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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
*2d Session* } No. 94-987

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## PROVIDING FOR THE CONSIDERATION OF H.R. 12572

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MARCH 30, 1976.—Referred to the House Calendar and ordered to be printed

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Mr. SISK, from the Committee on Rules,  
submitted the following

### REPORT

[To accompany H. Res. 1120]

The Committee on Rules, having had under consideration House Resolution 1120, by a nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

○



GRAIN INSPECTION REFORM ACT  
OF 1976

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REPORT  
OF THE  
COMMITTEE ON AGRICULTURE  
AND FORESTRY  
UNITED STATES SENATE  
TO ACCOMPANY  
S. 3055  
TOGETHER WITH  
MINORITY VIEWS

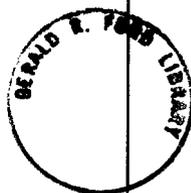


APRIL 9, 1976.—Ordered to be printed

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GRAIN INVESTIGATION STAFF

PHILLIP L. FRAAS, *Special Counsel*  
 BERT L. WILLIAMS, *Staff Investigator*  
 HUGH M. WILLIAMSON, *Staff Investigator*  
 ANN C. BOND, *Clerical Assistant*

(II)

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(III)

# Calendar No. 713

94TH CONGRESS }  
*2d Session* }

SENATE

{ REPORT  
No. 94-747

## GRAIN INSPECTION REFORM ACT OF 1976

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APRIL 9, 1976.—Ordered to be printed

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Mr. HUMPHREY, from the Committee on Agriculture and Forestry,  
submitted the following

### REPORT

together with

### MINORITY VIEWS

[To accompany S. 3055]

The Committee on Agriculture and Forestry, to which was referred the bill (S. 3055) to provide for United States standards and a national inspection system for grain, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

(1)

#### SHORT EXPLANATION

S. 3055, as amended by the Committee, makes major changes in the United States Grain Standards Act designed to strengthen and improve the United States grain inspection system so that confidence in the system will be restored.

The principal provisions of the bill would require (1) that all grain inspections at export elevators and major inland terminal elevators be made by employees of the Federal Grain Inspection Agency established to administer the program; (2) that all grain transferred into or out of export elevators be officially weighed by Federal employees; (3) that grain may be officially weighed at major inland terminal elevators either by Federal employees or by State employees under Federal supervision; (4) that a new Agency be established within the Department of Agriculture to administer the U.S. Grain Standards Act; and (5) that large companies engaged in merchandising grain must be registered with the Agency. Also, the bill would enhance the civil and criminal penalties available under the Act to enforce honest and accurate grain inspection and weighing.

The bill would provide for the recovery of most of the costs of the program through fees for program services.

## NEED FOR LEGISLATION

The United States grain inspection system plays a key role in facilitating the marketing and sale of grain produced by American farmers. In turn, trade in grain is crucial to a healthy, growing economy for the people of the United States.

During fiscal year 1975, the United States exported 21.6 billion dollars worth of agricultural products, with a net balance of trade surplus for such products of 12 billion dollars. Grain played a major role in reaching that favorable balance, as 12.5 billion dollars of that agricultural export total was in grain.

Most of that grain exported was officially inspected and sold to foreign customers on the basis of the grades established by the grain inspection system.

Yet, the current grain inspection system has fallen far short of protecting our farmers and their customers.

In the last year, the General Accounting Office "Report on Irregularities in the Marketing of Grain," witnesses before our subcommittees, the Committee's own investigation, and many stories in the news media have repeatedly shown that grain handling irregularities (shortweighing, misgrading, bribery, tax evasion, and others) are pervasive.

The GAO has told us that of the many foreign buyers of American grain they interviewed last year, 40 percent indicated that they had diminished their purchases of American grain within the last few years because of problems associated with grain inspection, and several indicated that they had dropped out of the United States market entirely.

The more than thirty indictments handed down in the lower Mississippi area illustrate a story of corruption in the grain inspection system and the export trade. Three of our largest grain firms have been indicted and have pled guilty or nolo contendere to charges of wholesale theft and misgrading of grain bound for foreign markets. Investigative efforts are continuing on other significant cases.

There are two points which must be considered concerning the indictments.

1. It is important to note that all indictments involve criminal cases which, for a verdict of guilty, require proof beyond a reasonable doubt. Yet, more than 40 defendants have pled guilty. The one defendant who went to trial was found guilty. We know that civil violations also are now being investigated. If cases are proven, they could result in the recovery of millions of dollars that the United States Government may have been defrauded of in its subsidy and Food for Peace programs.

(4)

2. The investigative efforts necessary to bring about these many indictments and prosecutions have been underway for two years. Time is necessary to develop these cases because they involve complex schemes, difficult to prove. Yet, there are investigative efforts underway in several other locations in the country (other than at the Gulf ports) that are still in the preliminary stages.

