

Grain Inspection, Packers and Stockyard Admin. (FGIS), USDA

§ 800.0

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DEFINITIONS

§ 800.0 Meaning of terms.

(a) *Construction.* Words used in the singular form shall be considered to

imply the plural and vice versa, as appropriate. When a section; e.g., § 800.2, is cited, it refers to the indicated section in these regulations.

(b) *Definitions.* For the purpose of these regulations, unless the context requires otherwise, the following terms shall have the meanings given for them below. The terms defined in the Act have been incorporated herein for easy reference.

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

Additives. Materials approved by the Food and Drug Administration or the Environmental Protection Agency and added to grain for purposes of insect and fungi control, dust suppression, or identification.

Administrator. The Administrator of the Agricultural Marketing Service or any person to whom authority has been delegated.

Agency. A delegated State or an official agency designated by the Administrator, as appropriate.

Appeal inspection service. An official review by a field office of the results of an original inspection service or a reinspection service.

Applicant. An interested person who requests an official inspection or a Class X or Class Y weighing service.

Approved scale testing organization. A State or local governmental agency, or person, approved by the Service to perform official equipment testing services with respect to weighing equipment.

Approved weigher. A person employed by or at an approved weighing facility and approved by the Service to physically perform Class X or Class Y weighing services, and certify the results of Class Y weighing.

Approved weighing equipment. Any weighing device or related equipment approved by the Service for the performance of Class X or Class Y weighing services.

Approved weighing facility. An elevator that is approved by the Service to receive Class X or Class Y weighing services.

Assigned area of responsibility. A geographical area assigned to an agency or to a field office for the performance of

official inspection or Class X or Class Y weighing services.

Average grade. Multiple carrier units or sublots that are graded individually then averaged to form a single lot inspection.

Board appeal inspection service. An official review by the Board of Appeals and Review of the results on an appeal inspection service.

Board of Appeals and Review. The Board of Appeals and Review of the Service.

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 an agency.

Cargo shipment. Bulk or sacked grain that is loaded directly aboard waterborne carrier for shipment. Grain loaded aboard a land carrier for shipment aboard a waterborne carrier shall not be considered to be a cargo shipment.

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

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

Circuit. A geographical area assigned to a field office.

Class X or Class Y weighing equipment testing. Any operation or procedure performed by official personnel to determine the accuracy of the equipment used, or to be used, in the performance of Class X or Class Y weighing services.

Combined lot. Grain loaded aboard, or being loaded aboard, or discharged from two or more carriers as one lot.

Compliance. Conformance with all requirements and procedures established by statute, regulation, instruction, or directive so that managerial, administrative, and technical functions are accomplished effectively. Compliance functions include: evaluating alleged violations, initiating preliminary investigations; initiating implementation of all necessary corrective actions; conducting management and technical reviews; administering the designation of agencies and the delegation of State agencies to perform official functions; identifying and, where appropriate,

waiving and monitoring conflicts of interest; licensing agency personnel; responding to audits of FGIS programs; and reviewing and, when appropriate, approving agency fee schedules.

Composite grade. Multiple samples obtained from the same type of carriers (e.g., trucklots, containers) that are combined into one sample for grade to form a single lot inspection.

Container. A carrier, or a bin, other storage space, bag, box, or other receptacle for grain.

Contract grade. The official grade, official factors, or official criteria specified in a contract for sale or confirmation of sale; or in the absence of a contract the official grade, official factors, or official criteria specified by the applicant for official service.

Contract service. An inspection or weighing service performed under a contract between an applicant and the Service.

Contractor. A person who enters into a contract with the Service for the performance of specified official inspection or official monitoring services.

Date of official inspection service or Class X or Class Y weighing services. The day on which an official inspection, or a Class X or Class Y weighing service is completed. For certification purposes, a day shall be considered to end at midnight, local time.

Deceptive loading, handling, weighing, or sampling. Any manner of loading, handling, weighing, or sampling that knowingly deceives or attempts to deceive official personnel.

Delegated State. A State agency delegated authority under the Act to provide official inspection service, or Class X or Class Y weighing services, or both, at one or more export port locations in the State.

Department of Agriculture and Department. The United States Department of Agriculture (USDA).

