field office of any change in the scope of the official inspection or official Class X or Class Y weighing services that the agency performs, or any suspension of official activities for such length of time as would impair the performance of official services at any location. Such notice shall be given, if possible, before the change occurs. The provisions of this paragraph (k) shall not be applicable to approved weighing facilities, but see subparagraph (r)(2) of this § 800.208.

(l) *Fees.* Each agency shall establish and collect fees only in accordance with the provisions of § 800.70.

(m) *Records (agencies).* Each agency shall keep records as required by § 800.145, including separate and complete accounts of all receipts for inspection and weighing services and all disbursements from such receipts, for purposes of audit by the Department of Agriculture or the Service.

(n) *Reports required (agencies and field offices only).* (1) *Volume report.* Each agency and each field office shall, in accordance with § 800.155 and instructions issued by the Service, periodically prepare and submit to the appropriate field office or regional office a report showing the kind and volume

of inspection or weighing services performed by the agency or the field office. Upon a showing of good cause, the requirements of this paragraph (n) may be temporarily waived in emergencies by a regional office.

(2) *Management report.* Each agency, in accordance with § 800.150, shall report such information regarding its ownership, management, and operation as may be required by the Service.

(3) *Reports of interest.* Each agency and field office shall report such information regarding the financial interests and employment practices of its employees as may be required by the Service. (The filing of such reports, or the filing of an application for a license, as provided in § 800.172, does not permit a licensee to have a conflict of interest not excepted by the Act or the regulations.)

(o) *Certificate control system (agencies and field offices only).* (1) *Requirements for systems.* (i) Each agency and each field office shall establish a certificate control system for (A) the standard form official certificates that they receive, issue, void, or otherwise render useless and (B) the special design weight certificates that they issue, void, or otherwise render useless. (ii) The system shall be subject to approval by the Service and shall consist of (A) maintaining a complete record as specified in § 800.155(c) of the numbers of the official certificates printed or received from any source; (B) storing or monitoring the storing of the unused certificates from fraudulent or unauthorized use; and (C) maintaining, in accordance with subparagraph (2) of this paragraph (o), a file copy of each certificate issued, voided, or otherwise rendered useless.

(2) *Requirements for file copies.* File copies shall be retained by certificate number, by date, or by carrier identification number for ready reference. In the case of an original inspection or weighing, the file copy shall consist of a true copy of the official certificate. In the case of a reinspection, appeal inspection, divided-lot, or corrected certificate, the file copy shall consist of a true copy of the reinspection, appeal inspection, divided-lot, or corrected certificate and, if surrendered, the original of the certificate that was superseded.

(p) *Avoiding conflicts of interest (agencies and field offices only).* Agencies and field offices shall at all times avoid acquiring any financial interest or engaging in any activity that would result in a violation of § 800.196, or a violation of Sections 7A and 11 of the Act. Agencies shall also prohibit the acquiring of any such interest or the engagement in any such activity by their employees and their employees' spouses, minor children, or blood rela-

tives who reside in the immediate households of the employees.

(q) *Disposition of conflicting interests (agencies and field offices only).* (1) *Corrective action by agency.* Upon being informed that certain interest or employment is in conflict with official inspection or official Class X or Class Y weighing and that remedial action is required, an agency or an applicant for a designation shall take immediate action to end the conflict of interest and inform the Service of the action taken.

(2) *Requests for exceptions.* An agency or an applicant for a designation who believes that remedial action will cause undue economic hardship or other irreparable harm may request an exception by forwarding to the Service either directly or through the appropriate field office a written statement setting forth the facts, the circumstances, and the reason for requesting an exception.

(3) *Penalties.* If a final determination is made by the Service that a conflict of interest does exist and should not be excepted, failure to end the conflict of interest shall subject an agency to action against its delegation or designation, and criminal prosecution, and an applicant for a designation to the dismissal of the application.

(r) *Duties of approved weighing facilities.* (1) *Personnel.* (i) Each approved weighing facility shall (A) permit only official personnel, or approved weighers, to operate scales used in the weighing of grain under the Act; (B) permit official personnel to monitor grain loading, unloading, or handling operations that are an integral part of the weighing of grain under the Act; (C) require that when approved weighers operate the scales, the approved weighers and other employees who operate grain loading, unloading, and handling equipment perform their duties in accordance with §§ 800.95 through 800.104 and in accordance with instructions issued by the Service; (D) keep record of the duties of approved weighers and other persons who operate grain loading, unloading, and handling equipment employed by, at, or in the facility; (E) designate one or more supervisory employees to have direct responsibility for the activities of the approved weighers and other persons employed by, at, or in the facility; and (F) be responsible for the actions of approved weighers and other persons who perform the loading, unloading, or handling operations that are an integral part of the weighing of grain under the Act.

(ii) Each approved weighing facility shall be responsible for assuring that all approved weighers who operate scales and all persons employed by, at,

or in the facility who operate grain loading, unloading, and handling equipment shall: (A) Execute diligently all instructions issued to them by the Service, either in writing or orally: *Provided*, However, that whenever feasible, such instructions shall be issued from the Service to the affected individuals through appropriate management officials at the facility; (B) Inform the Service, upon request, in full detail regarding inspection, weighing, or testing equipment used by them, or inspection or weighing services performed by them; and (C) Report to the appropriate field office (1) information which shows or tends to show a violation of any provision of the Act, the regulations, or the instructions issued by the Service and (2) information about any instructions which have been issued to them by official personnel or any other person which are contrary to or inconsistent with the Act, the regulations, or the instructions issued by the Service: *Provided*, However, that, whenever practicable, appropriate management officials at the facility may forward such reports on behalf of those individuals employed by the facility.

(iii) In addition, each approved weighing facility shall prohibit approved weighers who operate scales from: (A) performing official weighing functions unless approved by the Service to perform such functions; (B) engaging in criminal, dishonest, or notoriously disgraceful conduct that could jeopardize the integrity or the effective and objective operation of the function performed at the facility under authority of the Act; (C) smoking in prohibited areas in the facility, or otherwise performing official functions in an unsafe manner which could endanger other persons working in or about the premises; (D) refusing to give testimony or respond to questions in connection with official inquiries or investigations; and (E) violating any provisions of Section 13 of the Act.

(2) *Notification of change in facilities.* Prior to installing a new scale system or modifying an existing scale system, computer system, or handling system for use in the weighing of grain under the Act, the operator of an approved weighing facility shall submit to the appropriate agency or field office detailed information regarding the proposed installation or modification. The final approval of a new or a modified scale system, computer system, or handling system for use in weighing of grain under the Act will in all cases be based on an onsite test for accuracy and general operation.

(3) *Scale log.* A log book shall be maintained for each approved scale used for the weighing of grain under the Act. The identification of the scale

and all related information, including but not limited to scale test dates, scale failure, and scale repair, shall be recorded in the log. The log shall be kept at a convenient location in the approved weighing facility and shall be available to all official personnel.

(4) *Operation and maintenance of scales.* Each scale system and each related grain handling system used in the weighing of grain under the Act shall be operated and maintained in accordance with instructions issued by the manufacturer and by the Service.

(5) *Abnormal performance of scales.* Scales or scale systems that are broken or are otherwise performing in an abnormal manner shall not be used for weighing grain under the Act until the abnormal operation is corrected and the scales or the systems, as applicable, are found by the Service to operate in an approved manner.

(6) *Use of adjustments.* Adjustments in weight indicating devices shall not be made to correct for improper scale installations or for defective scale parts. Improper scale installations shall be corrected, and defective scale parts shall be replaced before a scale may be used for weighing under the Act.

(7) *Assistance in applying test weights.* Each approved weighing facility shall provide whatever assistance is needed by official personnel and approved scale testing organizations in the testing of scales installed in the facility. The assistance shall include but not be limited to the applying and removing of test weights.

(8) *Retention of records.* Each approved weighing facility shall keep a complete file and record of (i) the Act, the regulations, the standards, and the instructions issued to the facility by the Service; (ii) the authority issued to the facility by the Service to operate as an approved weighing facility; (iii) the names of the approved weighers employed by, at, or in the facility; and (iv) the information required by § 800.25.

(s) *Prohibited activities by agencies and field offices.* In addition to the actions restricted or prohibited by Sections 7, 7A, and 13 of the Act, agencies and field offices are subject to the location, conduct, conflict of interest, and related provisions in §§ 800.186, 800.187, 800.188, 800.195, and 800.196.

§§ 800.209-800.214 [Reserved]

SUPERVISION, MONITORING, AND EQUIPMENT TESTING

§ 800.215 Objectives in supervision, monitoring, and equipment testing.

(a) *Supervision.* The objective in supervision is to achieve and maintain an acceptable level of performance, in quality and quantity, for activities performed under the Act.

(b) *Monitoring.* The objective in monitoring is to help achieve the objectives of supervision.

(c) *Equipment testing.* The objective in equipment testing is to determine whether equipment used in performing official functions under the Act is operating in an approved manner.

(d) *Prototype equipment testing.* The objective in testing prototype or proposed equipment is to determine whether the equipment will improve the performance of activities under the Act.

§ 800.216 Activities that shall be supervised.

(a) *General.* Supervision of the activities described in this § 800.216 shall be performed in accordance with instructions issued by the Service.

(b) *Administrative activities.* Administrative activities subject to supervision include, but are not limited to (1) the providing of staffing, equipment, and facilities for the performance of 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) implementing 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) the implementing of (A) the equipment performance requirements in Parts 802 and 803 of this Chapter and (B) the instructions for the operation of equipment used under the Act and for the performance of equipment-testing activities and (ii) the performing by official personnel or by approved scale testing organizations of equipment-testing activities.

(2) *Inspection activities.* Inspection activities subject to supervision include, but are not limited to (i) the implementing of (A) the Official U.S. Standards for Grain in Part 801 of this Chapter, (B) official criteria, and (C) instructions for the performance of inspection activities and (ii) the performing by official personnel of stowage examination, sampling, laboratory testing, grading, and certification activities.

(3) *Weighing activities.* Weighing activities subject to supervision include, but are not limited to (i) the implementing of (A) uniform weighing procedures and (B) instructions for the performance of weighing activities and (ii) the performing (A) by official personnel of stowage examination, sampling (sacked grain), weighing, and

certification activities and (B) by approved weighers of weighing activities.

(4) *Testing of prototype equipment activities.* Prototype equipment-testing activities subject to supervision include, but are not limited to (i) the implementing of instructions for the testing of prototype equipment, (ii) the testing by official personnel of prototype equipment, and (iii) the approving or denying of the use of prototype equipment for use under the Act.

(d) *Regulatory activities.* regulatory activities subject to supervision include, but are not limited to (1) the implementing of (i) regulations in this Part 800 and (ii) instructions for performing regulatory activities; (2) designation of agencies; (3) registration of export businesses; (4) licensing official personnel and approving weighers; (5) approving scale-testing organizations and weighers' facilities; (6) reporting and resolving prohibited conflicts of interest; (7) granting waivers under Sections 5(a)(1), 5(a)(2), and 11(b)(5) of the Act; and (8) investigating, reporting, and initiating proceedings for apparent violations of the Act or other statutes involving the handling, inspection, or weighing of grain.

§ 800.217 Activities that shall be monitored.

(a) *General.* Each of the administrative, technical, and regulatory activities identified in § 800.216 and the elevator and merchandising activities identified in this § 800.217 shall be monitored in accordance with instructions issued by the Service.

(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 (Section 5(a)(1)); (2) describing grain by other than official grades (Section 6(a)); (3) falsely describing export grain (Section 6(b)); (4) falsely making or using official certificates, forms, or marks (Sections 13(a)(1), 13(a)(2)); (5) making false quality or quantity representations about grain (Sections 13(a)(5), 13(a)(6), 13(a)(12)); and (6) selling export grain without a certificate of registration (Section 17A).

(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 (Section 5(a)(1)); (2) transferring grain into or out of an export elevator at an export port location without official Class X weighing (Section 5(a)(2)); (3) violating any Federal law with respect to the handling, weighing, or inspection of grain (Section 10(a)); (4) deceptive loading, handling, weighing, or sampling of grain (Sections 13(a)(3), 13(a)(4)); and (5)

exporting grain without a certificate of registration (Section 17A).

(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) *Monitoring inventories at export elevators at export port locations.* The Service will conduct an annual physical inventory of the stocks of grain in each export elevator at an export port location. In addition, the Service may conduct such additional inventories as may be needed to protect the integrity of the official weighing program. Inventories shall be performed in accordance with instructions issued by the Service.

(f) *Other activities.* Other activities subject to monitoring for compliance with the Act include, but are not to be limited to (1) conflicts of interest with official agencies or their employees (Section 11(b)); (2) providing access to elevator facilities and records (Section 12(d)); (3) improperly influencing or interfering with official personnel (Sections 13(a)(7), 13(a)(8)); (4) falsely representing that a person is official personnel (Section 13(a)(9)); (5) using false means in filing an application for services under the Act (Section 13(a)(10)); and (6) preventing interested persons from observing the loading, weighing, or sampling of grain (Section 13(a)(13)).

§ 800.218 Equipment that shall be tested.

(a) *General.* Testing of equipment and prototype equipment described in this § 800.218 shall be performed in accordance with instructions issued by the Service.

(b) *Inspection equipment.* Each unit of equipment used in the sampling, testing, or grading of grain under the Act, or in monitoring the inspection of grain under the Act, shall be examined to determine whether the equipment is functioning in an approved manner. In addition, each unit of equipment for which performance requirements have been established in Subpart C of this Part shall be tested for accuracy. For the purpose of this paragraph (b), diverter-type mechanical samplers used in obtaining warehouse's samples shall be deemed to be inspection equipment used under the Act.

(c) *Weighing equipment.* Each unit of equipment used in the weighing of grain under the Act or in monitoring the weighing of grain under the Act, each related grain handling system and each related computer system, if any, shall be examined to determine whether the equipment, the grain handling system, and the related computer system, if any, are functioning in an approved manner. In addition, each unit of equipment for which per-

formance requirements have been established in Part 803 of this Chapter 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 possible use under the Act.

(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 possible use under the Act.

§ 800.219 Review of rejection or disapproval of equipment.

Any person desiring to complain of an alleged unlawful, arbitrary, capricious, or unwarranted rejection or disapproval of equipment by official personnel, or other alleged discrepancy or abuse by official personnel or by approved scale testing organizations in the testing of equipment under the Act may file a complaint with the Service in accordance with § 800.5 and the Informal Rules of Practice in Part 808 of this Chapter.

§ 800.220 Conditional approval on use of equipment.

Equipment that is in use under the Act of the effective date of this § 800.220 shall be deemed conditionally to have been (1) adopted and (2) approved by the Service for use under the Act. This conditional approval shall not bar a later rejection or disapproval of the equipment by the Service upon a determination that the equipment (i) should be rejected for use under the Act, or (ii) is not functioning in an approved manner, or (iii) is not producing results that are accurate within prescribed tolerances, or results that are otherwise consistent with the objectives of the Act.

PART 802—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN INSPECTION EQUIPMENT

Sec.

802.1 Applicability.

802.2 Meaning of terms.

802.3 Minimum tolerances for balances.

802.4 Minimum tolerances for barley pearlers.

802.5 Minimum tolerances for Carter dockage testers.

802.6 Minimum tolerances for diverter-type mechanical samplers.

802.7 Minimum tolerances for Motomeco moisture meters.

802.8 Minimum tolerances for near-infrared reflectance analyzers (NIR).

802.9 Minimum tolerances for sieve devices.

802.10 Minimum tolerances for test weight apparatus.

802.11 Related design requirements.

802.12-802.50 [Reserved]

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867; Pub. L. 95-113, 91 Stat. 1024 (7 U.S.C. 71 et seq.).

§ 802.1 Applicability.

This Part 802 prescribes certain specifications, tolerances, or other technical requirements for grain inspection equipment and related sample handling systems used in performing official inspection functions under the U.S. Grain Standards Act. The requirements are based on and are in harmony with the unofficial requirements that have been and are being used by the Federal Grain Inspection Service in testing inspection equipment used in performing official inspection functions under the Act.

§ 802.2 Meaning of terms.

(a) *Construction.* Words used in the singular form in this Part 802 shall be deemed to impart the plural, and vice versa, as appropriate.

(b) *Definitions.* The definitions of terms in the U.S. Grain Standards Act and in Part 800 are applicable to such terms when used in this Part 802. For the purposes of this Part 802, unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given for them below.

(1) *Avoirdupois weight.* A unit of weight based on the pound of 16 ounces.

(2) *Balances.* Laboratory devices used to manually, mechanically, or electronically measure and indicate the weight of a sample of grain or related material.

(3) *Barley pearler.* A laboratory device used to mechanically dehull kernels of barley.

(4) *Boerner divider.* A laboratory device used to mechanically divide a sample of grain into two or more representative portions.

(5) *Carter dockage tester.* A laboratory device used to mechanically separate dockage and foreign material from grain.

(6) *Direct comparison method.* An equipment testing procedure wherein given samples of grain are tested at one location using two or more units of the same inspection equipment, one unit of which shall be standard inspection equipment. (See also sample exchange method.)

(7) *Diverter-type mechanical sampler (primary).* A heavy-duty device used to obtain representative portions from a flowing stream of grain.

(8) *Diverter-type mechanical sampler (secondary).* A heavy-duty device used to periodically subdivide the portions of grain obtained with a diverter-type mechanical sampler (primary).

(9) *Master inspection equipment.* A unit of inspection equipment that is designated by the Federal Grain In-

spection Service for use in determining the accuracy of standard inspection equipment.

(10) *Mean deviation from the standard (MDS).* In testing inspection equipment for accuracy, the variation between (i) the average of the test results from the equipment that is being tested and (ii) the average of the test results from the standard or master equipment, as applicable.

(11) *Metric weight.* A unit of weight based on the kilogram of 1,000 grams.

(12) *Minimum acceptance tolerance.* An allowance established for use in determining whether new inspection equipment or newly reconditioned inspection equipment should be approved for use in performing official inspection functions.

(13) *Minimum maintenance tolerance.* An allowance established for use in determining whether inspection equipment, other than new or newly reconditioned inspection equipment, should be approved for use in performing official inspection functions.

(14) *Motomco moisture meter, model 919.* A laboratory device used to electronically measure the moisture content in a sample of grain.

(15) *Official inspection equipment.* Equipment approved by the Service and used by official personnel and approved personnel in performing inspection functions under the U.S. Grain Standards Act.

(16) *Sample exchange method.* An equipment testing procedure wherein given samples of grain are tested at different locations using two or more units of the same inspection equipment, one unit of which shall be standard inspection equipment. (See also direct comparison method.)

(17) *Sieves.* Laboratory devices with slots, holes, oblong or other perforations for use in manually or mechanically separating particles of various sizes.

(18) *Standard inspection equipment.* A unit of inspection equipment that is designated by the Federal Grain Inspection Service for use in determining the accuracy of official inspection equipment.

(19) *Test weight.* The avoirdupois weight of the grain or other material in a level-full Winchester bushel.

(20) *Test weight apparatus.* A laboratory device used to mechanically measure the test weight of grain.

(21) *Winchester bushel.* A container that has a capacity of 2,150.42 cubic inches (32 dry quarts).

§ 802.3 Minimum tolerances for balances.

The minimum acceptance and maintenance tolerances for balances used in performing official functions shall be:

Kind of balance	Minimum tolerance (Mean deviation from standard)
(a) Mettler, Model P..	+/- 0.50 gram
(b) Pennsylvania Pennograph, Model 501	+/- 0.10 gram
(c) Shadograph, Model 4205	+/- 0.1 gram
(d) Toledo Computagram, Models 4030 and 4032	+/- 1.0 gram
(e) Torsion, Models 5055, SE-1, DLT-2-1, and DLW 2-1	+/- 0.50 of one graduated division on the weight indicator
(f) Torsion, Model PL-2	+/- 1.0 gram

§ 802.4 Minimum tolerances for barley pearlers.

The minimum acceptance and maintenance tolerances for barley pearlers used in performing official inspection functions shall be:

Item	Minimum tolerance (Mean deviation from standard)
(a) Timer switch	+/- 2.5 sec. of the assigned pearling time for the pearler
(b) Pearled portion	+/- 1.0 gram from the weight portion pearled in the standard pearler

§ 802.5 Minimum tolerances for Carter dockage testers.

The minimum acceptance and maintenance tolerances for Carter dockage testers used in performing official inspection functions shall be:

Item	Minimum tolerance (Mean deviation from standard—percent)
Air separation	+/- 0.10
Riddle separation	+/- 0.10
Sieve separation	+/- 0.10
Total separation	+/- 0.15

§ 802.6 Minimum tolerances for diverter-type mechanical samplers.

The minimum acceptance and maintenance tolerances for diverter-type mechanical samplers (primary, or primary and secondary, in combination) used in performing official inspection functions shall be +/- 10 percent mean deviation from the standard for a given official factor.

§ 802.7 Minimum tolerances for Motomco moisture meters.

The minimum acceptance and maintenance tolerances for Motomco moisture meters used in performing official inspection functions shall be:

(a) Board of Appeals and Review Master/Standard.

Dial setting	Minimum tolerance (Mean deviation from standard—percent moisture)
25	+/- 0.05
50	+/- 0.05
75	+/- 0.05

(b) All other meters.

Dial setting	+/- 0.15	+/- 0.20
25	+/- 0.15	+/- 0.15
50	+/- 0.15	+/- 0.20
75	+/- 0.15	+/- 0.20

§ 802.8 Minimum tolerance for near-infrared reflectance (NIR) analyzers.

The minimum tolerances for NIR analyzers sieves used in performing official inspection functions shall be:

Test	Tolerance (percent)
Protein (wheat)	Direct Sample comparison exchange
Same ground and packed portion	0.1
Different portions from same whole grain sample:	
4 sample average	0.35
20 sample average	0.20

§ 802.9 Minimum tolerance for sieve devices.

The minimum acceptance and maintenance tolerance for sieves used in performing official inspection functions shall be:

(a) Thickness of metal: +/- 0.0015 inch

(b) Accuracy of perforation: +/- 0.0005 inch

(c) Sieving accuracy:

Sieve description	Minimum tolerance (Mean deviation from standard—percent)
	Direct Sample comparison exchange
.064 x 1/2 inch oblong	+/- 0.2 +/- 0.3
1/2 x 1/2 inch slotted	+/- 0.3 +/- 0.5
5-1/2/64 x 1/2 inch slotted	+/- 0.5 +/- 0.7
1/2 x 1/2 inch slotted	+/- 0.7 +/- 1.0

§ 802.10 Minimum tolerances for test weight apparatus.

