

Grading Factors	Grades U.S. Nos.				
	1	2	3	4	5
Insect-damaged kernels: In 100 grams .....	31	31	31	31	31

U.S. Sample grade is Wheat that:  
 (a) does not meet the requirements for U.S. Nos. 1, 2, 3, 4, or 5; or  
 (b) has a musty, sour or commercially objectionable foreign odor (except smut or garlic odor); or  
 (c) is heating or of distinctly low quality.

<sup>1</sup> Includes damaged kernels (total), foreign material, shrunken and broken kernels.  
<sup>2</sup> Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.  
<sup>3</sup> Includes contrasting classes.  
<sup>4</sup> Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substance.

(b) *Grades and grade requirements for Mixed wheat.* Mixed wheat is graded according to the U.S. numerical and U.S. Sample grade requirements of the class of wheat that predominates in the mixture, except that the factor wheat of other classes is disregarded.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24442, June 30, 1987; 57 FR 58966, Dec. 14, 1992]

**SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS**

**§ 810.2205 Special grades and special grade requirements.**

(a) *Ergoty wheat.* Wheat that contains more than 0.05 percent of ergot.

(b) *Garlicky wheat.* Wheat that contains in a 1,000 gram portion more than two green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(c) *Light smutty wheat.* Wheat that has an unmistakable odor of smut, or which contains, in a 250-gram portion, smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 5 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

(d) *Smutty wheat.* Wheat that contains, in a 250 gram portion, smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

(e) *Treated wheat.* Wheat that has been scoured, limed, washed, sulfured, or treated in such a manner that the true quality is not reflected by either the numerical grades or the U.S. Sample grade designation alone.

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**PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES**

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AUTHORITY: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

**Subpart A—Regulations**

SOURCE: 53 FR 3722, Feb. 9, 1988, unless otherwise noted. Redesignated at 60 FR 16364, Mar. 30, 1995.

DEFINITIONS

**§ 868.1 Meaning of terms.**

(a) *Construction.* Words used in the singular form are considered to imply the plural and vice versa, as appropriate.

(b) *Definitions.* For the purpose of these regulations, unless the context requires otherwise, the following terms have the meanings given for them in this paragraph.

(1) *Act.* The Agricultural Marketing Act of 1946, as amended (secs. 202–208, 60 Stat. 1087, as amended, 7 U.S.C. 1621 *et seq.*).

(2) *Administrator.* The Administrator of the Grain Inspection, Packers and Stockyards Administration or any person to whom the Administrator’s authority has been delegated.

(3) *Appeal inspection service.* A review by the Service of the results of an original inspection or retest inspection service.

(4) *Applicant.* An interested person who requests any inspection service with respect to a commodity.

(5) *Authorized inspector.* A Department employee authorized by the Administrator to inspect a commodity in accordance with the Act, regulations, standards, and instructions.

(6) *Board appeal inspection service.* A review by the Board of Appeals and Review of the results of an original inspection or appeal inspection service on graded commodities.

(7) *Board of Appeals and Review or Board.* The Board of Appeals and Review of the Service that performs Board appeal inspection services.

(8) *Business day.* The established field office working hours, any Monday through Friday that is not a holiday, or the working hours and days established by a cooperator.

(9) *Carrier.* A truck, trailer, truck/trailer(s) combination, railroad car, barge, ship, or other container used to transport bulk, sacked, or packaged commodity.

(10) *Commodity.* Agricultural commodities and products thereof that the Secretary has assigned to the Service for inspection under the Act, including but not limited to dry beans, grain, hops, lentils, oilseeds, dry peas, split peas, and rice.

(11) *Continuous inspection.* The conduct of inspection services in an approved plant where one or more official inspection personnel are present during the processing of a commodity to make in-process examinations of the preparation, processing, packing, and warehousing of the commodity and to determine compliance with applicable sanitation requirements.

(12) *Contract service.* Any service performed under a contract between an applicant and the Service.

(13) *Contractor.* Any person who enters into a contract with the Service or with a cooperator to perform specified inspection services.

(14) *Cooperator.* An agency or department of the Federal Government which has an interagency agreement or State agency which has a reimbursable agreement with the Service.

(15) *Cooperator inspection service.* The inspection service provided by a cooperator under the regulations. Under this service, inspection certificates are issued by the cooperator and all fees and charges are collected by the cooperator, except as provided in the agreement.

(16) *Department.* The United States Department of Agriculture.

(17) *Factor.* A quantified physical or chemical property identified in official standards, specifications, abstracts, contracts, or other documents whose measurement describes a specific quality of a commodity.

(18) *Field office.* An office of the Service designated to perform, monitor, or supervise inspection services.

(19) *Grade.* A grade designating a level of quality as defined in the commodity standards promulgated pursuant to the Act.

