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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and general officers of the Department to reflect the transfer of certain functions from the Inspector General to the Assistant Secretary for Administration and the Director, Office of Personnel and to reflect personnel responsibilities for the National Finance Center.

EFFECTIVE DATE: August 2, 1984.

FOR FURTHER INFORMATION CONTACT: Lawrence S. Cavallaro, Chief, Employee Appeals Staff, Office of Personnel, U.S. Department of Agriculture, Washington, D.C., (202) 447-7467.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are revised to reflect the transfer of responsibility for administering the contracts for investigations of Equal Employment Opportunity complaints from the Inspector General to the Assistant Secretary for Administration and the Director, Office of Personnel. In addition, the delegations of authority are changed to show that the National Finance Center is responsible for providing its own personnel services.

This rule relates to internal management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and this is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegation (Government Agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise stated.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development and Assistant Secretaries

2. Section 2.25 is amended by adding a new paragraph (e)(15) as follows:

§ 2.25 Delegations of authority to the Assistant Secretary for Administration.

* * * * *

(e) * * *

(15) Administer the contracts for the investigation of USDA EEO Complaints.

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Subpart J—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.78 is amended by adding a new paragraph (a)(27) and by revising paragraph (a)(13)(iii) to read as follows:

§ 2.78 Director, Office of Personnel.

(a) * * *

(13) * * *

(iii) The offices and agencies reporting to the Assistant Secretary for Administration, except the National Finance Center; and

* * * * *

(27) Administer the contracts for the investigation of USDA EEO Complaints.

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For Subpart C.

Richard E. Lyng,
Acting Secretary of Agriculture.

For Subpart J.

John J. Franke, Jr.,
Assistant Secretary for Administration.

[FR Doc. 84-20465 Filed 8-1-84; 8:45 am]
BILLING CODE 3410-01-M

Federal Grain Inspection Service

7 CFR Part 800

Conditions For Obtaining or Withholding Official Services; and Delegations, Designations, Approvals, and Contractual Arrangements

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is publishing, without change as a final rule, a proposed rule published in the **Federal Register** on April 3, 1984, (49 FR 13148), in which certain changes were made to the regulations under the United States Grain Standards Act, as amended (Act), concerning Conditions for Obtaining or Withholding Official Services; and Delegations, Designations, Approvals, and Contractual Arrangements. The changes involve rewriting, revising, and reorganizing these regulations to simplify, clarify, and condense certain language; and promote a better understanding of policy and procedure.

In addition, as mandated by changes in the Act, other changes allow additional eligible States to be delegated, and to include automatic termination of a delegation or designation when user fees are not paid within 30 days of the due date.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information and Resources Management Branch, Resources Management Division, USDA, FGIS, Room 0667 South Building, 14th Street and Independence Ave., SW., Washington, D.C. 20250, telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Kenneth A. Gilles, Administrator, FGIS, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (a) It applies to a limited number of (1) States and private grain inspection and weighing agencies which are delegated or designated under the Act, (2) scale testing and certification organizations, and (3) persons under contract with the Service; all of which are not considered to be small entities because they are dominant in their area of operation; (b) most users of the inspection and weighing services do not meet the requirements for small entities; and (c) this action poses no new or additional duties or obligations to business entities involved in the loading, weighing, handling, or sampling of grain.

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this final rule have been approved by the Office of Management and Budget under control numbers 0580-0003 and 0580-0006.

Regulations Review

In compliance with the requirement for periodic review of existing regulations, FGIS reviewed and proposed certain changes to the regulations (7 CFR 800.45-800.52 and 800.195-800-208) regarding Conditions for Obtaining or Withholding Official Services; and Delegations, Designations, Approvals, and Contractual Arrangements in the April 3, 1984, issue of the Federal Register (49 FR 13148). Comments were to be submitted by June 4, 1984.

Two organizations commented on the proposed changes to the regulations. One suggested using the National Bureau of Standards Accreditation Program instead of the FGIS Scale Testing and Certification Program. The commentor also recommended that FGIS use a trade association which does laboratory accreditations as a source of persons that may be interested in contracting to provide certain inspection services. The second organization agreed with the proposed changes.

FGIS has been working closely with a National Bureau of Standards task group on accreditation systems and will utilize these systems as appropriate. Additionally, an FGIS contracting for certain inspection services would be based upon competitive bidding as necessary and appropriate Departmental procedures would have to be followed.

FGIS is publishing as final rule the text of the proposed rule without change.

The review included a determination of the continued need for and consequences of the regulations. An objective of the review was to ensure that the language of the regulations is clear and that the regulations are consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. FGIS, however, is amending §§ 800.45-800.52 and §§ 800.195-800.208.

Section 800.46 contained requirements for obtaining official services. Sections 800.195-800.208 also contained provisions regarding conditions for obtaining official services (approval of weighing facilities). FGIS is consolidating all the provisions for obtaining official services in § 800.46.

In addition, FGIS is amending the following sections:

(a) *Section 800.45, Availability of official services,* by (1) clarifying and condensing language; (2) eliminating superfluous references to U.S. grain in Canadian ports; (3) combining language regarding inspection, sacked grain, and weighing; and (4) restructuring the section as: Original inspection and weighing services; Reinspection, review of weighing, and appeal inspection services; and Proof of authorization.

(b) *Section 800.46, Requirements for obtaining official services,* by (1) clarifying and condensing language, and adding representative samples as a condition for accessibility, and (2) including present §§ 800.116 (a) and (b), 800.126 (a) and (b), and 800.136 (a) and (b) provisions for completing application forms in § 800.46(b)(8).

