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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

Regulations and Standards for Inspection and Certification of Certain Agricultural Commodities and Their Products

AGENCY: Federal Grain Inspection Service, USDA.¹

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is revising Subpart A of the Part 68 regulations under the Agricultural Marketing Act of 1946, as amended (Act), by completely rewriting and reorganizing these regulations. This rule will combine and consolidate compatible requirements, incorporate many procedures currently found in instructions, simplify overall language, conform certain provisions to present marketing practices, and remove definitions and provisions that are no longer necessary. In addition, FGIS is removing the requirement that all factor information determined during the course of an inspection be reported on an official certificate; establishing provisions for providing a retest service on nongraded commodities; permitting appeal inspection services to be performed on a new sample when insect fragments are present; and providing provisions in the regulations for applications, terminations, and surrendering of licenses issued by the Service.

EFFECTIVE DATE: April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information

Resources Staff, RM, USDA, FGIS, P.O. Box 96454, Washington, DC 20090-6454, 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

W. Kirk Miller, Administrator, FGIS, has determined that this final rule does 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 most users of the official inspection and weighing services and those entities that perform these services do not meet the requirement for small entities, and this action poses no new or additional duties or obligations to business entities involved in the loading, weighing, handling, or sampling of commodities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements contained in this final rule have been either previously approved by OMB or have been submitted to OMB for approval.

Final Action

On December 24, 1985, FGIS proposed to revise Subpart A of the Part 68 regulations under the Act (50 FR 52469). It was proposed that the regulations be revised in their entirety by consolidating compatible provisions into a more logical order for clarity and by removing unnecessary language and provisions that are no longer needed. In addition, it was proposed that the requirement that all factor information determined during the course of an inspection be reported on the official certificate be eliminated; a provision for providing retest service for nongraded commodities be established; appeal inspection services to be performed on a new sample when insect fragments are present be

permitted; and procedures for applications, terminations, and surrender of licenses issued by the Service be provided in the regulations.

Interested parties were invited to participate in the rulemaking process by submitting written comments on the proposed rule. During the 60-day comment period, a total of eight comments were received. Seven commentors either agreed with the proposal as written or did not oppose the proposed language or intent of the provisions. These commentors included commodity and processed commodity trade associations, a seed company, and associations representing elevators. Some of these commentors noted that the proposed changes would facilitate use of the regulations and would also facilitate the buying and selling of commodities. One commentor indicated that the proposal included changes that were responsive to the needs of the industry and would benefit the same.

Another commentor, a State department of agriculture, supported some of the proposal changes but believed that it would be ill-advised to remove the requirement that all factors for graded commodities for which an official determination is made be shown on the inspection certificate. The commentor was of the opinion that the lack of this information on the certificate would be deceptive and would prove to be an impediment to marketing.

The proposal contained a provision that would remove the requirement that any factor for graded commodities for which an official determination is made during the course of the inspection be shown on the inspection certificate. Various industry groups had indicated that the requirement to report factor information not requested by the buyer was not needed and confused both buyers and financial institutions. After reviewing industry concerns that reporting factor information not requested by the buyer may cause confusion in the marketplace, it was proposed that the requirement be removed. However, the requirement to show grade determining factors on all certificates for commodities graded below the highest quality grade would be retained. This information is generally desired by the industry. The provision would not prohibit applicants from obtaining specific factor

¹ The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

information, when requested. In addition, one commentor stated that the existing requirement was not only unnecessary but in some cases had impaired export sales. After reviewing all available information, FGIS believes that the revision will not be deceptive or prove to be an impediment to marketing as suggested by the commentor; but rather, the change to the regulations will address industry concerns regarding confusion in the marketplace. Accordingly, this final rule retains the proposed provision unchanged.

After reviewing the proposed rule, FGIS has determined that several miscellaneous changes were needed to clarify some provisions of the regulations. These changes include adding two new definitions, one for graded commodities and the other for nongraded commodities. Graded commodities are commodities for which the Service has promulgated standards under this Act and commodities which are tested by the Service at a field office or by a cooperator for specific physical factor using approved equipment and an inspector's interpretation of visual conditions. Nongraded commodities are processed commodities and nonprocessed commodities which are chemically tested for factors not included in the standards under this Act or the United States Grain Standards Act (7 U.S.C. 71 *et seq.*). These definitions will aid in understanding those provisions of the regulations in which these terms appear.

In proposed § 68.84, *Suspension or revocation of license*, summary suspensions would be authorized in cases of willfulness or those in which the public health, interest, or safety were involved. Licensees would be afforded an opportunity for a hearing before the license was finally suspended or revoked. In addition, proposed § 68.84 provided for procedures for other than summary actions wherein licensees would be first afforded an opportunity to achieve compliance before the Administrator could institute proceedings to suspend or revoke a license. This final rule changes the proposed section to provide that summary suspensions are authorized only in cases in which the public health, interest, or safety requires. Further, this final rule provides that except in cases of willfulness or in which the public health, interest, or safety requires, licensees would be first afforded an opportunity for compliance. These changes are made to better specify the basis for summary suspension actions.

The proposal included changes that renumbered and reformatted the

sections of the regulations concerning fees but did not propose changes to the specific fees and charges. However, in the October 17, 1986, *Federal Register* (51 FR 36995), FGIS established a fee to cover the cost of performing milling yield in rough rice and brown rice for processing when requested as one single factor and a fee for total oil and free fatty acid analysis for brown rice for processing and milled rice. These two fees also appear in this final rule. In addition, this final rule clarifies Table 3—Laboratory Fees and Table 4—Hourly Rates to specifically reference original, retest, and appeal laboratory tests in Table 3 and to reference original and appeal implementation services in footnote 1 of Table 4. Laboratory test fees for retest results are the same as original and appeal fees.

FGIS has made for clarity and consistency between provisions other miscellaneous minor wording changes to the provisions in the regulations.

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Rice.

For reasons set forth in the preamble, 7 CFR Part 68 is amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. Subpart A is revised to read as follows:

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Subpart A—Regulations

Definitions

§ 68.1 Meaning of terms.

(a) *Construction.* Words used in the singular form are considered to imply the plural and vice versa, as appropriate.

(b) *Definitions.* For the purpose of these regulations, unless the context requires otherwise, the following terms have the meanings given for them in this paragraph.

(1) *Act.* The Agricultural Marketing Act of 1946, as amended (secs. 202–208, 60 Stat. 1087, as amended, 7 U.S.C. 1621 et seq.).

(2) *Administrator.* The Administrator of the Federal Grain Inspection Service or any person to whom the Administrator's authority has been delegated.

(3) *Appeal inspection service.* A review by the Service of the results of an original inspection or retest inspection service.

(4) *Applicant.* An interested person who requests any inspection service with respect to a commodity.

(5) *Authorized inspector.* A Department employee authorized by the Administrator to inspect a commodity in accordance with the Act, regulations, standards, and instructions.

(6) *Board appeal inspection service.* A review by the Board of Appeals and Review of the results of an original inspection or appeal inspection service on graded commodities.

(7) *Board of Appeals and Review or Board.* The Board of Appeals and Review of the Service that performs Board appeal inspection services.

(8) *Business day.* The established field office working hours, any Monday through Friday that is not a holiday, or the working hours and days established by a cooperator.