The minimum acceptance and maintenance tolerance for a test weight per bushel apparatus shall be:

Item	Minimum tolerance	
	(Mean deviation from the standard)	
(a) Beam accuracy	+/-	0.10 pound at any reading
(b) Weighing accuracy	+/-	0.15 pound at any reading

§ 802.11 Related design requirements.

(a) *Suitability.* The design, construction, and location of grain sampling and inspection equipment and related sample handling systems shall be suitable for the sampling and inspection activities for which the equipment will be used.

(b) *Durability.* The design, the construction, and the material used in grain sampling and inspection equipment and related sample handling systems shall insure that under normal operating conditions (1) operating parts will remain fully operable, (2) adjustments will remain reasonably constant, and (3) accuracy will be maintained between equipment test periods.

(c) *Identification and Marking.* (1) *Identification.* Each item of sampling and inspection equipment for which minimum tolerances have been established (see §§ 800.953 through 800.960) shall be permanently marked to show (i) the manufacturer's name, initials, or trademark, (ii) the serial number of the equipment, (iii) the identification of the model, the type, and the design or pattern of the equipment; (iv) for diverter-type mechanical samplers, the date the samplers were installed in their present location; and (v) for other equipment for which tolerances have been established, the date the equipment was manufactured.

(2) *Marking.* Each operational control for a diverter-type mechanical sampler and the related grain handling system, including but not limited to pushbuttons and switches, shall be conspicuously identified as to the equipment or activity controlled by the pushbutton or switch.

(3) *Lettering.* Each required identification and marking shall be (i) distinct and readily readable after the equipment is installed and (ii) shown in such a manner that the lettering will not become obliterated or illegible.

(d) *Repeatability.* Each unit of inspection equipment, when tested in accordance with §§ 800.218 through 800.220 of Part 800 of this Chapter, shall, within the tolerances prescribed in §§ 802.3 and 802.10, be capable of re-

peating its record results when the equipment is operated in its normal manner.

(e) *Security.* Each diverter-type mechanical sampler and each related sample handling system shall (1) provide a ready means of sealing to block unauthorized (i) adjustments or (ii) removal or changing of component parts or timing sequence without removal or breaking of the seals and (2) otherwise be designed, constructed, and installed in manner to prevent deception to any person.

(f) *Installation requirements.* (1) *Manufacturer's instructions.* Grain sampling and inspection equipment and sample handling systems shall be installed at a site approved by the Service in accordance with the manufacturer's instructions, including any instructions marked on the equipment or systems.

(2) *Foundations and supports.* Equipment and systems shall be so installed that neither the operation nor the performance of the sampling or inspection equipment or system will be adversely affected by the foundation, supports, or any other characteristic of the installation.

PART 803—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN-WEIGHING EQUIPMENT AND RELATED GRAIN-HANDLING SYSTEMS

Sec.

- 803.0 Applicability.
- 803.1 Meaning of terms.
- 803.2 General requirements.
- 803.3 Design of indicating and recording elements and of recorded representations.
- 803.4 Design of balance, tare, level, dampening, and arresting mechanisms.
- 803.5 Design of weighing elements.
- 803.6 Design of weighbeams and poises.
- 803.7 Marking requirements.
- 803.8 Installation requirements.
- 803.9 User requirements.
- 803.10 Tolerances and sensitivity requirements.
- 803.11 Weight-indicating and weight-recording devices and representations.
- 803.12 Railroad track scales—additional requirements.
- 803.13 Test standards and counterpoise weights.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867; Pub. L. 95-113, 91 Stat. 1024 (7 U.S.C. 71 et seq.)

§ 803.0 Applicability.

The requirements set forth in this Subpart D describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems use in performing official weighing functions under the United States Grain Standards Act. The requirements are based on, and are in general agreement with, portions of the "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring

Devices" adopted by the National Conference on Weights and Measures and published by the U.S. Department of Commerce, National Bureau of Standards (NBS), as Handbook 44, as well as documents from the Association of American Railroads, weighing bureaus, Terminal Grain Weighmasters Association, and other regulatory agencies.

§ 803.1 Meaning of terms.

(a) *Construction.* Words used in the singular form in this Part 803 shall be deemed to import the plural and vice versa, as appropriate. When a section; e.g., 803.4, is cited in this Part 803, it refers to the indicated section in this part.

(b) *Definitions.* For the purpose of this Part 803, unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given for them below. The terms are shown in alphabetical order.

(1) *Acceptance tolerance.* A magnitude fixing the limit of allowable error or departure from true performance or value, as established by the Service.

(2) *Accurate.* A piece of equipment is "accurate" when its performance or value; that is, its indications, its deliveries, its recorded representations or its capacity or actual value, etc., as determined by tests made with suitable standards, conform to the standard within the applicable tolerances and other performance requirements. Equipment that fails so to conform is "inaccurate."

(3) *Antifriction point.* A sharp, slight projection formed on the knife-edge line of a pivot or inserted in or attached to a lever for contacting a Thrust Plate.

(4) *Approach rail.* One of the rails of track approaching a scale.

(5) *Approval seal.* A label, tag, stamped or etched impression, or the like, indicating official approval of a device. (See also security seal.)

(6) *Automatic zero reset.* A means or circuit to return an indicator to zero from any reading within the nominal capacity of the scale. The command can be programmed as required and thus can be automatic as well as operator initiated.

(7) *Avoirdupois weight.* A unit of weight based on the pound of 16 ounces (7000 grains) commonly used in the United States for official weighing of all commodities except precious stones, precious metals, and drugs.

(8) *Balance indicator.* An accessory designed to magnify the indication and to indicate, by means of the relative positions of an indicator and a fixed reference, whether the weight of the applied load is greater or less than, or equal to, the weight indication; sometimes graduated in weight

units. A reading face of an Over-Under Device, provided with but one graduation positioned approximately at its center.

(9) *Basic tolerance.* Basic tolerances are those tolerances on underregistration and on overregistration, or in excess and in deficiency, that have been established by the Service for particular device under all normal tests. Basic tolerances include minimum tolerance value when these are specified.

(10) *Capacity.* With respect to a scale, the heaviest specified load that can be applied to the load-receiving element.

(11) *Correct.* A piece of equipment is "correct" when, in addition to being accurate, it meets all applicable specifications and requirements. Equipment that fails to meet any of the requirements for correct equipment is "incorrect."

(12) *Counterpoise weight.* An adjusted, removable, (usually) slotted weight, intended to counterpoise an applied load of designed weight value. Sometimes also colloquially called Counterweight.

(13) *Damping device.* A device for arresting of an oscillation by progressively diminishing its amplitude.

(14) *Dead rail.* Either rail of the independent track provided over a railway track scale for the movement of locomotives and cars not to be weighed.

(15) *Deficiency.* See Excess and deficiency.

(16) *Digital indications (or recordings).* Refers to a system of indication or recording of the selector type or one that advances intermittently in which all values are presented digitally or in numbers. In a digital indicating or recording element, or in digital representation, there are no graduations.

(17) *Electromagnetic interference (EMI).* Electrical disturbances which propagate into electronic and electrical circuits and cause deviations from the normally expected performance. The frequency range of the disturbance covers the entire electromagnetic spectrum.

(18) *Electronic scale.* Any scale in which the restoring force is a transducer which converts force into an electrical signal proportional to weight and presents the information in digital or analog form.

(19) *Excess and deficiency.* When an instrument or device is of such a character that it has a value of its own that can be determined, its error is said to be "in excess" or "in deficiency" depending upon whether its actual value is, respectively, greater or less than its nominal value. Examples of instruments having errors "in excess" are: A linear measure that is too long,

a liquid measure that is too large, and a weight that is "heavy." Examples of instruments having errors "in deficiency" are: A lubricating-oil bottle that is too small, a vehicle-tank compartment that is too small, and a weight that is "light."

(20) *Division.* A defining line, or one of the lines defining the subdivisions of a graduated series. The term includes such special forms as raised or intended or scored reference "lines" and special characters such as dots.

(21) *Grain handling system.* The physical arrangement including equipment, devices, and structures whereby grain is weighed with one or more scales and delivered or conveyed to a carrier, or unloaded from a carrier or container and delivered to one or more scales to be weighed.

(22) *Official grain weighing equipment or device (or weighing equipment or device).* Any scale system used in weighing grain under the U.S. Grain Standards Act.

(23) *Hanging scale.* Any scale designed to be hung from an overhead support, generally whose load-receiving element is a self-cleaning hopper with an outlet gate.

(24) *Hopper scale.* A scale designed for the weighing or granular materials in bulk, whose load-receiving element is a self-cleaning hopper with an outlet gate.

(25) *Indicating element.* An element incorporated in a weighing or measuring device by means of which its performance relative to quantity is "read" from the device itself as, for example, a weighbeam-and-poise combination, a digital indicator, and the like.

(26) *Interlock.* A mechanism designed to prevent an action or indicate the presence of an occurrence in a scale system or a grain handling system.

(27) *Levertronic scale.* A scale in which the indicating and the recording devices can be activated either manually or electronically and which generally has one load cell mounted in the lever system.

(28) *Load-receiving element.* That element of a scale which is provided to receive the load to be weighed.

(29) *Maintenance tolerance.* A tolerance for application under test conditions to a device in service, usually applied to errors "as found." Sometimes also called "users" tolerance.

(30) *Manual scale.* A scale in which the weight-indicating and the weight-recording devices are activated by hand.

(31) *Metric weight.* A unit system of weight based on the kilogram of 1,000 grams.

(32) *Minimum division.* The value of the smallest unit that can be indicated or recorded by a digital device in normal operation.

(33) *Minimum test load.* The minimum allowable weight used for testing the accuracy of a scale.

(34) *Minimum tolerance.* Minimum tolerances are the smallest values that can be applied to a scale. Minimum tolerances are determined on the basis of the value of the minimum graduated interval or the nominal or reading capacity of the scale.

(35) *Mode of operation.* The method of activating a scale-indicating device and a scale-recording device; i.e., manual, automatic, semi-automatic, and the like.

(36) *Motion detection.* The process of sensing a rate of change of applied load to determine when a given weighing system has reacted to a state of equilibrium.

(37) *Multiple.* (i) Lever Ratio.

(ii) In a lever train, the ratio of the applied load to the counterforce required at a given knife-edge in the train; hence, the product of the ratios of the involved levers.

(iii) With respect to a counterpoise or unit weight, the ratio of the applied load which the weight is intended to counterpoise to the nominal value of the weight.

(38) *Nominal.* Refers to "intended" or "named" or "stated" as opposed to "actual." For example, "the nominal value of something is the value that it is supposed or intended to have, the value that it is claimed or stated to have, or the value by which it is commonly known." Thus, "1-pound weight," "1-gallon measure," "1-yard indication," and "500-pound scale" are statements of nominal values; corresponding actual values may differ from these by greater or lesser amounts.

(39) *Nose iron.* A slidably-mounted, manually adjusted pivot assembly for changing the multiple of a lever, determined on the basis of the value of the minimum graduated interval or the nominal or reading capacity of the scale.

(40) *Out-of-zero balance.* A weight indication, weight representation other than zero when there is no load on the scale load-receiving element.

(41) *Overregistration.* An instrument or device is said to be in the direction of the overregistration when it records or indicates more than the true value of the applied load.

(42) *Parallax.* The apparent displacement, or apparent difference in height or width, of a graduation or other object with respect to a fixed reference, as viewed from different points.

(43) *Pendulum.* In general, a body suspended from a fixed point so as to swing freely to and fro or in an especially restricted sense; and with respect to certain types of scales, an element consisting of a mass and a rigid

arm connecting the mass to an axis of rotation.

(44) *Performance requirements.* Performance requirements include all tolerance requirements and, in the case of nonautomatic-indicating scales, sensitivity requirements (SR).

(45) *Platform scale.* A scale whose load-receiving element is a platform.

(46) *Poise.* A movable weight mounted upon or suspended from a weigh-beam bar and used in combination with graduations, and frequently with notches, on the bar to indicate weight values.

(47) *Potentiometer.* A resistance unit having a variable or sliding contact which is positioned by the rotation or sliding of a shaft. The motion of the shaft is an indication of that portion of the total resistance which is between the contact and each end of the potentiometer.

(48) *Primary indicating or recording element.* The term "primary" is applied to those principal indicating elements (visual) and recording elements that are designed to, or may, be used by the operator in the normal commercial use of a device. The term "primary" is applied to any elements that may be the determining factor in arriving at the representation when the device is used commercially. (Examples of primary elements are the visual indicators for meters or scales not equipped with ticket printers or other recording elements and both the visual indicators and the ticket printers or other recording elements for meters or scales so equipped.) The term "primary" is not applied to such auxiliary elements as, for example, the totaling register or the means for producing a running record of successive weighing operations, these elements being supplementary to those that are the determining factors in representations of individual deliveries or weights.

(49) *Railroad track scale.* A scale especially designed for weighing railway cars.

(50) *Radio frequency interference (RFI).* Radio frequency is a type of electrical disturbance which, when introduced into electronic and electrical circuits, may cause deviations from the normally expected performance.

(51) *Reading edge.* With respect to certain forms of poises, the edge intended as the index.

(52) *Recorded representations.* Refers to the printed, embossed, or other representation that is recorded as a quantity by a weighing or measuring device.

(53) *Recording element.* An element incorporated in a weighing or measuring device by means of which its performance relative to quantity is permanently recorded on a tape, ticket card or the like in the form of a print-

ed, stamped, punched, or perforated representation.

(54) *Repeatability.* The degree of reproducibility among several independent measurements of the same test load under specified conditions.

(55) *Scale (or grain scale).* An instrument designed for use in determining the weight of grain either in bulk, sacks, or containers, and consisting of a load-receiving device, a weight-indicating device, and a weight-recording device.

(56) *Scale system.* A system for weighing grain, including the scale and all parts of the scale, and all equipment and structures that are immediately associated with, related to, or are an integral part of the system whereby grain is delivered to the scale, is weighed, and is removed from the scale.

(57) *Seal.* See approval seal, security seal.

(58) *Sectional capacity.* The greatest live load which may be divided equally on the load pivots or load cells of a section without inducing stresses in any member in excess of the working stresses allowed for the load cells or levers and materials involved.

(59) *Security seal.* A lead-and-wire seal, or similar device, attached to a device for protection against access, removal, or adjustment (see also approval seal).

(60) *Sensitivity requirement.* A performance requirement for a non-automatic indicating scale; specifically, the minimum change in the position of rest of the indicating element of the scale in response to the increase or decrease, by a specified amount, of the test-weight load on the load-receiving element of the scale.

(61) *Specification.* A requirement usually dealing with the design construction or marking of a weighing or measuring device. Specifications are primarily directed to the manufacturers of devices.

(62) *Tare mechanism (Tare Bar).* A weighbeam bar intended primarily for use in setting off or balancing the weight of an empty container, vehicle, etc.

(63) *Tolerance.* A value fixing the limit of allowable error or departure from true performance or value. (See also basic tolerances.)

(64) *Trig loop.* The fixture through which the tip of the weighbeam projects in usual construction, designed to restrict vertical angular motion of the weighbeam to designed limits.

(65) *Underregistration.* An instrument or device is said to be in the direction of underregistration when it records or indicates less than the true value of the applied load.

(66) *Unit weights.* A counterpoise weight of a Unit Weight Scale. Sometimes also called Drop Weight.

(67) *User requirement.* A requirement dealing with the selection, installation, use, or maintenance of a weighing device. User requirements are primarily directed to the users of devices.

(68) *Vehicle scale.* A scale designed for use in determining the weight of bulk grain in a motorized vehicle or in a trailer drawn by a motorized vehicle.

(69) *Weighbeam.* In a scale of other than the automatic indicating or automatic recording types the element whose angular position denotes the balance condition. In a more restricted sense, the device or assembly upon which by the manipulation of poises and/or counterpoise weights, the applied load is counterpoised and its weight value indicated. Sometimes also colloquially called Beam.

(70) *Weighbridge.* In a large-capacity scale, the structural frame carried by the main bearings and which supports the load-receiving element.

(71) *Weight.*

(i) The force with which a mass is attracted toward the center of the earth by gravity. The True Weight of an object is its weight as determined in a vacuum. The Apparent Weight in Air of an object is its weight determined in air, and is less than the True Weight by an amount equal to the true weight of the air displaced by the object.

(ii) An object usually of metal, having a definite mass, designed for weighing or testing purposes, as a counterpoise weight, a test weight, etc.

(72) *Zero adjustment.* In a scale, a process or a means to bring about an accurate zero-load balance.

(73) *Zero-load balance.*

(i) Zero-load balance for an automatic-indicating scale is a condition in which:

(A) the indicator is at rest at or oscillates through approximately equal arcs above and below the center of a trig loop.

(B) the weighbeam or lever system is at rest at or oscillates through approximately equal arcs above and below a horizontal position or a position midway between limiting stops, or

(C) the indicator of a balance indicator is at rest at or oscillates through approximately equal arcs on either side of the zero graduation.

(ii) Zero-load balance for a recording scale is a condition in which the scale will record a representation of zero load.

(74) *Zone of uncertainty.* The zone between adjacent increments on a digital device in which the value of either of the adjacent increments may be displayed.

§ 803.2 General requirements.

(a) *Identification.* All equipment except weights shall be clearly and permanently marked on a surface visi-

ble after installation for purposes of identification with the name, initials, or trademark of the manufacturer and with the manufacturer's designation and nonrepetitive serial number that positively identifies the pattern or the design of the device. (Nonretroactive as of January 1, 1977.)

(b) *Facilitation of fraud.* All equipment and all mechanisms and devices attached thereto or used in connection therewith shall be so constructed, assembled, and installed for use that they do not, in the opinion of the Service facilities the perpetration of fraud.

(c) *Permanence.* All equipment and markings shall be of such materials, design, and construction as to assure that under normal operating conditions:

- (1) Accuracy will be maintained;
- (2) Operating parts will continue to function as intended;
- (3) Adjustments will remain permanent; and

(4) Graduations, indications, or recorded representations and their defining figures, words and symbols, markings and instructions shall be distinct and easily readable and of such character that they will not become obliterated or illegible. Undue stresses, deflections, or distortions of parts shall not occur to the extent that accuracy or permanence is detrimentally affected.

(d) *Protection from environmental factors.* The indicating elements, lever system or load cells, and the load-receiving element of a scale shall be adequately protected from environmental factors such as wind, weather, radio frequency interference (RFI), and electromagnetic interference (EMI) which may adversely affect the operation or performance of the device.

(e) *Abnormal performance.* Unstable indications or other abnormal equipment performance observed during operation shall be brought to the attention of the equipment's owner or owner's representative. If immediate correction cannot be made, the scale shall be taken out of service until corrective action is taken and the accuracy of the scale recertified.

(f) *Adjustments.* Weighing elements or components that are adjustable shall be adjusted only to correct the conditions they are designed to control and shall not be adjusted to compensate for defective and abnormal installation. Any faulty installation conditions shall be corrected before any adjustments are undertaken. Whenever equipment is adjusted, the adjustments shall be made so as to bring performance errors as close as practicable to zero value.

(g) *Suitability of equipment.* Official grain weighing equipment shall be suitable for the operation for which it

is to be used and shall conform to the requirements of these regulations with respect to elements of its design, including but not limited to its capacity; its computing capability; the character, number, size and location of its indicating or recording elements; and the value of its smallest division.

(h) *Installation.* A device shall be installed in accordance with the manufacturer's instructions, including any instructions marked on the device. A device installed in a fixed location shall be so installed that neither its operation nor its performance will be adversely affected by any characteristic of the foundation, supports, or any other detail of the installation.

(i) *Installation of indicating or recording element.* A device shall be so installed that there is no obstruction between a primary indicating and recording element and the load-receiving element; otherwise there shall be convenient and permanently installed means for direct communication, oral or visual, between an individual located at a primary indicating or recording element and an individual located at the load-receiving element.

(j) *"Retroactive" and "nonretroactive" requirements.* (1) "Retroactive Requirements" are enforceable with respect to all equipment and are listed at the end of each regulation where necessary; i.e., "(Retroactive as of January 1, 1981)."

(2) "Nonretroactive Requirements" are enforceable on equipment installed after the effective date and are not enforceable with respect to equipment that is in official service as of the effective date. Nonretroactive requirements are listed at the end of each regulation where necessary; i.e., "(Nonretroactive as of 1976)."

(3) All equipment must comply with all of the regulations as of January 1, 1981.

(k) *Method of operation.* Equipment shall be operated only in the manner that is obviously indicated by its construction or that is indicated by instructions on the equipment. Manufacturers are required to supply complete detailed operating instructions with the equipment and to the Service.

(l) *Associated and nonassociated equipment.* A device shall meet all performance requirements when associated or nonassociated equipment is operated at the same time in its usual and customary manner and location.

(m) *Maintenance of equipment.* All equipment in service and all mechanisms and devices attached thereto or used in connection therewith shall continuously be maintained in proper operating condition throughout the period of such service. Equipment in service at a single place of business found to be in error predominantly in

a direction favorable to the device user and near the tolerance limits shall not be considered "maintained in a proper operating condition."

(n) *Security.* Each scale and the related grain handling system shall (1) have a ready means of sealing to prevent unauthorized adjustments or removal or changing of component parts and (2) be designed, constructed, and installed in a manner to prevent inaccurate or deceptive weighing.

(o) *Repeatability.* Each scale when operated in accordance with the manufacturer's instructions will be capable of repeating its indicated and recorded weight representations within the tolerances prescribed in § 803.10.

(p) *Interlocks.* To assure correct operation, each automatically operated hopper scale and its related grain handling system shall have operating interlocks to provide for the following:

(1) *Flow of grain.* Grain cannot be cycled and weighed if the weight-recording device of the scale is:

- (i) Disconnected,
- (ii) Inoperative, or
- (iii) Fails to print the displayed weight.

(2) *Printing.* The weight-recording device on the scale cannot print a weight if either of the gates leading to or from the scale is open;

(3) *Scale.* The scale is operated in the proper sequence of operation in all modes of operation; or

(4) *Lifts.* There shall be means to activate the scale and the weight-recording device only when the scale platform is in its normal weighing position or is clear of any obstruction.

(q) *Weight entries to recording devices.* The displayed weight shall be entered into automatic recording devices only electronically and directly from the related weighing instrument.

(r) *Retention of visual weight.* All grain weighing devices shall be designed so that the visually indicated weight shall remain visually available to the operator until completion of its printed record.

(s) *Change in mode of operation.* All grain weighing automatic hopper scales shall be designed so that each change in the mode of operation is indicated on the printed record by a symbol or word that accurately describes the mode of operation which the scale is in; i.e., A-Automatic, M-Manual, SA-Semi-Automatic. (Nonretroactive and enforceable as of January 1, 1980.)

