

Testing Grains for Aflatoxin Under the USGSA

One commentator opposed the proposed action to provide aflatoxin testing services for grain under the authority of the USGSA. This commentator recommended that aflatoxin testing service remain under the Agricultural Marketing Act of 1946 (AMA).

The authority to test grain for which a standard has been established is included under the USGSA. Therefore, providing official aflatoxin testing service for all grains, including corn, under the authority of the USGSA is logical and justifiable. Additionally, this transfer would increase the availability of official testing service to the grain industry.

The commentator also indicated that transferring of testing authority from the AMA to the USGSA will significantly increase costs to exporters. FGIS charges \$29.20 per hour with \$7.50 charged per test under AMA and \$41.90 per hour under USGSA.

FGIS is required to recover, as nearly as practicable, the cost associated with performing official services. FGIS acknowledges the higher hourly fee under USGSA, as opposed to the hourly fees provided under AMA. However, FGIS believes the unit cost is lower under USGSA.

ESTIMATED COST COMPARISON PER TEST

[Non-contract, regular work-day]

No. of samples tested per hour	Cost per test	
	Under USGSA	Under AMA *
1.....	41.90	36.70
2.....	20.95	22.10
3.....	13.97	17.23

* The estimated cost per test under AMA includes \$7.50 per test to recover test kit cost.

The table above provides an estimated cost per aflatoxin test under USGSA compared to unit cost under AMA. This table shows that as the number of tests per hour increase, the cost per test decreases under both Acts. However, when two or more aflatoxin tests per hour were performed, the estimated cost per test is lower than USGSA.

Final Action

Based on the comments received and other available information, FGIS has decided to implement the changes to the regulations as appears in this final rule.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Conflict of interests, Exports, Freedom of Information, Grains,

Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR Part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Public Law 94-582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*).

2. Section 800.15 paragraph (b)(1) is revised to read as follows:

§ 800.15 Services.

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

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

3. Section 800.16 paragraph (a) is revised to read as follows:

§ 800.16 Certification requirements for export grain.

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

4. Section 800.162 paragraph (d) is added to read as follows:

§ 800.162 Certification of grade; special requirements.

(d) *Aflatoxin Test for Corn.* Official corn export certificates shall show, in addition to the requirements of paragraphs (a), (b), and (c) of this

section, the official aflatoxin test results if required under § 800.15(b).

Dated: December 27, 1991.

John C. Foltz,
Administrator

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Animal and Plant Health Inspection Service

9 CFR Part 75

[Docket No. 88-173]

Communicable Diseases in Horses, Asses, Ponies, Mules, and Zebras

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning communicable diseases in horses, asses, ponies, mules, and zebras by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing certain references to "Veterinary Services" and replacing them with references to the "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: January 22, 1992.

FOR FURTHER INFORMATION CONTACT:

Dr. Manual A. Thomas, Jr., Senior Staff Veterinarian, Equine Diseases Staff, VS, APHIS, USDA, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-6954.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 75 (referred to below as the regulations) contain restrictions on the interstate movement of horses, asses, ponies, mules, and zebras because of certain communicable diseases. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service (APHIS) was the official responsible for various decisions under these regulations. We are revising 9 CFR part 75 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions

in all other APHIS regulations. These revisions will be published in separate Federal Register documents.

We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service (APHIS)." We are also adding definitions of "Administrator," "Animal and Plant Health Inspection Service," and "APHIS representative" and deleting the definitions of "Deputy Administrator" and "Veterinary Services representative." Further, we are revising the definitions of "Accredited veterinarian" and "Veterinarian in Charge" to make them more consistent with the definitions in other parts of 9 CFR, and are revising APHIS mailing addresses to reflect the current addresses.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made 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 section is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR part 75 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 75

Animal diseases, Horses, Quarantine, Transportation.

Accordingly, we are amending 9 CFR part 75 as follows:

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

1. The authority citation for part 75 continues to read as follows:

Authority: 21 U.S.C. 111–113m 115, 117, 120, 121, 123–126, 134–134h; 7 CFR 2.17, 2.51, and 371.2(d).

§ 75.1 [Amended]

2. In § 75.1, in the heading, remove the words "Veterinary Services" and add the words "Animal and Plant Health Inspection Service (APHIS)" in their place; and in the first sentence, remove the words "Veterinary Services" and add the word "APHIS" in their place.

§ 75.2 [Amended]

3. In § 75.2, in the heading, remove the words "Veterinary Services" and add the words "Animal and Plant Health Inspection Service (APHIS)" in their place; and in the text, remove the words "a Veterinary Services" and add the words "an APHIS" in their place.

4. In § 75.4, paragraph (a), remove the definitions of "Deputy Administrator" and "Veterinary Services representative"; revise the heading and the definitions of "Accredited veterinarian" and "Veterinarian in Charge"; and add definitions of "Administrator," "Animal and Plant Health Inspection Service" and "APHIS representative", in alphabetical order, to read as follows:

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.