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

(10) *Commodity.* Agricultural commodities and products thereof that the Secretary has assigned to the Service for inspection under the Act, including but not limited to dry beans, grain, hops, lentils, oilseeds, dry peas, split peas, and rice.

(11) *Continuous inspection.* The conduct of inspection services in an approved plant where one or more official inspection personnel are present during the processing of a commodity to make in-process examinations of the preparation, processing, packing, and warehousing of the commodity and to

determine compliance with applicable sanitation requirements.

(12) *Contract service.* Any service performed under a contract between an applicant and the Service.

(13) *Contractor.* Any person who enters into a contract with the Service to perform specified inspection services.

(14) *Cooperator.* An agency or department of the Federal Government which has an interagency agreement or State agency which has a reimbursable agreement with the Service.

(15) *Cooperator inspection service.* The inspection service provided by a cooperator under the regulations. Under this service, inspection certificates are issued by the cooperator and all fees and charges are collected by the cooperator, except as provided in the agreement.

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

(17) *Factor.* A quantified physical or chemical property identified in official standards, specifications, abstracts, contracts, or other documents whose measurement describes a specific quality of a commodity.

(18) *Field office.* An office of the Service designated to perform, monitor, or supervise inspection services.

(19) *Grade.* A grade designating a level of quality as defined in the commodity standards promulgated pursuant to the Act.

(20) *Graded commodity.* Commodities for which the Service has promulgated Standards under the Act and commodities which are tested by the Service at a field office or by a cooperator for specific physical factors using approved equipment and an inspector's interpretation of visual conditions.

(21) *Holiday.* The legal public holidays specified in paragraph (a) of section 6103, Title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal Statute or Executive Order. Under section 6103 and Executive Order 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

(22) *Inspection certificate.* A written or printed official document which is approved by the Service and which shows the results of an inspection service performed under the Act.

(23) *Inspection service.* (i) Applying such tests and making examinations of a commodity and records by official personnel as may be necessary to determine the kind, class, grade, other

quality designation, the quantity, or condition of commodity; performing condition of container, carrier stowage examinations; and any other services as related to commodities, as necessary; and (ii) issuing an inspection certificate.

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

(25) *Interagency agreement.* An agreement between the Service and other agencies or departments of the Federal Government to conduct commodity inspection services as authorized in the Act.

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

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

(28) *Nongraded commodity.* Nonprocessed commodities which are chemically tested for factors not included in the Standards under the Act or the U.S. Grain Standards Act (7 U.S.C. 71 et seq.) and processed commodities.

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

(30) *Official inspector.* Any official personnel who performs, monitors, or supervises the performance of inspection service and certifies the results of inspection of the commodity.

(31) *Official personnel.* Any authorized Department employee or person licensed by the Administrator to perform all or specified functions under the Act.

(32) *Official sampler.* Any official personnel who performs, monitors, or supervises the performance of sampling of a commodity.

(33) *Official technician.* Any official personnel who performs, monitors, or supervises the performance of specified inspection services and certifies the results thereof, other than certifying the grade of a commodity.

(34) *Origin.* The geographical area or place where the commodity is grown.

(35) *Original inspection service.* An initial inspection of a commodity.

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

(37) *Plant.* The premises, buildings, structure, and equipment (including but not limited to machines, utensils, vehicles, and fixtures located in or about the premises) used or employed in the preparation, processing, handling, transporting, and storage of commodities.

(38) *Regular workday.* Any Monday through Saturday that is not a holiday.

(39) *Regulations.* The regulations in this Part

(40) *Reimbursable agreement.* An agreement between the Service and State agencies to conduct commodity inspection services authorized pursuant to the Act.

(41) *Retest inspection service.* To test, using the same laboratory procedures, a factor(s) of nongraded commodities previously tested.

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

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

(44) *Service representative.* An employee authorized by the Service or a person licensed by the Administrator.

(45) *Specification.* A document which clearly and accurately describes the essential and technical requirements for items, materials, or services including requested inspection procedures.

(46) *Standards.* The commodity standards in this Part that describe the physical and biological condition of a commodity at the time of inspection.

(47) *Submitted sample.* A sample submitted by or for an applicant for inspection.

(48) *Test.* A procedure to measure a factor using specialized laboratory equipment involving the application of established scientific principles and laboratory procedures.

Administration

§ 68.5 Administrator.

The Administrator, under the authority delegated by the Secretary, is charged with administering the programs and functions authorized under the Act and the regulations concerning those commodities assigned by the Secretary to the Service.

§ 68.6 Nondiscrimination—policy and provisions.

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

§ 68.7 Procedures for establishing regulations and standards.

Notice of proposals to prescribe, amend, or revoke regulations and standards shall be published in accordance with applicable provisions of the Administrative Procedures Act (5 U.S.C. 551 *et seq.*). Any interested person desiring to file a petition for the issuance, amendment, or revocation of

regulations or standards may do so in accordance with 7 CFR 1.28 of the regulations of the Office of the Secretary of Agriculture.

§ 68.8 Complaints and reports of alleged violations.

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

(b) *Retest inspection and appeal inspection service.* Complaints involving the results of inspection services shall, to the extent practicable, be submitted as requests for retest inspection, appeal inspection, or Board appeal inspection services as set forth in these regulations.

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

§ 68.9 Provisions for hearings.

Opportunities shall be provided for hearings either in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR Part 1, Subpart H) or in accordance with FGIS procedures as appropriate.

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

Information about the Service, Act, regulations, standards, rules of practice, instructions, and other matters related to the inspection of commodities may be obtained by telephoning or writing the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090-6454, or any field office or cooperator.

§ 68.11 Public information.

(a) *General.* This section is issued in accordance with §§ 1.1 through 1.16 of the regulations of the Secretary in Part 1, Subpart A, of Subtitle A of Title 7 (7 CFR 1.1 through 1.16), and Appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this section, govern the availability of records of the Service to the public.

(b) *Public inspection and copying.* Materials maintained by the Service, including those described in 7 CFR 1.2(a), will be made available, upon a request which has not been denied, for public inspection and copying at the U.S. Department of Agriculture, Federal Grain Inspection Service, 1400 Independence Avenue SW., Washington, DC 20250. The public may

request access to these materials 8:00 a.m.-4:30 p.m. Monday through Friday except for holidays.

(c) *Indexes.* The Service shall maintain an index of all material required to be made available in 7 CFR 1.2(a). Copies of these indexes will be maintained at the location given in paragraph (b) of this section. Notice is hereby given that quarterly publication of these indexes is unnecessary and impracticable because the material is voluminous and does not change often enough to justify the expense of quarterly publication. However, upon specific request, copies of any index will be provided at a cost not to exceed the direct cost of duplication.

(d) *Requests for records.* Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and shall be addressed as follows: Office of the Administrator, Federal Grain Inspection Service, FOIA Request, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090-6454.

(e) *FOIA Appeals.* Any person whose request, under paragraph (d) of this section, is denied shall have the right to appeal such denial in accordance with 7 CFR 1.3(e). Appeals shall be addressed to the Administrator, Federal Grain Inspection Service, FOIA Appeal, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090-6454.

(f) *Disclosure of information.* FGIS employees or persons acting for FGIS under the Act shall not, without the consent of the applicant, divulge or make known in any manner any facts or information acquired pursuant to the Act, regulations, or instructions except as authorized by the Administrator, by court of competent jurisdiction, or otherwise by law.