§ 803.3 Design of indicating and recording elements and of recording representations.

(a) *Indicating and recording elements.* All weighing devices shall be provided with indicating and recording elements appropriate in design and adequate in amount. Primary indica-

tions and recorded representations shall be clear, definite, accurate, and easily read under any conditions of normal operation of the device.

(b) *Digital indication and representation.* Digital elements shall be so designed that:

(1) All digital values in a system agree with one another,

(2) A digital value coincides with its associated analog value to the nearest minimum division,

(3) A digital value shall "round off" to the nearest minimum division that can be indicated or recorded, and

(4) The zone of uncertainty on digital indicating scales shall not be greater than 0.3 of the value of the minimum operating division.

(c) *Analog and digital indications.* All components of the same element used in combination (such as a dial and unit weight) shall not differ by an amount greater than the applicable tolerance at any given test load.

(d) *Capacity indication.* When the net load applied to the load-receiving element is in excess of 105 percent of the capacity of the system:

(1) The digital indicating element shall not display any weight values;

(2) The recorded representation shall clearly indicate that the system is in an overload condition; i.e., "Overload." (Nonretroactive and enforceable as of January 1, 1980, and to become retroactive as of January 1, 1981.)

(e) *Size and character.* In any series of divisions, indications, or recorded representations, corresponding divisions and units shall be uniform in size and character. Divisions, indications, or recorded representations which are subordinate to or of a lesser value than others with which they are associated shall be appropriately portrayed or designated.

(f) *Values.* If divisions, indications, or recorded representations are intended to have specific values, these shall be adequately defined by a sufficient number of figures, words, symbols, or combinations thereof; uniformly placed with reference to the divisions, indications, or recorded representations; and as close thereto as practicable, but not so positioned as to interfere with the accuracy of reading.

(g) *Values of graduated intervals or increments.* In any series of divisions, indications, or recorded representations, the values of the graduated intervals or increments shall be uniform throughout the series.

(h) *Repeatability of indications.* A device shall be capable of repeating within prescribed tolerances its indicated and recorded representations. This requirement shall be met irrespective of repeated manipulation of any element of the device in a manner approximating normal usage (including displacement of the indicating ele-

ments to the full extent allowed by the construction of the device and repeated operation of a locking or relieving mechanism) and of the repeated performance of steps or operations that are embraced in the testing procedure.

(i) *Recorded representations.* Insofar as they are appropriate, the requirements for indicating and recording elements shall be applicable also to recorded representations. All recorded values shall be printed digitally.

(j) *Remote indications and recorded representations.* Remote indications and recorded representations shall be clear, definite, accurate, and easily read under any conditions of normal operation of the device and shall agree with primary indications.

(k) *Markings, operational controls, indications, and features.* All operational controls, indications, and features, including, but not limited to switches, lights, displays, pushbuttons, and other means, shall be clearly and definitely identified.

(l) *Zero indication.* Provision shall be made on all scales equipped with indicating or recording elements to indicate and record a zero balance condition, and on an automatic-indicating scale or balance indicator to indicate or record an out-of-balance condition on both sides of zero. A digital zero indication shall represent a balance condition that is within plus or minus one-half the value of the minimum division that can be indicated and recorded.

(m) *Dial divisions.* Shall be so varied in length that they may be conveniently read.

(n) *Width-dial graduation.* In any series of graduations, the width of a graduation shall in no case be greater than the width of the minimum clear interval between graduations, and the width of main graduations shall be not more than 50 percent greater than the width of subordinate graduations. Graduations shall in no case be less than 0.008 inch in width.

(o) *Dial divisions—clear interval between divisions.* The clear interval shall be not less than 0.02 inch for each division. If the divisions are not parallel, the measurement shall be made:

(1) Along the line of relative movement between the divisions and the end of the indicator or

(2) If the indicator is continuous, at the point of widest separation of the divisions.

(p) *Dial indicator symmetry.* The index of an indicator shall be symmetrical with respect to the divisions with which it is associated and at least throughout that portion of its length that is associated with the divisions.

(q) *Dial indicator length.* The index of an indicator shall reach the finest

divisions with which it is used, unless the indicator and the divisions are in the same plane, in which case the distance between the end of the indicator and the ends of the divisions, measured along the line of the divisions, shall be not more than 0.04 inch.

(r) *Dial indicator width.* The width of the index of an indicator in relation to the series of divisions with which it is used shall be not greater than:

(1) The width of the widest division,

(2) The width of the minimum clear interval between weight divisions, and

(3) Three-fourths of the width of the minimum clear interval between divisions. When the index of an indicator extends along the entire length of a division, that portion of the index of the indicator that may be brought into coincidence with the division shall be of the same width throughout the length of the index that coincides with the division.

(s) *Dial indicator clearance.* The clearance between the index of an indicator and the graduations shall in no case be more than 0.06 inch.

(t) *Parallax.* Parallax effects shall be reduced to the practicable minimum.

(u) *Dial weight ranges and unit weights.* The total value of weight ranges and of unit weights in effect or in place at any time shall automatically be accounted for on the reading face and on any recorded representations.

(v) *Minimum division.* Weight indicating and weight recording devices on scales used in the weighing of grain shall indicate and record in avoirdupois weight. The value of the minimum division on such devices shall be no greater than:

Capacity of scale	Minimum division
(1) HOPPER, VEHICLE, AND RAILROAD TRACK SCALES	
0-10,000 pounds inclusive	1 lb.
Greater than 10,000-20,000 pounds inclusive	2 lbs.
Greater than 20,000-50,000 pounds inclusive	5 lbs.
Greater than 50,000-100,000 pounds inclusive	10 lbs.
Greater than 100,000-200,000 pounds inclusive	20 lbs.
Greater than 200,000-500,000 pounds inclusive	50 lbs.
(2) PORTABLE PLATFORM SCALE	
0-100 pounds inclusive	0.01 lb.
Greater than 100-200 pounds inclusive	0.02 lb.
Greater than 200-500 pounds inclusive	0.05 lb.

(Nonretroactive and enforceable as of January 1, 1980).

§ 803.4 Design of balance, tare, level, dampening, and arresting mechanisms.

(a) *Zero load—adjustment.* A scale shall be equipped with means by which the zero-load balance may be adjusted, and any loose material used

for this purpose shall be so enclosed that it cannot shift in position in such a way that the balance condition of the scale is altered. A balance ball shall not itself be rotatable unless it is automatic in operation or is enclosed in a cabinet.

(b) *Automatic zero setting devices.* An electronic mechanism designed to be manually operated to provide an automatic zero balance condition; i.e., "push button zero," shall be operable or accessible only by a tool outside of and entirely separate from this mechanism, or enclosed in a cabinet and operable only when the indication is stable within:

(1) Plus or minus 1 division for systems of 5000 pounds capacity or less; and

(2) Plus or minus 3 divisions for systems of more than 5000 pounds capacity. (Nonretroactive and enforceable as of January 1, 1977, and to become retroactive January 1, 1981.)

(c) *Automatic means to maintain a digital zero balance indication (AZM).* Scale designed with automatic means to maintain a digital zero balance indication shall be provided with means to meet the requirements of § 803.3(1), Zero Indication, and § 800.103(c), Capacity Indication. However, under normal operating conditions with the scale indicating zero, the maximum load, when placed immediately on the platform, which can be "zeroed" without indicating a weight value shall be:

(1) For scales with 2500 scale divisions or less, ± 1.0 scale division;

(2) For scales with more than 2500 scale divisions, ± 3.0 scale divisions.

Automatic zero maintenance is prohibited in hopper scales used for weighing grain. On scales equipped with automatic zero maintenance, provisions shall be made for disabling the AZM feature when testing the device. (Nonretroactive as of 1976.)

(d) *Tare mechanism.* The tare mechanism shall operate only in a backward direction (that is, in the direction of underregistration) with respect to the zero-load balance condition of the scale.

(e) *Balance indicator.* On a balance indicator consisting of two indicating edges, lines, or points, the ends of the indicators shall be sharply defined and shall be separated by not more than 0.04 inch, measured horizontally, when the scale is in balance.

(f) *Dampening means.* An automatic-indicating scale, and balance indicator, shall be equipped with effective means for dampening the oscillations whenever such means are necessary to bring the indicating elements quickly to rest.

(g) *Motion detection.* Electronic indicating elements shall be equipped with effective means to permit the recording

of weight values only when the indication is stable within:

(1) Plus or minus 1 division for systems of 5000 pounds capacity or less and

(2) plus or minus 3 divisions for systems of more than 5000 pounds capacity.

The values recorded shall be within applicable tolerances. (Nonretroactive and enforceable as of January 1, 1977, and to become retroactive as of January 1, 1981.)

§ 803.5 Design of weighing elements.

(a) *Antifriction elements.* At all points at which a live part of the mechanism may come into contact with another part in the course of normal usage, frictional effects shall be reduced to a minimum by means of suitable antifriction elements, opposing surfaces and points being properly shaped, finished, and hardened.

(b) *Adjustable components.* An adjustable component such as a nose iron, pendulum, spring, or potentiometer shall be held securely in adjustment. The position of a nose iron shall be held securely in adjustment. The positions of a nose iron on a scale of more than 2000 pounds capacity, as determined by the factory adjustment, shall be accurately, clearly, and permanently defined.

(c) *Multiple load-receiving elements.* A scale with a single indicating and recording element, or a combination indicating-recording element, that is coupled to two or more load-receiving elements with independent weighing systems shall be provided with automatic means to indicate and record clearly and definitely which load-receiving element is in use. (Nonretroactive as of 1969.)

§ 803.6 Design of weighbeams and poises.

(a) *Normal balance position.* The normal balance position of the weighbeam of a beam scale shall be horizontal.

(b) *Weighbeam travel.* The weighbeam of a beam scale shall have equal travel above and below the horizontal. The total travel of the weighbeam of a beam scale in a trig loop or between other limiting stops near the weighbeam tip shall be not less than the minimum travel shown in the table below. When such limiting stops are not provided, the total travel at the weighbeam tip shall be not less than 8 percent of the distance from the weighbeam fulcrum to the weighbeam tip.

MINIMUM TRAVEL OF WEIGHBEAM OF BEAM SCALE BETWEEN LIMITING STOPS

Distance from weighbeam fulcrum to limiting stops	Minimum travel between limiting stops
Inches	Inch
12 or less	0.4
13 to 20, incl	.5
21 to 40, incl	.7
Over 40	.9

(c) *Weighbeam subdivision.* A subdivided weighbeam bar shall be subdivided by means of graduations, notches, or a combination of both. Graduations on a particular bar shall be of uniform width and perpendicular to the top edge of the bar. Notches on a particular bar shall be uniform in shape and dimensions and perpendicular to the face of the bar. When a combination of graduations and notches is employed, the graduations shall be so positioned in relation to the notches as to indicate notch values clearly and accurately.

(d) *Readability.* A subdivided weighbeam bar shall be so subdivided and marked, and a weighbeam poise shall be so constructed, that the weight corresponding to any normal poise position can easily and accurately be read directly from the beam, whether or not provision is made for the optional recording of representations of weight.

(e) *Poise stop.* Except on a steelyard with no zero graduation, a shoulder or stop shall be provided on each weighbeam bar to prevent a poise from traveling and remaining back of the zero graduation.

(f) *Poises.* No part of a poise shall be readily detachable. A locking screw shall be perpendicular to the longitudinal axis of the weighbeam and shall not be removable. Except on a steelyard with no zero graduation, a poise shall not be readily removable from a weighbeam. The knife edge of a hanging poise shall be hard and sharp and so constructed as to allow the poise to swing freely on the bearing surfaces in the weighbeam notches.

(g) *Poise adjusting material.* The adjusting material in a poise shall be securely enclosed and firmly fixed in position, and if softer than brass it shall not be in contact with the weighbeam.

(h) *Poise pawl.* A poise, other than a hanging poise on a notched weighbeam bar shall have a pawl that will seat the poise in a definite and correct position in any notch, wherever in the notch the pawl is placed, and hold it there firmly and without appreciable movement. That dimension of the tip of the pawl that is transverse to the longitudinal axis of the weighbeam shall be at least equal to the corresponding dimension of the notches.

(1) *Reading edge or indicator.* The reading edge or indicator of a poise shall be sharply defined and shall be parallel to the graduations on the weighbeam.

§ 803.7 Marking requirements

(a) *Capacity.* The capacity shall be conspicuously marked as follows:

(1) On any scale equipped with unit weights or weight ranges;

(2) On any scale with which counterpoise or equal-arm weights are intended to be used;

(3) On any automatic-indicating or recording scale so constructed that the capacities of the several individual indicating and recording elements are not immediately apparent;

(4) On any scale with a capacity less than the sum of the reading elements.

(b) *Vehicle and railroad track scales.* A vehicle or railroad track scale shall be marked with the capacity of each section of the load-receiving element of the scale. Such marking shall be accurately and conspicuously presented on or adjacent to the indicating element of the scale. (Nonretroactive as of 1969.)

(c) *Weighting elements.* An indicating element not permanently attached to a weighing element shall be clearly and permanently marked for the purpose of identification with the name, initials, or trademark of the manufacturer; the manufacturer's designation that positively identifies the pattern or design; and the capacity. (Nonretroactive as of 1972.)

(d) *Operational controls.* All operational controls, indications, and features indicating switches, lights, displays, pushbuttons, and other means shall be clearly and definitely identified.

§ 803.8 Installation requirements

(a) *Foundation, supports, and clearance.* The foundation and supports of any scale installed in a fixed location shall be such as to provide strength, rigidity, and permanence of all components, and clearance shall be provided around all live parts to the extent that no contacts may result when the load-receiving element is empty and throughout the weighing range of the scale. On a motor truck scale, the clearance between the load-receiving elements and the coping at the bottom edge of the platform shall be greater than at the top edge of the platform. (Nonretroactive as of 1973.)

(b) *Access to pit.* Adequate provisions shall be made for ready access to the pit of a vehicle or railroad track scale for purposes of inspection and maintenance. Provisions shall be made to lock or seal all accesses to the pit.

(c) *Approaches to vehicle scales.* On the approach end of a vehicle scale, there shall be a straight approach in

the same plane as the platform. The approach shall be the same width as the platform and at least one-half the length of the platform. Not less than 10 feet of any approach adjacent to the platform shall be constructed of concrete, or similar durable material. However, grating of sufficient strength to withstand all loads may be installed in this portion; and further, where deemed necessary for drainage purposes, the remaining portion of the approach may slope slightly. (Nonretroactive as of 1976.)

(d) *Lifts.* On motor vehicle and railroad track scales equipped with means for raising the load-receiving element from the weighing element for vehicle unloading, suitable means shall be provided so that it is readily apparent to the weigher when the load-receiving element is in its designed weighing position. The printer shall not be operable until the load-receiving element is in its designed weighing position.

§ 803.9 User requirements.

(a) *Balance condition.* The zero-load adjustment of a scale shall be maintained so that, with no load on the load-receiving element and with all load-counterbalancing elements of the scale such as poises, drop weights, or counterbalancing weights set to zero, the scale shall indicate or record a zero balance condition.

(b) *Scale modifications.* Neither the length, nor the width, nor the height of the load-receiving element of a scale shall be increased beyond the manufacturer's design dimension; nor shall the capacity of a scale be increased beyond its design capacity by replacing or modifying the original primary indicating or recording element with one of a higher capacity; nor shall any other modification be made, except when the modification has been approved by competent engineering authority, preferably that of the engineering department of the manufacturer of the scale and by the Service.

(c) *Split or double draft static weighing.* A vehicle or a coupled vehicle combination or a railroad car shall be officially weighed statically on a vehicle or railroad track scale only as a single draft. That is, the total weight of such a vehicle or combination shall not be determined by adding together the results obtained by separately and not simultaneously weighing each end of such vehicle or individual elements of such coupled combination. However:

(1) The weight of a coupled combination may be determined by uncoupling the various elements (tractor, semi-trailer, trailer), statically weighing each unit separately as a single draft, and adding together the results; and

(2) The weight of a vehicle or coupled-vehicle combination may be determined by adding together the weights obtained while all individual elements are resting simultaneously on more than one scale platform.

(d) *Official testing and certification.* All official testing shall be performed in accordance with the appropriate chapters of the weighing handbook. Official certification shall be made only by scale specialists of the Service.

(e) *Railroad track scales—alignment of dead and weigh rails.* Dead rails should be provided for all scales where designed capacity does not correspond with the greatest combined load likely to run over scale rails. Weigh rails should be on the offset line and the dead rails straight unless a large portion of the cars is to be weighed. For motion weighing, the offset should be divided, unless the resistance is equalized by means of a spring switch.

(f) *Standing of equipment and keeping scales under load.* Equipment shall not be allowed to stand on the platform of a vehicle or railroad track scale, except when being weighed and, in the case of hopper scales, grain shall be stored or left in a hopper scale for extended lengths of time.

(g) *Altering poises and counterpoise weights.* After a poise or counterpoise weight has been sealed, no material shall be added to or removed without the approval of the Service and an official test conducted to recertify the scale.

(h) *Hopper scale venting.* All hopper scales used for official grain weighing shall be vented so that any internal or external pressure will not affect the accuracy or operation of the scale.

(i) *Suitability of equipment.* A scale used in grain weighing services shall be suitable with respect to the elements of design, including but not limited to its capacity; its computing capability; the character, number, size, and location of its indicating or recording elements; and the value of the smallest division that can be indicated or recorded.

(j) *Minimum test load.* The minimum amount of certified test weight required for testing shall be:

- (1) Hopper scales—10% of capacity.
- (2) Vehicle scales—20,000 lbs.
- (3) Railroad track scales—50,000 lbs.
- (4) Portable scales (up to 500 lbs.)—100% of capacity.

(k) *Assistance in testing.* If the design, construction, or location of any scale is such as to require a testing procedure involving special equipment, accessories, or an abnormal amount of labor, such equipment, accessories, and labor shall be supplied by the owner or operator of the device. Test weights calibrated to service specifications and in the amount required by paragraph (j) of this § 800.1009 shall

be supplied by the scale owner or operator.

(1) *Hopper scale working range.* A hopper scale shall normally be used in the working range of the scale, which is considered to be from half capacity to the capacity of the scale. Exceptions shall be made for certain special circumstances such as completing the

loading of a particular hold of a vessel, load-trimming a vessel, or other similar circumstances. Under no circumstances shall the hopper capacity be less than one thousand (1,000) pounds.

(m) *Vehicle scale minimum load.* A vehicle scale shall not be used to weigh a gross load of less than one thousand (1,000) pounds.

§ 803.10 Tolerances and sensitivity requirements.

(a) *Application.* Tolerances described herein are applicable to all scales under jurisdiction of the Service and for all tests.

(b) *Tolerance values.* The applicable tolerances are established as follows:

Type of scale	Acceptance tolerance	Maintenance tolerance
(1) Hopper scale	.05 × the applied test load or the minimum tolerance value, whichever is greater.	.05 × the applied test load or the minimum tolerance value, whichever is greater.
(2) Motor vehicle scale	.05 × the applied test load or the minimum tolerance value, whichever is greater.	.1 × the applied test load or the minimum tolerance value, whichever is greater.
(3) Railroad track scale	.05 × the applied test load or the minimum tolerance value, whichever is greater.	.1 × the applied test load or the minimum tolerance value, whichever is greater.

Test load		Maintenance tolerances			Acceptance tolerances		
From	to but not including	Expressed in grains	Expressed in ounces	Expressed in pounds	Expressed in grains	Expressed in ounces	Expressed in pounds
50	75	2			1		
75	100	4	1	.062	2	1/2	.031
100	150	8	1-1/2	.094	4	3/4	.017
150	200	16	2	.125	8	1	.062
200	300						

(c) *Minimum tolerance.* The minimum tolerances that may be applied are established as follows:

(1) *Hopper and vehicle.* The minimum tolerance that may be applied

shall not be smaller than one-half the minimum division.

(2) *Railroad track scales.* The minimum tolerance that may be applied

shall not be smaller than twenty-five (25) pounds.

(3) *Portable platform scales.* The minimum tolerance that may be applied shall not be smaller than:

Capacity for nonautomatic-indicating scale or reading-face capacity for automatic indicating scales	Minimum tolerance value		
Pounds	Expressed in grains	Expressed in ounces	Expressed in pounds
51 to 100, incl		3/4	.047
101 to 150, incl		1 1/4	.078
151 to 250, incl		2	.125
251 to 500, incl		4	.250

(d) *Tests involving digital indications or representations.* To the tolerances that would otherwise be applied, there shall be added an amount equal to one-half the minimum value that can be indicated or recorded.

(e) *Acceptance tolerances.* Shall apply as follows:

(1) To any newly-installed scale about to be used for official grain weighing for the first time,

(2) To a scale that is being returned to official grain weighing following official rejection for failure to conform to performance requirements, and

(3) To equipment that is being officially tested for the first time after reconditioning or overhaul.

(f) *Maintenance tolerance.* Shall apply to equipment in actual use, except as provided for under acceptance tolerances.

(g) *Excess and deficiency.* Tolerances "in excess" and tolerances "in deficiency" shall apply to errors in excess and to errors in deficiency, respectively.

(h) *To scales with multiple elements.* Tolerances shall be applied independently to each indicating and record-

ing element of a scale. However, the following requirements pertaining to analog and digital elements shall also apply:

(1) All analog indications within the same element shall not differ from one another, and all digital elements shall not differ from one another;

(2) All analog indications and representations shall not differ from digital indications and recorded representations by an amount greater than the value of the minimum division on the device, except the elements shall not

differ under a no-load zero balance condition; and

(3) All components of the same element used in combination (such as a dial and unit weights) shall not differ by an amount greater than the applicable tolerance at any given test load.

(i) *To shift tests.* Basic tolerances shall be applied.

(j) *To increasing load tests.* Basic tolerances shall be applied.

(k) *To decreasing load tests on automatic indicating scales.* One and one-half (1.5) times basic tolerance shall be applied.

(l) *To ratio tests.* Three fourths (0.75) of basic tolerances shall be applied.

(m) *To sectional tests on vehicle and railroad track scales.* The maximum deviation between indicated values on test loads applied to individual sections shall not be greater than the absolute value of the maintenance tolerance applicable to that test load.

(n) *To railroad track scales weighing uncoupled-in-motion cars.* The basic maintenance and acceptance tolerance shall be the same as the basic tolerances for railroad track scales stated in paragraph (b)(3) of this § 803.10.