(c) *Section 800.47, Withdrawal of request for official sevices,* by (1) clarifying and condensing language; (2) eliminating subparagraph (b) which already appears in § 800.51; and (3) restructuring so there are no subparagraphs.

(d) *Section 800.48, Dismissal of request for official services,* by (1) clarifying and condensing language; (2) restructuring subparagraph (a) to read *General, Original services, Reinspection and appeal inspection services, and Review of weighing services;* and (3) including provisions for dismissing requests for official services presently contained in §§ 800.17, 800.127, and 800.137 of the regulations.

(e) *Section 800.49, Conditional withholding of official services,* by clarifying and condensing language.

(f) *Section 800.50, Refusal of official services,* no change.

(g) *Section 800.51, Expenses of agency, field office, or Board of Appeals and Review,* by clarifying and condensing language.

(h) *Section 800.52, Official services not to be denied,* no change.

The amendment to §§ 800.195-800.208 involves reorganizing the sections by subject. Thus, the four subject topics, *Delegations, Designations, Approvals, and Contracts,* are each addressed in a separate section.

In addition, FGIS is revising the following sections:

(a) *Section 800.195* is amended by changing the heading to read *Delegations,* condensing language, and including pertinent provisions contained in §§ 800.71, 800.200, 800.201(a), 800.202(a), 800.204, 800.206(a), 800.207, and 800.208. Other changes include incorporating recent amendments to the Act. The Agriculture and Food Act of 1981, (Pub. L. 97-98, 95 Stat. 1213, December 22, 1981), amended Section 7(e) of the Act to allow additional eligible States to be delegated. Prior to the amendment, only State agencies that were performing official inspection at export port locations under the Act on July 1, 1976, and were qualified and met the criteria in section 7 (f)(1)(A) of the Act, could be delegated.

The amendment to the Act provides for delegation of additional States which (1) were performing official inspection at an export port location at any time prior to July 1, 1976; (2) were designated under section 7(f) of the Act on December 22, 1981; and (3) operate in a State from which total annual grain exports do not exceed, as determined by the Administrator, 5 percent of the total amount of grain exported from the United States annually. FGIS is addressing this new provision in § 800.195(c).

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, August 13, 1981), amended sections 7(j) and 7A(1) of the Act by providing for automatic termination of a delegation for failure to pay user fees within 30 days after the date due. The amendment also provides for reinstatement of the delegation upon payment of the fees plus late payment penalties. These provisions have already been included in § 800.71. FGIS is addressing these provisions in § 800.195(g).

FGIS also is changing the description of the responsibility assigned to a delegated State from either the switching limits, or the area within a 25-mile radius, to providing official services to export elevators at export port locations in the State (see § 800.195(f)(1)). This alleviates any confusion caused when a request for service is made at an export port location by a nonexport elevator within these limits.

Section 800.195 also is revised to provide for: (1) Rotation of licensees, where feasible, among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighing systems; (2) prohibiting delegated States or their employees from engaging in any outside work or activity that consists, in whole or in part, of performing unofficially any function or related activity they perform officially; and (3) a statement of the responsibility to adhere to the conflict-of-interest provisions of the Act and regulations. These provisions are part of the delegation of authority signed by each delegated State and FGIS has included them in § 800.195(f). Further revision provides explicitly for Class Y weighing at export elevators at export port locations. FGIS has provided Class Y weighing at export elevators at export locations since November 24, 1980. FGIS is including these provisions in § 800.195(a).

(b) *Section 800.196* is revised by changing the heading to read *Designations*, expanding certain language, and clarifying and condensing other language including pertinent provisions contained in §§ 800.200, 800.200(a), 800.201(b), 800.203, 800.205, 800.206(b), 800.207, and 800.208, and by incorporating an amendment to the Act by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, August 13, 1981). The Omnibus Budget Reconciliation Act amended sections 7(j) and 7A(1) of the Act by providing for automatic termination of a designation for failure to pay user fees within 30 days after due. The amendment also provides for reinstatement of the delegation upon payment of the fees plus late payment penalties. These provisions are already in § 800.71. FGIS is addressing these new provisions in § 800.196(h)(2).

FGIS is deleting the requirement that file copies of official certificates be carbon copies. This will allow designated agencies to use microrecords to maintain copies of official certificates.

Section 800.196 also is revised to provide for: (1) Rotating agency licensees, where feasible, among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighing systems; (2) prohibiting designated agencies, or their employees, from engaging in any outside work or activity that consists, in whole or in part, or performing unofficially any function or related activity they perform officially; and (3) a statement of the responsibility of agencies to adhere to the conflict-of-interest provisions of the Act and regulations. These provisions are part of the designation agreement signed by each agency, and FGIS is including them in § 800.196(g).

(c) *Section 800.197*, is revised by changing the heading to read *Approval* of scale testing and certification organizations, clarifying and condensing language, and including pertinent provisions contained in §§ 800.200, 800.201(c), and 800.208. Other changes include requiring State and local governmental agencies, which want to perform scale testing and certification under the Act and are not already approved, to request approval. Before the revision, the regulations (§ 800.198(c)) granted automatic approval to State and local governmental weights and measures organizations operating on September 29, 1977. A request for approval was not required. Automatic approval was included to ensure that there would be no lapse in scale testing and certification services, for purposes of the Act, when the initial regulations were implemented.

FGIS evaluated and approved several State organizations to perform scale testing and certifying for Class X and Class Y weighing. Since the initial approval process is over, exemption for State and local governmental scale testing and certification organizations is no longer needed. FGIS is deleting the exemption provisions and will require that a request be submitted.

