

Directive

FGIS 9290.18

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EXCEPTIONS AND SERVICE AGREEMENTS

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1. PURPOSE

This directive establishes requirements for providing official service under Title 7 of the Code of Federal Regulations (CFR) Section (§) 800.117(b) Who shall provide original services; Exceptions. It also establishes requirements for neighboring agencies to provide infrequent official service by agreement under 7 CFR §800.196(g) (1) Designations; Responsibilities; Providing Official Services of the regulations under the United States Grain Standards Act (USGSA).

2. REPLACEMENT HIGHLIGHTS

This directive supersedes *FGIS Directive 9290.18*, issued on April 14, 2017. The changes include updated procedures, expanding exception request types to include nonuse of service exceptions, adding three timely service exception tiers, and adding instructions for official agencies to challenge exception requests.

3. BACKGROUND

Under the USGSA, official agencies (OA) are designated to serve a specific geographic area. This restriction was established to ensure effective and efficient delivery of official services to all facilities within the assigned geographic area designated to an OA, in so far as practicable. As outlined in 7 CFR §800.117, an applicant for service may request, under certain conditions, a neighboring OA to provide official services in lieu of the OA assigned to their geographic area, subject to Federal Grain Inspection Service (FGIS) approval.

In 2000, Congress amended Section 7(c)(B)(2) of the USGSA to give the United States Department of Agriculture (USDA) the discretion to allow more than one designated OA to provide official inspection services within a single geographic area.

In 2003, FGIS revised its regulations to allow more than one designated OA to inspect or weigh grain within a single geographic area. Section 800.117(b) established three types of exceptions programs: timely service, nonuse of service, and barge probe service. These exceptions allowed, under certain conditions, eligible facilities to request official grain inspection or weighing services from a designated OA other than the one assigned to serve their geographic area.

In 2015, Congress amended Section 7(f) (2) and Section 7A (i) (2) of the USGSA eliminating the nonuse of service exception and adding a written agreement exception. A written agreement exception, made at the request of a facility, allows a geographically adjacent OA to serve the facility if the assigned OA waives the current geographic area restriction.

In 2018, Congress reinstated authority to allow a nonuse of service exception through an amendment to the USGSA in the 2018 Farm Bill and allowed for the restoration of previously terminated nonuse of service exceptions. Interested parties were given an opportunity to submit restoration requests to FGIS.

In 2023, following the rulemaking process, 7 CFR part 800.117 was revised to update the regulations, include three timely service exceptions tiers (one time, 90-day, and long-term), add nonuse of service exceptions parameters, and include the opportunity for the assigned Official Agencies to challenge timely service and nonuse of service exceptions requests.

4. RESPONSIBILITIES

a. FGIS Quality Assurance and Compliance Division (QACD).

QACD is responsible for the oversight of exceptions and service agreements. This includes evaluating requests, in consultation with other FGIS offices, to ensure all applicable requirements are met, including statutory and regulatory requirements. QACD notifies the applicant, assigned OA, and potential gaining OA when an exception request is received by QACD. FGIS, through QACD, makes the decision to grant or deny requests, and notifies the involved parties. FGIS, through QACD, makes the decision to cancel exceptions and service agreements and notifies the parties involved.

b. Applicants for Service.

The applicant for service (facility management), seeking or holding an exception an exception or service agreement, is responsible for:

- (1) Submitting the QACD-101 Exceptions Request information and any relevant documentation to FGISQACD@usda.gov, when requesting timely service or nonuse of service exception requests.
- (2) Submitting a written notification to terminate a 90-day or long-term timely service request to QACD, and the gaining OA, if desired.
- (3) Submitting a new nonuse of service exceptions request, if desired, in instances when facility ownership changes or the gaining OA is no longer designated.
- (4) Submitting a request for cancellation of an exception, where applicable.

c. Official Agency.

- (1) Assigned OA. The assigned OA is the OA designated to provide official services in the assigned geographic area. The assigned OA is responsible for:
 - (a) Submitting the QACD-102 Exceptions Request Challenge document and any relevant documentation within 14 calendar days of notice of a timely service or nonuse of service exception request, should the OA choose to challenge the request. See instructions on website at <https://www.ams.usda.gov/services/fgis/usgsaexceptions>.