Designated agency. A State or local governmental agency, or person, designated under the Act to provide either official inspection service, or Class X or Class Y weighing services, or both, at locations other than export port locations.

Door-probe sample. A sample taken with a probe from a lot of bulk grain that is loaded so close to the top of the

carrier that it is possible to insert the probe in the grain only in the vicinity of the tailgate of the truck or trailer, the door of the railroad boxcar, or in a similarly restricted opening or area in the carrier in which the grain is located or is loaded in hopper cars or barges in such a manner that a representative sample cannot be obtained.

Elevator. Any warehouse, storage, or handling facility used primarily for receiving, storing, or shipping grain. In a facility that is used primarily for receiving, storing, and shipping grain, all parts of the main facility, as well as annexes, shall be considered to be part of the elevator. A warehouse, storage, and handling facility that is located adjacent to and is operated primarily as an adjunct of a grain processing facility shall not be considered to be an elevator.

Elevator areas and facilities. All operational areas, including the automated data processing facilities that are an integral part of the inspection or weighing operations of an elevator; the loading and unloading docks; the headhouse and control rooms; all storage areas, including the bins, the interstices, the bin floor, and the basement; and all handling facilities, including the belts, other conveyors, distributor scales, spouting, mechanical samplers, and electronic controls.

Emergency. A situation that is outside the control of the applicant that prevents official inspection or weighing services within 24 hours of the scheduled service time.

Employed. An individual is employed if the individual is actually employed or the employment is being withheld pending issuance of a license under the Act.

Exporter. Any person who ships or causes to be shipped any bulk or sacked grain in a final carrier or container in which the grain is transported from the United States to any place outside the United States.

Export elevator. Any grain elevator, warehouse, or other storage or handling facility in the United States (i) from which bulk or sacked export grain is loaded (A) aboard a carrier in which the grain is shipped from the United States to any place outside thereof, or (B) into a container for shipment to an

export port location where the grain and the container will be loaded aboard a carrier in which it will be shipped from the United States to any place outside thereof; and (ii) which has been approved by the Service as a facility where Class X or Class Y weighing of grain may be obtained.

Export grain. Grain for shipment from the United States to any place outside thereof.

Export port location. A commonly recognized port of export in the United States or Canada, as determined by the Administrator, from which grain produced in the United States is shipped to any place outside the United States. Such locations include any coastal or border location or site in the United States which contains one or more export elevators, and is identified by the Service as an export port location.

False, incorrect, and misleading. Respectively false, incorrect, and misleading in any particular.²

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

Field Office. An office of the Service designated to perform or supervise official inspection services and Class X and Class Y weighing services.

Field Office administrative costs. The costs of management, support, and maintenance of a Field Office, including, but not limited to, the management and administrative support personnel, rent, and utilities. This does not include any costs directly related to providing original or review inspection or weighing services.

Grain. Corn, wheat, rye, oats, barley, flaxseed, sorghum, soybeans, triticale, mixed grain, sunflower seed, canola, and any other food grains, feed grains, and oilseeds for which standards are established under section 4 of the Act.

Handling. Loading, unloading, elevating, storing, binning, mixing, blending, drying, aerating, screening, cleaning, washing, treating, or fumigating grain.

¹[Reserved]

²A definition taken from the U.S. Grain Standards Act, as amended, with certain modifications which do not change the meanings.

High quality specialty grain. Grain sold under contract terms that specify all factors exceed the grade limits for U.S. No. 1 grain, except for the factor test weight, or specify “organic” as defined by 7 CFR part 205.

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 610 and Executive Order No. 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.

“IN” movement. A movement of grain into an elevator, or into or through a city, town, port, or other location without a loss of identity.

Instructions. The Notices, Instructions, Handbooks, and other directives issued by the Service.

Interested person. Any person having a contract or other financial interest in grain as the owner, seller, purchaser, warehouseman, or carrier, or otherwise.

Interstate or foreign commerce. Commerce from any State to or through any other State, or to or through any foreign country.

Licensee. Any person licensed by the Service.

Loading. Placing grain in or aboard any carrier or container.