§ 68.12 Identification.

All official personnel shall have in their possession and present upon request, while on duty, the means of identification furnished to them by the Department.

§ 68.13 Regulations not applicable for certain purposes.

These regulations do not apply to the inspection of grain under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) or the inspection of commodities under the United States Warehouse Act, as amended (7 U.S.C. 241 *et seq.*).

Conditions for Obtaining or Withholding Service

§ 68.20 Availability of services.

(a) *Original inspection service.* Original inspection services are

available according to this section and §§ 68.40 through 68.44.

(b) *Retest inspection and appeal inspection services.* Retest inspection, appeal inspection, and Board appeal inspection services are available according to §§ 68.50 through 68.52 and §§ 68.60 through 68.63.

(c) *Proof of authorization.* A cooperator or the Service may request satisfactory proof that an applicant is an interested person or their authorized agent.

§ 68.21 Requirements for obtaining service.

(a) *Consent and agreement by applicant.* In submitting a request for inspection service, the applicant and the owner of the commodity consent to the requirements specified in paragraphs (b) through (j) of this section.

(b) *Written confirmation.* Verbal requests for inspection service shall be confirmed in writing upon request. Each written request shall be made in English and shall include:

- (1) The date filed;
- (2) The identification, quantity, and location of the commodity;
- (3) The type of service(s) requested;
- (4) The name and mailing address of the applicant and, if made by an authorized agent, the agent's name and mailing address; and
- (5) Any other relevant information that the official with whom the application is filed may request.

A written request or a written confirmation of a verbal request shall be signed by the applicant or a duly authorized agent.

(c) *Names and addresses of interested persons.* When requested, each applicant for inspection service shall show on the application form the name and mailing address of each known interested person.

(d) *Surrender of superseded certificates.* Superseded certificates must be promptly surrendered.

(e) *Accessibility—(1) Commodities.* Each commodity lot inspected shall be arranged so the entire lot may be examined or, if necessary, a representative sample, as appropriate, can be obtained. If the entire lot is not accessible for examination or a representative sample cannot be obtained, the inspection shall be restricted to an examination or sampling of the accessible portion and the results certified as stated in § 68.34.

(2) *Origin records.* When an applicant requests origin inspection, the records indicating the origin of the commodity to be inspected shall be made accessible for examination and verification by official personnel.

(f) *Plant examination.* Plant surveys shall be performed upon request. Survey results shall be reported in writing to a designated plant official. If the plant is approved as a result of the survey, inspection service may begin or continue at a time agreed upon by the plant management and the cooperator or Service. If the plant is not approved as a result of the survey, inspection service shall be conditionally withheld pursuant to the procedures in § 68.24.

(g) *Working space.* An applicant must provide adequate and separate space when inspection service is performed at a plant.

(h) *Loading and unloading conditions.* Each applicant for inspection service shall provide or arrange for suitable conditions in the—

- (1) Loading and unloading areas and the truck and railroad holding areas;
- (2) Pier or dock areas;
- (3) Deck and stowage areas of a carrier;
- (4) Other service areas; and
- (5) Equipment used in loading or unloading, processing, and handling the commodity.

Suitable conditions are those which will facilitate accurate inspection, maintain the quantity and the quality of the commodity that is to be inspected, and not be hazardous to the health and safety of official personnel as prescribed in the instructions.

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

(j) *Payment of bills.* Each applicant for inspection service shall pay bills for the service pursuant to §§ 68.90–68.92.

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

§ 68.22 Withdrawal of request for inspection service by applicant.

An applicant may withdraw a request for inspection service any time before official personnel release results, either verbally or in writing. Reimbursement of expenses, if any, shall be made pursuant to § 68.26.

§ 68.23 Dismissal of request for inspection service.

(a) *Conditions for dismissal—(1) General.* A cooperator or the Service shall dismiss requests for inspection service when:

- (i) Performing the requested service is not practicable or possible.
- (ii) The cooperator or the Service lacks authority under the Act or

regulations to provide the inspection service requested or is unable to comply with the Act, regulations, standards, or instructions.

(iii) Sufficient information is not available to make an accurate determination.

(2) *Original inspection service.* A request for original inspection service shall be dismissed if an original inspection has already been performed and circumstances do not prevent a retest inspection, appeal inspection, or Board appeal inspection from being performed on the same lot.

(3) *Retest inspection service.* A request for a retest inspection service shall be dismissed by official personnel when:

- (i) The factor requested was not tested during the original inspection;
- (ii) The condition of the commodity has undergone a material change;
- (iii) A representative file sample is not available;
- (iv) The applicant requests that a new sample be obtained;
- (v) The request is for a graded commodity; or
- (vi) The reasons for the retest inspection are frivolous.

(4) *Appeal inspection service.* A request for an appeal inspection service shall be dismissed by official personnel when:

- (i) The scope is different from the scope of the original inspection service;
- (ii) The condition of the commodity has undergone a material change;
- (iii) The request specifies a file sample and a representative file sample is not available;
- (iv) The applicant requests that a new sample be obtained and a new sample cannot be obtained; or
- (v) The reasons for the appeal inspection are frivolous.

(5) *Board appeal inspection service.* A request for a Board appeal inspection service shall be dismissed by official personnel when:

- (i) The scope is different from the scope of the original inspection service;
- (ii) The condition of the commodity has undergone a material change;
- (iii) A representative file sample is not available;
- (iv) The applicant requests that a new sample be obtained; or
- (v) The reasons for the Board appeal inspection are frivolous.

(b) *Procedure for dismissal.* The cooperator or the Service shall notify the applicant of the proposed dismissal of service. If correctable, the applicant will be afforded reasonable time to take corrective action or to demonstrate there is no basis for the dismissal. If

corrective action has not been adequate, the applicant will be notified of the decision to dismiss the request for service, and any results of service shall not be released.

§ 68.24 Conditional withholding of service.

(a) *Conditional withholding.* A cooperator or the Service shall conditionally withhold service when an applicant fails to meet any requirement prescribed in § 68.21.

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

§ 68.25 Denial or withdrawal of service.

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

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

§ 68.26 Expenses of the cooperator or the Service.

For any request that has been withdrawn, dismissed, or withheld under §§ 68.22, 68.23, or 68.24, respectively, each applicant shall pay expenses incurred by the cooperator or the Service.

Inspection Methods and Procedures

§ 68.30 Methods and order of performing inspection service.

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

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

(3) *Submitted sample inspection service.* A submitted sample inspection

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

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

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

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

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

§ 68.31 Kinds of inspection services.

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

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

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

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

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

(c) *Submitted sample inspection service.* This service consists of official

personnel grading or testing a sample submitted by the applicant and certifying the results.

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

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

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

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

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

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

- (1) Performing a stowage examination;
- (2) Computing the number of filled commodity containers loaded aboard the carrier;
- (3) Observing the condition of commodity containers loaded aboard the carrier;

(4) If practicable, sealing the carrier; and

(5) Certifying the results.

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

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

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

(k) *Observation of loading service.* This service consists of official

personnel determining that an identified lot has been moved from a warehouse or carrier and loaded into another warehouse or carrier and certifying the results.

