

(3) Report for duty in an intoxicated or drugged condition, or consume intoxicating beverages or incapacitating drugs while on duty;

(4) Smoke in prohibited areas in elevators or perform official services in an unsafe manner that could endanger official personnel working on or about the premises;

(5) Make unwarranted criticisms or accusations against other official personnel, warehouse samplers, or employees of the Department; and

(6) Refuse to testify or respond to questions in connection with official inquiries or investigations.

(7) Coerce or attempt to coerce any person into providing any special or undue benefit to official personnel, approved weighers, or warehouse samplers.

(c) *Prohibited conduct; official personnel.* In addition to the conduct prohibited by paragraph (b) of this section, no official personnel shall:

(1) Solicit contributions from other official personnel or warehouse samplers for an employee of the Service, or make such a contribution. Nothing in this paragraph shall preclude the occasional voluntary giving or acceptance of gifts of a nominal value on special occasions;

(2) Take any action that might (i) create the appearance of a loss of impartiality or (ii) adversely affect the confidence of the public in the integrity of the inspection, weighing, or equipment testing services performed under the Act;

(3) Except as provided in §800.76(a), engage in any outside (unofficial) work or activity that:

(i) May impair their efficiency in performing official functions; or

(ii) Consists in whole or in part of unofficial acts of sampling, stowage examination, inspection testing, equipment testing, inspection, or weighing services similar to the official services for which the employing agency is designated; or

(iii) May result in the acquisition of property interests that could create a conflict of interest as defined in section 11 of the Act; or

(iv) May tend to bring criticism on or otherwise embarrass the Department or the Service;

(4) Issue to other official personnel, warehouse samplers, or approved weighers any instructions or directives inconsistent with the Act, the regulations, the Official U.S. Standards for Grain, or the instructions;

(5) Organize or help establish a general or specialized farm organization, or act as an officer or business agency in, recruit members for, or accept office space or contributions from such an organization;

(6) Advocate that any general or specialized farm organization better represents the interest of farmers than any other organization or individual, or recommend that the responsibilities of any government agency be carried out through a general or specialized farm organization. Nothing in paragraph (c)(5) of this section shall prevent official personnel from holding membership in a general or specialized farm organization or prohibit official personnel from participating in the operation of local groups or organizations that conduct government-authorized programs.

[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44454, Sept. 29, 1983; 60 FR 65235, Dec. 19, 1995; 63 FR 45677, Aug. 27, 1998]

§ 800.187 Conflicts of interest

(a) *General.* Warehouse samplers are exempt from the conflict-of-interest provisions of this section.

(b) *What constitutes a gratuity.* For the purposes of these regulations, the term "gratuity" shall include any favor, entertainment, gift, tip, loan, payment for unauthorized or fictitious work, unusual discount, or anything of monetary value. The term shall not include (1) the occasional exchange of a cup of coffee or similar social courtesies of nominal value in a business or work relationship if the exchange is wholly free of any embarrassing or improper implications; (2) the acceptance of unsolicited advertising material such as pencils, pens, and note pads of nominal value if the material is wholly free of any embarrassing or improper implications; and (3) the exchange of the usual courtesies in an obvious family or personal relationship (including those between official personnel and their parents, spouses, children, or close personal friends) when the circumstances

make it clear that the exchange is the result of the family or personal relationship, rather than a business or work relationship.

(c) *Conflicts.* In addition to the conflicts of interest prohibited by section 11 of the Act, the activities specified in this paragraph shall also be considered to be a conflict of interest. Accordingly, no official personnel shall, during the term of their license or authorization (including any period of suspension):

(1) Accept any gratuity.

(2) Accept any fee or charge or other thing of monetary value, in addition to the published fee or charge, for the performance of official inspection or weighing services under circumstances in which the acceptance could result, or create the appearance of resulting, in (i) the use of their office or position for undue private gain, (ii) an undertaking to give undue preferential treatment to any group or any person, or (iii) any other loss of independence or impartiality in the performance of official inspection or Class X or Class Y weighing services.

(3) Knowingly perform, or participate in performing, an inspection or weighing service on grain in which they have a direct or indirect financial interest.

(4) Engage in the business by buying, selling, transporting, cleaning, elevating, storing, binning, mixing, blending, drying, treating, fumigating, or other preparation of grain (other than a grower of grain, or in the disposition of inspection samples); or in the business of cleaning, treating, or fitting carriers or containers for transporting or storing grain; the merchandising for nonfarm use of equipment for cleaning, drying, treating, fumigating, or otherwise processing, handling, or storing grain; or the merchandising of grain inspection or weighing equipment (other than buying or selling by official personnel of the equipment for use in the performance of their official services).

(5) Seek or hold any appointive or elective office in a grain industry organization or association. This provision does not apply to organizations of official inspectors or official weighers.