(o) *Sensitivity requirement (SR).* (1) *Hopper scales not equipped with balance indicator.* The SR shall be twice the value of the minimum division of the weighbeam or 0.2 percent of the capacity of the scale, whichever is less.

(2) *Hopper scales equipped with balance indicator.* The SR shall be the value of the minimum division on the weighbeam.

(3) *Vehicle scales not equipped with balance indicator.* The SR shall be twice the value of the minimum divisions on the weighbeam or 0.2 percent of the capacity of the scale, whichever is less.

(4) *Vehicle scales equipped with balance indicator.* The SR shall be the value of the minimum division on the weighbeam.

(5) *Railroad track scales.* The SR shall be three times the value of the minimum division on the weighbeam or 100 lbs., whichever is less.

(6) *Portable platform scale not equipped with balance indicator.* The SR shall be twice the value of the minimum division or 0.2 percent of the capacity of the scale, whichever is less.

(7) *Portable platform scales equipped with balance indicator.* The SR shall be the value of the minimum division on the weighbeam.

§ 803.11 Weight-indicating and weight-recording devices and representations.

(a) *General requirements.* Each grain scale, except portable platform scales, shall be equipped with a weight-recording device.

(b) *Readability.* Primary and remote indications of the weight of grain and

printed representations of the weight of grain shall be clear, definite, accurate, and easily read under normal operating conditions.

(c) *Tape printers.* Tape printers on automatic-indicating scales shall be designed to produce a minimum of an original and one copy of the printed record.

(d) *Ticket printers.* Ticket printers on automatic indicating scales shall be designed to produce an original and five copies of the printed record. Ticket printers on non-automatic indicating scales shall be designed to produce an original and one copy of the printed record.

(e) *Multiple weight-indicating and printing devices.* If a scale has more than one weight-indicating and one weight-recording device, the values indicated by each of the devices and the weights printed by each of the devices shall be in agreement.

(f) *Recorded weight identification.* Gross weight, tare weight, net weight, sub-total, and total printed representations shall either be identified by a symbol clearly and accurately identifying the type weight printed; example, G-Gross, T-Tare, N-Net, ST-Sub-total, TO-Total, or shall be identified as such on the ticket or tape on which they are printed.

§ 803.12 Railroad track scales—additional requirements.

(a) *Rated sectional capacity.* The rated sectional capacity of a full load-cell scale shall be one of the following and shall employ load cells in capacities as shown:

Sectional Capacity (Tons) Track Scale	Each Load Cell Rated Capacity (Pounds)
85.....	100,000
180.....	200,000

The rated sectional capacity shall in no case exceed the actual sectional capacity.

(b) *Nose iron guides.* The guides for all nose-irons shall be such that when one is moved for the purpose of adjustment, the pivot will be held parallel to its original position. For cast iron levers, the guide and ways shall be machined.

(c) *Leveling lugs.* In scales of the straight lever type, each lever shall be provided with leveling lugs for longitudinal alignment. In scales of the torsion lever type, leveling lugs shall be provided on the pipe or torsion member for transverse alignment and on the extension arm for longitudinal alignment. Each pair of lugs shall be spaced 11 inches apart. The leveling surfaces of each pair of lugs shall be finished to a common plane, which

shall be parallel to the plane through the knife edges of the end pivots.

(d) *Truss rods.* Truss rods shall not be used in parts of the lever system except to stiffen levers laterally or to prevent whipping and vibration due to impact. Truss rods designed as part of a lever structure to support vertically applied loads will not be permitted.

(e) *Marking of levers.* Figures denoting the ratio of each lever shall be case or otherwise permanently marked on the lever.

(f) *Pivots and bearings—material.* The material to be used for pivots and bearings shall be alloy steel (SAE 52100), or a steel which will give equivalent performance, hardened to Rockwell C scale not less than 58 or more than 62.

(g) *Design and maintenance.* Pivots shall be so formed that the included angle of the sides forming the knife edge will not exceed 90 degrees and that the offset of the knife edge from the center line of the pivot will not exceed 10 percent of the width of the pivot.

(h) *Mounting.* (1) *Fastening.* Pivots shall be firmly fastened in position without swaging or caulking.

(2) *Machined-in pivots, when required.* For scales of greater sectional capacity than 50 tons, main lever pivots shall be machine finished and fitted into machined ways.

(3) *Continuous contact required.* Pivots shall be so mounted that continuous contact of the knife edges with their respective bearings for the full length of the parts designed to be in contact will be obtained; in loop bearings the knife edges shall project slightly beyond the bearings in the loops.

(i) *Position.* In any lever the pivots shall be so mounted that:

(1) Each knife edge will be maintained in a horizontal plane under any load within the capacity of the scale;

(2) A plane bisecting the angle of a knife edge will be perpendicular to the plane through the knife edges of the end pivots;

(3) The actual distance between the end knife edges of any lever will not differ from the nominal distance by more than $\frac{1}{4}$ inch per foot; and

(4) The knife edges in any lever will be parallel.

(j) *Support for projecting pivots.* The reinforcement on the levers to support projecting pivots shall be tapered off to prevent accumulation of dirt next to the pivots and to provide proper clearance.

(k) *Fulcrum distances.* The minimum distance between the fulcrum pivot knife edge and the load pivot knife edge in main levers of scales of 75 tons sectional capacity or less shall be 6.5 inches. In scales of greater than

75 tons sectional capacity, the minimum distance shall be 8 inches.

(1) *Design of bearings.* Bearing steels and the parts supporting or containing them shall be so applied to the mechanism that permissible movement of the platform will not displace the line of contact between any bearing and the opposing pivot.

(m) *Nose iron design.* Nose irons shall be so constructed that:

(1) They will be positioned by means of adjusting screws of standard size and thread;

(2) They will be retained in position by means of screws or bolts of standard size and thread;

(3) The surfaces of nose irons intended to be in slidable contact with the levers will be machined true, so as to secure fit in or on the levers; and

(4) When adjustments are made, the knife edge will be held parallel to its normal position.

(n) *Screws and bolts.* Adjusting and retaining screws and bolts shall be made of a corrosion-resistant material.

(o) *Retaining device.* A device for retaining each nose iron in position shall be provided and shall be so designed and constructed that it will:

(1) Be independent of the means provided for adjustment;

(2) Not cause indentations in the lever;

(3) Not cause tension in the remaining bolts when loads are applied to the scale; and

(4) Cause the nose iron to remain in position when the retaining device is released.

(p) *Lever fulcrum stands—qualities of materials.* Castings of structural steel for lever stands shall be clean, smooth, and uniform; and castings shall be free of blisters, blow holes, shrinkage holes, and cracks. All welding shall conform to current American Welding Society specifications.

(q) *Loops and connections—material.* The requirements for material and hardness of bearing surfaces in loop connections shall be the same as those herein prescribed for pivots and bearings.

(r) *Identification of parts.* Each weighbeam shall be given a serial number which shall be stamped on the weighbeam. The pivots, poises, and fractional bar shall have stamped upon them identification marks to show to which weighbeam each belongs; and the pivots shall be so marked as to indicate their proper positions in the weighbeam.

(s) *Factory adjustment of notches.* Each weighbeam notch be adjusted to within 0.002 inches of the nominal distance from the zero notch.

(t) *Trig loop.* The play of the weighbeam in the trig loop shall be not more than 2 percent of the distance from the trig to the fulcrum pivot, nor

less than 0.9 inches. The weighbeam shall be fitted with an indicator to be used in conjunction with a graduated target or other device on the trig loop to indicate a central position in the trig loop when the weighbeam is horizontal.

(u) *Weighbeam support.* The weighbeam fulcrum stand and trig loop stand shall be supported on a metal shelf mounted on metal pillars or material equivalent in strength and durability. The shelf shall be sufficiently rigid that, within the capacity of the scale, deflection cannot occur to such an extent as will affect the weighing performance.

(v) *Weighbridge girders.* Weighbridge girders shall be so designed that the joints over the centers of bearing will admit vertical flexure without deranging the sections. On short axle weighbridges, no tipping of the weighbridges will be allowed.

(w) *Weighbridge bearings.* The surfaces of weighbridge bearings intended to make contact with the bridge girders shall be finished so that, when in position, all the bearing surfaces will be within $\frac{1}{32}$ inch of the same horizontal plane and parallel to it. To secure proper alignment of parts, the diameters of the bolt holes in the weighbridge bearings and in the girders shall exceed the diameter of the bolts fastening the bearings to the girders by $\frac{1}{8}$ inch.

(x) *Steel specifications.* Structural steel work shall conform to the American Railway Engineering Association (A.R.E.A.) Specifications for Steel Railway Bridges, Part 1, Chapter 15.

(y) *Concrete bearing surfaces.* Bearing stresses on concrete shall not exceed 300 pounds per square inch (psi) under loadcell bearing plates and lever stands and 400 psi at all other points.

(z) *Stresses.* To allow for impact and normal pit conditions, all steel design stress in scale weighbridges shall be limited to 10,000 psi, and maximum deflection in main weighbridge beams or girders shall not exceed one twelve-hundredth ($\frac{1}{1200}$) of the span between sections. In designing cast iron members, the maximum allowable unit stress of any character shall be determined by the greatest thickness, exclusive of fillets, of the portion of the section carrying the stress being considered. In the main portion of a beam, the thickness of the web or flange shall be used, whichever is the greater. The thickness of the flange shall be considered either as the average depth of the outstanding portion or the breadth of flange outside to outside, whichever is less. A.R.E.A. weighbridge specifications—Cooper E-80 rating live load, minimum.

(aa) *Weighrails—length and weight.* The weight and section of weighrails

shall be as large as is consistent with surrounding yard track conditions, but no less than 112 pounds per yard. Rails shall be one piece full length of scale.

(bb) *Clearance along weighrails.* The clearance between weighrails or their pedestals and the rigid deck shall be less than one and one-half ($1\frac{1}{2}$) inches unless other adequate provision for clearance is made, and the openings shall be protected from weather and dirt.

(cc) *Approach rails.* Positive means shall be provided to prevent creeping of approach rails and to maintain a clearance which shall be not less than one-eighth ($\frac{1}{8}$) inch or more than five-eighths ($\frac{5}{8}$) inches between the approach rails and the weighrails unless some special means is used to reduce impact when wheel loads pass from the approach rails to weighrails.

(dd) *Mitre joints.* For motion weighing scales, mitred joints shall be provided.

(ee) *Dead rails.* All scales except those located where they cannot be subjected to locomotive or other loads in excess of the sectional capacity, and excepting also scales of greater than 100 tons sectional capacity, shall be equipped with dead rails extending in one continuous piece across the scale and at the same elevation as the weighrails.

(ff) *Clearance.* The clearance between the bottom of any fixed beams, or deck supports, and the girder forming the weighbridge shall not be less than two (2) inches.

(gg) *Location.* Scales shall be so located that an adequate foundation and at least seventy-five (75) feet of tangent track at each approach to the weighrails can be provided.

(hh) *Approach walls static scales.* Approach walls or piers of concrete shall be built to extend at least 25 feet from the pit face of the end walls and back under the track to preserve line and surface of tracks. They may be built of a solid mass of concrete or may consist of parallel walls or piers; however, the latter construction shall have a single footing supporting both walls. Where necessary to obtain safe bearing capacity, the approach walls shall extend to the same depth as the pit walls.

(ii) *Footings or piers for load cells.* Concrete footings or piers supporting load-cell base plates shall not be less than 18 inches thick. Their tops shall be above the floor a sufficient distance to prevent the accumulation of water around or under the base plates.

(jj) *Footings or piers for lever stands.* Concrete footings or piers supporting the lever stands shall be not less than 18 inches thick. Their tops shall be above the floor a sufficient distance to prevent the accumulation

of water under the bases of stands, and shall be finished to exact level and elevation to receive the lever stands directly without the use of shims or grouting where possible. If the scale is of a type having main levers or parts of the bearing assemblies that hang below the bases of the main lever stands, the piers shall be provided with recesses of a size to give clearance of not less than 1.5 inches and so formed as to prevent accumulation of dirt.

(kk) *Anchor bolts.* Anchor bolts embedded in concrete a minimum of 15 inches shall be provided in foundations for lever stands or load-cell base plates.

(ll) *Bearing pressures under foundations.* The bearing areas of the foundation footings shall be such that the pressure under the footings will not exceed:

For fine sand and clay.....	4,000 lb. per sq. ft.
For coarse sand and gravel or hard clay.	5,000 lb. per sq. ft.
For boulders or solid rock.	20,000 lb. per sq. ft.

If the soil does not have a bearing capacity of at least 4,000 pounds per sq. ft. and its bearing capacity cannot be increased by drainage, by stabilization, or by other means, pile foundations shall be provided. Careful soil exploration, including borings, is always desirable.

§ 803.13 Test standards and counterpoise weights.

(a) *Weight accuracy.* counterpoise weights and field test standards (except in railroad track scale tests) shall be verified to within tolerances established by the National Bureau of Standards for Class "F" weights.

(b) *Railroad scale standards accuracy.* Test cars shall be calibrated within "master" track scale limits whenever possible. In any event, the test car error shall not exceed 16 pounds plus or minus.

(c) *Frequency of test weight certification.* (1) Counterpoise weights test weights up to and including 50 pounds, and baskets used to hold test weights which are themselves calibrated as standards shall be reverified annually. Documentation indicating date or reverification by a qualified laboratory shall be supplied to the Service on request.

(2) Large one-piece standards (block test weights) which are stored in the facility in which they are used and meet the following criteria shall be reverified every 3 years.

(i) Standards shall be kept covered and stored in a reasonably clean and dry environment when not in use.

(ii) All movement of standards, such as to and from storage and movement between scales shall be supervised by employees of the Service.

(iii) Standards shall show no evidence of abuse or damage and the sealing cavity shall be clearly stamped by a "qualified laboratory" with the year of reverification.

(iv) documentation clearly indicating the date of last reverification shall be supplied to the Service. The 3-year interval will begin on the date indicated.

(3) Large one-piece standards used for testing official scales by approved testing agencies shall be reverified at least biennially. Documentation indicating reverification by a qualified laboratory shall be supplied to the Service on request.

(4) Standard test weights cars; i.e., railroad track scale test cars used in official testing of railroad track scales under the jurisdiction of the Service, shall be reverified at least annually. Documentation indicating date and location of least reverification shall be supplied to the Service on request.

(d) *Test standard size.* The stenciled weight of a test car shall be in 1000-pound intervals. Test weight loads, for vehicle and hopper scales used, shall be sealed to a 50-pound interval.

(e) *Care of field standards.* Test standards shall be kept clean and protected in such a manner that they will not become chipped or damaged. They must be repainted as required by the Service. Plugs and seals for adjusting cavities shall always remain intact.

(f) *chains, hangers, and baskets.* Any chains or hangers used for suspending test weights on a large capacity scale may be balanced in part of the zero load and treated as a segment of the scale. Hangers for groups of test weights shall be treated as known standard weights and consequently maintained in a similar manner. "Open" baskets shall be sealed to a 50-pound multiple interval which shall be calibrated and treated as a normal

standard. Closed baskets shall be sealed as an integral part of a standard summation. The closed basket shall be designed in such a manner to incorporate a fitted cover plate which shall be locked during calibration and keys placed in the local field office for security.

(g) *Qualified laboratories.* (1) All State laboratories currently approved by a NBS ongoing certification program having auditing capabilities are 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 "qualified" provided:

(i) They request authority to work on elevator-owned weights through the State jurisdiction. The State in turn must advise the Service of their decision;

(ii) They have NBS "traceable" standards (through the State) and trained staff to perform calibrations in a manner prescribed by NBS and/or the State;

(iii) They must be equipped to provide suitable certification documentation;

(iv) They must permit the Service's Scale Testing Branch to make on-the-site visits to "laboratory" testing space. Final approval of the commercial industrial laboratory will be contingent on the Service's judgment; and

(v) Once having obtained approval, the commercial industrial laboratory must maintain its site in a manner prescribed by the State and/or the Service.

Done at Washington, D.C.: February 22, 1979.

L. E. BARTELT,

Administrator.

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FRIDAY, MARCH 2, 1979

PART IV



EQUAL EMPLOYMENT
OPPORTUNITY
COMMISSION

OFFICE OF PERSONNEL
MANAGEMENT

DEPARTMENT OF JUSTICE

DEPARTMENT OF LABOR

DEPARTMENT OF THE
TREASURY



ADOPTION OF QUESTIONS AND
ANSWERS TO CLARIFY AND
PROVIDE A COMMON
INTERPRETATION OF THE
UNIFORM GUIDELINES ON
EMPLOYEE SELECTION
PROCEDURES

[6570-06-M]

Title 29—Labor

CHAPTER XIV—EQUAL EMPLOYMENT
OPPORTUNITY COMMISSIONPART 1607—UNIFORM GUIDELINES
ON EMPLOYEE SELECTION PROCEDURE
(1978)

Title 5—Administrative Personnel

OFFICE OF PERSONNEL
MANAGEMENTPART 300—EMPLOYMENT
(GENERAL)

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF
JUSTICE

PART 50—STATEMENTS OF POLICY

Title 31—Money and Finance:
TreasuryCHAPTER I—MONETARY OFFICES:
DEPARTMENT OF THE TREASURYPART 51—FISCAL ASSISTANCE TO
STATE AND LOCAL GOVERNMENTSTitle 41—Public Contracts and
Property ManagementCHAPTER 60—OFFICE OF FEDERAL
CONTRACT COMPLIANCE PRO-
GRAMS, DEPARTMENT OF LABORPART 60-3—UNIFORM GUIDELINES
ON EMPLOYEE SELECTION PROCEDURE
(1978)Adoption of Questions and Answers
To Clarify and Provide a Common
Interpretation of the Uniform
Guidelines on Employee Selection
Procedures

AGENCIES: Equal Employment Opportunity Commission, Office of Personnel Management, Department of Justice, Department of Labor and Department of Treasury.

ACTION: Adoption of questions and answers designed to clarify and provide a common interpretation of the Uniform Guidelines on Employee Selection Procedures.

SUMMARY: The Uniform Guidelines on Employee Selection Procedures were issued by the five Federal agen-

cies having primary responsibility for the enforcement of Federal equal employment opportunity laws, to establish a uniform Federal government position. See 43 FR 38290, et seq. (Aug. 25, 1978) and 43 FR 40223 (Sept. 11, 1978). They became effective on September 25, 1978. The issuing agencies recognize the need for a common interpretation of the Uniform Guidelines, as well as the desirability of providing additional guidance to employers and other users, psychologists, and investigators, compliance officers and other Federal enforcement personnel. These Questions and Answers are intended to address that need and to provide such guidance.

EFFECTIVE DATE: March 2, 1979.

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INTRODUCTION

The problems addressed by the Uniform Guidelines on Employee Selection Procedures (43 FR 38290 et seq., August 25, 1978) are numerous and im-

portant, and some of them are complex. The history of the development of those Guidelines is set forth in the introduction to them (43 FR 38290-95). The experience of the agencies has been that a series of answers to commonly asked questions is helpful in providing guidance not only to employers and other users, but also to psychologists and others who are called upon to conduct validity studies, and to investigators, compliance officers and other Federal personnel who have enforcement responsibilities.

The Federal agencies which issued the Uniform Guidelines—the Departments of Justice and Labor, the Equal Employment Opportunity Commission, the Civil Service Commission (which has been succeeded in relevant part by the Office of Personnel Management), and the Office of Revenue Sharing, Treasury Department—recognize that the goal of a uniform position on these issues can best be achieved through a common interpretation of the same guidelines. The following Questions and Answers are part of such a common interpretation. The material included is intended to interpret and clarify, but not to modify, the provisions of the Uniform Guidelines. The questions selected are commonly asked questions in the field and those suggested by the Uniform Guidelines themselves and by the extensive comments received on the various sets of proposed guidelines prior to their adoption. Terms are used in the questions and answers as they are defined in the Uniform Guidelines.

The agencies recognize that additional questions may be appropriate for similar treatment at a later date, and contemplate working together to provide additional guidance in interpreting the Uniform Guidelines. Users and other interested persons are invited to submit additional questions.

ELEANOR HOLMES NORTON,
*Chair, Equal Employment
Opportunity Commission.*

ALAN K. CAMPBELL,
*Director, Office of
Personnel Management.*

DREW S. DAYS III,
*Assistant Attorney General,
Civil Rights Division, Department of Justice.*

WELDEN ROUGEAU,
Director, Office of Federal Contract Compliance, Department of Labor.

KENT A. PETERSON,
*Acting Deputy Director,
Office of Revenue Sharing.*

I. PURPOSE AND SCOPE

1. Q. What is the purpose of the Guidelines?

A. The guidelines are designed to aid in the achievement of our nation's

goal of equal employment opportunity without discrimination on the grounds of race, color, sex, religion or national origin. The Federal agencies have adopted the Guidelines to provide a uniform set of principles governing use of employee selection procedures which is consistent with applicable legal standards and validation standards generally accepted by the psychological profession and which the Government will apply in the discharge of its responsibilities.

2. Q. What is the basic principle of the Guidelines?

A. A selection process which has an adverse impact on the employment opportunities of members of a race, color, religion, sex, or national origin group (referred to as "race, sex, and ethnic group," as defined in Section 16P) and thus disproportionately screens them out is unlawfully discriminatory unless the process or its component procedures have been validated in accord with the Guidelines, or the user otherwise justifies them in accord with Federal law. See Sections 3 and 6. This principle was adopted by the Supreme Court unanimously in *Griggs v. Duke Power Co.*, 401 U.S. 424, and was ratified and endorsed by the Congress when it passed the Equal Employment Opportunity Act of 1972, which amended Title VII of the Civil Rights Act of 1964.

3. Q. Who is covered by the Guidelines?

A. The Guidelines apply to private and public employers, labor organizations, employment agencies, apprenticeship committees, licensing and certification boards (see Question 7), and contractors or subcontractors, who are covered by one or more of the following provisions of Federal equal employment opportunity law: Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter Title VII); Executive Order 11246, as amended by Executive Orders 11375 and 12086 (hereinafter Executive Order 11246); the State and Local Fiscal Assistance Act of 1972, as amended; Omnibus Crime Control and Safe Streets Act of 1968, as amended; and the Intergovernmental Personnel Act of 1970, as amended. Thus, under Title VII, the Guidelines apply to the Federal Government with regard to

Federal employment. Through Title VII they apply to most private employers who have 15 or more employees for 20 weeks or more a calendar year, and to most employment agencies, labor organizations and apprenticeship committees. They apply to state and local governments which employ 15 or more employees, or which receive revenue sharing funds, or which receive funds from the Law Enforcement Assistance Administration to impose and strengthen law enforcement and criminal justice, or which receive grants or other federal assistance under a program which requires maintenance of personnel standards on a merit basis. They apply through Executive Order 11246 to contractors and subcontractors of the Federal Government and to contractors and subcontractors under federally-assisted construction contracts.