“LOCAL” movement. A bin run or other inhouse movement, or grain in bins, tanks, or similar containers which are not in transit or designed to transport grain

Lot. A specific quantity of grain identified as such.

Material error. An error in the results of an official inspection service that exceeds the official tolerance, or any error in the results of a Class X or Class Y weighing service

Material portion. A subsample, component, or subplot which is determined to be inferior to the contract or declared grade. A subsample is a material portion when it has sour, musty, or commercially objectionable foreign odors,

when it is heating; or when it is of distinctly low quality. A component is a material portion when it is infested or when it is determined to be inferior in quality by more than one numerical grade to the contract or declared grade. A subplot is a material portion when a factor result causes a breakpoint to be exceeded or when a factor result exceeds specific subplot contract requirements. A subplot designated a material portion shall include only one subplot.

Merchandiser. Any person, other than a producer, who buys and sells grain and takes title to the grain. A person who operates as a broker or commission agent and does not take title to the grain shall not be considered to be a merchandiser.

Monitoring. Observing or reviewing activities performed under or subject to the Act for adherence to the Act, the regulations, standards, and instructions and preparing reports thereon.

National program administrative costs. The costs of national management and support of official grain inspection and/or weighing. This does not include the Field Office administrative costs and any costs directly related to providing service.

Nonregular workday. Any Sunday or holiday.

Official agency. Any State or local government agency, or any person, designated by the Administrator pursuant to subsection (f) of section 7 of the Act for the conduct of official inspection (other than appeal inspection), or subsection (c) of section 7A of the Act for the conduct of Class X or Class Y weighing (other than review of weighing).

Official certificate. Those certificates which show the results of official services performed under the Act as provided in the instructions, and any other official certificates which may be approved by the Service in accordance with the instructions.

Official criteria. A quantified physical or chemical property of grain that is approved by the Service to determine the quality or condition of grain or other facts relating to grain.

Official factor. A quantified physical or chemical property of grain as identi-

fied in the Official U.S. Standards for Grain.

Official forms. License, authorizations, and approvals; official certificates; official pan tickets; official inspection or weighing logs; weight sheets; shipping bin weight loading logs; official equipment testing reports; official certificates of registration; and any other forms which may be issued or approved by the Service that show the name of the Service or an agency and a form number.

Official grade designation. A numerical or sample grade designation, specified in the standards relating to kind, class, quality, and condition of grain provided for in the Act.

Official inspection. The determination (by original inspection, and when requested, reinspection and appeal inspection) and the certification, by official personnel, of the kind, class, quality, or condition of grain, under standards provided for in the Act; or the condition of vessels and other carriers or receptacles for the transportation of grain insofar as it may affect the quality of such grain; or other facts relating to grain under other criteria approved by the Administrator (the term "officially inspected" shall be construed accordingly).

Official inspection equipment testing. Any operation or procedure by official personnel to determine the accuracy of equipment used, or to be used, in the performance of official inspection services.

Official inspection technician. Any official personnel who perform or supervise the performance of specified official inspection services and certify the results thereof, other than certifying the grade of the grain.

Official inspector. Any official personnel who perform or supervise the performance of official inspection services and certify the results thereof including the grade of the grain.

Official marks. The symbols or terms "official certificate," "official grade," "officially sampled," "officially inspected," "official inspection," "U.S. inspected," "loaded under continuous official inspection," "official weighing," "officially weighed," "official

weight,” “official supervision of weighing,” “supervision of weighing,” “officially supervised weight,” “loaded under continuous official weighing,” “loaded under continuous official inspection and weighing,” “officially tested,” “Class X weight,” “official Class X weighing,” “Class X weighing,” “official Class Y weighing,” “Class Y weighing,” and “Class Y weight.”

Official personnel. Persons licensed or otherwise authorized by the Administrator pursuant to Section 8 of the Act to perform all or specified functions involved in official inspection, Class X or Class Y weighing, or in the supervision of official inspection, or Class X or Class Y weighing.

Official sample. A sample obtained from a lot of grain by, and submitted for official inspection by, official personnel (the term “official sampling” shall be construed accordingly).

Official sampler. Any official personnel who perform or supervise the performance of official sampling services and certify the results thereof.