(20) *Graded commodity.* Commodities for which the Service has promulgated Standards under the Act and commodities which are tested by the Service at a field office or by a cooperator for specific physical factors using approved equipment and an inspector's interpretation of visual conditions.

(21) *Holiday.* The legal public holidays specified in paragraph (a) of section 6103, title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal Statute or Executive Order. Under section 6103 and Executive Order 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

(22) *Inspection certificate.* A written or printed official document which is ap-

proved by the Service and which shows the results of an inspection service performed under the Act.

(23) *Inspection service.* (i) Applying such tests and making examinations of a commodity and records by official personnel as may be necessary to determine the kind, class, grade, other quality designation, the quantity, or condition of commodity; performing condition of container, carrier stowage examinations; and any other services as related to commodities, as necessary; and (ii) issuing an inspection certificate.

(24) *Instructions.* The Notices, Instructions, Handbooks, and other directives issued by the Service.

(25) *Interagency agreement.* An agreement between the Service and other agencies or departments of the Federal Government to conduct commodity inspection services as authorized in the Act.

(26) *Interested person.* Any person having a contract or other financial interest in a commodity as the owner, seller, purchaser, warehouseman, carrier, or otherwise.

(27) *Licensee.* Any person licensed by the Service.

(28) *Nongraded commodity.* Nonprocessed commodities which are chemically tested for factors not included in the Standards under the Act or the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*) and processed commodities.

(29) *Nonregular workday.* Any Sunday or holiday.

(30) *Official inspector.* Any official personnel who performs, monitors, or supervises the performance of inspection service and certifies the results of inspection of the commodity.

(31) *Official personnel.* Any authorized Department employee or person licensed by the Administrator to perform all or specified functions under the Act.

(32) *Official sampler.* Any official personnel who performs, monitors, or supervises the performance of sampling of a commodity.

(33) *Official technician.* Any official personnel who performs, monitors, or supervises the performance of specified inspection services and certifies the results thereof, other than certifying the grade of a commodity.

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(34) *Origin*. The geographical area or place where the commodity is grown.

(35) *Original inspection service*. An initial inspection of a community.

(36) *Person*. Any individual, partnership, association, corporation, or other business entity.

(37) *Plant*. The premises, buildings, structure, and equipment (including but not limited to machines, utensils, vehicles, and fixtures located in or about the premises) used or employed in the preparation, processing, handling, transporting, and storage of commodities.

(38) *Regular workday*. Any Monday through Saturday that is not a holiday.

(39) *Regulations*. The regulations in this part.

(40) *Reimbursable agreement*. An agreement between the Service and State agencies to conduct commodity inspection services authorized pursuant to the Act.

(41) *Retest inspection service*. To test, using the same laboratory procedures, a factor(s) of nongraded commodities previously tested.

(42) *Secretary*. The Secretary of Agriculture of the United States or any person to whom the Secretary's authority has been delegated.

(43) *Service*. The Federal Grain Inspection Service of the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture.

(44) *Service representative*. An employee authorized by the Service or a person licensed by the Administrator.

(45) *Specification*. A document which clearly and accurately describes the essential and technical requirements for items, materials, or services including requested inspection procedures.

(46) *Standards*. The commodity standards in this part that describe the physical and biological condition of a commodity at the time of inspection.

(47) *Submitted sample*. A sample submitted by or for an applicant for inspection.

(48) *Test*. A procedure to measure a factor using specialized laboratory equipment involving the application of

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established scientific principles and laboratory procedures.

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### ADMINISTRATION

#### § 868.5 Administrator.

The Administrator, under the authority delegated by the Secretary, is charged with administering the programs and functions authorized under the Act and the regulations concerning those commodities assigned by the Secretary to the Service.

#### § 868.6 Nondiscrimination—policy and provisions.

In implementing, administering, and enforcing the Act and the regulations, standards, and instructions, it is the policy of the Service to promote adherence to the provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000a *et seq.*).

#### § 868.7 Procedures for establishing regulations and standards.

Notice of proposals to prescribe, amend, or revoke regulations and standards shall be published in accordance with applicable provisions of the Administrative Procedures Act (5 U.S.C. 551 *et seq.*). Any interested person desiring to file a petition for the issuance, amendment, or revocation of regulations or standards may do so in accordance with 7 CFR 1.28 of the regulations of the Office of the Secretary of Agriculture.

#### § 868.8 Complaints and reports of alleged violations.

(a) *General*. Except as provided in paragraph (b) of this section, complaints and reports of violations involving the Act or the regulations, standards, and instructions issued under the Act should be filed with the Service in accordance with 7 CFR 1.133 of the regulations of the Office of the Secretary of Agriculture and these regulations and the instructions.

(b) *Retest inspection and appeal inspection service*. Complaints involving the results of inspection services shall, to the extent practicable, be submitted as