Furthermore, State and local governmental scale testing and certification organizations which were operating on September 29, 1977, are subject to the termination of approval provisions. These organizations were exempted from the termination of approval provisions in conjunction with their exemption from the application provisions previously discussed. Approvals of scale testing and certification organizations do not have a termination date but are subject to termination for cause. FGIS is deleting exemption in § 800.201(c).

(d) *Section 800.198*, is amended by changing the heading to read Contracts, adding language in § 800.196(d), redefining the types of services that FGIS may contract, and including pertinent provisions contained in §§ 800.200, 800.201(d), and 800.202(d).

(e) *Section 800.199*, is amended by changing the heading to read *Conflict of interest* and adding pertinent language in § 800.196(e).

(f) Sections 800.200–800.208, is deleted and the provisions moved to sections 800.45–800.52, and 800.195–800.199 as described above.

List of Subjects in 7 CFR Part 800

Administrative practices and procedure, Export, Grain.

PART 800—GENERAL REGULATIONS

Accordingly, Part 800 is amended by:

1. Revising §§ 800.45–800.49, to read as follows:

Conditions for Obtaining or Withholding Official Services

§ 800.45 Availability of official services.

(a) *Original inspection and weighing services.* Original inspection and weighing services on grain are available according to this section and §§ 800.115 through 800.119, when requested by an interested person.

(b) *Reinspection, review of weighing, and appeal inspection services.* Reinspection, review of weighing, appeal inspection, and Board appeal inspection services are available when requested by an interested person, according to §§ 800.125 through 800.130 and §§ 800.135 through 800.140.

(c) *Proof of authorization.* If an application for official services is filed by a person representing the applicant, the agency or the field office receiving the application may require written proof of the authority to file the application. (Approved by the Office of Management and Budget under control number 0580–0003)

§ 800.46 Requirements for obtaining official services.

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

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

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

(3) *Notice of changes.* The operator of each facility at which official services are performed must notify the appropriate agency or field office promptly, in full detail, of changes in the grain handling and weighing facilities, equipment, or procedures at the elevator that could or would affect the proper performance of official services.

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

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

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

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

(8) *Written confirmations.* When requested by the agency or field office, verbal requests for official services shall be confirmed in writing. Each written request shall be signed by the applicant, or the applicant's agent, and shall show or be accompanied by the following information: (i) The identification, quantity, and specific location of the grain; (ii) the name and mailing address of the applicant; (iii) the kind and scope of services desired; and (iv) any other information requested by the agency or field office.

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

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

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

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

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

(2) *Conditions.* The facility shall provide the following information annually to the Service: (i) The facility owner's name and address; (ii) the facility operator's name and address; (iii) the name of each individual employed by the facility as a weigher and a statement that each individual: (A) Has a technical ability to operate grain weighing equipment and (B) has a reputation for honesty and integrity; (iv) a blueprint or similar drawing of the facility showing the location of: (A) The loading, unloading, and grain handling systems; (B) the scale systems used or to be used in weighing grain; and (C) the bins and other storage areas; (v) the identification of each scale in the facility that is to be used for weighing grain under the Act; (vi) the following information regarding automated data processing systems: (A) Overall system intent, design, and layout; (B) make, model, and technical specifications of all hardware; (C) description of software, language used, and flow charts of all programs, subprograms, routines, and subroutines; and (D) complete operating instructions; and (vii) any other information deemed necessary to carry out the provisions of the Act.

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

(3) *Duties and responsibilities of weighing facilities requesting official services*—(i) *Providing official services.* Upon request, each weighing facility shall permit official weighing services to be performed promptly.

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

(iii) *Facilities and equipment*—(A) *General.* Each weighing facility shall obtain and maintain facilities and equipment which the Service determines are needed for weighing services performed at the facility. Each facility shall operate and shall maintain each scale system and related grain handling system used in weighing according to instructions issued by the manufacturer and by the Service. A scale log book for each approved scale used for official weighing services shall be maintained according to instructions at each weighing facility.

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

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

(Approved by the Office of Management and Budget under control number 0580–0003.)

§ 800.47 Withdrawal of request for official services.

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

§ 800.48 Dismissal of request for official services.

(a) *Conditions for dismissal*—(1) *General.* An agency or the Service shall dismiss requests for official services when (i) § 800.78 prohibits the requested service; (ii) performing the requested service is not practicable; (iii) the agency or the Service lacks authority under the Act or regulations; or (iv) sufficient information is not available to make an accurate determination.

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

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

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

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

§ 800.49 Conditional withholding of official services.

(a) *Conditional withholding.* An agency or the Service shall conditionally withhold requests for official services when an applicant fails to meet any requirement prescribed in § 800.46.

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

2. Revising § 800.51 to read as follows:

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

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

3. Revising the undesignated center heading and §§ 800.195–800.199 and removing §§ 800.200–800.208 as follows:

Delegations, Designations, Approvals, Contracts, and Conflicts-of-Interest

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

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Delegations, Designations, Approvals, Contractual Arrangements, and Conflicts of Interest

§ 800.195 Delegations.

(a) *General.* Eligible States may be delegated authority to perform official services (excluding appeal inspection) at export port locations within their respective States.

(b) *Restrictions.* Only the Service or the delegated State may perform official inspection, Class X, and Class Y weighing services at an export port location within the State. If official inspection services, at export port locations within the State, are performed by the Service, only the Service may perform Class X and Class Y weighing services at the locations. If official inspection services are performed by a delegated State, either the State or the Service may perform Class X and Class Y weighing services at the export port locations within the State.