4. Q. Are college placement officers and similar organizations considered to be users subject to the Guidelines?

A. Placement offices may or may not be subject to the Guidelines depending on what services they offer. If a placement office uses a selection procedure as a basis for any employment decision, it is covered under the definition of "user". Section 16. For example, if a placement office selects some students for referral to an employer but rejects others, it is covered. However, if the placement office refers all interested students to an employer, it is not covered, even though it may offer office space and provision for informing the students of job openings. The Guidelines are intended to cover all users of employee selection procedures, including employment agencies, who are subject to Federal equal employment opportunity law.

5. Q. Do the Guidelines apply only to written tests?

A. No. They apply to all selection procedures used to make employment decisions, including interviews, review of experience or education from application forms, work samples, physical requirements, and evaluations of performance. Sections 2B and 16Q, and see Question 6.

6. Q. What practices are covered by the Guidelines?

A. The Guidelines apply to employee selection procedures which are used in making employment decisions, such as hiring, retention, promotion, transfer, demotion, dismissal or referral. Section 2B. Employee selection procedures include job requirements (physical, education, experience), and evaluation of applicants or candidates on the basis of application forms, interviews, performance tests, paper and pencil tests, performance in training programs or probationary periods, and any other procedures used to make an employment decision whether admin-

istered by the employer or by an employment agency. See Section 2B.

7. Q. Do the Guidelines apply to the licensing and certification functions of state and local governments?

A. The Guidelines apply to such functions to the extent that they are covered by Federal law, Section 2B. The courts are divided on the issue of such coverage. The Government has taken the position that at least some kinds of licensing and certification which deny persons access to employment opportunity may be enjoined in an action brought pursuant to Section 707 of the Civil Rights Act of 1964, as amended.

8. Q. What is the relationship between Federal equal employment opportunity law, embodied in these Guidelines, and State and Local government merit system laws or regulations requiring rank ordering of candidates and selection from a limited number of the top candidates?

A. The Guidelines permit ranking where the evidence of validity is sufficient to support that method of use. State or local laws which compel rank ordering generally do so on the assumption that the selection procedure is valid. Thus, if there is adverse impact and the validity evidence does not adequately support that method of use, proper interpretation of such a state law would require validation prior to ranking. Accordingly, there is no necessary or inherent conflict between Federal law and State or local laws of the kind described.

Under the Supremacy Clause of the Constitution (Art. VI, Cl. 2), however, Federal law or valid regulation overrides any contrary provision of state or local law. Thus, if there is any conflict, Federal equal opportunity law prevails. For example, in *Rosenfeld v. So. Pacific Co.*, 444 F.2d 1219 (9th Cir., 1971), the court held invalid state protective laws which prohibited the employment of women in jobs entailing long hours or heavy labor, because the state laws were in conflict with Title VII. Where a State or local official believes that there is a possible conflict, the official may wish to consult with the State Attorney General, County or City attorney, or other legal official to determine how to comply with the law.

II. ADVERSE IMPACT, THE BOTTOM LINE AND AFFIRMATIVE ACTION

9. Q. Do the Guidelines require that only validated selection procedures be used?

A. No. Although validation of selection procedures is desirable in personnel management, the Uniform Guidelines require users to produce evidence of validity only when the selection procedure adversely affects the opportunities of a race, sex, or ethnic group

¹Section references throughout these questions and answers are to the sections of the *Uniform Guidelines on Employee Selection Procedures* (herein referred to as "Guidelines") that were published by the Equal Employment Opportunity Commission, the Civil Service Commission, the Department of Labor, and the Department of Justice on Aug. 25, 1978, 43 FR 38290. The Uniform Guidelines were adopted by the Office of Revenue Sharing of the Department of Treasury on September 11, 1978, 43 FR 40223.

for hire, transfer, promotion, retention or other employment decision. If there is no adverse impact, there is no validation requirement under the Guidelines. Sections 1B and 3A. See also, Section 6A.

10. Q. What is adverse impact?

A. Under the Guidelines adverse impact is a substantially different rate of selection in hiring, promotion or other employment decision which works to the disadvantage of members of a race, sex or ethnic group. Sections 4D and 16B. See Questions 11 and 12.

11. Q. What is a substantially different rate of selection?

A. The agencies have adopted a rule of thumb under which they will generally consider a selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5ths) or eighty percent (80%) of the selection rate for the group with the highest selection rate as a substantially different rate of selection. See Section 4D. This "4/5ths" or "80%" rule of thumb is not intended as a legal definition, but is a practical means of keeping the attention of the enforcement agencies on serious discrepancies in rates of hiring, promotion and other selection decisions.

For example, if the hiring rate for whites other than Hispanics is 60%, for American Indians 45%, for Hispanics 48%, and for Blacks 51%, and each of these groups constitutes more than 2% of the labor force in the relevant labor area (see Question 16), a comparison should be made of the selection rate for each group with that of the highest group (whites). These comparisons show the following impact ratios: American Indians 45/60 or 75%; Hispanics 48/60 or 80%; and Blacks 51/60 or 85%. Applying the 4/5ths or 80% rule of thumb, on the basis of the above information alone, adverse impact is indicated for American Indians but not for Hispanics or Blacks.

12. Q. How is adverse impact determined?

A. Adverse impact is determined by a four step process.

(1) calculate the rate of selection for each group (divide the number of persons selected from a group by the number of applicants from that group).

(2) observe which group has the highest selection rate.

(3) calculate the impact ratios, by comparing the selection rate for each group with that of the highest group (divide the selection rate for a group by the selection rate for the highest group).

(4) observe whether the selection rate for any group is substantially less (i.e., usually less than 4/5ths or 80%) than the selection rate for the highest group. If it is, adverse impact is indicated in most circumstances. See Section 4D.

For example:

Applicants	Hires	Selection rate Percent hired
80 White.....	48	48/60 or 80%
40 Black.....	12	12/40 or 30%

A comparison of the black selection rate (30%) with the white selection rate (80%) shows that the black rate is 30/80, or one-half (or 50%) of the white rate. Since the one-half (50%) is less than 4/5ths (80%) adverse impact is usually indicated.

The determination of adverse impact is not purely arithmetic however; and other factors may be relevant. See, Section 4D.

13. Q. Is adverse impact determined on the basis of the overall selection process or for the components in that process?

A. Adverse impact is determined first for the overall selection process for each job. If the overall selection process has an adverse impact, the adverse impact of the individual selection procedure should be analyzed. For any selection procedures in the process having an adverse impact which the user continues to use in the same manner, the user is expected to have evidence of validity satisfying the Guidelines. Sections 4C and 5D. If there is no adverse impact for the overall selection process, in most circumstances there is no obligation under the Guidelines to investigate adverse impact for the components, or to validate the selection procedures used for that job. Section 4C. But see Question 25.

14. Q. The Guidelines designate the "total selection process" as the initial basis for determining the impact of selection procedures. What is meant by the "total selection process"?

A. The "total selection process" refers to the combined effect of all selection procedures leading to the final employment decision such as hiring or promoting. For example, appraisal of candidates for administrative assistant positions in an organization might include initial screening based upon an application blank and interview, a written test, a medical examination, a background check, and a supervisor's interview. These in combination are the total selection process. Additionally, where there is more than one route to the particular kind of employment decision, the total selection process encompasses the combined results of all routes. For example, an employer may select some applicants for a particular kind of job through appropriate written and performance tests. Others may be selected through an internal upward mobility program, on the basis

of successful performance in a directly related trainee type of position. In such a case, the impact of the total selection process would be the combined effect of both avenues of entry.

15. Q. What is meant by the terms "applicant" and "candidate" as they are used in the Uniform Guidelines?

A. The precise definition of the term "applicant" depends upon the user's recruitment and selection procedures. The concept of an applicant is that of a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities. This interest might be expressed by completing an application form, or might be expressed orally, depending upon the employer's practice.

The term "candidate" has been included to cover those situations where the initial step by the user involves consideration of current employees for promotion, or training, or other employment opportunities, without inviting applications. The procedure by which persons are identified as candidates is itself a selection procedure under the Guidelines.

A person who voluntarily withdraws formally or informally at any stage of the selection process is no longer an applicant or candidate for purposes of computing adverse impact. Employment standards imposed by the user which discourage disproportionately applicants of a race, sex or ethnic group may, however, require justification. Records should be kept for persons who were applicants or candidates at any stage of the process.

16. Q. Should adverse impact determinations be made for all groups regardless of their size?

A. No. Section 15A(2) calls for annual adverse impact determinations to be made for each group which constitutes either 2% or more of the total labor force in the relevant labor area, or 2% or more of the applicable workforce. Thus, impact determinations should be made for any employment decision for each group which constitutes 2% or more of the labor force in the relevant labor area. For hiring, such determination should also be made for groups which constitute more than 2% of the applicants; and for promotions, determinations should also be made for those groups which constitute at least 2% of the user's workforce. There are record keeping obligations for all groups, even those which are less than 2%. See Question 86.

17. Q. In determining adverse impact, do you compare the selection rates for males and females, and blacks and whites, or do you compare selection rates for white males, white females, black males and black females?

A. The selection rates for males and females are compared, and the selection rates for the race and ethnic groups are compared with the selection rate of the race or ethnic group with the highest selection rate. Neutral and objective selection procedures free of adverse impact against any race, sex or ethnic group are unlikely to have an impact against a subgroup. Thus there is no obligation to make comparisons for subgroups (e.g., white male, white female, black male, black female). However, there are obligations to keep records (see Question 87), and any apparent exclusion of a subgroup may suggest the presence of discrimination.

18. Q. Is it usually necessary to calculate the statistical significance of differences in selection rates when investigating the existence of adverse impact?

A. No. Adverse impact is normally indicated when one selection rate is less than 80% of the other. The federal enforcement agencies normally will use only the 80% (2/3) rule of thumb, except where large numbers of selections are made. See Questions 20 and 22.

19. Q. Does the 2/3 rule of thumb mean that the Guidelines will tolerate up to 20% discrimination?

A. No. The 2/3 rule of thumb speaks only to the question of adverse impact, and is not intended to resolve the ultimate question of unlawful discrimination. Regardless of the amount of difference in selection rates, unlawful discrimination may be present, and may be demonstrated through appropriate evidence. The 2/3 rule merely establishes a numerical basis for drawing an initial inference and for requiring additional information.

With respect to adverse impact, the Guidelines expressly state (section 4D) that differences in selection rates of less than 20% may still amount to adverse impact where the differences are significant in both statistical and practical terms. See Question 20. In the absence of differences which are large enough to meet the 2/3 rule of thumb or a test of statistical significance, there is no reason to assume that the differences are reliable, or that they are based upon anything other than chance.

20. Q. Why is the 2/3 rule called a rule of thumb?

A. Because it is not intended to be controlling in all circumstances. If, for the sake of illustration, we assume that nationwide statistics show that use of an arrest record would disqualify 10% of all Hispanic persons but only 4% of all whites other than Hispanic (hereafter non-Hispanic), the selection rate for that selection procedure is 90% for Hispanics and 96% for non-Hispanics. Therefore, the 2/3 rule

of thumb would not indicate the presence of adverse impact (90% is approximately 94% of 96%). But in this example, the information is based upon nationwide statistics, and the sample is large enough to yield statistically significant results, and the difference (Hispanics are 2 1/2 times as likely to be disqualified as non-Hispanics) is large enough to be practically significant. Thus, in this example the enforcement agencies would consider a disqualification based on an arrest record alone as having an adverse impact. Likewise, in *Gregory v. Litton Industries*, 472 F. 2d 631 (9th Cir., 1972), the court held that the employer violated Title VII by disqualifying persons from employment solely on the basis of an arrest record, where that disqualification had an adverse impact on blacks and was not shown to be justified by business necessity.

On the other hand, a difference of more than 20% in rates of selection may not provide a basis for finding adverse impact if the number of persons selected is very small. For example, if the employer selected three males and one female from an applicant pool of 20 males and 10 females, the 2/3 rule would indicate adverse impact (selection rate for women is 10%; for men 15%; 10% is 66 2/3% of 15%, which is less than 80%), yet the number of selections is too small to warrant a determination of adverse impact. In these circumstances, the enforcement agency would not require validity evidence in the absence of additional information (such as selection rates for a longer period of time) indicating adverse impact. For recordkeeping requirements, see Section 15A(2)(c) and Questions 84 and 85.

21. Q. Is evidence of adverse impact sufficient to warrant a validity study or an enforcement action where the numbers involved are so small that it is more likely than not that the difference could have occurred by chance? For example:

Applicants	Not hired	Hired	Selection rate percent hired
80 White	64	16	20
20 Black	17	3	15
White Selection Rate.....			20
Black Selection Rate			15
15 divided by 20 = 75% (which is less than 80%).			

A. No. If the numbers of persons and the difference in selection rates are so small that it is likely that the difference could have occurred by chance, the Federal agencies will not assume the existence of adverse impact, in the absence of other evidence. In this example, the difference in selection rates is too small, given the small number of black applicants, to constitute adverse

impact in the absence of other information (see Section 4D). If only one more black had been hired instead of a white the selection rate for blacks (20%) would be higher than that for whites (18.7%). Generally, it is inappropriate to require validity evidence or to take enforcement action where the number of persons and the difference in selection rates are so small that the selection of one different person for one job would shift the result from adverse impact against one group to a situation in which that group has a higher selection rate than the other group.

On the other hand, if a lower selection rate continued over a period of time, so as to constitute a pattern, then the lower selection rate would constitute adverse impact, warranting the need for validity evidence.

22. Q. Is it ever necessary to calculate the statistical significance of differences in selection rates to determine whether adverse impact exists?

A. Yes. Where large numbers of selections are made, relatively small differences in selection rates may nevertheless constitute adverse impact if they are both statistically and practically significant. See Section 4D and Question 20. For that reason, if there is a small difference in selection rates (one rate is more than 80% of the other), but large numbers of selections are involved, it would be appropriate to calculate the statistical significance of the difference in selection rates.

23. Q. When the 2/3 rule of thumb shows adverse impact, is there adverse impact under the Guidelines?

A. There usually is adverse impact, except where the number of persons selected and the difference in selection rates are very small. See Section 4D and Questions 20 and 21.

24. Q. Why do the Guidelines rely primarily upon the 2/3 rule of thumb, rather than tests of statistical significance?

A. Where the sample of persons selected is not large, even a large real difference between groups is likely not to be confirmed by a test of statistical significance (at the usual .05 level of significance). For this reason, the Guidelines do not rely primarily upon a test of statistical significance, but use the 2/3 rule of thumb as a practical and easy-to-administer measure of whether differences in selection rates are substantial. Many decisions in day-to-day life are made without reliance upon a test of statistical significance.

25. Q. Are there any circumstances in which the employer should evaluate components of a selection process, even though the overall selection process results in no adverse impact?

A. Yes, there are such circumstances: (1) Where the selection process

ture is a significant factor in the continuation of patterns of assignments of incumbent employees caused by prior discriminatory employment practices. Assume, for example, an employer who traditionally hired blacks as employees for the "laborer" department in a manufacturing plant, and traditionally hired only whites as skilled craftsmen. Assume further that the employer in 1962 began to use a written examination not supported by a validity study to screen incumbent employees who sought to enter the apprenticeship program for skilled craft jobs. The employer stopped making racial assignments in 1972. Assume further that for the last four years, there have been special recruitment efforts aimed at recent black high school graduates and that the selection process, which includes the written examination, has resulted in the selection of black applicants for apprenticeship in approximately the same rates as white applicants.

In those circumstances, if the written examination had an adverse impact, its use would tend to keep incumbent black employees in the laborer department, and deny them entry to apprenticeship programs. For that reason, the enforcement agencies would expect the user to evaluate the impact of the written examination, and to have validity evidence for the use of the written examination if it has an adverse impact.

(2) Where the weight of court decisions or administrative interpretations holds that a specific selection procedure is not job related in similar circumstances.

For example, courts have held that because an arrest is not a determination of guilt, an applicant's arrest record by itself does not indicate inability to perform a job consistent with the trustworthy and efficient operation of a business. Yet a no arrest record requirement has a nationwide adverse impact on some minority groups. Thus, an employer who refuses to hire applicants solely on the basis of an arrest record is on notice that this policy may be found to be discriminatory. *Gregory v. Litton Industries*, 472 F.2d 631 (9th Cir., 1972) (excluding persons from employment solely on the basis of arrests, which has an adverse impact, held to violate Title VII). Similarly, a minimum height requirement disproportionately disqualifies women and some national origin groups, and has been held not to be job related in a number of cases. For example, in *Dothard v. Rawlinson*, 433 U.S. 321 (1977), the Court held that height and weight requirements not shown to be job related were violative of Title VII. Thus an employer using a minimum height requirement should have evidence of its validity.

(3) In addition, there may be other circumstances in which an enforcement agency may decide to request an employer to evaluate components of a selection process, but such circumstances would clearly be unusual. Any such decision will be made only at a high level in the agency. Investigators and compliance officers are not authorized to make this decision.

26. Q. Does the bottom line concept of Section 4C apply to the administrative processing of charges of discrimination filed with an issuing agency, alleging that a specific selection procedure is discriminatory?

A. No. The bottom line concept applies only to enforcement actions as defined in Section 16 of the Guidelines. Enforcement actions include only court enforcement actions and other similar proceedings as defined in Section 16I. The EEOC administrative processing of charges of discrimination (investigation, finding of reasonable cause/no cause, and conciliation) required by Section 706(b) of Title VII are specifically exempted from the bottom line concept by the definition of an enforcement action. The bottom line concept is a result of a decision by the various enforcement agencies that, as a matter of prosecutorial discretion, they will devote their limited enforcement resources to the most serious offenders of equal employment opportunity laws. Since the concept is not a rule of law, it does not affect the discharge by the EEOC of its statutory responsibilities to investigate charges of discrimination, render an administrative finding on its investigation, and engage in voluntary conciliation efforts. Similarly, with respect to the other issuing agencies, the bottom line concept applies not to the processing of individual charges, but to the initiation of enforcement action.

27. Q. An employer uses one test or other selection procedure to select persons for a number of different jobs. Applicants are given the test, and the successful applicants are then referred to different departments and positions on the basis of openings available and their interests. The Guidelines appear to require assessment of adverse impact on a job-by-job basis (Section 15A(2)(a)). Is there some way to show that the test as a whole does not have adverse impact even though the proportions of members of each race, sex or ethnic group assigned to different jobs may vary?

A. Yes, in some circumstances. The Guidelines require evidence of validity only for those selection procedures which have an adverse impact, and which are part of a selection process which has an adverse impact. If the test is administered and used in the same fashion for a variety of jobs, the impact of that test can be assessed in

the aggregate. The records showing the results of the test, and the total number of persons selected, generally would be sufficient to show the impact of the test. If the test has no adverse impact, it need not be validated.

But the absence of adverse impact of the test in the aggregate does not end the inquiry. For there may be discrimination or adverse impact in the assignment of individuals to, or in the selection of persons for, particular jobs. The Guidelines call for records to be kept and determinations of adverse impact to be made of the overall selection process on a job by job basis. Thus, if there is adverse impact in the assignment or selection procedures for a job even though there is no adverse impact from the test, the user should eliminate the adverse impact from the assignment procedure or justify the assignment procedure.

28. Q. The Uniform Guidelines apply to the requirements of Federal law prohibiting employment practices which discriminate on the grounds of race, color, religion, sex or national origin. However, records are required to be kept only by sex and by specified race and ethnic groups. How can adverse impact be determined for religious groups and for national origin groups other than those specified in Section 4B of the Guidelines?

A. The groups for which records are required to be maintained are the groups for which there is extensive evidence of continuing discriminatory practices. This limitation is designed in part to minimize the burden on employers for recordkeeping which may not be needed.

For groups for which records are not required, the person(s) complaining may obtain information from the employer or others (voluntarily or through legal process) to show that adverse impact has taken place. When that has been done, the various provisions of the Uniform Guidelines are fully applicable.

Whether or not there is adverse impact, Federal equal employment opportunity law prohibits any deliberate discrimination or disparate treatment on grounds of religion or national origin, as well as on grounds of sex, color, or race.

Whenever "ethnic" is used in the Guidelines or in these Questions and Answers, it is intended to include national origin and religion, as set forth in the statutes, executive orders, and regulations prohibiting discrimination. See Section 16P.

29. Q. What is the relationship between affirmative action and the requirements of the Uniform Guidelines?

A. The two subjects are different, although related. Compliance with the Guidelines does not relieve users of

their affirmative action obligations, including those of Federal contractors and subcontractors under Executive Order 11246, Section 13.

The Guidelines encourage the development and effective implementation of affirmative action plans or programs in two ways. First, in determining whether to institute action against a user on the basis of a selection procedure which has adverse impact and which has not been validated, the enforcement agency will take into account the general equal employment opportunity posture of the user with respect to the job classifications for which the procedure is used and the progress which has been made in carrying out any affirmative action program. Section 4E. If the user has demonstrated over a substantial period of time that it is in fact appropriately utilizing in the job or group of jobs in question the available race, sex or ethnic groups in the relevant labor force, the enforcement agency will generally exercise its discretion by not initiating enforcement proceedings based on adverse impact in relation to the applicant flow. Second, nothing in the Guidelines is intended to preclude the use of selection procedures, consistent with Federal law, which assist in the achievement of affirmative action objectives. Section 13A. See also, Questions 30 and 31.

30. Q. When may a user be race, sex or ethnic-conscious?

A. The Guidelines recognize that affirmative action programs may be race, sex or ethnic-conscious in appropriate circumstances. (See Sections 4E and 13; See also Section 17, Appendix). In addition to obligatory affirmative action programs (See Question 29), the Guidelines encourage the adoption of voluntary affirmative action programs. Users choosing to engage in voluntary affirmative action are referred to EEOC's Guidelines on Affirmative Action (44 F.R. 4422, January 19, 1979). A user may justifiably be race, sex or ethnic-conscious in circumstances where it has reason to believe that qualified persons of specified race, sex or ethnicity have been or may be subject to the exclusionary effects of its selection procedures or other employment practices in its work force or particular jobs therein. In establishing long and short range goals, the employer may use the race, sex, or ethnic classification as the basis for such goals (Section 17(3) (a)).