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

(m) *Stowage examination service.* This service consists of official personnel visually determining if an identified carrier or container is clean; dry; free of infestation, rodents, toxic substances and foreign odor; and suitable to store or carry commodities and certifying the results.

§ 68.32 Who shall inspect commodities.

Official commodity inspections shall be performed only by official personnel.

§ 68.33 Sample requirements; general.

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

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

(2) *Retest lot inspection service.* The sample(s) on which the retest is determined shall meet the requirements of paragraph (a)(1) of this section. The retest inspection shall be performed on the basis of a file sample(s), and the samples shall meet the requirements prescribed in § 68.35(e).

(3) *Appeal lot inspection service.* For an appeal lot inspection service, the sample(s) on which the appeal is determined shall meet the requirements of paragraph (a)(1) of this section. If the appeal inspection is performed on the basis of a file sample(s), the samples shall meet the requirements prescribed in § 68.35(e). In accordance with § 68.61(b), an applicant may request that a new sample be obtained and examined as part of the appeal inspection service.

(4) *Board appeal lot inspection service.* A Board appeal lot inspection

service shall be performed on the basis of file sample.

(b) *Sampler requirement.* An official sampler shall sample commodities and forward the samples to the appropriate cooperator or field office or other location as specified. A sampling report signed by the sampler shall accompany each sample. The report shall include the identity, quantity, and location of the commodity sampled; the name and mailing address of the applicant; and all other information regarding the lot as may be required.

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

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

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

§ 68.34 Partial inspection.

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

§ 68.35 Sampling provisions by level of service.

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

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

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

(c) *Appeal inspection service.*—(1) *Lot inspection service.* Each appeal

inspection service on a commodity lot shall be made on the basis of a file sample or, upon request, a new sample.

(2) *Submitted sample service.* Each appeal inspection service on the commodity in a submitted sample shall be based on an analysis of the file sample.

(d) *Board appeal inspection service.* Each Board appeal inspection service performed on a commodity lot or submitted sample shall be based on an analysis of the file sample.

(e) *Use of file samples.*—(1) *Requirements for use.* A file sample that is retained by official personnel in accordance with the procedures prescribed in the instructions shall be considered representative for retest inspection, appeal inspection, and Board appeal inspection service if: (i) The file samples have remained at all times in the custody and control of the official personnel that performed the inspection service and (ii) the official personnel who performed the inspection service in question and those who are to perform the retest inspection, the appeal inspection, or the Board appeal inspection service determines that the samples were representative of the commodity at the time the inspection service was performed and that the quality or condition of the commodity in the samples has not since changed.

(2) *Certificate statement.* The certificate for a retest inspection, appeal inspection, or Board appeal inspection service which is based on a file sample shall show the statement "Results based on file sample."

§ 68.36 Loss of identity.

(a) *Lots.* The identity of a packaged lot, bulk lot, or sublot of a commodity shall be considered lost if:

(1) A portion of the commodity is unloaded, transferred, or otherwise removed from the carrier or location after the time of original inspection, unless the identity is preserved; or

(2) More commodity or other material, including a fumigant or insecticide, is added to the lot after the original inspection was performed, unless the addition of the fumigant or insecticide was performed in accordance with the instructions; or

(3) At the option of official personnel performing an appeal inspection or Board appeal inspection service, the identity of a commodity in a closed carrier or container may be considered lost if the carrier or container is not sealed or the seal record is incomplete.

(b) *Carriers and containers.* The identity of a carrier or container shall be considered lost if (1) the stowage area is

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

cleaned, treated, fumigated, or fitted after the original inspection was performed or (2) the identification has been changed since the original inspection.

(c) *Submitted sample.* The identity of a submitted sample of a commodity shall be considered lost if:

(1) The identifying number, mark, or symbol for the sample is lost or destroyed; or

(2) The sample has not been retained and protected by official personnel as prescribed in the regulations and the instructions.

Original Inspection Service

§ 68.40 Who may request original inspection service.

Any interested person may apply for inspection service.

§ 68.41 Contract service.

Any interested person may enter into a contract with a cooperator or the Service whereby the cooperator or Service will provide original inspection services for a specified period, and the applicant will pay a specific fee.

§ 68.42 How to request original inspection service.

(a) *General.* Requests may be made verbally or in writing. Verbal requests shall be confirmed in writing when requested by official personnel. All written requests shall include the information specified in § 68.21. Copies of request forms may be requested from the cooperator or the Service. If all required documentation is not available when the request is made, it shall be provided as soon as it is available. At their discretion, official personnel may withhold inspection service pending receipt of the required documentation.

(b) *Request requirements.* Requests for original inspection service, other than submitted sample inspections, must be made with the cooperator or the Service responsible for the area in which the service will be provided. Requests for submitted sample inspections may be made with any cooperator or any field office that provides original inspection service. Requests for inspection of commodities during loading, unloading, handling, or processing shall be received far enough in advance so official personnel can be present.

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

§ 68.43 Certifying original inspection results.

Official certificates shall be issued in accordance with § 68.70 and the instructions.

§ 68.44 New original inspection.

When circumstances prevent a retest inspection, appeal inspection, or Board appeal inspection, an applicant may request a new original inspection on any previously inspected lot; except that a new original inspection may not be performed on an identifiable commodity lot which, as a result of a previous inspection, was found to be contaminated with filth, other than insect fragments in nongraded processed products, or to contain a deleterious substance. A new original inspection shall be based on a new sample and shall not be restricted to the scope of any previous inspection. A new original inspection certificate shall not supersede any previously issued certificate.

Retest Inspection Service

§ 68.50 Who may request retest inspection service.

(a) *General.* Any interested person may request a retest inspection service on nongraded commodities. When more than one interested person requests a retest inspection service, the first interested person to file is the applicant of record. Only one retest inspection service may be performed on any original inspection service.

(b) *Scope of request.* A retest inspection service may be requested for any or all quality factors tested but shall be limited to analysis of the file sample.

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

§ 68.51 How to request retest inspection service.

(a) *General.* Requests shall be made with the field office responsible for the area in which the original inspection service was performed. Verbal requests shall be confirmed in writing, upon request, as specified in § 68.21. Copies of request forms may be obtained from the field office upon request. If at the time the request is filed and the documentation required by § 68.21 is not available, official personnel may, at their discretion, withhold service pending the receipt of the required documentation.

(b) *Request requirements.* Requests will be considered filed on the date they are received by official personnel.

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§ 68.52 Certifying retest inspection results.

(a) *General.* Retest inspection certificates shall be issued according to § 68.70 and instructions. The certificate shall show the results of the factor(s)

retested and the original results not included in the retest service.

(b) *Required statements on retest certificates.* Each retest inspection certificate shall show the statements required by this section, § 68.71, and the instructions.

(1) Each retest inspection certificate shall clearly show the term "Retest" and a statement identifying the superseded original certificate. The superseded certificate shall be considered null and void as of the date of the retest certificate. When applicable, the certificate shall also show a statement as to which factor(s) result is based on the retest inspection service and that all other results are those of the original inspection service.

(2) If the superseded certificate is in the custody of the Service, the superseded certificate shall be marked "Void." If the superseded certificate is not in the custody of the Service at the time the retest certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the retest certificate.

Appeal Inspection Service

§ 68.60 Who may request appeal inspection service.