Official stowage examination. Any examining operation or procedure performed by official personnel to determine the suitability of a carrier or container to receive or store grain.

Official tolerance. A statistical allowance prescribed by the Service, on the basis of expected variation, for use in performing or supervising the performance of official inspection services, official equipment testing services, and, when determined under an established loading plan, reinspection services and appeal inspection services.

Official U.S. Standards for Grain. The Official U.S. Standards for Grain established under the Act describe the physical and biological condition of grain at the time of inspection.

Official weigher. Any official personnel who perform or supervise the performance of Class X or Class Y weighing services and certify the results thereof, including the weight of the grain.

Official weighing. (Referred to as Class X weighing.) The determination and certification by official personnel of the quantity of a lot of grain under standards provided for in the Act, based on the actual performance of weighing or the physical supervision

thereof, including the physical inspection and testing for accuracy of the weights and scales and the physical inspection of the premises at which weighing is performed and the monitoring of the discharge of grain into the elevator or conveyance. (The terms “officially weigh” and “officially weighed” shall be construed accordingly.)

Official weighing technician. Any personnel who perform or supervise specified weighing services and certify the results thereof other than certifying the weight of grain.

Official weight sample. Sacks of grain obtained at random by, or under the complete supervision of, official personnel from a lot of sacked grain for the purpose of computing the weight of the grain in the lot.

Operating expenses. The total costs to the Service to provide official grain inspection and/or weighing services.

Operating reserve. The amount of funds the Service has available to provide official grain inspection and/or weighing services.

Original inspection. An initial official inspection of grain.

“Out” movement. A movement of grain out of an elevator or out of a city, town, port, or other location.

Person. Any individual, partnership, corporation, association, or other business entity.

Quantity. Pounds or kilograms, tons or metric tons, or bushels.

Reasonably continuous operation. A loading or unloading operation in one specific location which does not include inactive intervals in excess of 88 consecutive hours.

Regular workday. Any Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday that is not a holiday.

Regulations. The regulations in parts 800, 801, and 802 of this chapter.

Reinspection service. An official review of the results of an original inspection service by the agency or field office that performed the original inspection service.

Respondent. The party proceeded against.

Review of weighing service. An official review of the results of a Class X or Class Y weighing service.

Secretary. The Secretary of Agriculture of the United States or any person to whom authority has been delegated.

Service. The Federal Grain Inspection Service of the Agricultural Marketing Service of the United States Department of Agriculture.

Service representative. An authorized salaried employee of the Service; or a person licensed by the Administrator under a contract with the Service.

Shallow-probe sample. A sample taken with a probe from a lot of bulk grain that is loaded so close to the top of the carrier that it is possible to insert the probe in the grain at the prescribed locations, but only at an angle greater or more obtuse from the vertical than the angle prescribed in the instructions.

Ship. The verb "ship" with respect to grain means transfer physical possession of the grain to another person for the purpose of transportation by any means of conveyance, or transport one's own grain by any means of conveyance.

Shiplot grain. Grain loaded aboard, or being loaded aboard, or discharged from an ocean-going vessel including a barge, lake vessel, or other vessel of similar capacity.

Shipper's Export Declaration. The Shipper's Export Declaration certificate filed with the U.S. Department of Commerce, Bureau of Census.

Specified service point. A city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and within which the agency or one or more of its inspectors or weighers is located.

Standardization. The act, process, or result of standardizing methodology and measurement of quality and quantity. Standardization functions include: compiling and evaluating data to develop and to update grading and weighing standards, developing or evaluating new methodology for determining grain quality and quantity, providing reference standards for official grading methods, and reviewing official results through the use of a quality control and weight monitoring program.

State. Any one of the States (including Puerto Rico) or territories or pos-

sessions of the United States (including the District of Columbia).

Submitted sample. A sample submitted by or for an interested person for official inspection, other than an official sample.

Supervision. The effective guidance of agencies, official personnel and others who perform activities under the Act, so as to reasonably assure the integrity and accuracy of the program activities. Supervision includes overseeing, directing, and coordinating the performance of activities under the Act, reviewing the performance of these activities; and effecting appropriate action. FGIS supervisory personnel supervise agencies, official personnel and others who perform activities under the Act. Agency supervisors are responsible for the direct supervision of their own official personnel and employees. FGIS provides oversight, guidance, and assistance to agencies as they carry out their responsibilities.

