

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.

(2) *Intercompany barges.* Operators of export elevators at export port locations are responsible for complying with Class X weighing requirements and regulations covering intercompany grain shipments received by barge.

(3) *Grain in marked containers.* When grain is in a container that bears an official grade designation or mark, the person who places the designation or mark on the container or the person who places the grain in a container that bears the designation or mark shall be responsible for determining that the grain has been inspected or weighed by official personnel and qualifies for the official grade designation or mark.

(4) *Grain for which representations have been made.* Any person who makes a representation that (i) grain has been officially inspected or weighed; or (ii) grain has been officially inspected or weighed and found to be of a particular kind, class, quality, condition, or weight; or (iii) particular facts have been established with respect to the grain by official inspection or weighing, shall be responsible for determining that the representation is true and is not in violation of the Act and regulations.

[50 FR 49668, Dec. 4, 1985, as amended at 57 FR 2439, Jan. 22, 1992]

§ 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.

(b) *Promptly furnished.* Export certificates shall be considered promptly furnished if they are forwarded by the shipper or the shipper's agent to the consignee not later than 10 business days after issuance.

[50 FR 49668, Dec. 4, 1985, as amended at 57 FR 2439, Jan. 22, 1992]

§ 800.17 Special inspection and weighing requirements for sacked export grain.

(a) *General.* Subject to the provisions of § 800.18, sacked export grain shall be (1) officially inspected on the basis of official samples obtained with an approved sampling device and operated in accordance with instructions, (2) Class X weighed or checkweighed, and (3) officially checkloaded by official personnel at the time the grain is loaded aboard the export carrier, in accordance with the provisions of paragraphs (b) and (c) of this section.

(b) *Services at time of loading.* When official sampling, official inspection, Class X weighing or checkweighing, and checkloading of sacked export grain loaded aboard an export carrier is performed at one location and time, official export inspection and weight certificate(s) which identify the export carrier shall be issued.

(c) *Services prior to loading.* When official sampling, official inspection, and Class X weighing or checkweighing of sacked export grain is performed prior to the date of loading aboard an export carrier, official "OUT" certificates shall be issued. An examination by official personnel for condition and checkloading of the grain shall be made as the grain is loaded aboard the export carrier. If the examination for condition and the checkloading shows that the identity or quantity of the grain has not changed or the condition of the grain has not changed beyond expected variations prescribed in the instruction, official export inspection and weight certificates shall be issued on the basis of the official "OUT" certificates and the checkloading. If the identity, quantity, or the condition has changed, official export inspection and weight certificates shall be issued on the basis of the most representative

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samples, including weight samples, obtained at the time the grain is loaded aboard the export carrier.

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§ 800.18 Waivers of the official inspection and Class X weighing requirements.

(a) *General.* Waivers from the official inspection and Class X weighing requirements for export grain under section 5 of the Act shall be provided in accordance with this section and the Act.

(b) *Waivers—(1) 15,000 metric-ton waiver.* Official inspection and Class X weighing requirements apply only to exporters and individual elevator operators who (i) exported 15,000 metric tons or more of grain during the preceding calendar year, or (ii) have exported 15,000 metric tons or more of grain during the current calendar year. Exporters and elevator operators who are granted a waiver by reason of this paragraph shall, as a condition of the waiver, keep such accounts, records, and memorandum to fully and correctly disclose all transactions concerning lots of all export grain shipments. In addition, the exporters or elevator operators shall notify the Service in writing of the intention to export grain under this waiver. In the case of lots waived under this provision, if such lots are required by contract to be inspected or weighed, or if the lots are represented by official inspection or weight certificates, then such certificates shall meet the requirements of section 5 of the Act.

(2) *Grain exported for seeding purposes.* Official inspection and Class X weighing requirements do not apply to grain exported for seeding purposes, provided that (i) the grain is (A) sold or consigned for sale and invoiced as seed; and (B) identified as seed for seeding purposes on the Shipper's Export Declaration; and (ii) records pertaining to these shipments are made available, upon request by the Service, for review or copying purposes.

(3) *Grain shipped in bond.* Official inspection and weighing requirements do not apply to grain that is shipped from a foreign country to a foreign country through the United States in bond in accordance with applicable regulations

of the United States Customs Service (19 CFR part 18).

(4) *Grain exported by rail or truck to Canada or Mexico.* Inspection and weighing requirements do not apply to grain exported by rail or truck from the United States to Canada or Mexico.

(5) *Grain not sold by grade.* Official inspection requirements may be waived by the Service on a shipment-by-shipment basis for export grain not sold, offered for sale, or consigned for sale by official grade if (i) the contract and any amendments clearly show that the buyer and seller mutually agree to ship the grain without official inspection and (ii) a copy of the contract and any amendments is furnished in advance of loading, along with a completed application on a form prescribed by the Service.

(6) *Service not available.* Upon request, any required official inspection or Class X weighing of grain may be waived on a shipment-by-shipment basis if (i) official personnel are not and will not be available within a 24-hour period to perform needed inspection or weighing services and (ii) both the buyer and seller of the grain are made aware that the grain has not been officially inspected or Class X weighed.

(7) *Emergency waiver.* Upon request, the requirements for official inspection or Class X weighing may be waived whenever the Service determines (i) that an emergency exists that precludes official inspection or Class X weighing and (ii) that granting an emergency waiver will not impair the objectives of the Act. To qualify for an emergency waiver, the exporter or elevator operator shall make timely application and comply with all conditions which may be required by the Service.

(8) *High Quality Specialty Grain Shipped in Containers.* Official inspection and weighing requirements do not apply to high quality specialty grain exported in containers. Records generated during the normal course of business that pertain to these shipments shall be made available to the Service upon request, for review or