(a) *General.* Any interested person may request appeal inspection or Board appeal inspection service. When more than one interested person requests an appeal inspection or Board appeal inspection service, the first interested person to file is the applicant of record. Only one appeal inspection may be obtained from any original inspection or retest inspection service for nongraded commodities. Only one Board appeal inspection may be obtained from any original or appeal inspection service for graded commodities. Board appeal inspection shall be performed on the basis of the file sample.

(b) *Kind and scope of request.* When the results for more than one kind of service are reported on a certificate, an appeal inspection or Board appeal inspection service, as applicable, may be requested on any or all kinds of services reported on the certificate. The scope of an appeal inspection service will be limited to the scope of the original inspection or, in the case of a Board appeal inspection service, the original or appeal inspection service. A request for appeal inspection of a retest inspection will be based upon the scope of the original inspection. If the request specifies a different scope, the request shall be dismissed. An appeal inspection for grade shall include a review of all factors that: (1) Determine the grade and (2) are reported on the original or, in the

case of a Board appeal inspection, the original or appeal inspection certificate.

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§ 68.61 How to request appeal inspection service.

(a) *General.* Requests shall be made with the field office responsible for the area in which the original service was performed. Requests for Board appeal inspections may be made with the Board of Appeals and Review or the field office that performed the appeal inspection. Verbal requests must be confirmed in writing, upon request, as specified in § 68.21. Copies of request forms may be obtained from the field office upon request. If at the time the request is made the documentation required by § 68.21 is not available, official personnel may, at their discretion, withhold service pending the receipt of the required documentation.

(b) *Request requirements.* (1) This subparagraph is applicable to rice inspection only. Except as may be agreed upon by the interested persons, the application shall be made: (i) Before the rice has left the place where the inspection being appealed was performed and (ii) no later than the close of business on the second business day following the date of the inspection being appealed. However, the Administrator may extend the time requirement as deemed necessary.

(2) Subject to the limitations of paragraph (b)(3) of this section, the applicant may request that an appeal inspection be based on: (i) The file sample or (ii) a new sample. However, an appeal inspection shall be based on a new sample only if the lot can positively be identified by official personnel as the one that was previously inspected and the entire lot is available and accessible for sampling and inspection. Board appeals shall be on the basis of the file sample.

(3) An appeal inspection shall be limited to a review of the sampling procedure and an analysis of the file sample when, as a result of a previous inspection, the commodity was found to be contaminated with filth (other than insect fragments in nongraded processed products) or to contain a deleterious substance. If it is determined that the sampling procedures were improper, a new sample shall be obtained if the lot can be positively identified as the lot which was previously inspected and the entire lot is available and accessible for sampling and inspection.

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§ 68.62 Who shall perform appeal inspection service.

(a) *Appeal.* For graded commodities, the appeal inspection service shall be performed by the field office responsible for the area in which the original inspection was performed. For nongraded commodities, the appeal inspection service shall be performed by the Service's Commodity Testing Laboratory.

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

§ 68.63 Certifying appeal inspection results.

(a) *General.* An appeal inspection certificate shall be issued according to § 68.70 and instructions. Except as provided in paragraph (b)(2) of this section, only the results of the appeal inspection or Board appeal inspection service shall be shown on the appeal inspection certificate.

(b) *Required statements.* Each appeal inspection certificate shall show the statements required by this section, § 68.71, and instructions.

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

(2) When the results for more than one kind of service are reported on a certificate, the appeal or Board appeal inspection certificate shall show a statement of which kind of service(s) results are based on the appeal or Board appeal inspection service and that all other results are those of the original inspection, retest inspection, or appeal inspection service.

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

(c) *Finality of Board appeal inspection.* A Board appeal inspection shall be the final appeal inspection service except that for nongraded commodities an appeal shall be the final appeal inspection.

Official Certificates

§ 68.70 Official certificates; issuance and distribution.

(a) *Required issuance.* An inspection certificate shall be issued to show the results of each kind and each level of inspection service.

(b) *Distribution—(1) Original.* The original and one copy of each inspection certificate shall be distributed to the applicant or the applicant's order. In addition, one copy of each inspection certificate shall be filed with the office providing the inspection; and, if the inspection is performed by a cooperator, one copy shall be forwarded to the appropriate field office. If requested by the applicant prior to issuance of the inspection certificate, additional copies not to exceed a total of three copies will be furnished at no extra charge.

(2) *Retest and appeal inspection service.* In addition to the distribution requirements in paragraph (b)(1) of this section, one copy of each retest or appeal inspection certificate will be distributed to each interested person of record or the interested person's order and to the cooperator or field office that issued the superseded certificate.

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

(c) *Prompt issuance.* An inspection certificate shall be issued before the close of business on the business day following the date the inspection is completed.

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

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

(e) *Name requirement.* The name or the signature, or both, of the person who issued the inspection certificate shall be shown on the original and all copies of the certificate.

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

(2) *Initialing.* When a name or signature, or both, is affixed by an authorized agent, the initials of the agent shall appear directly below or following the name or signature of the person.

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

(h) *Certification; when prohibited.* An official certificate shall not be issued for service after the request for an inspection service has been withdrawn or dismissed.

§ 68.71 Official certificate requirements.

Official certificates shall—

(a) Be on standard printed forms prescribed in the instructions;

(b) Be in English;

(c) Be typewritten or handwritten in ink and be clearly legible;

(d) Show the results of inspection services in a uniform, accurate, and concise manner;

(e) Show the information required by §§ 68.70–68.75; and

(f) Show only such other information and statements of fact as are provided in the instructions authorized by the Administrator.

§ 68.72 Certification of results.

(a) *General.* Each official certificate shall show the results of the inspection service.

(b) *Graded commodities.* Each official certificate for graded commodities shall show—

(1) The class, grade, or any other quality designation according to the official grade standards;

(2) All factor information requested by the applicant; and

(3) All grade determining factors for commodities graded below the highest quality grade.

§ 68.73 Corrected certificates.

(a) *General.* The accuracy of the statements and information shown on official certificates must be verified by the individual whose name or signature, or both, is shown on the official certificate or by the authorized agent who affixed the name or signature, or both. Errors found during this process shall be corrected according to this section.

(b) *Who may correct.* Only official personnel or their authorized agents may make corrections, erasures, additions, or other changes to official certificates.

(c) *Corrections prior to issuance.* No corrections, erasures, additions, or other changes shall be made which involve identification, quality, or quantity. If such errors are found, a new official certificate shall be prepared and issued and the incorrect certificate marked "Void." Otherwise, errors may be corrected provided that—

(1) The corrections are neat and legible;

(2) Each correction is initialed by the individual who corrects the certificate; and

(3) The corrections and initials are shown on the original and all copies.

(d) *Corrections after issuance—(1) General.* If errors are found on an official certificate at any time up to a maximum of 1 year after issuance, the errors shall be corrected by obtaining the incorrect certificate and replacing it with a corrected certificate. When the incorrect certificate cannot be obtained, a corrected certificate can be issued superseding the incorrect one.