(c) *Who can apply.* States which: (1) Were performing official inspection at an export port location under the Act on July 1, 1976, or; (2) (i) performed official inspection at an export port location at any time prior to July 1, 1976; (ii) were designated under Section 7(f) of the Act on December 22, 1981, to perform official inspections; and (iii) operate in a State from which total annual exports of grain do not exceed, as determined by the Administrator, 5 per centum of the total amount of grain exported from the United States annually may apply to the Service for a delegation.

(d) *When and how to apply.* A request for authority to operate as a delegated State should be filed with the Service not less than 90 calendar days before the State proposes to perform the official service. A request for authority to operate as a delegated State shall show: (1) The export port location(s) where the State proposes to perform official inspection, Class X, and Class Y weighing services; (2) the estimated annual volume of inspection and weighing services for each location; and (3) the schedule of fees the State proposes to assess. A request for a revision to a delegation shall (i) be filed with the Service not less than 90 calendar days before the desired effective date, and (ii) specify the change desired.

(e) *Review of eligibility and criteria for delegation.* Each applicant for authority to operate as a delegated State shall be reviewed to determine whether the applicant meets the eligibility conditions contained in paragraph (c) of this section and the criteria contained in section 7(f)(1)(A) of the Act. The requested delegation may be granted if the Service determines that the applicant meets the eligibility conditions and criteria. If an application is dismissed, the Service shall notify the applicant promptly, in writing, of the reason(s) for the dismissal.

(f) *Responsibilities*—(1) *Providing official services.* Each delegated State shall be responsible for providing each official service authorized by the delegation at all export elevators at export port locations in the State. The State shall perform each official service according to the Act, regulations, and instructions.

(2) *Staffing, licensing, and training.* Delegated States shall employ official personnel on the basis of job qualifications rather than political affiliations. The State shall employ sufficient personnel to provide the services normally requested in an accurate and timely manner. The State shall only use personnel licensed by the Service for the performance of official services and shall train and assist its personnel in acquiring and maintaining the necessary skills. The State shall keep the Service informed of the employment status of each of its licensees and any substantial change in a licensee's duties.

(3) *Rotation of personnel.* Where feasible, each delegated State shall rotate licensees among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighting systems.

(4) *Supervision.* The State and its officials shall be responsible for the actions of the official personnel employed by the State, for direct supervision of the daily activities of such personnel, and for the conduct of official services and related activities in the State. The State shall supervise official activities according to the Act, regulations, and instructions and shall take action necessary to ensure that its employees are not performing prohibited functions and are not involved in any action prohibited by the Act, regulations, or instructions. Each State shall report to the Service information which shows or may show a violation of any provision of the Act, regulations, or instructions and information on any instructions which have been issued to State personnel by Service personnel or by any other person which are contrary to or inconsistent with the Act, regulations, or instructions.

(5) *Conflict of interest*—(i) *General.* The delegated State and any commissioner, director, employee, or other related person or entity shall not have a conflict of interest, as defined in section 11 of the Act and § 800.199 of the regulations. A conflict of interest may be waived pursuant to § 800.199(d).

(ii) *Unofficial activities.* The delegated State or personnel employed by the State shall not perform any unofficial service that is the same as any of the official services covered by the delegation.

(6) *Fees.* The delegated State shall charge fees according to § 800.70.

(7) *Facilities and equipment*—(i) *General.* The laboratory and office facilities of each delegated State shall be: Located: equipped; and large enough so that requested services are provided in an orderly and timely manner.

(ii) *Equipment testing.* Each delegated State shall test the equipment that it uses for official services according to the instructions.

(8) *Security.* Each delegated State shall provide sufficient security to assure that official samples, records, equipment, and forms are reasonably secure from theft, alteration, or misuse.

(9) *Certificate control system.* Each delegated State shall establish a certificate control system for all official certificates it receives, issues, voids, or otherwise renders useless. The system shall provide for: (i) Recording the numbers of the official certificates printed or received; (ii) protecting unused certificates from fraudulent or unauthorized use; and (iii) maintaining a file copy of each certificate issued, voided, or otherwise rendered useless in a manner that would permit retrieval.

(10) *Records.* Each delegated State shall maintain the records specified in §§ 800.145–800.155.

(g) *Termination*—(1) *Automatic Termination.* Failure to pay the user fees prescribed by the Service for supervisory costs related to official inspection and weighing services within 30 days after due shall result in the automatic termination of the delegation. The delegation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination, are paid within 60 days after the termination.

(2) *Voluntary cancellation.* A State may request that its delegation be canceled by giving 90 days written notice to the Service.

(3) *Revocation*—(i) *Without hearing.* The Administrator may revoke the delegation of a State without first affording the State opportunity for a hearing. Unless otherwise provided, the revocation shall be effective when the State receives a notice from the Service regarding the revocation and the reason(s) therefor.

(ii) *Informal conference.* At the discretion of the Administrator, before the delegation of a State is revoked under (g)(3)(i), the Service may (A) notify the State of the proposed action and the reason(s) therefor, and (B) afford the State an opportunity to express its views in an informal conference before the Administrator.

(h) *Provision of services following termination.* If a State's delegation is terminated, official services at the export port locations in the State shall be provided by the Service.

(The information collection requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 0580–0003. The information collection requirements contained in paragraphs (f)(2) and (f)(4) were approved under control number 0580–0006.

§ 800.196 Designations.