Supervision of weighing (Referred to as Class Y weighing.) Such supervision by official personnel of the grain-weighing process as is determined by the Administrator to be adequate to reasonably assure the integrity and accuracy of the weighing and of certificates which set forth the weight of the grain and such physical inspection by such personnel of the premises at which the grain weighing is performed as will reasonably assure that all the grain intended to be weighed has been weighed and discharged into the elevator or conveyance.

United States. The States (including Puerto Rico) and the territories and possessions of the United States (including the District of Columbia).

Use of official inspection service. The use of the services provided under a delegation or designation or provided by the Service.

Uniform in quality. A lot of grain in which there are no material portions.

Warehouseman's sampler. An elevator employee licensed by the Service to obtain samples of grain for a warehouseman's sample-lot inspection service. Warehouseman's samplers are not considered official personnel, but

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they are licensed under authority of section 11 of the Act.

[45 FR 15810, Mar. 11, 1980, as amended at 49 FR 36068, Sept. 14, 1984; 49 FR 37055, Sept. 21, 1984; 49 FR 49586, Dec. 21, 1984; 52 FR 6495, Mar. 4, 1987; 55 FR 24041, June 13, 1990; 57 FR 3273, Jan. 29, 1992; 60 FR 5835, Jan. 31, 1995; 70 FR 21923, Apr. 28, 2005; 70 FR 73558, Dec. 13, 2005; 75 FR 41695, July 19, 2010; 76 FR 45399, July 29, 2011; 78 FR 43755, July 22, 2013; 81 FR 49859, July 29, 2016]

ADMINISTRATION

§ 800.1 Mission.

The mission of the Federal Grain Inspection Service is to facilitate the marketing of grain, oilseeds, pulses, rice, and related commodities by:

- (a) Establishing descriptive standards and terms,
- (b) Accurately and consistently certifying quality,
- (c) Providing for uniform official inspection and weighing,
- (d) Carrying out assigned regulatory and service responsibilities, and
- (e) Providing the framework for commodity quality improvement incentives to both domestic and foreign buyers.

[54 FR 9197, Mar. 6, 1989]

§ 800.2 Administrator.

The Administrator is delegated, from the Secretary, responsibility for administration of the United States Grain Standards Act and responsibilities under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The Administrator is responsible for the establishment of policies, guidelines, and regulations by which the Service is to carry out the provisions of the Act and the Agricultural Marketing Act of 1946. The regulations promulgated under the Agricultural Marketing Act of 1946 appear at part 68 of this title (7 CFR part 68). The Administrator is authorized by the Secretary to take any action required by law or considered to be necessary and proper to the discharge of the functions and services under the Act. The Administrator may delegate authority to the Deputy Administrator and other appropriate officers and employees. The Administrator may, in emergencies or other circumstances which would not impair the objectives

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of the Act, suspend for period determined by the Administrator any provision of the regulations or official grain standards. The Administrator may authorize research; experimentation; and testing of new procedures, equipment, and handling techniques to improve the inspection and weighing of grain. The Administrator may waive the official inspection and official weighing requirements pursuant to Section 5 of the Act.

[60 FR 5835, Jan. 31, 1995]

§ 800.3 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.*), (Pub. L. 88–352).

§ 800.4 Procedures for establishing regulations, official standards, and official criteria.

Notice of proposals to prescribe, amend, or revoke regulations, official standards, and official criteria under the Act shall be published in accordance with applicable provisions of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*). Proposals to establish, amend, or revoke grain standards will be made effective not less than 1 calendar year after promulgation unless, for good cause, the Service determines that the public health, interest, or safety require that they become effective sooner. Any interested person desiring to file a petition for the issuance, amendment, or revocation of regulations, Official U.S. Standards for Grain, or official criteria may do so in accordance with §1.28 of the regulations of the Office of the Secretary of Agriculture (7 CFR 1.28).

§ 800.5 Complaints and reports of alleged violations.

(a) *General.* Except as provided in paragraphs (b) and (c) 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 §1.133 of the