In establishing a recruiting program, the employer may direct its recruiting activities to locations or institutions which have a high proportion of the race, sex, or ethnic group which has been excluded or underutilized (Section 17(3) (b)). In establishing the pool of qualified persons from which final

selections are to be made, the employer may take reasonable steps to assure that members of the excluded or underutilized race, sex, or ethnic group are included in the pool (Section 17(3) (e)).

Similarly, the employer may be race, sex or ethnic-conscious in determining what changes should be implemented if the objectives of the programs are not being met (Section 17(3) (g)).

Even apart from affirmative action programs a user may be race, sex or ethnic-conscious in taking appropriate and lawful measures to eliminate adverse impact from selection procedures (Section 6A).

31. Q. Section 6A authorizes the use of alternative selection procedures to eliminate adverse impact, but does not appear to address the issue of validity. Thus, the use of alternative selection procedures without adverse impact seems to be presented as an option in lieu of validation. Is that its intent?

A. Yes. Under Federal equal employment opportunity law the use of any selection procedure which has an adverse impact on any race, sex or ethnic group is discriminatory unless the procedure has been properly validated, or the use of the procedure is otherwise justified under Federal law. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); Section 3A. If a selection procedure has an adverse impact, therefore, Federal equal employment opportunity law authorizes the user to choose lawful alternative procedures which eliminate the adverse impact rather than demonstrating the validity of the original selection procedure.

Many users, while wishing to validate all of their selection procedures, are not able to conduct the validity studies immediately. Such users have the option of choosing alternative techniques which eliminate adverse impact, with a view to providing a basis for determining subsequently which selection procedures are valid and have as little adverse impact as possible.

Apart from Federal equal employment opportunity law, employers have economic incentives to use properly validated selection procedures. Nothing in Section 6A should be interpreted as discouraging the use of properly validated selection procedures; but Federal equal employment opportunity law does not require validity studies to be conducted unless there is adverse impact. See Section 2C.

III. GENERAL QUESTIONS CONCERNING VALIDITY AND THE USE OF SELECTION PROCEDURES

32. Q. What is "validation" according to the Uniform Guidelines?

A. Validation is the demonstration of the job relatedness of a selection procedure. The Uniform Guidelines

recognize the same three validity strategies recognized by the American Psychological Association:

(1) Criterion-related validity—a statistical demonstration of a relationship between scores on a selection procedure and job performance of a sample of workers.

(2) Content validity—a demonstration that the content of a selection procedure is representative of important aspects of performance on the job.

(3) Construct validity—a demonstration that (a) a selection procedure measures a construct (something believed to be an underlying human trait or characteristic, such as honesty) and (b) the construct is important for successful job performance.

33. Q. What is the typical process by which validity studies are reviewed by an enforcement agency?

A. The validity study is normally requested by an enforcement officer during the course of a review. The officer will first determine whether the user's data show that the overall selection process has an adverse impact, and if so, which component selection procedures have an adverse impact. See Section 15A(3). The officer will then ask for the evidence of validity for each procedure which has an adverse impact. See Sections 15B, C, and D. This validity evidence will be referred to appropriate personnel for review. Agency findings will then be communicated to the user.

34. Q. Can a user send its validity evidence to an enforcement agency before a review, so as to assure its validity?

A. No. Enforcement agencies will not review validity reports except in the context of investigations or reviews. Even in those circumstances, validity evidence will not be reviewed without evidence of how the selection procedure is used and what impact its use has on various race, sex, and ethnic groups.

35. Q. May reports of validity prepared by publishers of commercial tests and printed in test manuals or other literature be helpful in meeting the Guidelines?

A. They may be. However, it is the user's responsibility to determine that the validity evidence is adequate to meet the Guidelines. See Section 7, and Questions 43 and 66. Users should not use selection procedures which are likely to have an adverse impact without reviewing the evidence of validity to make sure that the standards of the Guidelines are met.

The following questions and answers (36-81) assume that a selection procedure has an adverse impact and is part of a selection process that has an adverse impact.

36. Q. How can users justify continued use of a procedure on a basis other than validity?

A. Normally, the method of justifying selection procedures with an adverse impact and the method to which the Guidelines are primarily addressed, is validation. The method of justification of a procedure by means other than validity is one to which the Guidelines are not addressed. See Section 6B. In *Griggs v. Duke Power Co.*, 401 U.S. 424, the Supreme Court indicated that the burden on the user was a heavy one, but that the selection procedure could be used if there was a "business necessity" for its continued use; therefore, the Federal agencies will consider evidence that a selection procedure is necessary for the safe and efficient operation of a business to justify continued use of a selection procedure.

37. Q. Is the demonstration of a rational relationship (as that term is used in constitutional law) between a selection procedure and the job sufficient to meet the validation requirements of the Guidelines?

A. No. The Supreme Court in *Washington v. Davis*, 426 U.S. 229 (1976) stated that different standards would be applied to employment discrimination allegations arising under the Constitution than would be applied to employment discrimination allegations arising under Title VII. The *Davis* case arose under the Constitution, and no Title VII violation was alleged. The Court applied a traditional constitutional law standard of "rational relationship" and said that it would defer to the "seemingly reasonable acts of administrators and executives." However, it went on to point out that under Title VII, the appropriate standard would still be an affirmative demonstration of the relationship between the selection procedure and measures of job performance by means of accepted procedures of validation and it would be an "insufficient response to demonstrate some rational basis" for a selection procedure having an adverse impact. Thus, the mere demonstration of a rational relationship between a selection procedure and the job does not meet the requirement of Title VII of the Civil Rights Act of 1964, or of Executive Order 11246, or the State and Local Fiscal Assistance Act of 1972, as amended (the revenue sharing act) or the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and will not meet the requirements of these Guidelines for a validity study. The three validity strategies called for by these Guidelines all require evidence that the selection procedure is related to successful performance on the job. That evidence may be obtained

through local validation or through validity studies done elsewhere.

38. Q. Can a user rely upon written or oral assertions of validity instead of evidence of validity?

A. No. If a user's selection procedures have an adverse impact, the user is expected to produce evidence of the validity of the procedures as they are used. Thus, the unsupported assertion by anyone, including representatives of the Federal government or State Employment Services, that a test battery or other selection procedure has been validated is not sufficient to satisfy the Guidelines.

39. Q. Are there any formal requirements imposed by these Guidelines as to who is allowed to perform a validity study?

A. No. A validity study is judged on its own merits, and may be performed by any person competent to apply the principles of validity research, including a member of the user's staff or a consultant. However, it is the user's responsibility to see that the study meets validity provisions of the Guidelines, which are based upon professionally accepted standards. See Question 42.

40. Q. What is the relationship between the validation provisions of the Guidelines and other statements of psychological principles, such as the *Standards for Educational and Psychological Tests*, published by the American Psychological Association (Wash., D.C., 1974) (hereinafter "American Psychological Association Standards")?

A. The validation provisions of the Guidelines are designed to be consistent with the generally accepted standards of the psychological profession. These Guidelines also interpret Federal equal employment opportunity law, and embody some policy determinations of an administrative nature. To the extent that there may be differences between particular provisions of the Guidelines and expressions of validation principles found elsewhere, the Guidelines will be given precedence by the enforcement agencies.

41. Q. When should a validity study be carried out?

A. When a selection procedure has adverse impact on any race, sex or ethnic group, the Guidelines generally call for a validity study or the elimination of adverse impact. See Sections 3A and 6, and Questions 9, 31, and 36. If a selection procedure has adverse impact, its use in making employment decisions without adequate evidence of validity would be inconsistent with the Guidelines. Users who choose to continue the use of a selection procedure with an adverse impact until the procedure is challenged increase the risk that they will be found to be engaged in discriminatory practices and will be

liable for back pay awards, plaintiffs' attorneys' fees, loss of Federal contracts, subcontracts or grants, and the like. Validation studies begun on the eve of litigation have seldom been found to be adequate. Users who choose to validate selection procedures should consider the potential benefit from having a validation study completed or well underway before the procedures are administered for use in employment decisions.

42. Q. Where can a user obtain professional advice concerning validation of selection procedures?

A. Many industrial and personnel psychologists validate selection procedures, review published evidence of validity and make recommendations with respect to the use of selection procedures. Many of these individuals are members or fellows of Division 14 (Industrial and Organizational Psychology) or Division 5 (Evaluation and Measurement) of the American Psychological Association. They can be identified in the membership directory of that organization. A high level of qualification is represented by a diploma in Industrial Psychology awarded by the American Board of Professional Psychology.

Individuals with the necessary competence may come from a variety of backgrounds. The primary qualification is pertinent training and experience in the conduct of validation research.

Industrial psychologists and other persons competent in the field may be found as faculty members in colleges and universities (normally in the departments of psychology or business administration) or working as individual consultants or as members of a consulting organization.

Not all psychologists have the necessary expertise. States have boards which license and certify psychologists, but not generally in a specialty such as industrial psychology. However, State psychological associations may be a source of information as to individuals qualified to conduct validation studies. Addresses of State psychological associations or other sources of information may be obtained from the American Psychological Association, 1200 Seventeenth Street, N.W., Washington, D.C. 20036.

43. Q. Can a selection procedure be a valid predictor of performance on a job in a certain location and be invalid for predicting success on a different job or the same job in a different location?

A. Yes. Because of differences in work behaviors, criterion measures, study samples or other factors, a selection procedure found to have validity in one situation does not necessarily have validity in different circumstances. Conversely, a selection procedure

sure not found to have validity in one situation may have validity in different circumstances. For these reasons, the Guidelines requires that certain standards be satisfied before a user may rely upon findings of validity in another situation. Section 7 and Section 14D. See also, Question 66. Cooperative and multi-unit studies are however encouraged, and, when those standards of the Guidelines are satisfied, validity evidence specific to each location is not required. See Section 7C and Section 8.

44. Q. Is the user of a selection procedure required to develop the procedure?

A. No. A selection procedure developed elsewhere may be used. However, the user has the obligation to show that its use for the particular job is consistent with the Guidelines. See Section 7.

45. Q. Do the Guidelines permit users to engage in cooperative efforts to meet the Guidelines?

A. Yes. The Guidelines not only permit but encourage such efforts. Where users have participated in a cooperative study which meets the validation standards of these Guidelines and proper account has been taken of variables which might affect the applicability of the study to specific users, validity evidence specific to each user will not be required. Section 8.

46. Q. Must the same method for validation be used for all parts of a selection process?

A. No. For example, where a selection process includes both a physical performance test and an interview, the physical test might be supported on the basis of content validity, and the interview on the basis of a criterion-related study.

47. Q. Is a showing of validity sufficient to assure the lawfulness of the use of a selection procedure?

A. No. The use of the selection procedure must be consistent with the validity evidence. For example, if a research study shows only that, at a given passing score the test satisfactorily screens out probable failures, the study would not justify the use of substantially different passing scores, or of ranked lists of those who passed. See Section 5G. Similarly, if the research shows that a battery is valid when a particular set of weights is used, the weights actually used must conform to those that were established by the research.

48. Q. Do the Guidelines call for a user to consider and investigate alternative selection procedures when conducting a validity study?

A. Yes. The Guidelines call for a user, when conducting a validity study, to make a reasonable effort to become aware of suitable alternative selection procedures and methods of

use which have as little adverse impact as possible, and to investigate those which are suitable. Section 3B.

An alternative procedure may not previously have been used by the user for the job in question and may not have been extensively used elsewhere. Accordingly, the preliminary determination of the suitability of the alternative selection procedure for the user and job in question may have to be made on the basis of incomplete information. If on the basis of the evidence available, the user determines that the alternative selection procedure is likely to meet its legitimate needs, and is likely to have less adverse impact than the existing selection procedure, the alternative should be investigated further as a part of the validity study. The extent of the investigation should be reasonable. Thus, the investigation should continue until the user has reasonably concluded that the alternative is not useful or not suitable, or until a study of its validity has been completed. Once the full validity study has been completed, including the evidence concerning the alternative procedure, the user should evaluate the results of the study to determine which procedure should be used. See Section 3B and Question 50.

49. Q. Do the Guidelines call for a user continually to investigate "suitable alternative selection procedures and suitable alternative methods of using the selection procedure which have as little adverse impact as possible"?

A. No. There is no requirement for continual investigation. A reasonable investigation of alternatives is called for by the Guidelines as a part of any validity study. Once the study is complete and validity has been found, however, there is generally no obligation to conduct further investigations, until such time as a new study is called for. See, Sections 3B and 5K. If a government agency, complainant, civil rights organization or other person having a legitimate interest shows such a user an alternative procedure with less adverse impact and with substantial evidence of validity for the same job in similar circumstances, the user is obliged to investigate only the particular procedure which has been presented. Section 3B.

50. Q. In what circumstances do the Guidelines call for the use of an alternative selection procedure or an alternative method of using the procedure?

A. The alternative selection procedure (or method of use) should be used when it has less adverse impact and when the evidence shows that its validity is substantially the same or greater for the same job in similar circumstances. Thus, if under the original selection procedure the selection rate for black applicants was only one

half (50 percent) that of the selection rate for white applicants, whereas under the alternative selection procedure the selection rate for blacks is two-thirds (67 percent) that of white applicants, the new alternative selection procedure should be used when the evidence shows substantially the same or greater validity for the alternative than for the original procedure. The same principles apply to a new user who is deciding what selection procedure to institute.

51. Q. What are the factors to be considered in determining whether the validity for one procedure is substantially the same as or greater than that of another procedure?

A. In the case of a criterion-related validity study, the factors include the importance of the criteria for which significant relationships are found, the magnitude of the relationship between selection procedure scores and criterion measures, and the size and composition of the samples used. For content validity, the strength of validity evidence would depend upon the proportion of critical and/or important job behaviors measured, and the extent to which the selection procedure resembles actual work samples or work behaviors. Where selection procedures have been validated by different strategies, or by construct validity, the determination should be made on a case by case basis.

52. Q. The Guidelines require consideration of alternative procedures and alternative methods of use, in light of the evidence of validity and utility and the degree of adverse impact of the procedure. How can a user know that any selection procedure with an adverse impact is lawful?

A. The Uniform Guidelines (Section 5G) expressly permit the use of a procedure in a manner supported by the evidence of validity and utility, even if another method of use has a lesser adverse impact. With respect to consideration of alternative selection procedures, if the user made a reasonable effort to become aware of alternative procedures, has considered them and investigated those which appear suitable as a part of the validity study, and has shown validity for a procedure, the user has complied with the Uniform Guidelines. The burden is then on the person challenging the procedure to show that there is another procedure with better or substantially equal validity which will accomplish the same legitimate business purposes with less adverse impact. Section 3B. See also, *Albemarle Paper Co. v. Moody*, 422 U.S. 405.

53. Q. Are the Guidelines consistent with the decision of the Supreme Court in *Furnco Construction Corp. v. Waters*, — U.S. —, 98 S. Ct. 2943 (1978) where the Court stated: "Title

VII * * * does not impose a duty to adopt a hiring procedure that maximizes hiring of minority employees."

A. Yes. The quoted statement in *Furnco v. Waters* was made on a record where there was no adverse impact in the hiring process, no different treatment, no intentional discrimination, and no contractual obligations under E.O. 11246. Section 3B of the Guidelines is predicated upon a finding of adverse impact. Section 3B indicates that, when two or more selection procedures are available which serve a legitimate business purpose with substantially equal validity, the user should use the one which has been demonstrated to have the lesser adverse impact. Part V of the Overview of the Uniform Guidelines, in elaborating on this principle, states: "Federal equal employment opportunity law has added a requirement to the process of validation. In conducting a validation study, the employer should consider available alternatives which will achieve its legitimate purpose with lesser adverse impact."

Section 3B of the Guidelines is based on the principle enunciated in the Supreme Court decision in *Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975) that, even where job relatedness has been proven, the availability of other tests or selection devices which would also serve the employer's legitimate interest in "efficient and trustworthy workmanship" without a similarly undesirable racial effect would be evidence that the employer was using its tests merely as a pretext for discrimination.

Where adverse impact still exists, even though the selection procedure has been validated, there continues to be an obligation to consider alternative procedures which reduce or remove that adverse impact if an opportunity presents itself to do so without sacrificing validity. Where there is no adverse impact, the *Furnco* principle rather than the *Albermarle* principle is applicable.

IV. TECHNICAL STANDARDS

54. Q. How does a user choose which validation strategy to use?

A. A user should select a validation strategy or strategies which are (1) appropriate for the type of selection procedure, the job, and the employment situation, and (2) technically and administratively feasible. Whatever method of validation is used, the basic logic is one of prediction; that is, the presumption that level of performance on the selection procedure will, on the average, be indicative of level of performance on the job after selection. Thus, a criterion-related study, particularly a predictive one, is often regarded as the closest to such an ideal.

See American Psychological Association *Standards*, pp. 26-27.

Key conditions for a criterion-related study are a substantial number of individuals for inclusion in the study, and a considerable range of performance on the selection and criterion measures. In addition, reliable and valid measures of job performance should be available, or capable of being developed. Section 14B(1). Where such circumstances exist, a user should consider use of the criterion-related strategy.

Content validity is appropriate where it is technically and administratively feasible to develop work samples or measures of operationally defined skills, knowledges, or abilities which are a necessary prerequisite to observable work behaviors. Content validity is not appropriate for demonstrating the validity of tests of mental processes or aptitudes or characteristics; and is not appropriate for knowledges, skills or abilities which an employee will be expected to learn on the job. Section 14C(1).

The application of a construct validity strategy to support employee selection procedures is newer and less developed than criterion-related or content validity strategies. Continuing research may result in construct validity becoming more widely used. Because construct validity represents a generalization of findings, one situation in which construct validity might hold particular promise is that where it is desirable to use the same selection procedures for a variety of jobs. An overriding consideration in whether or not to consider construct validation is the availability of an individual with a high level of expertise in this field.

In some situations only one kind of validation study is likely to be appropriate. More than one strategy may be possible in other circumstances, in which case administrative considerations such as time and expense may be decisive. A combination of approaches may be feasible and desirable.

55. Q. Why do the Guidelines recognize only content, construct and criterion-related validity?

A. These three validation strategies are recognized in the Guidelines since they represent the current professional consensus. If the professional community recognizes new strategies or substantial modifications of existing strategies, they will be considered and, if necessary, changes will be made in the Guidelines. Section 5A.

56. Q. Why don't the Uniform Guidelines state a preference for criterion-related validity over content or construct validity?

A. Generally accepted principles of the psychological profession support the use of criterion-related, content or

construct validity strategies as appropriate. American Psychological Association *Standards*, E, pp. 25-26. This use was recognized by the Supreme Court in *Washington v. Davis*, 426 U.S. 229, 247, fn. 13. Because the Guidelines describe the conditions under which each validity strategy is inappropriate, there is no reason to state a general preference for any one validity strategy.

57. Q. Are the Guidelines intended to restrict the development of new testing strategies, psychological theories, methods of job analysis or statistical techniques?

A. No. The Guidelines are concerned with the validity and fairness of selection procedures used in making employment decisions, and are not intended to limit research and new developments. See Question 55.

58. Q. Is a full job analysis necessary for all validity studies?

A. It is required for all content and construct studies, but not for all criterion-related studies. See Sections 14A and 14B(2). Measures of the results or outcomes of work behaviors such as production rate or error rate may be used without a full job analysis where a review of information about the job shows that these criteria are important to the employment situation of the user. Similarly, measures such as absenteeism, tardiness or turnover may be used without a full job analysis if these behaviors are shown by a review of information about the job to be important in the specific situation. A rating of overall job performance may be used without a full job analysis only if the user can demonstrate its appropriateness for the specific job and employment situation through a study of the job. The Supreme Court held in *Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975), that measures of overall job performance should be carefully developed and their use should be standardized and controlled.

59. Q. Section 5J on interim use requires the user to have available substantial evidence of validity. What does this mean?

A. For purposes of compliance with 5J, "substantial evidence" means evidence which may not meet all the validation requirements of the Guidelines but which raises a strong inference that validity pursuant to these standards will soon be shown. Section 5J is based on the proposition that it would not be an appropriate allocation of Federal resources to bring enforcement proceedings against a user who would soon be able to satisfy fully the standards of the Guidelines. For example, a criterion-related study may have produced evidence which meets almost all of the requirements of the Guidelines with the exception that the gathering of the data of test fair-

ness is still in progress and the fairness study has not yet produced results. If the correlation coefficient for the group as a whole permits the strong inference that the selection procedure is valid, then the selection procedure may be used on an interim basis pending the completion of the fairness study.

60. Q. What are the potential consequences to a user when a selection procedure is used on an interim basis?

A. The fact that the Guidelines permit interim use of a selection procedure under some conditions does not immunize the user from liability for back pay, attorney fees and the like, should use of the selection procedure later be found to be in violation of the Guidelines. Section 5J. For this reason, users should take steps to come into full compliance with the Guidelines as soon as possible. It is also appropriate for users to consider ways of minimizing adverse impact during the period of interim use.

61. Q. Must provisions for retesting be allowed for job-knowledge tests, where knowledge of the test content would assist in scoring well on it the second time?

A. The primary intent of the provision for retesting is that an applicant who was not selected should be given another chance. Particularly in the case of job-knowledge tests, security precautions may preclude retesting with the same test after a short time. However, the opportunity for retesting should be provided for the same job at a later time, when the applicant may have acquired more of the relevant job knowledges.

62. Q. Under what circumstances may a selection procedure be used for ranking?

A. Criterion-related and construct validity strategies are essentially empirical, statistical processes showing a relationship between performance on the selection procedure and performance on the job. To justify ranking under such validity strategies, therefore, the user need show mathematical support for the proposition that persons who receive higher scores on the procedure are likely to perform better on the job.

Content validity, on the other hand, is primarily a judgmental process concerned with the adequacy of the selection procedure as a sample of the work behaviors. Use of a selection procedure on a ranking basis may be supported by content validity if there is evidence from job analysis or other empirical data that what is measured by the selection procedure is associated with differences in levels of job performance. Section 14C(9); see also Section 5G.

Any conclusion that a content validated procedure is appropriate for

ranking must rest on an inference that higher scores on the procedure are related to better job performance. The more closely and completely the selection procedure approximates the important work behaviors, the easier it is to make such an inference. Evidence that better performance on the procedure is related to greater productivity or to performance of behaviors of greater difficulty may also support such an inference.

Where the content and context of the selection procedure are unlike those of the job, as, for example, in many paper-and-pencil job knowledge tests, it is difficult to infer an association between levels of performance on the procedure and on the job. To support a test of job knowledge on a content validity basis, there must be evidence of a specific tie-in between each item of knowledge tested and one or more work behaviors. See Question 79. To justify use of such a test for ranking, it would also have to be demonstrated from empirical evidence either that mastery of more difficult work behaviors, or that mastery of a greater scope of knowledge corresponds to a greater scope of important work behaviors.