(a) *General.* Eligible persons or governmental agencies may be designated to perform official services (excluding appeal inspection) within a specified area (other than export port locations).

(b) *Restrictions*—(1) *General.* If official inspection services are performed in an area by a designated agency, Class X and Class Y weighing services in that area may be performed only by the designated agency if the agency applies for designation to provide weighing services and is found qualified by the Service. If the agency designated to provide official inspection services is found not qualified or does not apply, the Class X and Class Y weighing services may be performed by another available agency that is found qualified and is designated by the Service, or the official services may be performed by the Service.

(2) *Interim authority*—(i) *By agency.* A designated agency may perform official services outside its assigned area on an interim basis when authorized by the Service.

(ii) *By Service.* Official inspection services and/or Class X and Class Y weighing services may be performed by the Service in an area (other than export port locations) on an interim basis in accordance with sections 7(h) and 7A(c) of the Act.

(c) *Who can apply.* Any State or local governmental agency or any person may apply, subject to sections 7 and 7A of the Act, to the Service for designation as an official agency to perform official inspection services (excluding appeal inspection) and/or Class X and Class Y weighing services in a given area (other than export port locations) in the United States.

(d) *When and how to apply.* An application for designation should be filed with the Service, according to the provisions of the **Federal Register** notice which requests applicants for designation to perform official services in existing or new geographic areas. The application for designation: (1) Shall be submitted on a form furnished by the Service; (2) shall be typewritten or legibly written in English; (3) shall show or be accompanied by documents which show all information requested on the form, or otherwise required by the Service; and (4) shall be signed by the applicant or its chief operating officer.

(e) *Review of conditions and criteria for designation*—(1) *Application.* Each application for a designation shall be reviewed to determine whether it complies with paragraph (d) of this section. If an application is not in compliance, the applicant shall be provided an opportunity to submit the needed information. If the needed information is not submitted within a reasonable time, as determined by the Service, the application may be dismissed. When an application is dismissed, the Service shall notify the applicant, in writing, of the reason(s) for the dismissal.

(2) *Applicant.* Each applicant for authority to operate as as designated agency shall be reviewed to determine whether the applicant meets the conditions and criteria contained in sections 7(f)(1) (A) and (B) of the Act, § 800.199 of the regulations, and paragraph (g) of this section. The requested designation may be granted if the Service determines that: (i) The requested action is consistent with the need for official services; (ii) the applicant meets the conditions and criteria specified in the Act and regulations; and (iii) the applicant is better able than any other applicant to provide official services.

(f) *Area of responsibility*—(1) *General.* Each agency shall be assigned an area of responsibility by the Service. Each area shall be identified by geographical boundaries and, in the case of a State or local government, shall not exceed the jurisdictional boundaries of the State or the local government, unless otherwise approved by the Service. The area of responsibility may not include any export elevators at export port locations or any portion of an area of responsibility assigned to another agency that is performing the same functions. A designated agency may perform official services at locations outside its assigned area of responsibility only after obtaining approval from the Service.

(2) *Amending.* A request for an amendment to an assigned area of responsibility shall (i) be submitted to the Service in writing; (ii) specify the change desired; (iii) be signed by the applicant or its chief operating officer; and (iv) be accompanied by the fee prescribed by the Service. The assigned area may be amended if the Service determines that the amendment is consistent with the provisions and objectives of the Act, regulations, and instructions. Upon a finding of need, the Service may initiate action to change an assigned area of responsibility.

(3) *Specified service points.* An agency may change its specified service points by notifying the Service in advance. Interested persons may obtain a list of specified service points within an agency's area of responsibility by contacting the agency. The list shall include all specified service points and shall identify each specified service point which operates on an intermittent or seasonal basis.

(g) *Responsibilities*—(1) *Providing official services.* Insofar as practicable, each agency shall be responsible for providing at all locations in its assigned area each service authorized by the designation. An agency may, subject to Service approval, make arrangements with a neighboring agency to provide official services requested infrequently. The agency shall perform all official services according to the Act, regulations, and instructions in effect at the time of designation or which may be promulgated subsequently.

(2) *Fees.* The agency shall charge fees according to § 800.70.

(3) *Staffing, licensing, and training*—(i) *General.* The agency shall employ sufficient personnel to provide the official services normally requested in an accurate and timely manner. Each agency shall only use personnel licensed by the Service for the performance of official services and shall train and assist its personnel in acquiring and maintaining the necessary skills. Each agency shall keep the Service informed of the employment status of each of its licensees and any substantial change in a licensee's duties.

(ii) *State agencies.* State agencies shall employ official personnel on the basis of job qualifications rather than political affiliations.

(4) *Rotation of personnel.* Where feasible, each agency shall rotate licensees among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighing systems.

(5) *Supervision.* The agency and its officials shall be responsible for the actions of the official personnel employed by the agency, for direct supervision of the daily activities of such personnel, and for the conduct of official services and related activities at the agency. The agency shall supervise official activities, in accordance with the Act, regulations, and instructions, and shall take action necessary to ensure that its employees are not performing prohibited functions and are not involved in any action prohibited by the Act, regulations, or instructions. Each agency shall report to the responsible field office information which shows or may show a violation of any provision of the Act, regulations, or instructions and information on any instructions which have been issued to agency personnel by Service personnel or by any other person which are inconsistent with the Act, regulations, or instructions.

