

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

FSIS NOTICE	14-12	2/24/12
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**VERIFICATION AND ENFORCEMENT ACTIVITIES RELATED TO EXPORT
CERTIFICATION REIMBURSABLE SERVICES**

I. PURPOSE

This notice provides inspection program personnel (IPP) with instructions regarding verification and enforcement activities at facilities (including official establishments and warehouses) where IPP conduct export certification reimbursable services. This notice also provides District Managers (DMs) with instructions related to the procedures for denial or withdrawal of export reimbursable certification services. This notice supplements the information in FSIS Directive 12,600.1 to clarify how IPP are to document non-compliances, when DMs are to deny voluntary export certification reimbursable services without providing prior notification, and when they are to provide prior notification.

II. BACKGROUND

A. In addition to mandatory inspection, FSIS provides voluntary inspection services to accommodate business needs, such as obtaining certifications necessary to meet requirements of importing countries. The Agricultural Marketing Act (AMA) (7 U.S.C. 1621 et seq.), through 7 CFR Part 2, Subpart C (7 CFR 2.18 and Subpart H), authorizes these types of inspection services, called voluntary reimbursable services. Voluntary reimbursable services are outlined in FSIS Directive 12,600.1.

B. FSIS conducts voluntary reimbursable services only when they are requested by the facility. All facilities receiving voluntary reimbursable services, including official FSIS inspected establishments that need export certificates to meet an importing country's requirements, must apply and receive approval from the District Office (DO) using FSIS Form 5200-6, which is available from IPP.

C. Only the execution of certifications that are in addition to FSIS regulatory requirements (e.g., additional certifications that are required by the importing country) are considered reimbursable services. When performed at non-official establishments, the issuance of export certificates as set out in FSIS Directives 9000.1, Revision 1,

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Export Certification and 9040.1, Revision 3, Re-inspection of Product Intended for Export, is a reimbursable service.

D. Under the authorities of the AMA and the regulations promulgated under that Act in 9 CFR 350.3(a) and (b) and 362.2 (a) and (b), FSIS has prescribed rules and regulations required for facilities receiving FSIS voluntary reimbursable export certification services. The regulations in 9 CFR 350.6 and 362.4 and in 7 CFR Subtitle 1, Part 1, Subpart H, provide for the denial or withdrawal of voluntary reimbursable inspection services, including the denial (with or without prior notification) or withdrawal of service when necessitated by the public interest.

III. IPP RESPONSIBILITIES

A. IPP are to verify that the facility receiving export certification reimbursable services is complying with applicable regulatory requirements, as provided by the:

1. Sanitation Performance Standards (SPS) outlined in 9 CFR 416.2 – 416.5 (see verification activities in FSIS PHIS Directive 5000.1 (same title and chapter); and
2. Export requirements as outlined in 9 CFR 307.4(c), 312.8, 316.5, 317.1, 317.7, 318.2, 322.1, 322.2, 322.4, 325.8, 325.13, 350, 351, 354, 355, 362, 381.37(c), 381.66, 381.104, 381.105-107, 381.128, 381.193 (see verification activities in FSIS Directive 9000.1).

B. IPP are to perform and record inspection procedures as unscheduled activities that are directed tasks in PHIS in official establishments and during each visit to a non-inspected facility with an agreement to provide voluntary reimbursable services.

NOTE: At this time, there are no PHIS versions of FSIS Directive 12,600.1, Voluntary Reimbursable Inspection Services - Revision 1 Amendment 2; FSIS Directive 9000.1, Export Certification; or FSIS Directive 7000.1, Verification of Non-Food Safety Consumer Protection Regulatory Requirements. IPP are to use PHIS versions when they become available.

C. Under PHIS, IPP are to perform the Export Certification task using the methodology described in FSIS Directive 9000.1 for reimbursable exports services whether at official inspected establishments or non-inspected facilities where the voluntary inspection service is approved.

NOTE: When documenting PHIS tasks in facilities where voluntary inspection service is being offered, use the 4 voluntary inspection tasks in the task list that have a “(V)” designation after the task name indicating “voluntary-only facilities”.