(a) * * *

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

APHIS representative. An individual employed by APHIS who is authorized to perform the functions involved.

* * * * *

Veterinarian in Charge. The veterinary official of APHIS who is assigned by the Administrator to supervise and perform the animal health activities of APHIS in the State concerned.

* * * * *

§ 75.4 [Amended]

5. In § 75.4, paragraph (a), in the definition of "Certificate" remove the words "Veterinary Services" and add the word "APHIS" in their place.

§ 75.4 [Amended]

6. In § 75.4, paragraph (a), in the definition of "Officially identified" remove the words "a Veterinary Services" and add the words "an APHIS" in their place.

§ 75.4 [Amended]

7. In § 75.4, in the following paragraphs, remove the word "Deputy" wherever it appears:

- a. § 75.4(a), definition of "Official test";
- b. § 75.4(c)(1);
- c. § 75.4(c)(2) both times it appears;
- d. § 75.4(d) introductory text;
- e. § 75.4(d)(2) both times it appears;
- f. § 75.4(d)(3); and
- g. § 75.4(d)(4) both times it appears.

§ 75.4 [Amended]

8. In § 75.4, paragraphs (a), footnote 1; (c)(1), footnote 2; and (c)(2), footnote 3, remove the words "Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Federal Building," and add, in their place, the words "Administrator, c/o SGEPS, VS, APHIS, room 769, Federal Building, 6505 Belcrest Road,".

9. In § 75.5, the definition of "Accredited Veterinarian" is revised to read as follows:

§ 75.5 Definitions.

Accredited Veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

* * * * *

Done at Washington, DC, this 15th day of January 1992.

Robert Melland,
Administrator, Animal and Plant Health
Inspection Service.

[FR Doc. 92-1521 Filed 1-21-92; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 11

RIN 3150-AE03

DOE-L or DOE-Q Reinvestigation Program for NRC-R Access Authorization Renewal Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to allow an exception to NRC-R access authorization renewal requirements. The final rule allows acceptance of the DOE-L or DOE-Q Reinvestigation Program for NRC-R access authorization renewal requirements and reduces and clarifies for the licensee the documentation required by the NRC when an exception is used. The final rule is intended to reduce administrative and investigative costs to affected licensees and administrative costs to the Federal government. Affected licensees are those who use or possess a formula quantity of special nuclear material.

EFFECTIVE DATE: February 21, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Rocio Castaneira, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2392.

SUPPLEMENTARY INFORMATION:

Background

In 1985, 10 CFR part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control over Special Nuclear Material" was amended in § 11.15 to allow, among other things, an exception in the access authorization renewal requirements for NRC-U renewals. These requirements apply to licensees who use or possess a formula quantity of special nuclear material. An NRC-U special nuclear material access authorization is required for—

- (1) All positions in the licensee's security force;
- (2) Management positions with the authority to direct the actions of members of the security force or alter security procedures, direct routine movements of special nuclear material, or direct the routine status of vital equipment;
- (3) All jobs which require unescorted access within onsite alarm stations; and
- (4) All jobs which require unescorted access to special nuclear material or within vital areas.

The NRC provided an exception in § 11.15 that allowed individuals subject to the Department of Energy's (DOE) Selective Reinvestigation Program for DOE-Q access authorization to use the DOE reinvestigation for NRC-U renewal requirements. The investigative basis for the DOE-Q is comparable to the investigative basis of the NRC-U. Allowing this exception for NRC-U renewal requirements reduced administrative and investigative costs to the licensees and avoided duplicate investigations of an individual.

However, in 1985, the DOE-L Selective Reinvestigation Program did not meet NRC-R renewal requirements. Therefore, no provisions were made for allowing the use of the DOE-L Selective Reinvestigation Program for NRC-R renewal requirements. An NRC-R special nuclear material access authorization is required for an individual whose job requires unescorted access within protected areas but does not fall within any of the categories that require an NRC-U access authorization.

Subsequently, DOE implemented an "L" Reinvestigation Program which meets NRC-R renewal requirements. Accordingly, the NRC has determined that it would be appropriate to amend Part 11 to include the DOE-L program. The NRC has also determined that allowing the DOE-Q Reinvestigation Program for NRC-R renewal requirements would be appropriate. The NRC has found that many individuals that have NRC-R access authorizations also have DOE-Q clearances and are thereby subject to reinvestigation by DOE. Additionally, the title of the DOE program is changed to reflect its current title, i.e., "DOE Reinvestigation Program."

Public Comments

On September 30, 1991, the proposed rule was published for comment (56 FR 49435). The comment period expired on October 30, 1991. One comment was received during the comment period. The commenter agreed that amending the rule would be appropriate to allow the use of the DOE-Q or DOE-L Reinvestigation Program for NRC-R renewal requirements. However, the commenter objected to the documentation required to be submitted to the NRC when the exceptions allowed were used.