(6) *Conflict of interest*—(i) *General.* Each agency and any officer, director, stockholder, employee, or other related entity shall not have a conflict of interest, as defined in Section 11 of the Act and § 800.199 of the regulations. A conflict of interest may be waived pursuant to § 800.199(d). The agency shall advise the Service immediately of any proposed change in name, ownership, officers or directors, or control of the agency and, if a trust, any change affecting the trust agreement.

(ii) *Unofficial activities.* The agency or personnel employed by the agency shall not perform any unofficial service that is the same as the official services covered by the designation.

(7) *Facilities and equipment*—(i) *General.* The laboratory and office facilities of each agency shall be: Located; equipped; and large enough so that requested services are provided in an orderly and timely manner.

(ii) *Equipment testing.* Each agency shall test the equipment it uses for official services according to the instructions.

(8) *Security.* Each agency shall provide sufficient security to ensure that official samples, records, equipment, and forms are reasonably secure from theft, alteration, or misuse.

(9) *Certificate control system.* Each agency shall establish a certificate control system for all official certificates it receives, issues, voids, or otherwise renders useless. The system shall provide for (i) recording the numbers of the official certificates printed or received; (ii) protecting unused

certificates from fraudulent or unauthorized use; and (iii) maintaining a file copy of each certificate issued, voided, or otherwise rendered useless in a manner that would permit retrieval.

(10) *Records.* Each agency shall maintain the records specified in §§ 800.145–800.155.

(h) *Termination and renewal*—(1) *Triennial.* (i) *Termination.* A designation shall terminate at a time specified by the Administrator, but not later than 3 years after the effective date of the designation. A notice of triennial termination shall be issued by the Service to a designated agency at least 120 calendar days in advance of the termination date. The notice shall provide instructions for requesting renewal of the designation. Failure to receive a notice from the Service shall not exempt a designated agency from the responsibility of having its designation renewed on or before the specified termination date.

(ii) *Renewal.* Designations may be renewed, upon application, in accordance with criteria and procedures for designation prescribed in Section 7(f) of the Act and this section of the regulations. The Administrator may decline to renew a designation if: (A) The requesting agency fails to meet or comply with any of the criteria for designation set forth in the Act, regulations, and instructions, of (B) the Administrator determines that another qualified applicant is better able to provide official services in the assigned area.

(2) *Automatic Termination.* Failure to pay the user fees prescribed by the Service for supervisory costs related to official inspection and weighing services within 30 days after due shall result in the automatic termination of the designation. The designation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination, are paid within 60 days after the termination.

(3) *Voluntary cancellation.* An agency may request that its designation be canceled by giving 90 days written notice to the Service.

(4) *Suspension or revocation of designation*—(i) *General.* A designation is subject to suspension or revocation, under section 7(g)(3) of the Act, by the Service, whenever the Administrator determines that: (A) The agency has failed to meet one or more of the criteria specified in section 7(f) of the Act or the regulations for the performance of official functions, or otherwise has not complied with any provision of the Act, regulations, or instructions, or (B) has been convicted of any violation of other Federal law involving the handling or official inspection of grain.

(ii) *Summary suspension.* The Service may, without first affording the agency (hereafter referred to in this paragraph as the "respondent") an opportunity for a hearing, suspend a designation or refuse to reinstate a designation when the suspension period has expired, pending final determination of the proceeding whenever the Service has reason to believe there is cause for revocation of the designation and considers such action to be in the best interest of the official inspection and weighing system. A suspension or refusal to reinstate a suspended designation shall be effective upon the respondent's receipt of a notice from the Service. Within 30 calendar days following the issuance of a notice of such action, the Service shall afford the respondent an opportunity for a hearing under paragraph (iii) of this section. The Service may terminate the action if it finds that alternative managerial, staffing, financial, or operational arrangements satisfactory to the Service can be and are made by the respondent.

(iii) *Other than summary suspension.* Except as provided in paragraph (h)(4)(ii) of the section, before the Service revokes or suspends a designation, the respondent shall be: (A) Notified by the Service of the proposed action and the reason(s) therefor, and (B) afforded an opportunity for a hearing in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR Part 1, Subpart H). Before initiating formal adjudicatory proceedings, the Service may, at its discretion, afford the respondent an opportunity to present its views on the proposed action and the reason(s) therefor in an informal conference. If, as a result of the informal conference, a consent agreement is reached, no formal adjudicatory proceedings shall be initiated.

(i) *Provision of services following suspension or termination.* If the designation of an agency is suspended, terminated, or the renewal of a designation is not granted, the Service shall attempt, upon a finding of need, to arrange for a replacement agency. If a qualified replacement agency cannot be designated on a timely basis, a qualified agency, if available, shall be designated on an interim basis. If a qualified agency is not available on an interim basis, the Service shall provide needed services on an interim basis.

(The information collection requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 0580–0003. The information collection requirements contained in paragraphs (g)(3) and (g)(5) were approved under control number 0580–0006.)

§ 800.197 Approval as a scale testing and certification organization.

(a) *Who may apply.* Any State, local government, or person may request approval to perform scale testing and certification under the Act.

(b) *When and how to apply.* A request for approval to perform scale testing and certification under the Act should be filed with the Service not less than 90 calendar days before the requested action's effective date. A request for approval to perform scale testing and certification shall: (1) Show or be accompanied by documents which show all information required by the Service; (2) certify that each employee scheduled to perform official scale testing and certification services is competent to test weighing equipment and has a working knowledge of the regulations and instructions applicable to such services; (3) be accompanied by the fee prescribed in § 800.71; and (4) be signed by the applicant or its chief operating officer.

(c) *Review of applicant.* The review of an applicant for authority to perform scale testing and certification shall include an evaluation of the applicant's policies and procedures for testing and certifying scales for Class X and Class Y weighing.