- (b) When the assigned OA agrees to waive the current geographic restriction, it is responsible for working with the gaining OA to submit the written agreement exception or service agreement to QACD.
 - (c) Providing customer service information (e.g., the date and time of service last provided to the facility). The assigned OA, even with an exception in its territory, is allowed to provide service to the applicant upon request, as such it must and report monthly volume information for any services provided to the facility after the nonuse of service exception, written agreement exception, or service agreement allowing a gaining OA to provide service within their assigned geographic area has been approved.
- (2) Gaining OA. The gaining OA is the OA excepted to provide official services in the assigned geographic area of another OA. The gaining OA is responsible for:
- (a) The gaining OA is responsible for ensuring that service is provided upon accepting an exception or service agreement and reporting monthly volume information for official services provided at facilities under exceptions and service agreements.
 - (b) Requesting a new SSP code in cases where an exception has been granted for an applicant outside of the gaining OA's assigned geographic area.

5. EXCEPTIONS

There are four types of exceptions: Timely service, nonuse of service, barge probe, and written agreement.

- a. Timely Service. If an official agency cannot provide an applicant official services within 6 hours, cannot provide the results and certificate in accordance with §800.160(c) Official certificates; issuance and distribution; prompt issuance, and/or cannot provide services due to weather or other short term disruption, or does not offer the official services the applicant is requesting, a timely service exception may be requested by completing the QACD-101 Exceptions Request document and submitting to FGISQACD@usda.gov.

- (1) There are three tiers of timely service exceptions.
 - (a) One time: When the first instance of untimely service by the assigned OA occurs, the applicant needs to request and/or notify of a one-time exception. For one-time requests outside of business hours, the gaining OA may provide the service at the request of the applicant. Under urgent one-time requests in which services are performed prior to notification to QACD and its review of the exception request the, following conditions apply;

- 1 The applicant must still submit one-time timely service exception request notification to QACD within two business days after the service has been completed.
 - 2 The gaining OA must email FGISQACD@usda.gov and within two business days of the services being performed and include the following.
 - a The date and types of services provided,
 - b The applicant name and address that services where provided,
 - c Evidence which demonstrates the applicant attempted to contact their assigned OA for service, including the date, time, and result of the request (i.e., e-mails, documented phone call attempts, voicemail messages, etc.), or confirms the assigned OA is unable to provide service within 6 hours of the requested start time.
- (b) 90-Day: If an applicant has been granted a one-time exception and a second occurrence of untimely service by the assigned OA has occurred within 180 calendar days of the first instance, they may submit a 90-day exception request. Granted exceptions will be active for 90 calendar days beginning the day the exception is granted.
 - (c) Long-Term: If an applicant has been granted a 90-day exception and there is another occurrence of untimely service by the assigned OA within 365 calendar days of the applicant returning to service with the assigned OA, the applicant may request a long-term exception. If approved by QACD, a long-term exception may remain in effect until the end of the gaining OA's designation period.
- (2) Upon receipt of a 90-Day or Long-Term timely service request, QACD will notify the assigned OA and the gaining OA that the request has been submitted and offer the assigned OA 14 calendar days to challenge the request.
 - (3) QACD will notify the applicant, the assigned OA, and gaining OA once a determination is made. While waiting a decision on 90-day or long-term requests, the applicant may receive services from the gaining OA. QACD aims to make a determination within 15 business days unless more time is needed due to a request being challenged by the assigned OA.
 - (4) QACD, in consultation with all parties, may terminate 90-day or long-term timely service exceptions and will notify the applicant, the assigned OA, and gaining OA.