(2) *Certification requirements.* The same statements and information, including permissive statements, that were shown on the incorrect certificate, along with the correct statement or information, shall be shown on the corrected certificate. According to this section and the instructions, corrected certificates shall show—

(i) The terms "Corrected Original" and "Corrected Copy,"

(ii) A statement identifying the superseded certificate and the corrections,

(iii) A statement indicating the superseded certificate was not surrendered when the incorrect certificate was not submitted; and

(iv) A new serial number.

In addition, the incorrect certificate shall be marked "Void" when submitted.

(e) *Limitations.* Corrected certificates cannot be issued for a certificate that has been superseded by another certificate or on the basis of a subsequent analysis for quality.

§ 68.74 Divided-lot certificates.

(a) *General.* When commodities are offered for inspection and are certificated as a single lot, the applicant may exchange the inspection certificate for two or more divided-lot certificates.

(b) *Application.* Requests for divided-lot certificates shall be made—

(1) In writing;

(2) By the applicant who made the initial request;

(3) To the office that issued the outstanding certificate;

(4) Within 5 business days of the outstanding certificate date; and

(5) Before the identity of the commodity has been lost.

(c) *Quantity restrictions.* Divided-lot certificates shall not show an aggregate quantity different than the total quantity shown on the superseded certificate.

(d) *Surrender of certificate.* The certificate that will be superseded shall—

(1) Be in the custody of the cooperator or the Service;

(2) Be marked "Void," and

(3) Show the identification of the divided-lot certificates.

(e) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the superseded certificate shall be shown on each divided-lot certificate. Divided-lot certificates shall show—

(1) A statement indicating the commodity was inspected as an undivided lot;

(2) The terms "Divided-Lot Original," and the copies shall show "Divided-Lot Copy;"

(3) The same serial number with numbered suffix (for example, 1764–1, 1764–2, 1764–3, and so forth); and

(4) The quantity specified by the request.

(f) *Issuance and distribution.* Divided-lot certificates shall be issued no later than the close of business on the next business day after the request and be distributed according to § 68.70(b).

(g) *Limitations.* After divided-lot certificates have been issued, further dividing or combining is prohibited except with the approval of the Service.

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

§ 68.75 Duplicate certificates.

Upon request, a duplicate certificate may be issued for a lost or destroyed official certificate.

(a) *Application.* Requests for duplicate certificates shall be filed—

- (1) In writing;
- (2) By the applicant who requested the service covered by the lost or destroyed certificate; and
- (3) With the office that issued the initial certificate.

(b) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the lost or destroyed certificate shall be shown on the duplicate certificate. Duplicate certificates shall show: (1) The terms "Duplicate Original," and the copies shall show "Duplicate Copy" and (2) a statement that the certificate was issued in lieu of a lost or destroyed certificate.

(c) *Issuance.* Duplicate certificates shall be issued as promptly as possible and distributed according to § 68.70(b).

(d) *Limitations.* Duplicate certificates shall not be issued for certificates that have been superseded.

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Licensed Inspectors, Technicians, and Samplers**§ 68.80 Who may be licensed.**

(a) *Inspectors.* The Administrator may license any person to inspect commodities and to perform related services if the individual—

- (1) Is employed by a cooperator;
 - (2) Possesses the qualifications prescribed in the instructions; and
 - (3) Has no interest, financial or otherwise, direct or indirect in merchandising, handling, storing, or processing the kind of commodities or related products to be inspected.
- The Administrator may require applicants to be examined for competency at a specific time and place and in a prescribed manner.

(b) *Technicians or samplers.* The Administrator may license any person as a technician to perform official specified laboratory functions, including sampling duties and related services, or as a sampler to draw samples of commodities and perform related services if the individual: (1) Possesses proper qualifications as prescribed in the instructions and (2) has no interest, financial or otherwise direct or indirect in merchandising, handling, storing, or processing the kind of commodities or related products to be chemically analyzed, mechanically tested, sampled, and so forth. The Administrator may require applicants to be examined for

competency at a specific time and place and in a prescribed manner.

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

§ 68.81 Licensing procedures.

(a) *Application.* An application for a license, the renewal of a license, or the return of a suspended license shall be submitted to the Service on forms furnished by the Service. Each application shall be in English, be typewritten or legibly written in ink, show all information prescribed by the application form, and be signed by the applicant.

(b) *Examinations and reexaminations.* Applicants for a license and individuals who are licensed to perform any or all inspection services shall, at the discretion of the Service, submit to examinations or reexaminations to determine their competency to perform the inspection functions for which they desire to be or are licensed.

(c) *Termination—(1) Procedure.* Each license shall terminate according to the termination date shown on the license and as specified by the schedule in this paragraph. The termination date for a license shall be no less than 3 years or more than 4 years after the issuance date for the initial license; thereafter, every 3 years. Upon request of a licensee and for good cause shown, the termination date may be advanced or delayed by the Administrator for a period not to exceed 60 days.

TERMINATION SCHEDULE

Last name beginning with	Termination date
A	January.
B	February.
C, D	March.
E, F, G	April.
H, I, J	May.
K, L	June.
M	July.
N, O, P, Q	August.
R	September.
S, T, U, V	October.
W	November.
X, Y, Z	December.

The Service shall issue a termination notice 60 days before the termination date. The notice shall give detailed instructions for requesting renewal of license, state whether a reexamination is required, and, if a reexamination is required, give the scope of the examination. Failure to receive a notice from the Service shall not exempt a licensee from the responsibility of having the license renewed by the termination date.

(2) *Exception.* The license of an individual under contract with the

Service shall terminate upon termination of the contract.

(d) *Surrender of license.* Each license that is terminated or which is suspended or revoked under § 68.84 shall be promptly surrendered to the Administrator or other official of the Service designated by the Administrator.

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§ 68.82 Voluntary cancellation or suspension of license.

Upon request by a licensee, the Service may cancel a license or suspend a license for a period of time not to exceed 1 year. A license that has been voluntarily suspended shall be returned by the Service upon request by the licensee within 1 year, subject to the provisions of § 68.81 (a) and (b); a license that has been cancelled shall be considered void and shall not be subject to return or renewal.

§ 68.83 Automatic suspension of license by change in employment.

A license issued to an individual shall be automatically suspended when the individual ceases to be employed by the cooperator. If the individual is reemployed by the cooperator or employed by another cooperator within 1 year of the suspension date and the license has not terminated in the interim, upon request of the licensee, the license will be reinstated subject to the provisions of § 68.81 (a) and (b).

§ 68.84 Suspension or revocation of license.

(a) *General.* (1) An inspector's, technician's, or sampler's license may be suspended or revoked if the licensee: (i) Willfully, carelessly, or through incompetence fails to perform the duties specified in the Act, regulations, standards, or the instructions or (ii) becomes incapable of performing required duties.

(2) A license may not be suspended or revoked until the individual: (i) Has been served notice, in person or by registered mail, that suspension or revocation of the license is under consideration for reasons set out in the notice and (ii) has been given an opportunity for a hearing.

(b) *Procedure for summary action.* In cases where the public health, interest, or safety require, the Administrator may summarily suspend an inspector's, technician's, or sampler's license without prior hearing. In such cases, the licensee shall be advised of the factors which appear to warrant suspension or revocation of the license. The licensee

shall be accorded an opportunity for a hearing before the license is finally suspended or revoked.