(d) *Termination*—(1) *Voluntary.* A scale testing and certification organization may request cancellation of its approval by notifying the Service.

(2) *Suspension or revocation of approval*—(i) *General.* An approval is subject to suspension or revocation whenever the Administrator determines that the approved organization has violated any provision of the Act or regulations, or has been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code.

(ii) *Summary suspension.* The Service may, without first affording the organization an opportunity for a hearing, suspend an approval or refuse to reinstate an approval when the suspension period has expired, pending final determination of the proceeding whenever the Service has reason to believe there is cause for revocation of the approval and considers such action to be in the best interest of the official weighing system.

A suspension or refusal to reinstate a suspended approval shall be effective when the organization receives a notice from the Service. Within 30 calendar days following the issuance of a notice of such action, the Service shall give the organization an opportunity for a hearing under paragraph (d)(2)(iii) of this section. The Service may terminate its action if it finds that alternative managerial, staffing, or operational arrangements satisfactory to the Service can be and are made by the organization.

(iii) *Other than summary suspension.* Except as provided in paragraph (d)(2)(ii) of this section, before the Service revokes or suspends an approval, the organization shall be notified by the Service of the proposed action and the reason(s) therefor and shall be given an opportunity for a hearing. Before the Service initiates a hearing, it may, at its discretion, give the organization an opportunity to present its views on the proposed action and the reason(s) therefor in an informal conference. If a consent agreement is reached during the informal conference, no formal adjudicatory proceedings shall be initiated.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 0580-0003.)

§ 800.198 Contracts.

(a) *Services contracted and who may apply.* The Service may enter into a contract with any person, State, or governmental agency to perform on an occasional basis: (1) Specified official sampling, laboratory testing, or other similar objective technical activities involved in the testing of grain for official factors or official criteria, and (2) monitoring activities in foreign ports with respect to export grain that has been inspected and weighed under the Act.

(b) *Restrictions*—(1) *Conflict of interest.* A person, State or governmental agency with a conflict of interest prohibited by section 11 of the Act or § 800.199 shall not be eligible to enter into a contract with the Service.

(2) *Appeal service.* An agency or employees of agencies shall not be eligible to enter into a contract with the Service to obtain samples for, or to perform other services involved in, appeal inspection or Board appeal inspection services. However, agencies may forward file samples to the Service in accordance with § 800.154(b).

(3) *Monitoring services.* Agencies, employees of agencies, organizations, employees of organizations, and other persons that regularly provide official services to persons who export grain from the United States are eligible to enter into a contract with the Service to perform monitoring services on export grain in foreign ports only if they are under Service employees' direct supervision during monitoring activities.

(c) *When and how to apply.* An application for a contractual arrangement shall: (1) Be typewritten or legibly written in English; (2) conform to the invitation to bid or other instructions issued by the Service or be filed on a form furnished by the Service; (3) show or be accompanied by documents which show any information requested by the Service; and (4) be signed by the applicant or its chief operating officer. All contracts shall be issued by the Department and shall follow Departmental procedures.

(d) *Termination and renewal.* A contract with the Service shall terminate annually unless othewise provided in the contract. A contract may be renewed in accordance with Departmental procedures.

(e) *Cancellation.* A contract may, upon request of the governmental agency or person that entered into the contract with the Service, be canceled by the Department in accordance with the terms of the contract or Departmental procedures and regulations.

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 0580-0003)

§ 800.199 Conflict-of-interest provisions.

(a) *Meaning of terms.* For the purpose of this section, the following terms shall have the meaning given for them below:

(1) *Grain business.* The term "grain business" shall include (i) any entity that is engaged in the commercial transportation, storage, merchandising or other commercial handling of grain, which includes: The commercial buying, selling, transporting, cleaning, elevating, storing, binning, mixing, blending, drying, treating, fumigating, or other preparation of grain (other than as a grower of grain or the disposition of inspection samples); the cleaning, treating, or fitting of carriers or containers for transporting or storing of grain; the merchandising of equipment for cleaning, drying, treating, fumigating, or other processing, handling, or storing of grain; the merchandising of grain inspection and weighing equipment (other than the buying or selling by an agency or official personnel of the equipment for their exclusive use in the performance of their official inspection or Class X or Class Y weighing services); and the commercial use of official inspection and Class X or Class Y weighing services and (ii) any board of trade, chamber of commerce, grain exchange, or other trade group composed, in whole or in part, of one or more such entities.

(2) *Interest.* The term "interest" when used with respect to an individual, shall include the interest of a spouse, minor child, or blood relative who resides in the immediate household of the individual.

(3) *Related.* The term "related" when used in reference to a business or governmental entity means an entity that owns or controls another entity, or is owned or controlled by another entity, or both entities are owned or controlled by another entity.

(4) *Substantial stockholder.* The term "substantial stockholder" means any person holding 2 per centum or more, or 100 shares or more of the voting stock of the corporation, whichever is the lesser interest.

(b) *Prohibited conflicts of interest.* Unless waived on a case-by-case basis by the Administrator under section 11(b)(5) or the Act, the following conflicts of interest for a business or association are prohibited:

(1) *Agency and contractor.* No agency or contractor, or any member, director, officer, or employee thereof, and no business or governmental entity related to any such agency or contractor, shall be employed in or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any grain business or otherwise have any conflict of interest specified in § 800.187(b).

(2) *Grain business.* No grain business or governmental entity conducting any such business, or any member, director, officer, or employee thereof, and no other business or governmental entity related to any such entity, shall operate or be employed by, or directly or indirectly have any stock or other financial interest in, any agency or contractor.