- b. **Nonuse of Service:** If an applicant has not received services from the assigned OA within 90-calendar days, they may submit a nonuse of service request to receive services from another OA. Periods of nonuse resulting from timely service exceptions will not qualify as part of a period of nonuse. Nonuse of service requests must be submitted on QACD-101 to FGISQACD@usda.gov. Requests must include at minimum the last date the assigned OA provided service to the facility, the reason services have not been received or requested in the past 90 days, and the identified reason for the request. See instructions on the AMS Website at <https://www.ams.usda.gov/services/fgis/usgsaexceptions>.
- (1) Upon receipt of a nonuse of service request, QACD will notify the assigned OA and the gaining OA that the request has been submitted and offer the assigned OA an opportunity to challenge the request within 14 calendar days.
 - (2) QACD will notify the applicant, the assigned OA, and gaining OA once a determination is made.
 - (3) Approved nonuse of service exceptions remains in effect until the end of the gaining OA's designation period and will be automatically renewed if the gaining OA is awarded a new designation period.
 - (4) If the applicant transfers ownership of its facility, the nonuse of service exception will automatically terminate, and the new owner of the facility will need to request a new nonuse of service exception to receive service from an OA other than the assigned OA for their geographic area.
 - (5) If the applicant, the assigned OA, gaining OA, and QACD agree to terminate the exception, the exception will be terminated and the applicant must return to the assigned OA.
- c. **Barge probe:** Any OA may provide probe sampling and inspection services for barge-lots of grain with no restrictions due to geographical locations. QACD approval is not required for barge probe exceptions.
- d. **Written Agreement:** An applicant may request official services be provided by a gaining OA whose geographic area is adjacent to the assigned OA's geographic area. If the assigned OA agrees to allow the gaining OA to provide service at that facility, a written agreement exception request must be submitted to QACD at FGISQACD@usda.gov.
- (1) The applicant must submit a written agreement exception request, on company letterhead, and include the following:
 - (a) Date of request;
 - (b) Date of implementation;

- (c) Name, location, and contact information for the specific facility pertaining to the written agreement;
 - (d) Names and contact information of the assigned OA and the gaining OA;
 - (e) The inspection and/or weighing services that will be provided by the gaining OA;
 - (f) The responsibilities of each OA under the written agreement;
 - (g) Timeframes governing the duration of the written agreement, if applicable;
 - (h) A termination clause, if timeframes are not specified;
 - (i) Any relevant information that will aid in the evaluation of the written agreement; and
 - (j) Signatures of the OAs and applicant facility management.
- (2) Once approved, written agreement exceptions remain in place until:
- (a) One or more parties cancel the exception, and/or;
 - (b) Significant changes, such as change of ownership, occur with one or more parties involved.
- (3) To ensure facilities continue to receive official services upon the cancellation of a written agreement exception, FGIS allows 30-days for the parties to either submit a new written agreement exception or transfer services to the assigned OA.

6. SERVICE AGREEMENTS

When an assigned OA determines that official service at a facility (or facilities) within its assigned geographic area is impracticable, the assigned OA may enter into a service agreement with a gaining OA. A service agreement request must be submitted to QACD at FGISQACD@usda.gov. QACD will review the request and provide documented approval of the service agreement to all parties.

- a. The assigned OA must submit a service agreement request, on company letterhead, and include the following:
 - (1) Date of request;
 - (2) Date of implementation;

- (3) The name(s), location(s) and contact information for the specific facility (or facilities) pertaining to the service agreement;
 - (4) Names and contact information of the assigned OA and the gaining OA;
 - (5) The inspection and/or weighing services that will be provided by the gaining OA ;
 - (6) The responsibilities of each OA under the service agreement including how fees will be charged to the customers, how certification issuance will be handled under the agreement, etc.;
 - (7) A justification for signing the service agreement (i.e., benefits of the service agreement to the facility (or facilities) and the official inspection system);
 - (8) Timeframes governing the duration of the service agreement, if applicable.
 - (9) A termination clause, timeframes are not specified;
 - (10) Any relevant information that will aid in the evaluation of the service agreement;
 - (11) Signatures of the OAs.
- b. Once approved, service agreements remain in place until:
- (1) The timeframe governing the duration of the service agreement expires; or
 - (2) The agreement is cancelled per the termination clause; or
 - (3) Significant changes, such as change of ownership, occur with one or more parties involved; or
 - (4) FGIS determines the service agreement is no longer in the best interest of the official system.
- c. To ensure facilities continue to receive official services upon the cancellation of a service agreement FGIS allows 30-days for the parties to either submit a new service agreement or transfer services back to the assigned OA.
- d. The gaining OA will be responsible for maintenance of records and file samples in accordance with the U.S. Grain Standards Act.

7. ADDITIONAL INFORMATION

Resources and additional information may be found at <https://www.ams.usda.gov/services/fgis/usgsaexceptions>.

Contact information:

FGIS Quality Assurance and Compliance Division; FGISQACD@usda.gov.