(c) *Procedures for other than summary action.* Except in cases of willfulness or those described in paragraph (b) of this section, the Administrator, before instituting proceedings for the suspension or revocation of a license, shall provide the licensee an opportunity to demonstrate

or achieve compliance with the Act, regulations, standards, and instructions. If the licensee does not demonstrate or achieve compliance, the Administrator may institute proceedings to suspend or revoke the license.

(The information collection requirements contained in paragraph (c) have been approved by the Office of Management and Budget under control number 0580-0012.)

Fees

§ 68.90 Fees for certain Federal inspection services.

The following fees apply to the Federal inspection services specified below.

Fees for Inspection of Hops, Pulses, Hay, Straw, and Miscellaneous Processed Commodities

TABLE 1.—HOURLY RATES

Service ¹	Regular Workday (Monday-Saturday)	Nonregular Workday (Sunday and Holiday)
Contract (per hour per Service representative).....	\$18.40	\$21.00
Noncontract (per hour per Service representative).....	22.40	25.40

¹ Original and appeal inspection services include: Grading, sampling, factor analysis, checkweighing, checkloading, condition examination, demonstration of grading, and other services requested by the applicant when performed at the point of service.

TABLE 2.—UNIT RATES

Service ¹	Bean, Pea and Lentil	Hay and Straw	Hops	Nongraded, Nonprocessed Commodities
Lot or sample (per lot or sample).....	\$	\$15.00	\$22.40	\$
Field run (per lot or sample).....	15.00			
Other than field run (per lot or sample).....	11.20			
Factor analysis (per factor).....	3.75	3.75		3.75
Extra copies of certificates (per copy).....	3.00	3.00	3.00	3.00

¹ Fees apply to determinations (original or appeal) for kind, class, grade, factor analysis, and any other quality designation as defined in the official U.S. Standards or applicable instructions when performed at other than the point of service.

Table 3.—Laboratory Fees ¹ Merchant Marine Act, 1920

	Fees
Laboratory report.....	3.00
Laboratory testing:	
(a) In addition to the fees, if any, for sampling or other requested service a fee will be assessed for each laboratory test (original, retest or appeal) as follows:	
(1) Acidity Greek.....	6.30
(2) Acid value—oil.....	6.30
(3) Aflatoxin (Minicolumn method).....	18.90
(4) Aflatoxin (TLC).....	44.00
(5) Appearance, flavor and odor—oils.....	3.15
(6) Arachidic acid.....	12.10
(7) Ash.....	7.60
(8) Bacteria count.....	7.90
(9) Baking test—bread.....	18.90
(10) Baking test—cake.....	26.50
(11) Baking test—cookies.....	23.60
(12) Baume.....	6.30
(13) Bostwick (cooked).....	12.60
(14) Bostwick (uncooked).....	6.30
(15) Calcium (AOCA).....	7.90
(16) Calcium enrichment.....	7.90
(17) Carotenoid color.....	9.45
(18) Checked and broken macaroni units.....	6.30
(19) Clarity of oil involving heating.....	6.30
(20) Cold test—oil.....	6.30
(21) Coliform.....	18.90
(22) Color—bleached.....	9.45
(23) Color—gardner.....	3.15
(24) Color—lovibond.....	3.15
(25) Color—oil and shortening.....	3.15

Table 3.—Laboratory Fees ¹ Merchant Marine Act, 1920—Continued

	Fees
(26) Congeal point.....	15.10
(27) Cooking test.....	6.30
(28) Crude fat.....	6.30
(29) Crude fiber.....	10.10
(30) Density.....	6.30
(31) Dextrose equivalent.....	18.00
(32) Diastatic activity of flour.....	18.90
(33) Enrichment—quick test.....	3.15
(34) Falling number.....	6.30
(35) Farinograph characteristics.....	23.60
(36) Fat—acid hydrolysis.....	12.60
(37) Fat acidity.....	9.45
(38) Fat stability—AOM.....	12.60
(39) Filth—heavy.....	15.60
(40) Filth—light.....	18.90
(41) Flash point—open and close cup.....	9.45
(42) Foam test.....	18.90
(43) Foots—heated and/or chilled.....	6.30
(44) Foreign material—processed grain products.....	9.45
(45) Free fatty acids.....	6.30
(46) Heating test—oil and shortening.....	6.30
(47) Hydrogen ion activity pH.....	9.45
(48) Insoluble bromides.....	6.30
(49) Insoluble impurities—oil and shortening.....	6.30
(50) Iodine number or value.....	9.45
(51) Iron enrichment.....	12.60
(52) Linolenic acid (fatty acid profile).....	12.10
(53) Lipid phosphorous.....	47.00
(54) Loaf volume.....	18.90
(55) Lysine from fortification.....	23.10
(56) Lysine from hydrolysis of protein.....	12.10
(57) Maltose value—flour.....	18.90

Table 3.—Laboratory Fees ¹ Merchant Marine Act, 1920—Continued

	Fees
(58) Marine oil in vegetable oil—qualitative.....	6.30
(59) Melting point—Wiley.....	12.60
(60) Moisture—distillation.....	9.45
(61) Moisture—oven.....	4.40
(62) Moisture and volatile matter—oil and shortening.....	6.30
(63) Neutral oil loss.....	18.90
(64) Nitrogen solubility index.....	15.70
(65) Oven leak test—oil can.....	9.45
(66) Oil content—oilseed.....	9.45
(67) Particle size—flour.....	14.90
(68) Performance test—prepared bakery mix.....	21.70
(69) Peroxide value.....	6.30
(70) Phosphorous.....	12.60
(71) Popping value—popcorn.....	18.90
(72) Potassium bromate—qualitative.....	3.15
(73) Potassium bromate—quantitative.....	9.45
(74) Protein dispersibility index.....	15.70
(75) Protein, Kjeldahl.....	7.30
(76) Purity—Monosodium glutamate.....	25.20
(77) Reducing sugars.....	18.90
(78) Refractive index.....	9.45
(79) Riboflavin.....	25.20
(80) Rope spore count.....	31.50
(81) Salmonella.....	37.00
(82) Salt content.....	9.45
(83) Saponification number.....	9.45
(84) Sedimentation.....	15.70
(85) Sieve test.....	4.40
(86) Smoke point.....	9.45
(87) Softening point.....	12.60
(88) Solid fat index.....	21.80
(89) Specific baking volume cake mix.....	21.80

Table 3—Laboratory Fees¹ Merchant Marine Act, 1920—Continued

	Fees
(90) Specific gravity—oils	12.60
(91) Starch damage—flour	14.90
(92) Staphylococcus aureus	24.50
(93) Sucrose	18.90
(94) Test weight per bushel—other than grain	2.60
(95) Tilletia controversa Kuhn (TCK)	25.20
(96) Unsaponifiable matter	12.60
(97) Urease activity	9.45
(98) Viscosity	12.60
(99) Water soluble protein	15.70
(100) Xanthidrol test for rodent urine ..	12.60

Table 3.—Laboratory Fees¹ Merchant Marine Act, 1920—Continued

	Fees
(101) Other laboratory tests	(7)
(b) If a requested test is to be reported on a specified moisture basis, a fee for moisture test will also be assessed.	

¹ When laboratory testing service is provided for FGIS by a private laboratory, the applicant will be assessed a fee which, as nearly as practicable, covers the cost to FGIS for the service provided.