For example, for a particular warehouse worker job, the job analysis may show that lifting a 50-pound object is essential, but the job analysis does not show that lifting heavier objects is essential or would result in significantly better job performance. In this case a test of ability to lift 50 pounds could be justified on a content validity basis for a pass/fail determination. However, ranking of candidates based on relative amount of weight that can be lifted would be inappropriate.

In another instance, a job analysis may reflect that, for the job of machine operator, reading of simple instructions is not a major part of the job but is essential. Thus, reading would be a critical behavior under the Guidelines. See Section 14C(8). Since the job analysis in this example did not also show that the ability to read such instructions more quickly or to understand more complex materials would be likely to result in better job performance, a reading test supported by content validity alone should be used on a pass/fail rather than a ranking basis. In such circumstances, use of the test for ranking would have to be supported by evidence from a criterion-related (or construct) validity study.

On the other hand, in the case of a person to be hired for a typing pool, the job analysis may show that the job consists almost entirely of typing from manuscript, and that productivity can be measured directly in terms of finished typed copy. For such a job,

typing constitutes not only a critical behavior, but it constitutes most of the job. A higher score on a test which measured words per minute typed, with adjustments for errors, would therefore be likely to predict better job performance than a significantly lower score. Ranking or grouping based on such a typing test would therefore be appropriate under the Guidelines.

63. Q. If selection procedures are administered by an employment agency or a consultant for an employer, is the employer relieved of responsibilities under the Guidelines?

A. No. The employer remains responsible. It is therefore expected that the employer will have sufficient information available to show: (a) What selection procedures are being used on its behalf; (b) the total number of applicants for referral by race, sex and ethnic group; (c) the number of persons, by race, sex and ethnic group, referred to the employer; and (d) the impact of the selection procedures and evidence of the validity of any such procedure having an adverse impact as determined above.

A. CRITERION-RELATED VALIDITY

64. Q. Under what circumstances may success in training be used as a criterion in criterion-related validity studies?

A. Success in training is an appropriate criterion when it is (1) necessary for successful job performance or has been shown to be related to degree of proficiency on the job and (2) properly measured. Section 14B(3). The measure of success in training should be carefully developed to ensure that factors which are not job related do not influence the measure of training success. Section 14B(3).

65. Q. When may concurrent validity be used?

A. A concurrent validity strategy assumes that the findings from a criterion-related validity study of current employees can be applied to applicants for the same job. Therefore, if concurrent validity is to be used, differences between the applicant and employee groups which might affect validity should be taken into account. The user should be particularly concerned with those differences between the applicant group and current employees used in the research sample which are caused by work experience or other work related events or by prior selection of employees and selection of the sample. See Section 14B(4).

66. Q. Under what circumstances can a selection procedure be supported (on other than an interim basis) by a criterion-related validity study done elsewhere?

A. A validity study done elsewhere may provide sufficient evidence if four conditions are met (Sec. 7B):

1. The evidence from the other studies clearly demonstrates that the procedure was valid in its use elsewhere.

2. The job(s) for which the selection procedure will be used closely matches the job(s) in the original study as shown by a comparison of major work behaviors as shown by the job analyses in both contexts.

3. Evidence of fairness from the other studies is considered for those groups constituting a significant factor in the user's labor market. Section 7B(3). Where the evidence is not available the user should conduct an internal study of test fairness, if technically feasible. Section 7B(3).

4. Proper account is taken of variables which might affect the applicability of the study in the new setting, such as performance standards, work methods, representativeness of the sample in terms of experience or other relevant factors, and the currency of the study.

67. Q. What does "unfairness of a selection procedure" mean?

A. When a specific score on a selection procedure has a different meaning in terms of expected job performance for members of one race, sex or ethnic group than the same score does for members of another group, the use of that selection procedure may be unfair for members of one of the groups. See section 16V. For example, if members of one group have an average score of 40 on the selection procedure, but perform on the job as well as another group which has an average score of 50, then some uses of the selection procedure would be unfair to the members of the lower scoring group. See Question 70.

68. Q. When should the user investigate the question of fairness?

A. Fairness should be investigated generally at the same time that a criterion-related validity study is conducted, or as soon thereafter as feasible. Section 14B(8).

69. Q. Why do the Guidelines require that users look for evidence of unfairness?

A. The consequences of using unfair selection procedures are severe in terms of discriminating against applicants on the basis of race, sex or ethnic group membership. Accordingly, these studies should be performed routinely where technically feasible and appropriate, whether or not the probability of finding unfairness is small. Thus, the Supreme Court indicated in *Albemarle Paper Co. v. Moody*, 422 U.S. 405, that a validation study was "materially deficient" because, among other reasons, it failed to investigate fairness where it was not shown to be unfeasible to do so. Moreover,

the American Psychological Association *Standards* published in 1974 call for the investigation of test fairness in criterion-related studies wherever feasible (pp. 43-44).

70. Q. What should be done if a selection procedure is unfair for one or more groups in the relevant labor market?

A. The Guidelines discuss three options. See Section 14B(8)(d). First, the selection instrument may be replaced by another validated instrument which is fair to all groups. Second, the selection instrument may be revised to eliminate the sources of unfairness. For example, certain items may be found to be the only ones which cause the unfairness to a particular group, and these items may be deleted or replaced by others. Finally, revisions may be made in the method of use of the selection procedure to ensure that the probability of being selected is compatible with the probability of successful job performance.

The Federal enforcement agencies recognize that there is serious debate in the psychological profession on the question of test fairness, and that information on that concept is developing. Accordingly, the enforcement agencies will consider developments in this field in evaluating actions occasioned by a finding of test unfairness.

71. Q. How is test unfairness related to differential validity and to differential prediction?

A. Test unfairness refers to use of selection procedures based on scores when members of one group characteristically obtain lower scores than members of another group, and the differences are not reflected in measures of job performance. See Sections 16V and 14B(8)(a), and Question 67.

Differential validity and test unfairness are conceptually distinct. Differential validity is defined as a situation in which a given instrument has significantly different validity coefficients for different race, sex or ethnic groups. Use of a test may be unfair to some groups even when differential validity is not found.

Differential prediction is a central concept for one definition of test unfairness. Differential prediction occurs when the use of the same set of scores systematically overpredicts or underpredicts job performance for members of one group as compared to members of another group.

Other definitions of test unfairness which do not relate to differential prediction may, however, also be appropriately applied to employment decisions. Thus these Guidelines are not intended to choose between fairness models as long as the model selected is appropriate to the manner in which the selection procedure is used.

72. Q. What options does a user have if a criterion-related study is appropriate but is not feasible because there are not enough persons in the job?

A. There are a number of options the user should consider, depending upon the particular facts and circumstances, such as:

1. Change the procedure so as to eliminate adverse impact (see Section 6A);

2. Validate a procedure through a content validity strategy, if appropriate (see Section 14C and Questions 54 and 74);

3. Use a selection procedure validated elsewhere in conformity with the Guidelines (see Sections 7-8 and Question 66);

4. Engage in a cooperative study with other facilities or users (in cooperation with such users either bilaterally or through industry or trade associations or governmental groups), or participate in research studies conducted by the state employment security system. Where different locations are combined, care is needed to insure that the jobs studied are in fact the same and that the study is adequate and in conformity with the Guidelines (see Sections 8 and 14 and Question 45).

5. Combine essentially similar jobs into a single study sample. See Section 14B(1).

B. CONTENT VALIDITY

73. Q. Must a selection procedure supported by content validity be an actual "on the job" sample of work behaviors?

A. No. The Guidelines emphasize the importance of a close approximation between the content of the selection procedure and the observable behaviors or products of the job, so as to minimize the inferential leap between performance on the selection procedure and job performance. However, the Guidelines also permit justification on the basis of content validity of selection procedures measuring knowledges, skills, or abilities which are not necessarily samples of work behaviors if: (1) The knowledge, skill, or ability being measured is operationally defined in accord with Section 14C(4); and (2) that knowledge, skill, or ability is a prerequisite for critical or important work behaviors. In addition users may justify a requirement for training, or for experience obtained from prior employment or volunteer work, on the basis of content validity, even though the prior training or experience does not duplicate the job. See Section 14B(6).

74. Q. Is the use of a content validity strategy appropriate for a procedure measuring skills or knowledges which are taught in training after initial employment?

A. Usually not. The Guidelines state (Section 14C(1)) that content validity is not appropriate where the selection procedure involves knowledges, skills, or abilities which the employee will be expected to learn "on the job". The phrase "on the job" is intended to apply to training which occurs after hiring, promotion or transfer. However, if an ability, such as speaking and understanding a language, takes a substantial length of time to learn, is required for successful job performance, and is not taught to those initial hires who possess it in advance, a test for that ability may be supported on a content validity basis.

75. Q. Can a measure of a trait or construct be validated on the basis of content validity?

A. No. Traits or constructs are by definition underlying characteristics which are intangible and are not directly observable. They are therefore not appropriate for the sampling approach of content validity. Some selection procedures, while labeled as construct measures, may actually be samples of observable work behaviors. Whatever the label, if the operational definitions are in fact based upon observable work behaviors, a selection procedure measuring those behaviors may be appropriately supported by a content validity strategy. For example, while a measure of the construct "dependability" should not be supported on the basis of content validity, promptness and regularity of attendance in a prior work record are frequently inquired into as a part of a selection procedure, and such measures may be supported on the basis of content validity.

76. Q. May a test which measures what the employee has learned in a training program be justified for use in employment decisions on the basis of content validity?

A. Yes. While the Guidelines (Section 14C(1)) note that content validity is not an appropriate strategy for knowledges, skills or abilities which an employee "will be expected to learn on the job", nothing in the Guidelines suggests that a test supported by content validity is not appropriate for determining what the employee has learned on the job, or in a training program. If the content of the test is relevant to the job, it may be used for employment decisions such as retention or assignment. See Section 14C(7).

77. Q. Is a task analysis necessary to support a selection procedure based on content validity?

A. A description of all tasks is not required by the Guidelines. However, the job analysis should describe all important work behaviors and their relative importance and their level of difficulty. Sections 14C(2) and 15C(3). The

job analysis should focus on observable work behaviors and, to the extent appropriate, observable work products, and the tasks associated with the important observable work behaviors and/or work products. The job analysis should identify how the critical or important work behaviors are used in the job, and should support the content of the selection procedure.

78. Q. What is required to show the content validity of a paper-and-pencil test that is intended to approximate work behaviors?

A. Where a test is intended to replicate a work behavior, content validity is established by a demonstration of the similarities between the test and the job with respect to behaviors, products, and the surrounding environmental conditions. Section 14B(4).

Paper-and-pencil tests which are intended to replicate a work behavior are most likely to be appropriate where work behaviors are performed in paper and pencil form (e.g., editing and bookkeeping). Paper-and-pencil tests of effectiveness in interpersonal relations (e.g., sales or supervision), or of physical activities (e.g., automobile repair) or ability to function properly under danger (e.g., firefighters) generally are not close enough approximations of work behaviors to show content validity.

The appropriateness of tests of job knowledge, whether or not in pencil and paper form, is addressed in Question 79.

79. Q. What is required to show the content validity of a test of a job knowledge?

A. There must be a defined, well recognized body of information, and knowledge of the information must be prerequisite to performance of the required work behaviors. The work behavior(s) to which each knowledge is related should be identified on an item by item basis. The test should fairly sample the information that is actually used by the employee on the job, so that the level of difficulty of the test items should correspond to the level of difficulty of the knowledge as used in the work behavior. See Section 14C(1) and (4).

80. Q. Under content validity, may a selection procedure for entry into a job be justified on the grounds that the knowledges, skills or abilities measured by the selection procedure are prerequisites to successful performance in a training program?

A. Yes, but only if the training material and the training program closely approximate the content and level of difficulty of the job and if the knowledges, skills or abilities are not those taught in the training program. For example, if training materials are at a level of reading difficulty substantially in excess of the reading difficulty of

materials used on the job, the Guidelines would not permit justification on a content validity basis of a reading test based on those training materials for entry into the job.

Under the Guidelines a training program itself is a selection procedure if passing it is a prerequisite to retention or advancement. See Section 2C and 14C(17). As such, the content of the training program may only be justified by the relationship between the program and critical or important behaviors of the job itself, or through a demonstration of the relationship between measures of performance in training and measures of job performance.

Under the example given above, therefore, where the requirements in the training materials exceed those on the job, the training program itself could not be validated on a content validity basis if passing it is a basis for retention or promotion.

C. CONSTRUCT VALIDITY

81. Q. In Section 5, "General Standards for Validity Studies," construct validity is identified as no less acceptable than criterion-related and content validity. However, the specific requirements for construct validity, in Section 14D, seem to limit the generalizability of construct validity to the rules governing criterion-related validity. Can this apparent inconsistency be reconciled?

A. Yes. In view of the developing nature of construct validation for employment selection procedures, the approach taken concerning the generalizability of construct validity (section 14D) is intended to be a cautious one. However, construct validity may be generalized in circumstances where transportability of tests supported on the basis of criterion-related validity would not be appropriate. In establishing transportability of criterion-related validity, the jobs should have substantially the same major work behaviors. Section 7B(2). Construct validity, on the other hand, allows for situations where only some of the important work behaviors are the same. Thus, well-established measures of the construct which underlie particular work behaviors and which have been shown to be valid for some jobs may be generalized to other jobs which have some of the same work behaviors but which are different with respect to other work behaviors. Section 14D(4).

As further research and professional guidance on construct validity in employment situations emerge, additional extensions of construct validity for employee selection may become generally accepted in the profession. The agencies encourage further research and professional guidance with respect

to the appropriate use of construct validity.

V. RECORDS AND DOCUMENTATION

82. Q. Do the Guidelines have simplified recordkeeping for small users (employers who employ one hundred or fewer employees and other users not required to file EEO-1, *et seq.* reports)?

A. Yes. Although small users are fully covered by Federal equal employment opportunity law, the Guidelines have reduced their record-keeping burden. See option in Section 15A(1). Thus, small users need not make adverse impact determinations nor are they required to keep applicant data on a job-by-job basis. The agencies also recognize that a small user may find that some or all validation strategies are not feasible. See Question 54. If a small user has reason to believe that its selection procedures have adverse impact and validation is not feasible, it should consider other options. See Sections 7A and 8 and Questions 31, 36, 45, 66, and 72.

83. Q. Is the requirement in the Guidelines that users maintain records of the race, national origin, and sex of employees and applicants constitutional?

A. Yes. For example, the United States Court of Appeals for the First Circuit rejected a challenge, on constitutional and other grounds to the Equal Employment Opportunity Commission regulations requiring State and local governmental units to furnish information as to race, national origin and sex of employees. *United States v. New Hampshire*, 539 F. 2d 277 (1st Cir. 1976), *cert. denied*, sub nom. *New Hampshire v. United States*, 429 U.S. 1023. The Court held that the recordkeeping and reporting requirements promulgated under Title VII of the Civil Rights Act of 1964, as amended, were reasonably necessary for the Federal agency to determine whether the state was in compliance with Title VII and thus were authorized and constitutional. The same legal principles apply to recordkeeping with respect to applicants.

Under the Supremacy Clause of the Constitution, the Federal law requiring maintenance of records identifying race, sex and national origin overrides any contrary provision of State law. See Question 8.

The agencies recognize, however, that such laws have been enacted to prevent misuse of this information. Thus, employers should take appropriate steps to ensure proper use of all data. See Question #88.

84. Q. Is the user obliged to keep records which show whether its selection processes have an adverse impact on race, sex, or ethnic groups?

A. Yes. Under the Guidelines users are obliged to maintain evidence indicating the impact which their selection processes have on identifiable race, sex or ethnic groups. Sections 4 A and B. If the selection process for a job does have an adverse impact on one or more such groups, the user is expected to maintain records showing the impact for the individual procedures. Section 15A(2).

85. Q. What are the recordkeeping obligations of a user who cannot determine whether a selection process for a job has adverse impact because it makes an insufficient number of selections for that job in a year?

A. In such circumstances the user should collect, maintain, and have available information on the impact of the selection process and the component procedures until it can determine that adverse impact does not exist for the overall process or until the job has changed substantially. Section 15A(2)(c).

86. Q. Should applicant and selection information be maintained for race or ethnic groups constituting less than 2% of the labor force and the applicants?

A. Small employers and other small users are not obliged to keep such records. Section 15A(1). Employers with more than 100 employees and other users required to file EEO-1 *et seq.* reports should maintain records and other information upon which impact determinations could be made, because section 15A2 requires the maintenance of such information for "any of the groups for which records are called for by section 4B above." See also, Section 4A.

No user, regardless of size, is required to make adverse impact determinations for race or ethnic groups constituting less than 2% of the labor force and the applicants. See Question 16.

87. Q. Should information be maintained which identifies applicants and persons selected both by sex and by race or ethnic group?

A. Yes. Although the Federal agencies have decided not to require computations of adverse impact by subgroups (white males, black males, white females, black females—see Question 17), the Guidelines call for record keeping which allows identification of persons by sex, combined with race or ethnic group, so as to permit the identification of discriminatory practices on any such basis. Section 4A and 4B.

88. Q. How should a user collect data on race, sex or ethnic classifications for purposes of determining the impact of selection procedures?

A. The Guidelines have not specified any particular procedure, and the enforcement agencies will accept differ-

ent procedures that capture the necessary information. Where applications are made in person, a user may maintain a log or applicant flow chart based upon visual observation, identifying the number of persons expressing an interest, by sex and by race or national origin; may in some circumstances rely upon personal knowledge of the user; or may rely upon self-identification. Where applications are not made in person and the applicants are not personally known to the employer, self-identification may be appropriate. Wherever a self-identification form is used, the employer should advise the applicant that identification by race, sex and national origin is sought, not for employment decisions, but for record-keeping in compliance with Federal law. Such self-identification forms should be kept separately from the application, and should not be a basis for employment decisions; and the applicants should be so advised. See Section 4B.

89. Q. What information should be included in documenting a validity study for purposes of these Guidelines?

A. Generally, reports of validity studies should contain all the information necessary to permit an enforcement agency to conclude whether a selection procedure has been validated. Information that is critical to this determination is denoted in Section 15 of the Guidelines by the word "(essential)".

Any reports completed after September 25, 1978, (the effective date of the Guidelines) which do not contain this information will be considered incomplete by the agencies unless there is good reason for not including the information. Users should therefore prepare validation reports according to the format of Section 15 of the Guidelines, and should carefully document the reasons if any of the information labeled "(essential)" is missing.

The major elements for all types of validation studies include the following:

When and where the study was conducted.

A description of the selection procedure, how it is used, and the results by race, sex, and ethnic group.

How the job was analyzed or reviewed and what information was obtained from this job analysis or review.

The evidence demonstrating that the selection procedure is related to the job. The nature of this evidence varies, depending upon the strategy used.

What alternative selection procedures and alternative methods of using the selection procedure were studied and the results of this study.

The name, address and telephone number of a contact person who can

provide further information about the study.

The documentation requirements for each validation strategy are set forth in detail in Section 15 B, C, D, E, F, and G. Among the requirements for each validity strategy are the following:

1. Criterion-Related Validity

A description of the criterion measures of job performance, how and why they were selected, and how they were used to evaluate employees.

A description of the sample used in the study, how it was selected, and the size of each race, sex, or ethnic group in it.

A description of the statistical methods used to determine whether scores on the selection procedure are related to scores on the criterion measures of job performance, and the results of these statistical calculations.

2. Content Validity

The content of the job, as identified from the job analysis.

The content of the selection procedure.

The evidence demonstrating that the content of the selection procedure is a representative sample of the content of the job.

3. Construct Validity

A definition of the construct and how it relates to other constructs in the psychological literature.

The evidence that the selection procedure measures the construct.

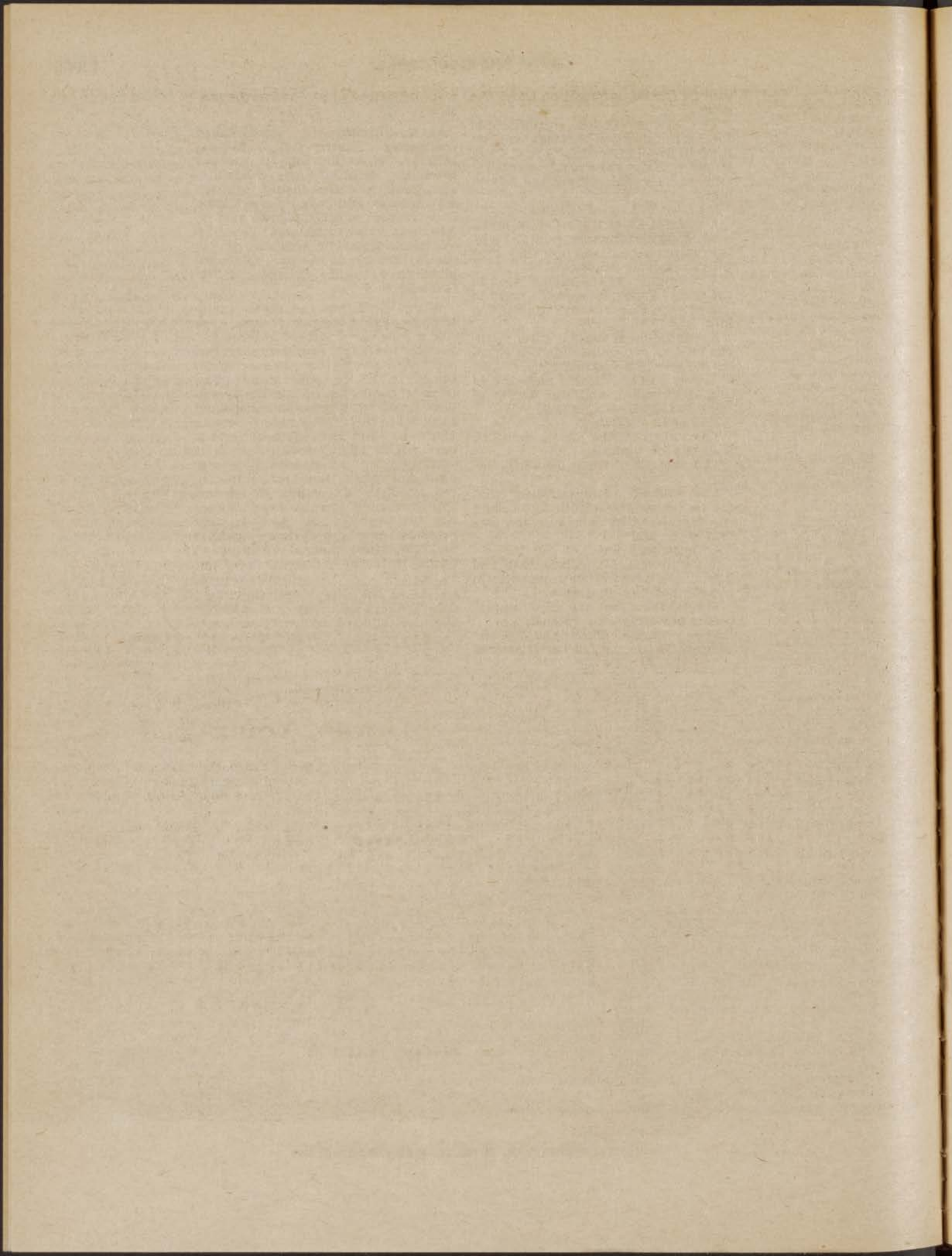
The evidence showing that the measure of the construct is related to

work behaviors which involve the construct.