(3) *Stockholder in any agency or contractor.* No substantial stockholder in any agency or contractor shall be employed in or otherwise engaged in, or be a substantial stockholder in, any grain business, or directly or indirectly have any other kind of financial interest in any such business or otherwise have any conflict of interest specified in § 800.187(b).

(4) *Stockholder of a grain business.* No substantial stockholder in any grain business shall operate or be employed by or be a substantial stockholder in, or

directly or indirectly have any other kind of financial interest in an incorporated agency or contractor.

(5) *Gratuity.* No person described in paragraph (b)(1) of this section shall give to or accept from a person described in paragraph (b)(2) of this section any gratuity, and no person described in paragraph (b)(2) of this section shall give to or accept from a person described in paragraph (b)(1) of this section any gratuity. A "gratuity" is defined in § 800.187(a).

(c) *Exempt conflicts of interest*—(1) *Agency and contractor.* An agency or contractor may use laboratory or office space or inspection, weighing, transportation, or office equipment that is owned or controlled, in whole or in part, by a grain business or related entity when the use of the space or equipment is approved by the Service for the performance of onsite official services under the Act.

(2) *Financial institution.* A bona fide financial institution that has a financial relationship with one or more grain businesses or related entities may have a financial relationship with an agency, contractor, or related agency.

(3) *Grain business.* A grain business or related entity may furnish laboratory or office space or inspection, weighing, transportation, or office equipment for use by an agency, contractor, or field office when use of the space or equipment is approved by the Service for the performance of onsite official inspection or weighing services.

(d) *Disposition of a conflict of interest.* Upon being informed that a prohibited conflict of interest exists in the ownership, management, or operation of an agency and that remedial action is required, the agency shall take immediate action to resolve that conflict of interest and inform the Service of the action taken. An agency which believes that remedial action will cause undue economic hardship or other irreparable harm may request a waiver by forwarding to the Service a written statement setting forth the facts, the circumstances, and the reasons for requesting a waiver.

§§ 800.200–800.208 [Removed]

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

Dated: July 18, 1984.

K. A. Gilles,

Administrator.

[FR Doc. 84–20412 Filed 8–1–84; 8:45 am]

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DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 7

[Docket No. 84–25]

Indemnification of Directors, Officers and Employees of National Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final ruling.

SUMMARY: The Office of the Comptroller of the Currency has revised Interpretive Ruling 7.5217 (12 CFR 7.5217) to recognize that national banks may, with certain limitations, adopt articles of association to provide for the indemnification of their directors, officers and employees in accordance with the standards reflected in the law of the state in which the bank is headquartered, the law of the state in which the bank's parent holding company is incorporated or as provided in the Model Business Corporation Act (MBCA). The Ruling indicates that indemnification articles which substantially reflect the principles of any of the three alternatives are presumptively within the corporate powers of a national bank. The Ruling prohibits indemnification when a supervisory action results in a final order assessing civil money penalties or requiring affirmative action in the form of payments by an individual to a national bank, and recognizes the Comptroller's authority to deny or modify an indemnification which appears to be inconsistent with the standards stated in the bank's indemnification article or which would jeopardize the safety and soundness of the bank. The Ruling allows a bank to follow the insurance provisions contained in the indemnification standard set forth in the MBCA or the relevant state act, except that a bank may not insure its directors or employees against a final order assessing civil money penalties.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: Judith E. Cohn (202) 447–1954, Attorney, Office of the Comptroller of the Currency, Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: The principal drafter of this document was Judith E. Cohn, Attorney, Securities & Corporate Practices Division, Comptroller of the Currency (202) 447–1954.

Special Analysis

Since the Regulatory Flexibility Act does not apply to interpretive rulings, no regulatory flexibility analysis has been prepared for this proposal.

This Office believes that the Ruling is not a major regulation under Executive Order 12291 and, therefore, has not prepared a regulatory impact analysis. The Ruling will not require national banks to expend any funds or file reports, and will not otherwise have an adverse effect on their prices and costs. It seeks to reduce administrative expenses with respect to drafting and implementing indemnification provisions. Further, since the Ruling will enable national banks to adopt indemnification provisions comparable to those observed elsewhere in the business community, it will not have an adverse effect on their competitive posture.

Background

On June 3, 1983, the Office of the Comptroller of the Currency ("Office") published a Notice of Proposed Rulemaking ("Notice") which solicited comments on specific proposed changes to the Office's Interpretive Ruling 7.5217 (12 CFR 7.5217) regarding the indemnification of directors, officers and employees of national banks. 48 FR 24913. As the Notice indicated, the current Interpretive Ruling recognizes, in general terms, the legal authority of national banks to provide indemnification to directors, officers and employees "against legal and other expenses incurred in defending law suits brought against them by reason of the performance of their official duties." In addition, the existing Interpretive Ruling indicates that national banks may purchase and pay the premiums on insurance for such indemnification. A national bank may not, however, in any manner provide indemnification to persons "guilty of, or liable for, willful misconduct, gross neglect of duty, or criminal acts."

As a result of significant differences between this Office's interpretations concerning indemnification and general corporate law principles concerning indemnification, the general principles stated in the existing indemnification ruling had posed difficulties for drafters of bank articles of association regarding indemnification of bank officers and directors. Consequently, the Notice proposed to revise Interpretive Ruling 7.5217 to recognize that a national bank, with certain limitations, may adopt indemnification standards which reflect either general corporate law standards,