² Fees for other laboratory tests not referenced above will be based on the noncontract hourly rate listed in Table 1.

§ 68.91 Fees for certain Federal rice inspection services.

The fees shown in tables 4 and 5 apply to Federal rice inspection services.

Fees for Federal Rice Inspection Services

TABLE 4.—HOURLY RATES

Service ¹	Regular Workday (Monday-Saturday)	Nonregular Workday (Sunday and Holiday)
Contract (per hour per Service representative)	\$28.40	\$39.40
Noncontract (per hour per Service representative)	34.40	48.00

¹ Original and appeal inspection services include: sampling, grading, weighing, and other services requested by the applicant when performed at the point of service.

TABLE 5.—UNIT RATES

Service ^{1,2}	Rough Rice	Brown Rice for Processing	Milled Rice
Inspection for quality (per lot, subplot, or sample inspection)	\$23.00	\$20.00	\$14.30
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	18.00	18.00	
(b) All other factors (per factor)	8.60	8.60	8.60
Total oil and free fatty acid		28.00	28.00
Interpretive lines samples: ²			
(a) Milling degree (per set)			60.00
(b) Parboiled light (per sample)			15.00
Extra copies of certificates (per copy)	3.00	3.00	3.00

¹ Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or combined at other than the point of service.

² Interpretive line samples may be purchased from the U.S. Department of Agriculture, Federal Grain Inspection Service, Field Management Division, Board of Appeals and Review, USDA, FGIS Technical Center, 10383 North Executive Hills Boulevard, Kansas City, MO 68030.

Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Deputy Director, Field Management Division, USDA, FGIS, P.O. Box 96454, Washington, DC 20090-6454. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

³ Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in Table 1.

§ 68.92 Explanation of service fees and additional fees.

(a) *Costs included in the fees.* Fees for official services in §§ 68.90 and 68.91 include—

- (1) The cost of performing the service and related supervision and administrative costs;
- (2) The cost of per diem, subsistence, mileage, or commercial transportation to perform the service;
- (3) The cost of first-class mail service;
- (4) The cost of overtime and premium pay; and
- (5) The cost of certification except as provided in § 68.92(c).

(b) *Computing hourly rates.* Hourly fees will be assessed in quarter hour increments for—

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

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

(c) *Additional fees.* Fees in addition to the applicable hourly or unit fee will be assessed when—

- (1) An applicant requests more than the original and three copies of a certificate;
- (2) An applicant requests onsite typing of certificates or typing of certificates at the FGIS field office during other than normal working hours; and
- (3) An applicant requests the use of express-type mail or courier service.

(d) *Application of fees when service is delayed by the applicant.* Hourly fees will be assessed when—

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

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

(3) FGIS officials determine that the Service representative(s) cannot be utilized elsewhere or cannot be released without cost to the Service.

(e) *Application of fees when an application for service is withdrawn or dismissed.* Hourly fees will be assessed to the applicant for the scheduled service if the request is withdrawn or dismissed after the Service representative departs for the service point or if the request for service is not withdrawn or dismissed by 2 p.m. of the business day preceding the date of scheduled service. However, hourly fees

will not be assessed to the applicant if FGIS officials determine that the Service representative can be utilized elsewhere or if the Service representative can be released without cost to the Service.

(f) *To whom fees are assessed.* Fees for official services including additional fees as provided in § 68.92(c) shall be assessed to and paid by the applicant for the service.

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

(h) *Time and form of payment—(1) Fees for Federal inspection service.* Bills for fees assessed under the regulations for official services performed by FGIS shall be paid by check, draft, or money order, payable to U.S. Department of Agriculture, Federal Grain Inspection Service.

(2) *Fees for cooperator inspection service.* Fees for inspection services provided by a cooperator shall be paid by the applicant to the cooperator in accordance with the cooperator's fee schedule.

Date: January 20, 1988.

W. Kirk Miller,
Administrator.

[FR Doc. 88-2549 Filed 2-8-88; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 1097

Milk in the Memphis, TN, Marketing Area; Order Suspending a Certain Provision

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of a rule.

SUMMARY: This action extends through 1988 the suspension, which expired December 31, 1987, of the pool supply plant provision of the Memphis order. The extension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that is continuing to make supplemental shipments of milk to meet the increased fluid milk needs of Memphis distributing plants. The supply that Mid-Am has available to meet the greater need for milk in fluid uses by Memphis handlers is milk received at the cooperative's plants which handle reserve milk supplies associated with distributing plants that are regulated under other Federal orders. The quantity of milk

needed by Memphis handlers would result in Mid-Am's plants and the associated milk supplies becoming regulated under the individual-handler pool Memphis order. Such a regulatory change would result in a reduction of returns to Mid-Am's member-producers and disrupt their normal association with other Federal orders. A continuation of the suspension will allow the reserve milk supplies and supplemental shipments for fluid milk needs to continue to be regulated under the orders with which the milk is currently associated and facilitate making sufficient supplies of milk available to Memphis distributing plants for fluid use.

DATE: Effective February 9, 1988, § 1097.7(b) is suspended for the months of January through December 1988.

FOR FURTHER INFORMATION CONTACT: John F. Borovics, Marketing Specialist, USDA/AMS, Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued January 12, 1988; published January 19, 1988 (53 FR 1369).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action tends to ensure that dairy farmers will continue to have their milk priced under the order for the market which is the primary outlet for their milk and thereby receive the benefits that accrue from such pricing. This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) and of the order regulating the handling of milk in the Memphis, Tennessee marketing area.

Notice of proposed rulemaking was published in the *Federal Register* on January 19, 1988 (53 FR 1369) concerning a proposal to suspend a certain provision of the Memphis order. Interested persons were given an opportunity to file written data, views or arguments with respect to such

proposal. No comments opposing the proposed action were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of January-December 1988 the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1097.7, paragraph (b) in its entirety.

Statement of Consideration

This action continues through 1988 the suspension, which expired on December 31, 1987, of that portion of the fluid milk plant provision that defines a pool supply plant. The Memphis order regulates a plant that ships in excess of 70,000 pounds of milk to fully regulated distributing plants during the month.

An extension of the prior suspension (which covered the months of March-December 1987) was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that is continuing to make supplemental shipments of milk to meet the increased fluid milk needs of distributing plants regulated under the Memphis order. Such shipments are expected to be necessary throughout 1988.

The most feasible supply that Mid-Am has available to meet the continuing fluid milk needs of Memphis handlers is located in the heavy milk production area of southwest Missouri. However, milk in that area is associated with plants that are operated by Mid-Am and regulated under the Southern Illinois, Southwest Plains, and Texas orders. These plants are qualified for pool status under the respective orders on the basis of shipments from such plants to distributing plants and/or on the basis of Mid-Am's marketwide performance in supplying milk to distributing plants. Shipments from the cooperative's Missouri plants would result in the regulation of one or more of Mid-Am's plants under the Memphis order.

Since the Memphis order provides for individual-handler pooling, regulation of Mid-Am's reserve plants under that order would result in a reduction of returns to Mid-Am's producers since the reserve milk supplies of other markets also would become regulated under the Memphis order. Thus, an extension of the suspension is necessary to permit the continued pooling during 1988 of the reserve milk supplies under the orders with which such milk is currently associated and to facilitate making sufficient supplies of milk available to Memphis handlers for fluid use.