

Directive

9070.5

9/18/96

GRAIN HANDLING PRACTICES

1. PURPOSE

This directive establishes procedures for carrying out the Grain Handling Practices provisions in sections 800.60 and 800.61 of the regulations according to the United States Grain Standards Act (USGSA). It provides instructions for identifying and reporting both deceptive and prohibited grain handling practices at domestic and export facilities.

2. REPLACEMENT HIGHLIGHTS

This directive replaces Program Directives 918.46, Grain Handling Practices, dated January 4, 1988, and 907.5, Deceptive Grain Practices, dated July 16, 1993.

3. BACKGROUND

The USGSA and the regulations provide guidelines for addressing various grain handling and deceptive practices. These requirements help maintain the integrity of the official system, foster the marketing of high quality grain in domestic and foreign commerce, and promote fair and honest inspection and weighing practices.

The grain handling provisions apply market wide, not just to those who receive official services. The deceptive practice requirements, however, are applicable to grain that is officially inspected or weighed.

4. RESPONSIBILITIES

a. Grain handlers shall:

- (1) Comply with the grain handling and deceptive practice requirements set forth in sections 800.60 and 800.61 of the regulations and guidelines established in this directive;

- (2) Submit requests for exemption(s) from the prohibited grain handling practices to the Administrator or his or her designee; and
 - (3) Provide notification to official personnel when grain is loaded into a carrier or container in a way that may cause the issuance of a false or incorrect official certificate. The handlers should give notice to FGIS or agency personnel who are responsible for that geographical area before official services commence. Oral reports by grain handlers must be confirmed in writing within 2 business days. In addition, the written report must explain the nature and extent of the action or practice in question (e.g., identify the grain, the carrier(s), equipment, facility, etc.).
- b. Official personnel shall:
- (1) Be familiar with the material handling system(s) at their respective work site(s);
 - (2) Understand the grain handling and deceptive practice provisions;
 - (3) Ensure that industry representatives understand our requirements through education, meetings, etc.; and
 - (4) Observe grain handling operations during tours through a facility, as applicable.

5. **GRAIN HANDLING REQUIREMENTS**

- a. General. Section 800.61 of the regulations outlines the prohibited and permitted grain handling practices. These requirements differ slightly at domestic and export locations, consequently, we have addressed them separately in this directive.
- b. Export Facilities.
 - (1) Prohibited Practices. No person handling grain at export elevators, export port locations shall: (a) recombine or add dockage or foreign material including dust to any grain as defined in section 800.61 of the regulations; (b) blend different kinds of grain unless such blending results in grain being designated as Mixed Grain as defined in subpart F of the Official U.S. Standards for Grain; (c) add water to grain for

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purposes other than milling, malting, or similar processing operations; or (d) spray water on belts during grain handling.

- (2) Permitted Practices. Export handlers may: (a) blend grain of the same kind together to adjust quality; (b) recombine or add broken corn and broken kernels to whole grain of the same kind, provided, no dockage or foreign material including dust is added to the broken corn or broken kernels; (c) recombine or add grain removed from a bin during coring to grain of the same kind; (d) add confetti or similar material to grain for identifications purposes; (e) treat grain to control insects and fungi; (f) treat grain with vegetable or mineral oil to suppress dust during handling; and (g) add water to grain for milling, malting, or similar processing operations.
- (3) Monitoring. Official personnel must monitor the entire export facility (all grain movements) to ensure adherence with the grain handling provisions. The monitoring should occur routinely during normal tours and require knowledge about the facility's grain handling, dust disposal, cleaning, and storage practices.

Official personnel can obtain information about a facility's operations through communication with company representatives or by reviewing documentation required by section 800.46(c)(2) of the regulations.

- (4) Reporting. Official personnel must notify their supervisor anytime they observe a violation of the grain handling provisions. Supervisory personnel will evaluate the situation and, as applicable, contact the agency or FGIS field office manager. The agency or FGIS manager should inform company representatives about the alleged noncompliance and notify the Compliance Division's (CP) Regulatory Branch at 1-800-998-3447, toll free.

Official personnel must document any noncompliance situation on a Form WH-13, Repair/Modification Notice, or work record. In addition, official personnel must document observations made during tours through a facility on an inspection log, weight log, or work record (e.g., observer, date, and time, etc.).

c. Domestic Facilities.

- (1) Prohibited Practices. Persons handling grain at domestic elevators shall not: (a) add or recombine dockage or foreign material as defined in section 800.61 of the regulations to any grain; (b) blend different kinds of grain unless such blending results in grain being designated as Mixed Grain as defined in subpart F of the Official U.S. Standards for Grain; (c) add water to grain for purposes other than milling, malting, or similar processing operations; or (d) spray water on belts during grain handling.
- (2) Permitted Practices. Domestic handlers may: (a) blend grain of the same kind together to adjust quality; (b) recombine or add broken corn and broken kernels to whole grain of the same kind, provided no dockage or foreign material is added to the broken corn or broken kernels; (c) recombine or add grain removed from bins(s) during coring to grain of the same kind; (d) add confetti or similar material to grain for identification purposes; (e) treat grain to control insects and fungi; (f) treat grain with vegetable or mineral oil to suppress dust during handling; and (g) add water to grain for milling, malting, or similar processing operations.

