

Directive

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) “Exceptions for official agencies to provide service.” It also establishes requirements for neighboring agencies to provide infrequent official service by agreement under 7 CFR §800.196(g) (1) “Providing official services” of the regulations under the United States Grain Standards Act (USGSA).

This directive does not apply to permanent exceptions. Permanent exceptions are granted as part of an OA’s designation responsibilities, as listed in appendix A of the OA’s designation packet. Permanent exceptions do not expire. This directive also does not apply to commodities regulated by the U.S. Agricultural Marketing Act (AMA) or submitted samples.

2. REPLACEMENT HIGHLIGHTS

This directive supersedes *FGIS Directive 9290.18*, issued on December 2, 2010.

The changes include eliminating nonuse of service exceptions and adding written agreement and service agreement exceptions. Additionally, the name of the document has changed from ‘Exception Programs’ to ‘Exceptions and Service Agreements’.

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, insofar as practicable. As outlined in 7 CFR §800.196(g) (1), an OA may make arrangements with a neighboring OA to provide official services requested infrequently, 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 incumbent OA waives the current geographic area restriction.

4. POLICY

It is FGIS's policy to ensure that exceptions and service agreements facilitate the marketing of US grain and related products, while meeting the statutory requirements of the USGSA.

Timely service exceptions must be approved by FGIS prior to providing service, unless outside of normal business hours, in which case, FGIS must be notified within 2 business days.

Barge probe service exceptions do not require FGIS approval.

Written agreement exceptions and service agreements must be approved by FGIS prior to implementation. Once approved, written agreement exceptions and service agreements remain in place until:

- (1) One or more parties cancel the exception or service agreement, and/or;
- (2) Significant changes, such as change of ownership, occur with one or more parties involved.

To ensure facilities continue to receive official services upon the cancellation of a written agreement exception or service agreement, FGIS allows a 30-day time period for the parties to either submit a new written agreement exception or service agreement, or transfer services.

Further, FGIS reserves the right to cancel or deny an OA from entering into a written agreement exception or service agreement based on:

- (1) Current OA performance as determined by a Quality Management Program (QMP) review; or
- (2) A regulatory violation as determined by a FGIS investigation; or
- (3) A letter of jeopardy issued during the OA's current designation period; or
- (4) A determination that it is no longer in the best interest of the official inspection system.

Nonuse of service exceptions that were in place prior to the USGSA Reauthorization of 2015 remain in effect until:

- (1) One or more parties cancel the nonuse of service exception;
- (2) Significant changes, such as change of ownership, occur with one or more parties involved; and/or
- (3) They have not been utilized in the past 18 months.

5. 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 the FGIS Field Management Division, to ensure all applicable requirements are met, including statutory and regulatory requirements. QACD makes the decision to grant final approval, when required, and notifies the involved parties. QACD also makes the decision to cancel or deny exceptions and service agreements and notify the parties involved.

b. Facility Management.

The management of the facility, where official service is provided under an exception or service agreement, is responsible for initiating exception requests, and providing valid documentation related to timely service exception requests.

c. Official Agency.

(1) Incumbent OA. The incumbent OA is the OA designated to provide official services in the assigned geographic area.

(a) When the incumbent OA agrees to waive the current geographic restriction, it is responsible for working with the alternate OA to write and submit the written agreement exception or service agreement.

(b) The incumbent OA is responsible for providing customer service information (e.g., the date and time of service last provided to the facility), and reporting monthly volume information for any services provided to the facility after the written agreement exception or service agreement has been approved.

(2) Alternate OA. The alternate OA is responsible for ensuring that service is provided upon accepting an exception or service agreement; notifying FGIS of timely service exceptions; and reporting monthly volume information for official services provided at facilities under exceptions and service agreements.

6. EXCEPTIONS

a. Timely Service. If the incumbent OA cannot provide service within 6-hours of the request then the facility can request official services from an alternate OA. Facilities should request services within the time periods established in the OA's approved fee schedule.

Facilities must provide valid documentation to the alternate OA that sufficient attempt(s) were made to contact the incumbent OA before requesting service from an alternate OA. Valid documentation includes voicemail messages, text messages, or e-mails that show the date and time of the request.

If the alternate OA agrees to provide the service, and it is within QACD normal business hours (7:00 AM to 4:30 PM EST), then the alternate OA must notify QACD prior to providing service. If outside of QACD normal business hours, the alternate OA may provide service and must notify QACD within 2 business days. The notification must be sent to FGISQACD@usda.gov and must contain:

- (1) Name of sender;
 - (2) Incumbent OA and alternate OA name;
 - (3) Name of facility requesting service; and
 - (4) Time and date of service provided.
- b. Barge Probe Service. Any OA may provide probe sampling and inspection service for barge-lots of grain with no restrictions due to geographical locations.
- c. Written Agreement. A facility may request official services be provided by an alternate OA whose geographic area is adjacent to the incumbent OA's geographic area. If the incumbent OA agrees to allow the alternate OA to provide service at that facility, a written agreement exception request must be submitted to QACD at FGISQACD@usda.gov. QACD will review the request and provide documented approval of the written agreement exception to all parties.

The facility must submit a written agreement exception request, on company letterhead, and include the following:

- (1) Date of request;
- (2) Date of implementation;
- (3) Name, location, and contact information for the specific facility pertaining to the written agreement;
- (4) Names and contact information of the incumbent OA and the alternate OA;
- (5) The inspection and/or weighing services that will be provided by the alternate OA;
- (6) The responsibilities of each OA under the written agreement;
- (7) Timeframes governing the duration of the written agreement, if applicable;

- (8) A termination clause, if timeframes are not specified;
- (9) Any relevant information that will aid in the evaluation of the written agreement; and
- (10) Signatures of the OAs and facility management.

7. SERVICE AGREEMENTS

When an incumbent OA determines that official service at a facility (or facilities) within its assigned geographic area is impracticable, the incumbent OA may enter into a service agreement with an alternate 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.

The incumbent 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 incumbent OA and the alternate OA;
- (5) The inspection and/or weighing services that will be provided by the alternate OA ;
- (6) The responsibilities of each OA under the service agreement;
- (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 and the facility management.

8. CONTACT INFORMATION

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