(6) Participate in any transaction involving the purchase or sale of corporate stocks or bonds, grain or grain-

related commodities, or other property for speculative or income purposes if the transaction could reasonably be construed to interfere with the proper and impartial performance of official inspection for Class X or Class Y weighing services. Official personnel are not prohibited from (i) producing grain as a grower and selling the grain; (ii) making bona fide investments in governmental obligations, banking institutions, savings and loan associations, and other tangibles and intangibles that are clearly not involved in the production, transportation, storage, marketing, or processing of grain; or (iii) borrowing money from banks or other financial institutions on customary terms.

(d) *Reports of interests.* Official personnel shall report information regarding their employment or other business or financial interests which may be required by the Service.

(e) *Avoiding conflicts of interest.* Official personnel shall not acquire any financial interest or engage in any activity that would result in a violation of this § 800.187, or § 800.186, or section 11 of the Act and shall not permit their spouses, minor children, or blood relatives who reside in their immediate households to acquire any such interest or engage in any such activity. For the purpose of this section, the interest of a spouse, minor child, or blood relative who is a resident of the immediate household of official personnel shall be considered to be an interest of the official personnel.

(f) *Disposing of a conflict of interest—*

(1) *Remedial action.* Upon being informed that a conflict of interest exists and that remedial action is required, an applicant for a license and official personnel shall take immediate action to end the conflict of interest and inform the Service of the action taken.

(2) *Hardship cases.* Applicants and official personnel who believe that remedial action will cause undue personal hardship may request an exception by forwarding to the Service a written statement setting forth the facts, circumstances, and reasons for requesting an exception.

(3) *Failure to terminate.* If a final determination is made by the Service that a conflict of interest does exist

and should not be excepted, failure to terminate the conflict of interest shall subject: (i) An applicant for a license to a dismissal of the application; (ii) An employee of the Service to disciplinary action; and (iii) A licensee to license revocation.

(Approved by the Office of Management and Budget under control number 0580-0012)

[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44453 and 44454, Sept. 29, 1983; 54 FR 5924, Feb. 7, 1989]

§ 800.188 Crop year, variety, and origin statements.

No official personnel shall certify or otherwise state in writing (a) the year of production of grain, including use of terms such as "new crop" or "old crop"; (b) the place or geographical area where the grain was grown; or (c) the variety of the grain.

§ 800.189 Corrective actions for violations.

(a) *Criminal prosecution.* Official personnel and warehouse samplers who commit an offense prohibited by section 13 of the Act are subject to criminal prosecution in accordance with section 14 of the Act.

(b) *Administrative action—(1) Other than Service employees.* In addition to possible criminal prosecution, licensees and warehouse samplers are subject to administrative action in accordance with sections 9 and 14 of the Act.

(2) *Service employees.* In addition to possible criminal prosecution, employees of the Service are subject to disciplinary action by the Service.

DELEGATIONS, DESIGNATIONS, APPROVALS, CONTRACTS, AND CONFLICTS OF INTEREST

AUTHORITY: Sections 800.195 through 800.199 were issued under secs. 8, 9, 10, 13, and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e.

§ 800.195 Delegations.

(a) *General.* Eligible States may be delegated authority to perform official services (excluding appeal inspection) at export port locations within their respective States.

(b) *Restrictions.* Only the Service or the delegated State may perform official

inspection, Class X, and Class Y weighing services at an export port location within the State. If official inspection services, at export port locations within the State, are performed by the Service, only the Service may perform Class X and Class Y weighing services at the locations. If official inspection services are performed by a delegated State, either the State or the Service may perform Class X and Class Y weighing services at the export port locations within the State.

(c) *Who can apply.* States which: (1) Were performing official inspection at an export port location under the Act on July 1, 1976, or; (2)(i) performed official inspection at an export port location at any time prior to July 1, 1976; (ii) were designated under section 7(f) of the Act on December 22, 1981, to perform official inspections; and (iii) operate in a State from which total annual exports of grain do not exceed, as determined by the Administrator, 5 per centum of the total amount of grain exported from the United States annually may apply to the Service for a delegation.

(d) *When and how to apply.* A request for authority to operate as a delegated State should be filed with the Service not less than 90 calendar days before the State proposes to perform the official service. A request for authority to operate as a delegated State shall show: (1) The export port location(s) where the State proposes to perform official inspection, Class X, and Class Y weighing services; (2) the estimated annual volume of inspection and weighing services for each location; and (3) the schedule of fees the State proposes to assess. A request for a revision to a delegation shall (i) be filed with the Service not less than 90 calendar days before the desired effective date, and (ii) specify the change desired.

(e) *Review of eligibility and criteria for delegation.* Each applicant for authority to operate as a delegated State shall be reviewed to determine whether the applicant meets the eligibility conditions contained in paragraph (c) of this section and the criteria contained in section 7(f)(1)(A) of the Act. The requested delegation may be granted if the Service determines that the applicant meets the eligibility conditions and