Specifically, the proposed rule would have required the licensee to submit a duplicate security clearance package to the NRC when submitting the individual's security clearance package to the DOE for a reinvestigation. The commenter recommended that the

licensee provide the NRC with critical identifying data on the individual when submitting that individual's security clearance package to the DOE for reinvestigation. If a need arises, the NRC can obtain copies of the security clearance package from the DOE. This comment has been adopted for the NRC-R renewal requirements and expanded to the NRC-U renewal requirements, and the final rule has been revised to incorporate this comment. Additionally, in order to conform other regulatory text with the planned changes, the introductory text to paragraph (c)(1) has been revised.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, room LL6, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Ms. Rocio Castaneira, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2392.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule does not have a significant economic impact upon a substantial number of small entities. The final rule affects three nuclear fuel facility licensees. Because these licensees are not classified as small entities as defined by the NRC's size standards (November 6, 1991; 56 FR 56671), the Commission finds that this final rule does not have a significant economic

impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109 does not apply to this final rule, and therefore, that a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 11.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 946, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15, the introductory text of paragraph (c)(1) is revised, paragraph (c)(2) is revised, paragraph (c)(3) is redesignated as paragraph (c)(5) and revised, and new paragraphs (c)(3) and (c)(4) are added to read as follows:

§ 11.15 Application for special nuclear material access authorization

(c)(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, NRC-U and NRC-R special nuclear material access authorizations must expire 5 years from the date of issuance. If continued NRC-U and NRC-R special nuclear material access authorization is required, an application for renewal must be submitted at least 120 days prior to its expiration date. Failure to make a timely application will result in an expiration of special nuclear material access authorization. Special nuclear material access authorization for which a timely application for renewal has been made may be continued beyond the expiration date pending final action on the application.

An application for renewal must include:

(2) An exception to the NRC-U special nuclear material access authorization expiration date and the time for submission of NRC-U special nuclear material access authorization renewal applications is provided for those individuals who have a current and active DOE-Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the time for submission of NRC-U special nuclear material access authorization renewal applications may coincide with the time for submission to DOE of the SF-86 pursuant to DOE Reinvestigation Program requirements. The licensee may submit to NRC, concurrent with its reinvestigation submission to DOE, a completed NRC Form 237, "Request for Access Authorization," containing the individual's full name, to include social security number, date of birth, reinvestigation submittal date to DOE, type of request, i.e., renewal, and the information required by paragraph (c)(1)(i) of this section, as the supporting documentation for an NRC-U special nuclear material access authorization renewal application. Any NRC-U special nuclear material access authorization issued in response to a renewal application submitted pursuant to this paragraph will not expire until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program (generally every five years). NRC-U special nuclear material access authorizations for which timely applications for renewal have been made may be continued beyond the expiration date, pending final action on the application.

(3) An exception to the NRC-R special nuclear material access authorization expiration date and the time for submission of NRC-R special nuclear material access authorization renewal applications is provided for those individuals who have a current and active DOE-L or DOE-Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the time for submission of NRC-R special nuclear material access authorization renewal applications may coincide with the time for submission to DOE of the SF-86 pursuant to DOE Reinvestigation Program requirements. The licensee may submit to NRC, concurrent with its reinvestigation submission to DOE, a completed NRC Form 237, "Request for Access Authorization," containing the

individual's full name, to include social security number, date of birth, reinvestigation submittal date to DOE, and type of request, i.e., renewal, as the supporting documentation for an NRC-R special nuclear material access authorization renewal application. Any NRC-R special nuclear material access authorization issued in response to a renewal application submitted pursuant to this paragraph will not expire until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program (generally every five years). NRC-R special nuclear material access authorizations for which timely applications for renewal have been made may be continued beyond the expiration date, pending final action on the application.

(4) The licensee may use either of the exceptions as specified in paragraphs (c)(2) or (c)(3) of this section for an individual who is subject to an NRC-U or NRC-R reinvestigation, even if less than five years has passed since the date of the issuance or renewal of the NRC-U or NRC-R access authorization. Failure to file a renewal application concurrent with the time for submission of an individual's SF-86 to DOE pursuant to DOE Reinvestigation Program requirements will result in the expiration of the individual's NRC special nuclear material access authorization.

(5) Notwithstanding the provisions of paragraphs (c)(2), (c)(3), or (c)(4) of this section, the period of time for the initial and each subsequent NRC-U or NRC-R renewal application to NRC may not exceed 7 years. Any individual who is subject to the DOE Reinvestigation Program requirements but, for administrative or other reasons, does not submit reinvestigation forms to DOE within 7 years of the previous submission, shall submit a renewal application to NRC using the forms prescribed in paragraph (c)(1) of this section before the expiration of the 7 year period. Failure to request an NRC-U or NRC-R renewal for any individual within the 7 year period will result in termination of the individual's NRC-U or NRC-R access authorization.

Dated at Rockville, Maryland this 9th day of January, 1992.

For the Nuclear Regulatory Commission,

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-1502 Filed 1-21-92; 8:45 am]

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