

Directive

9100.3

May 21, 1997

WITHHOLDING AND WITHDRAWAL OF AMA INSPECTION SERVICES

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1. PURPOSE

This directive provides uniform guidelines for conditional withholding or withdrawal of AMA inspection services.

2. REPLACEMENT HIGHLIGHTS

This directive supersedes FGIS Program Directive 910.3, dated 1/24/91. This directive is updated to reflect organizational changes, new numbering system, and new format but does not revise policy.

3. PROCEDURES

a. Section 868.24 of the regulations under the Agricultural Marketing Act of 1946 (Act), as amended, provides for the conditional withholding of inspection service for correctable causes found in section 868.21, such as (1) failure to pay bills for inspection services, (2) insanitary plant conditions, or (3) plant conditions which would subject the inspector to unusual hazard or discomfort.

(1) Inspectors at the plant shall report any such conditions to the cooperator or field office as soon as possible.

(2) The final decision to withhold service shall be made by the cooperator or the field office manager.

(3) The cooperator or field office manager may conditionally withhold service upon notification to the applicant.

b. Section 868.25 of the regulations provides for the denial or withdrawal of service due to (1) a willful violation of the Act, regulations, or directives; or (2) intimidation, threat, assault, or other improper action that interferes with or obstructs official personnel in the performance of their duties.

(1) Denial or withdrawal of service requires that the applicant be accorded due process and shall, therefore be conducted by FGIS headquarters in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture under Various Statutes (7 CFR Part 1, Subpart H).

(2) When circumstances warrant denial or withdrawal of service, the cooperator or field office manager shall report the circumstances in accordance with FGIS Directive 9070.6, Reporting Violations of the U.S. Grain Standards Act, and The Agricultural Marketing Act of 1946.

Note: If a situation, such as assault, occurs that threatens the safety of official personnel and also is a violation of the Act, the cooperator and field office managers may withhold service on the grounds that official personnel are subject to hazardous conditions. Such situations should be reported in accordance with FGIS Directive 9070.6.

4. WITHHOLDING NOTICE

- a. When deemed necessary by the cooperator or field office manager, notify the applicant why service may be withheld and afford the applicant time to correct the problem or demonstrate why service should not be withheld.
- b. If a resolution is not reached, the cooperator or field office manager must notify the applicant, in writing, of the decision to withhold service.
- c. Use the following statements to notify the applicant that services are being withheld. The wording of these statements may be modified provided the meaning is not altered and the statement is approved by the field office manager.
 - (1) Insanitary or Hazardous Conditions. “Pursuant to the 7 CFR Part 868 regulations under the Agricultural Marketing Act of 1946, effective immediately, all services performed by this (cooperator, Service) at your (plant, mill, etc.) are being conditionally withheld because of (insanitary, hazardous) plant conditions. A written description of the (insanitary, hazardous) condition(s) will follow. Notify the FGIS field office at (field office location) when you have eliminated or corrected the specified (insanitary, hazardous) condition(s). If it is determined upon examination of your (plant, mill, etc.) that these conditions have been eliminated or corrected, inspection services will be restored immediately or as soon thereafter as a sampler or inspector can be made available. If you have any questions concerning this action, contact the (field office location) Field Office. Copies of the Part 868 regulations are being mailed to you today.”
 - (2) Nonpayment of Bills. Pursuant to the 7 CFR Part 868 regulations under the Agricultural Marketing Act of 1946, effective immediately, all services performed by this (cooperator, Service) for your account are being conditionally withheld because of nonpayment of bills for services. Upon payment of these delinquent bills, services will be restored immediately, or as soon thereafter as a sampler or inspector can be made available. If you have any questions concerning this action, contact the (field office location) Field Office. Copies of the Part 868 regulations are being mailed to you today.”

5. REINSTATEMENT OF SERVICE NOTICE

- a. If the conditions causing withholding of service are corrected, service shall be reinstated. The cooperator or field office manager shall notify the applicant, in writing, of the decision to reinstate service.
- b. Use the following statements to notify the applicant that service will be reinstated. The wording of these statements may be modified provided the meaning is not altered and the statement is approved by the field office manager.
 - (1) Insanitary or Hazardous Conditions. “On (date of withholding), the Federal Grain Inspection Service, AMS, USDA, conditionally withheld services from your (plant, mill, etc.) because of (insanitary, hazardous) conditions. Upon reexamination of your (plant, mill, etc.) on (date), the specified conditions were found to be (corrected or eliminated). You are hereby informed that services are restored effective (immediately or give date).”
 - (2) Nonpayment of Bills. “On (date of withholding notice), the Federal Grain Inspection Service, AMS, USDA, conditionally withheld services from your (plant, mill, etc.) because of nonpayment of bills for services. These delinquent bills have now been paid and you are hereby informed that services are restored effective (immediately or give date).