D. As set out in FSIS Directive 9000.1, if IPP find signs of poor product handling and storage, they may examine the product as set out in FSIS Directive 9040.1, and they:

1. Are not to sign the application;
2. At an official establishment when any of the product is determined to be unsound or unwholesome, are to complete FSIS Form 5400-4 and, if necessary FSIS Form 5400-4a, as specified in FSIS Directive 5400.5 using the Noncompliance

Determination Guide. IPP are to refer to FSIS PHIS Directive 5000.1 for information regarding completion of FSIS Form 5400-4 and to the PHIS User's Guide; or

3. At non-official establishments when any of the product is determined to be unsound or unwholesome, are to detain product as set out in FSIS Directive 8410.1 and complete FSIS Form 8080-1 Notice of Detention (at non-official establishments).

E. As set out in FSIS Directive 9000.1, when the product in the container or the labeling of the product does not meet the requirements of the importing country, IPP are to raise the concern with the applicant and prepare a memorandum of interview (MOI) as described in paragraph VII. B. 1. b. and c. of FSIS Directive 9000.1.

F. When there are repeated non-compliances related to III. A., above, IPP are to notify the District Manager (DM) through supervisory channels. The DM will use this information in determining whether to take additional regulatory or administrative action based on facility performance.

IV. DM RESPONSIBILITIES FOR DENIAL TO FURNISH VOLUNTARY REIMBURSABLE SERVICES

A. Under the regulations in 9 CFR 350.6 and 362.4, the DM may deny voluntary reimbursable services to any person for administrative reasons, for the use without authority of any marks of inspection, or for failure to comply with the applicable Acts or regulations, or when necessitated by the public interest, health, or safety.

B. The DM is to deny voluntary reimbursable inspection services without providing prior notification when necessitated by the public interest, health, or safety from such conditions as 1) are set out in paragraph III. E.; 2) when product that does not meet the country specific requirements in the export library are exported; or 3) when the conditions set out in paragraph III. D. exist, as determined by OPEER. In these instances, the DM is to:

1. Notify the facility management orally and then follow up in writing about the denial of service; and
2. Explain the reasons for the action and provide the facility appeal and hearing rights as provided in 9 CFR 306.5 and 381.35 and 9 CFR 350.6 and 362.4, respectively.

C. The DM is to provide the facility prior notice and an opportunity to achieve compliance before denying reimbursable inspection service in situations such as when IPP have notified the facility about repeat non-compliances (see paragraph III. F.). In such instances, the DM is to:

1. Notify the facility in writing of the Agency's intent to deny reimbursable inspection services;

2. Explain the reasons for the action and provide the facility appeal and hearing rights as provided in 9 CFR 306.5 and 381.35 and 9 CFR 350.6 and 362.4, respectively; and
3. Advise the facility that it may submit corrective actions and other measures to ensure compliance with the Acts and regulations to the DM, or service will be denied.

D. The DM is to contact OPEER, Compliance and Investigations Division (CID), when he or she believes there is a need for:

1. Investigations of criminal activity (e.g. fraud, falsification of records, bribery); or
2. The permanent withdrawal of voluntary reimbursable inspection services.

NOTE: The DM is to also contact OPEER, Evaluation and Enforcement Division (EED) when he or she becomes aware of convictions related to more than one food misdemeanor or any felony of an employee or agent, for administrative enforcement actions in accordance with 7 CFR 1.133.

E. Referrals of potential criminal violations to OPEER, CID, for investigation do not preclude the DM from denying services as described in paragraphs B. or C.

V. DENIAL OR REINSTATEMENT OF VOLUNTARY REIMBURSABLE INSPECTION SERVICES

A. When the DM receives the facility management's written response, he or she is to evaluate the response based on whether the facility's proposed action plan addresses the problem, and whether, if effectively implemented, the proposed plan will ensure that the requirements of the Acts, regulations, or importing countries are met. The DM also is to consider the facility's history when determining whether it will likely implement its proposed actions effectively. Based on the evaluation the DM is to decide whether to:

1. In cases without prior notification:
 - a. Reinstate services; or
 - b. Maintain the denial of service.
2. In cases with prior notification:
 - a. Not deny services based on the response to prior notification;
 - b. Deny services based on the response to prior notification.
3. Refer to OPEER, EED for withdrawal of services (see paragraph IV D .2.).

B. The DM will inform the facility management of his or her decision in writing explaining the reasons for the action.

Refer questions through supervisory channels.

A handwritten signature in black ink, appearing to read "David Joseph". The signature is written in a cursive style with a prominent loop at the end.

Assistant Administrator
Office of Policy and Program Development