90. Q. Although the records called for under "Source Data", Section 15B(11) and section 15D(11), are not listed as "Essential", the Guidelines state that each user should maintain such records, and have them available upon request of a compliance agency. Are these records necessary? Does the absence of complete records preclude the further use of research data compiled prior to the issuance of the Guidelines?

A. The Guidelines require the maintenance of these records in some form "as a necessary part of the study." Section 15A(3)(c). However, such records need not be compiled or maintained in any specific format. The term "Essential" as used in the Guidelines refers to information considered essential to the validity report. Section 15A(3)(b). The Source Data records need not be included with reports of validation or other formal reports until and unless they are specifically requested by a compliance agency. The absence of complete records does not preclude use of research data based on those records that are available. Validation studies submitted to comply with the requirements of the Guidelines may be considered inadequate to the extent that important data are missing or there is evidence that the collected data are inaccurate.

[FR Doc. 79-6323 Filed 3-1-79; 8:45 am]



FRIDAY, MARCH 2, 1979

PART V



**DEPARTMENT OF
HEALTH,
EDUCATION, AND
WELFARE**

**Office of Human
Development Services**

**Administration for
Children, Youth and
Families**



**CHILD ABUSE AND
NEGLECT GRANTS
PROGRAM**

Fiscal Year 1979 State Grants

Registered for
protection

[4110-92-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

Administration for Children, Youth and
Families

[Notice No. 13.628-791]

CHILD ABUSE AND NEGLECT GRANTS PROGRAM

Fiscal Year 1979 State Grants

AGENCY: The Office of Human Development Services, DHEW.

SUBJECT: Announcement of Availability of Grant Funds for fiscal year 1979 Child Abuse and Neglect Grants Program—State Grants.

SUMMARY: The Administration for Children, Youth and Families announces that applications are being accepted for State grants for fiscal year 1979. This program is authorized by the Child Abuse Prevention and Treatment Act, Pub. L. 93-247, as amended. Regulations governing this program are published in the *Code of Federal Regulations* in 45 CFR Part 1340.

DATES: The closing date for receipt of applications is May 31, 1979.

SCOPE OF THIS NOTICE

The Child Abuse Prevention and Treatment Act (Pub. L. 93-247, as amended) in Section 4(b)(1) provides that the Secretary, through the National Center on Child Abuse and Neglect (NCCAN) is authorized to make grants to States.

This Notice identifies NCCAN's fiscal year 1979 objectives and funding priorities for States desirous of making application for a State grant.

PROGRAM PURPOSE

The primary purpose of the Child Abuse and Neglect State Grants Program is to support the States in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.

ELIGIBLE APPLICANTS

The Regulations implementing the legislation provide that "Whichever State office, agency or organization is designated by the Governor, may apply for financial assistance under section 4(b)(1) (of the Act) for the payment of reasonable and necessary expenses in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs." (45 CFR 1340.3-2(b)) In virtually all States the Governor has designated the agency which may apply for a State grant.

The term "State" as defined in Section 4(b)(1) of the Act includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

In order for a State to qualify for a State grant, the State must meet the eligibility criteria stipulated in Appendix C.

SPECIAL CONDITIONS FOR FUNDING

States which have been awarded fiscal year 1978 State grants with special conditions must satisfy these conditions before making application for a fiscal year 1979 State grant. Grant applications from States which have not fully satisfied all of the special conditions by May 31, 1979, the deadline for making application, will not be considered for funding in fiscal year 1979.

However, any State with special conditions that has its legislature in session and a bill introduced to amend State law, which in turn would satisfy an eligibility requirement or any requirement, may request in writing by May 1, 1979 an extension of time for satisfying special conditions.

AVAILABLE FUNDS

Pub. L. 93-248, as amended, provides that 25 percent of the funds appropriated in fiscal year 1979 for the implementation of the Act will be used for making State grants. Based upon the fiscal year 1979 continuing resolution of \$18.9 million for the National Center on Child Abuse and Neglect a total of \$4,732,000 will be available for making State grants. Funds are allocated to the States on the basis of the following criteria: An amount of \$25,000 plus an additional amount bearing the same ratio to the total amount made available for the purpose as the number of children under the age of eighteen in each State bears to the total number of children under eighteen in all States.

The tentative allocation for each State is provided in Appendix A to this Notice.

The actual allocation to each eligible State will be slightly higher. Some states will not apply or will be found ineligible and their cumulative allocations for FY 1979 will be distributed, by the above stated formula, to eligible States. As soon as the number of eligible States and States not applying for a grant can be determined, the allocations to eligible States can be finalized. However, States should not delay the submission of their application until the actual allocation is known. Instead, they should use the tentative allocations provided in Appendix A for preparing their application.

The Child Abuse and Neglect State Grant program is not a special revenue sharing program for the ongoing support and maintenance of local or State programs for the prevention and treatment of child abuse and neglect. Funds awarded under it should support specific developmental or start-up activities (usually, no longer than three years in duration for any one project activity) such as those described under "Program Objectives" in this Notice.

USE OF UNOBLIGATED BALANCE

Pub. L. 93-247, as amended, provides that any State which fails to obligate funds within 18 months after the award will receive a reduction in the next grant award in an amount equal to the unobligated balance unless the Secretary determines that extraordinary reasons justify the failure to so obligate.

PROGRAM OBJECTIVES

Applications are solicited from States for projects which reflect the following program objectives. They are not listed in any priority order.

1. Establishment of an organizationally visible State Protective Services unit responsible for policy and program direction. Such unit would provide a focal point for coordinating program activities; developing and promulgating staff manuals and procedural guides; enhancing resource development; convening child protection coordinating committees and conducting research and demonstration programs. These responsibilities are suggestive and not exhaustive.

2. Develop and strengthen hot lines, helplines, and parent self-help programs.

3. Prevention and correction of institutional child abuse and neglect.

Develop, publish, and promulgate regulations, operational procedures and guidelines for the identification, reporting and investigation of all incidents of child abuse and neglect in residential care facilities.

Establish a special unit for this purpose at the State level.

Support review commissions at the individual institution or groups of institutions.

Establish and implement a monitoring system.

4. Develop a training capacity within the State agency that includes a plan for meeting the training needs of those working in a child protective service system. The use of grant funds for training those providing direct service to clients is specifically excluded as Title XX and Title IV-B funds are available for this use.

5. Innovative prevention and treatment programs which hold promise for adding a new dimension of service

for abused and neglected children and their families. This does not include the on-going support or maintenance of current programs.

THE APPLICATION PROCESS

AVAILABILITY OF APPLICATION FORMS

The agency, designated by the Governor, that wishes to apply under this grant Notice may request application forms from the appropriate HEW Regional Office (See Appendix B). The application consists of two forms:

1. The Eligibility Statement (Form 627).
2. The Application for Federal Assistance (Form 424).

States which have never applied or who have previously been found ineligible for a State Child Abuse and Neglect grant are encouraged to apply at the earliest possible time but in no event by no later than May 31, 1979 as described in the section dealing with the Closing Date for receipt of Applications.

No applications will be considered unless both forms are completed according to the instructions provided.

A-95 CLEARINGHOUSE NOTICE

In compliance with the Department of Health, Education, and Welfare's implementation of Office of Management and Budget Circular No. A-95 Revised (interim procedures at 41 FR 3160, July 29, 1976), applicants who request grant support must, prior to submission of an application, notify both the State and Area-wide A-95 Clearinghouse of the intent to apply for Federal assistance. If the application is for a Statewide project which does not affect areawide or local planning and programs, the notification need be sent only to the State Clearinghouse. Some State and Area Clearinghouses provide their own forms on which such information is to be submitted. Applicants should contact the appropriate State Clearinghouse (listed at 42 FR 2210, January 10, 1977) for information on how they can meet the A-95 requirements.

CRITERIA FOR REVIEW AND EVALUATION

Criteria utilized in the review process are the eligibility requirements contained in 45 CFR 1340.3-3. (See Appendix C) The Regional Office has been delegated responsibility for the review and approval of the Eligibility Statement and the Application for Federal Assistance.

Eligible applicants submitting applications are notified through issuance of a Notice of Grant Awarded which sets forth the amount of funds awarded, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is

given, and the total period for which support is contemplated.

APPLICATION SUBMISSION

In order to be considered for a grant under the State Child Abuse and Neglect Grants Program, an application must be submitted on the forms and in the manner described above. The application must be signed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant award, including the regulations of the Program. One signed original and two copies of the grant application, including all attachments, are required.

Applications sent by mail should be addressed to the appropriate Regional Office. Addresses will be provided in the Application Kits.

CLOSING DATE FOR RECEIPT OF APPLICATIONS

The closing date for receipt of applications under this Notice is May 31, 1979, except as otherwise stated in the section "Special Condition for Funding." Applications received after the close of business on May 31, 1979, will be considered ineligible and will not be reviewed and evaluated.

An application sent by mail will be considered to be received on time by the HEW Regional Office if:

1. The application was sent by registered or certified mail not later than May 31, 1979, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service.
2. An application delivered by hand must be delivered to the appropriate HEW Regional Office before close of business on May 31, 1979. As the Regional Offices have different hours of operation, applicants may wish to contact the Regional Office for the time of day that the office closes.

(Catalog of Federal Domestic Assistance Program Number 13.628, Child Development—Child Abuse)

Dated: February 9, 1979.

BLANDINA C. RAMERIZ,
Commissioner for Children,
Youth and Families.

Approved: February 23, 1979.

ARABELLA MARTINEZ,
Assistant Secretary for
Human Development Services.

APPENDIX A

(Tentative Allocations)

REGION I	
Connecticut.....	\$68,425
Maine.....	41,577
Massachusetts.....	105,647
New Hampshire.....	37,879
Rhode Island.....	38,081
Vermont.....	32,458

APPENDIX A—Continued

(Tentative Allocations)

REGION II	
New Jersey.....	130,279
New York.....	277,035
Puerto Rico.....	89,803
Virgin Islands.....	26,926

REGION III	
Delaware.....	33,725
Dist. of Col.....	34,232
Maryland.....	85,954
Pennsylvania.....	188,840
Virginia.....	100,695
West Virginia.....	52,621

REGION IV	
Alabama.....	82,213
Florida.....	138,537
Georgia.....	105,711
Kentucky.....	78,355
Mississippi.....	66,248
North Carolina.....	108,801
South Carolina.....	71,770
Tennessee.....	89,145

REGION V	
Illinois.....	194,058
Indiana.....	107,281
Michigan.....	167,513
Minnesota.....	85,599
Ohio.....	185,851
Wisconsin.....	95,630

REGION VI	
Arkansas.....	57,991
Louisiana.....	91,425
New Mexico.....	45,630
Oklahoma.....	66,451
Texas.....	230,937

REGION VII	
Iowa.....	67,819
Kansas.....	58,295
Missouri.....	94,414
Nebraska.....	48,467

REGION VIII	
Colorado.....	65,184
Montana.....	37,018
North Dakota.....	35,195
South Dakota.....	35,752
Utah.....	49,278
Wyoming.....	31,547

REGION IX	
No. Marianas.....	25,443
American Samoa.....	25,793
Arizona.....	62,551
California.....	341,574
Guam.....	27,323
Hawaii.....	39,146
Nevada.....	34,941
Trust Territory.....	28,199

REGION X	
Alaska.....	32,662
Idaho.....	39,501
Oregon.....	59,612
Washington.....	78,963

Totals..... 4,732,000

APPENDIX B

REGIONAL PROGRAM DIRECTORS, ACYF

Region I

Roy Fleischer, Acting Regional Program Director, Administration for Children, Youth and Families, Room 2000, JFK Federal Building, Government Center, Boston, Massachusetts 02203, FTS 223-6450 (617) 223-6450.

Region II

Elaine Danavall, Acting Regional Program Director, Administration for Children,

Youth and Families, Room 4149, Federal Building, New York, New York 10007, FTS 264-2974 (212) 264-2974.

Region III

Fred Digby, Acting Regional Program Director, Administration for Children, Youth and Families, P.O. Box 13716-3535 Market Street, Philadelphia, Pennsylvania 19101, FTS 596-6763 (215) 596-6776.

Region IV

John Jordan, Acting Regional Program Director, Administration for Children, Youth and Families, 101 Marietta Tower, Suite 903, Atlanta, Georgia 30323, FTS 242-2134 (404) 221-2134.

Region V

Hilton Baines, Acting Regional Program Director, Administration for Children, Youth and Families, 300 South Wacker Drive, 15th Floor, Chicago, Illinois 60606, FTS 353-1781 (312) 353-6503.

Region VI

David Chapa, Acting Regional Program Director, Administration for Children, Youth and Families, 1200 Main Tower Bldg., Dallas, TX 75205, FTS 729-1981 (214) 767-2976.

Region VII

Richard Rosenthal, Acting Regional Program Director, Administration for Children, Youth and Families, 601 E. 12th Street, 3rd Floor, Federal Bldg., Kansas City, Missouri 64106, FTS 758-5401 (816) 374-5401.

Region VIII

John Garcia, Acting Regional Program Director, Administration for Children, Youth and Families, 1961 Stout Street, Denver, Colorado 80294, FTS 327-3106 (303) 837-3106.

Region IX

Gerald Hastings, Acting Regional Program Director, Administration for Children, Youth and Families, 50 United Nations Plaza, Rm. 144, San Francisco, California 94102, FTS 556-6153 (415) 556-6153.

Region X

William Hayden, Acting Regional Program Director, Administration for Children, Youth and Families, MS 622, Arcade Plaza Bldg., 1321 Second Ave., Seattle, Washington 98101, FTS 399-0838 (206) 442-0838.

APPENDIX C

§ 1340.3-3 Qualification for assistance.

(a) The Act enumerates ten elements of a comprehensive system to prevent and treat child abuse and neglect which a State must have in order to qualify for assistance under section 4(b)(1). The enactment of identical laws and procedures in the States is not necessary. Rather, as its purpose, the Act seeks to insure that all States receiving assistance under this subsection (in meeting the ten requirements) must provide what may be grouped into four fundamental child protective capabilities: (1) Detection through third party reporting of children in danger, including mandatory and permissive reporting of suspected child abuse and neglect; (2) child protective services to provide non-criminal investigations for the verification of reports, to provide immediate protection

of children through such means as protective custody, and to provide rehabilitative and ameliorative services; (3) juvenile or family court action to remove a child or to impose treatment services; and (4) law enforcement investigations and criminal court prosecution, when appropriate.

(b) Similarly, it is not necessary for States to adopt language for the definition of "child abuse and neglect" identical to that used in the Act. A State definition which is the same in substance as the one set forth in this part will be sufficient. In addition, nothing in this part is intended to prevent a State from further elaborating on the definition or from providing additional grounds to consider a child abused or neglected. This part takes this approach in recognition of the need to allow and encourage flexibility and innovation in light of the diverse local conditions found from State to State and community to community.

(c) Finally, in order to facilitate compliance, this part makes a distinction between requirements that can be satisfied by a specific State law and those that can be satisfied by a legally authorized and legally binding administrative procedure, if certified by the State's Attorney General.

(d) In order for a State to qualify for assistance under section 4(b)(1) of the Act, the State shall satisfy each of the following ten requirements:

(1) The State must have in effect a child abuse and neglect law which includes provisions for immunity for all persons reporting, whether mandated by law or not, instances of known or reasonably suspected child abuse and neglect, from civil or criminal prosecution under any State or local law, arising out of such reporting. In the absence of a specific statutory provision in an existing child abuse and neglect reporting law, this requirement may be satisfied, but only until July 1, 1975, or the close of the next session of the State legislature, whichever is later, by a legal opinion of the State's Attorney General holding that such immunity exists under State law.

(2)(i) The State must provide for the reporting of known or suspected instances of child abuse and neglect. This requirement shall be deemed satisfied if a State requires specified persons by law, and has a law or administrative procedure which requires, allows, or encourages all other citizens, to report known or suspected instances of child abuse and neglect to one or more properly constituted authorities with the power and responsibility to perform an investigation and take necessary ameliorative and protective steps as required in paragraph (3). A properly constituted authority may include the police, the juvenile court or any agency thereof, or a legally mandated, public or private child protective agency; *Provided*, However, that a properly constituted authority must be an agency other than the agency, institution or facility involved in the acts or omissions, if the report of child abuse and neglect involves the acts or omissions of a public or private agency or other institution or facility.

(ii) In the absence of a specific statute, the requirements of this subsection may be satisfied by an opinion of the State Attorney General holding that the State administrative procedures in this regard are legally binding.

(3)(i) A State must provide that upon the receipt of a report of known or suspected instance of child abuse or neglect an appropri-

ate investigation by a properly constituted authority shall be initiated promptly to substantiate the accuracy of the report. Such investigation may include contact with central registers, field investigations and interviews, home visits, consultation with other agencies, medical examinations, and psychological and social evaluations.

(ii) The State must provide further that, upon a finding of abuse or neglect, immediate steps, as required by law and/or administrative procedure, shall be taken to protect the health and welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect. Such steps may include multidisciplinary teams, instruction in education for parenthood, protective and preventive social counseling, foster care, emergency caretaker service, emergency homemaker service emergency shelter care, emergency medical service, and, if appropriate, criminal court or juvenile court action, in order to protect the child and help strengthen the family, help the parents in their child rearing responsibilities, and if necessary, remove the child from a dangerous situation.

(4) The State must demonstrate that there are in effect throughout the State, in connection with the enforcement of child abuse and neglect laws and with the reporting of suspected instances of child abuse and neglect, such administrative procedures, such personnel trained in child abuse and neglect prevention and treatment, such training procedures, such institutional and other facilities (public and private), and such related multidisciplinary programs and services as may be necessary or appropriate to assure that the State has operational procedures and capabilities sufficient to deal effectively with child abuse and neglect cases in the State. Such operational procedures and capabilities shall include: provision for receipt, investigation and verification of reports; provision for the determination of treatment or ameliorative social service and medical needs; provision of such services; and, when necessary, resort to criminal or juvenile court.

(5) The State must provide for methods to preserve the confidentiality of all records concerning reports of child abuse and neglect in order to protect the rights of the child, his parents or guardians. This section shall be satisfied only if a State has a law which makes such records confidential and which makes any person who permits or encourages the unauthorized dissemination of their contents guilty of a crime. Such law may allow access to such records but only to the following agencies and persons: (i) A legally mandated, public or private child protective agency investigating a report of known or suspected child abuse or neglect or treating a child or family which is the subject of a report or record; (ii) a police or other law enforcement agency investigating a report of known or suspected child abuse or neglect; (iii) a physician who has before him a child whom he reasonably suspects may be abused or neglected; (iv) a person legally authorized to place a child in protective custody when such person has before him a child whom he reasonably suspects may be abused or neglected and such person requires the information in the report or record in order to determine whether to place the child in protective custody; (v) an agency having the legal responsibility or authorization to care for, treat, or supervise a

child who is the subject of a report or record, or a parent, guardian, or other person who is responsible for the child's welfare; (vi) any person named in the report or record who is alleged to be abused or neglected; if the person named in the report or record is a minor or is otherwise incompetent, his guardian ad litem; (vii) a parent, guardian, or other person responsible for the welfare of a child named in a report or record, with protection for the identity of reporters and other appropriate persons; (viii) a court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in camera inspection, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it; (ix) a grand jury upon its determination that access to such records is necessary in the conduct of its official business; (x) any appropriate State or local official responsible for the child protective service or legislation carrying out his official functions; (xi) any person engaged in a bona fide research purpose, provided, however, that no information identifying the subjects of the report shall be made available to the researcher unless it is absolutely essential to the research purpose and the appropriate State official gives prior approval. Nothing in these regulations is intended to affect a State's laws or procedures concerning the confidentiality of its criminal court and its criminal justice system.

(6) The State must provide for the cooperation of law enforcement officials, courts of competent jurisdiction, and all appropriate State agencies providing human services in relation to preventing, identifying and treating child abuse and neglect. Such cooperation may include joint consultation and services, joint planning, joint case management, joint public education and information service, utilization of each other's facilities, and joint staff and other training.

(7) The State must provide that in every case involving an abused or neglected child which results in a judicial proceeding, a

guardian ad litem shall be appointed to represent the child in such proceedings. The requirement of this clause may be satisfied by a State law or by a legal opinion of the State's Attorney General holding that such appointments can be made, and by a statement from the Governor that such appointments are made, in all cases. Such guardian ad litem need not be an attorney; however, such representative may be an attorney charged with the presentation in a judicial proceeding of the evidence alleged to amount to the abuse and neglect, so long as his legal responsibility includes representing the rights, interests, welfare, and well-being of the child; where such appointments are made, the legal opinion of the State Attorney General must specify that such attorney has said legal responsibility.

(8) The State must provide that the aggregate of State support for programs or projects related to child abuse and neglect assisted by State funds shall not be reduced below the level provided during Federal fiscal year 1973, and set forth policies and procedures designed to assure that Federal funds made available under this Act for any fiscal year will be so used as to supplement and, to the extent practicable, increase the level of State funds which would, in the absence of Federal funds, be available for such programs and projects.

(9) The State must provide for dissemination of information to the general public with respect to the problem of child abuse and neglect and the facilities and the prevention and treatment methods available to combat instances of child abuse and neglect; and

(10) To the extent feasible, the State must insure that parental organizations combating child abuse and neglect, as recognized by the State, receive preferential treatment.

In addition, whenever the term "child abuse and neglect" is used (laws, administrative procedures, etc.) it must satisfy all elements of the definition expressed in 45 CFR 1340.1-2(b) of the Regulations which is Question 1 of the Eligibility Statement (HEW Form 627).

[FR Doc. 79-6239 Filed 3-1-79;8:45 am]