Although the statute does not prohibit domestic elevators from adding dust to grain, FGIS encourages these facilities to adopt the same dust disposal practices as export elevators, export port locations.

- (3) Monitoring. Official personnel should monitor a domestic facility's operations during service delivery to ensure adherence with these requirements. The monitoring should occur routinely and require knowledge about the facility's grain handling, cleaning, and storage practices.
- (4) Reporting. Official personnel must notify their supervisor anytime they observe a violation of the grain handling provisions. Supervisory personnel will evaluate the situation and, as applicable, contact the agency or FGIS field office manager. The agency or FGIS manager should inform company representatives about the alleged noncompliance and notify CP's Regulatory Branch at 1-800-998-3447, toll free.

Official personnel must document noncompliance situations or observations made during tours through a facility on a work record.

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d. Exemptions.

- (1) General. The Administrator or his or her designee has authority to provide exemptions to persons who ship grain directly to domestic end users or processors. These final sale transactions may be exempt from the prohibited practices outlined in paragraphs 5(b)(1) and (c)(1), if interested parties meet all qualifying criteria.
- (2) Domestic Final Sale Exemption Criteria. The Administrator may grant exemptions for domestic final sale transactions provided:
 - (a) The purchaser consumes or processes the grain into a product(s) and they do not reintroduce the grain into the marketplace;
 - (b) The purchaser does not blend or add products or by-products from the grain to grain in commercial channels, except vegetable oil which the statute permits for use as a dust suppressant;
 - (c) The grain supplier's customers (processors or end users) submit a written exemption request for the supplier. The request should include the purchaser's name (a company name if applicable), address, phone number, contact person, kind of grain, and receiving period. Send requests to: USDA-GIPSA-FGIS, Office of the Administrator, STOP 3601, 1400 Independence Ave., S.W., Washington, D.C. 20250-3601; and
 - (d) The grain supplier submits an exemption request for a single shipment or a request covering multiple shipments. The request should include the supplier's name (a company name if applicable), address, phone number, contact person, kind of grain, and shipping period. Grain handlers should send requests to the address in the preceding paragraph.
- (3) Approval. The CP and the Field Management Division Directors will review all requests for exemptions and recommend appropriate action to the Administrator. The exemption will automatically apply if interested parties meet the above requirements. The CP will notify grain suppliers, purchasers, and field personnel regarding the approval status and maintain a list of companies who receive exemptions. Domestic Final Sale Exemptions will remain in effect indefinitely, provided interested parties keep FGIS informed about any changes in the original agreement.

6. DECEPTIVE PRACTICES

- a. General. Section 800.60 of the regulations outline provisions governing deceptive practices. FGIS' policy is to reduce or deter incidences of deception through conducting market evaluations and by initiating prompt administrative and civil actions against violaters.
- b. Deceptive Practices. The circumstances surrounding deceptive situations may vary; however, official personnel should aggressively examine any loading, handling, weighing, or sampling activity that suggests an attempt to deceive. The following are some examples of deceptive situations involving officially inspected or weighed grain:
- (1) Loading grain that is significantly different in quality (e.g., high damage kernels or foreign material, sour, musty, etc.) than other grain in the stowage area near the bottom, toward the sides, or in the corners of carriers or containers;
 - (2) Loading grain on top of fertilizer or other nongrain material;
 - (3) Diverting officially weighed grain to locations other than its designated carrier, container, or bin;
 - (4) Using materials or substances to mask grain odors;
 - (5) Altering or switching official samples; and
 - (6) Loading a different kind of grain (e.g., wheat beneath sunflower seeds, corn beneath Yellow soybeans, etc.) near the bottom, toward the sides, or in the corners of carriers or containers;
- c. Reporting. Official personnel must notify their supervisor anytime they observe a deceptive practice situation. Supervisory personnel or their designee should investigate the incident and, as applicable, contact the agency or field office manager for guidance. The agency or field office manager should notify CP's Regulatory Branch at 1-800-998-3447, toll free. Official personnel must confirm oral reports in writing and should include the following information, as applicable:

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- (1) Identification of the buyer, seller, merchandiser, carrier, or loading facility;
- (2) The grain's origin and/or destination;
- (3) Copies of certificates(s), work records(s), photograph(s), and the name(s) of official personnel involved;
- (4) A diagram(s) illustrating the problem (use attachment 1, 2, or 3 to show the number and location of probed compartments, grain quality, etc.);
- (5) A brief description (narrative) of the occurrence and indicate whether file sample(s) are available; and
- (6) List equipment or other devices used in the evaluation and provide results of auxiliary samples.

Send written reports to: USDA-GIPSA-FGIS, Compliance Division, Regulatory Branch, STOP 3604, 1400 Independence Ave. S.W., Washington, D.C., 20250-3604.

7. ENFORCEMENT

Grain handlers are responsible for adhering to the deceptive and grain handling requirements set forth in the statutes, regulations, and this directive. The CP's Regulatory Branch will evaluate reports involving grain handling or deceptive practices and, based on the facts, will initiate the appropriate administrative or civil action. In certain instances, CP will recommend criminal action against individuals who violate these provisions.

Neil E. Porter, Director
Compliance Division

Attachments

ATTACHMENTS NOT AVAILABLE IN WORDPERFECT
FORMAT -- CONTACT COMPLIANCE DIVISION FOR
HARD COPIES.