The current grain inspection system invites these irregularities because of the benefits to be derived by both individuals and companies, the lack of effective investigatory power and the weak penalties provided under the Grain Standards Act, and the interdependency of the grain companies and the inspection agencies upon each other.

The Committee is dedicated to reforming the Grain Standards Act and thus strengthening the grain inspection system, to restore the integrity and credibility of American grain. And to do this, the Committee believes that the Congress must enact legislation which completely revises and revitalizes the Act. The reform legislation in S. 3055 will put the grain inspection system back on its mandated course—to promote and protect interstate and foreign commerce in grain and facilitate the marketing of farmers' grain.

Remedial legislation that will accomplish the whole task must attempt to: (1) Eliminate proven irregularities; (2) restore integrity and confidence; (3) provide greater uniformity and consistency in the application of the grain standards of quality; (4) eliminate the actual and potential conflicts of interest; and, (5) facilitate the smooth orderly movement of grain from farm to market.

Also, many of the irregularities in grain marketing have resulted from shortweighing practices. There is no Federal law now that provides a comprehensive scheme for regulating the weighing of grain moving in interstate and foreign commerce. For the protection of producers, merchandisers, warehousemen, processors, and consumers of grain, a uniform Federal weighing system similar to a uniform grain inspection system is needed.

The Committee believes that S. 3055 meets those needs and many more by:

Providing for a unified, Federal system of grain inspection at export elevators and the largest interior terminal areas;

Providing for official weighing at both export and interior points;

Establishing the Federal Grain Inspection Agency within the Department of Agriculture;

Providing for the registration of large grain companies;

Strengthening many other provisions of the Act, such as the conflicts of interest provisions, the civil and criminal penalties, and the investigative authorities.

FEDERAL INSPECTION AND WEIGHING AT EXPORT AND MAJOR INLAND  
ELEVATORS IS NEEDED

This is the major step to restoring integrity and credibility to the grain inspection system. Since these export and major inland terminal elevators handle about 85 percent of the official inspection performed in the United States and are a relatively concentrated, small number of elevators, Federal inspection and weighing at these elevators can provide an essentially "all-Federal" system at a reasonable cost.

The key problem with the current system is that there are 110 separate, unrelated, and relatively independent official inspection agencies that provide all inspection, at 183 designated inspection points. This alone makes administering and enforcing present law and regulating the activities of agencies most difficult, if not impossible. In addition, under the present system, these agencies operate almost totally without control by the Department of Agriculture.

The following problems with the present system, which were pointed out in the GAO report, give an indication of some of the weaknesses that flow from diversity and lack of control.

(1) Independent agencies are generally unwilling to cooperate fully with the Department of Agriculture in the proper administration of the system and often have resentment toward Federal supervision.

(2) Some independent agencies tend to circumvent or compromise prescribed procedures and regulations as quickly as the Department writes them.

(3) It is impractical for the Department to provide centralized training for inspection personnel working for the agencies.

(4) Agencies are unable or do not choose to provide extensive rotation of personnel.

(5) There are indications that shipments to major inland and export elevators from rural or smaller elevators are graded and weighed discriminatorily against these shippers, who are not present to witness the activity.

(6) There are wasteful duplicative and multiple inspections.

(7) The Department has not been able to prevent easy circumvention by elevators of controls designed to insure honest and accurate grain inspection.

(8) The fault throughout the system is in the development of intimate relationships and mutuality of interest between grain companies and the inspection agencies. Thus, many inspection personnel feel that their loyalty is to the grain company they are supposed to be supervising and not to the United States.

S. 3055 would correct these and other deficiencies through a system of Federal inspection which will provide for:

Greater uniformity and consistency in inspection procedures and operations;

Placement of inspectors under direct control of the Department of Agriculture to provide more effective authority to deal with inspection deficiencies;

Establishment of an independent system to eliminate actual and inherent conflicts of interest;

Development of an inspection force which conforms to uniform hiring and training requirements;

Rotation of the inspection force among specific locations;

Greater flexibility in the use of inspection personnel, especially where seasonal work may be involved;

Maximum use of standardized equipment and better maintenance and testing of equipment;

Reduction of the number of multiple or duplicate inspections presently required; and

Reduction of the number of inspection agencies to increase administrative efficiency.

It is only with this type of change that the people of the United States will be protected and our foreign markets for grain preserved and enhanced. Grain inspection requires a national strategy, a national system, a national direction, and a national responsibility. Since it is the United States Government that will be certifying that lots of grain are of the quality called for in contracts, inspection should be performed by the Federal Government.

A SYSTEM OF OFFICIAL WEIGHING OF GRAIN IS NEEDED

Right now, there is essentially no Federal standard, authority, or regulation for the weighing of grain. We have a complex system that is known world-wide for determining the quality of grain; yet, we have no system that applies to determining the quantity of grain.

Under the current system, the grain is weighed in many instances by grain company employees. This is an inherent conflict of interest.

Although State and independent organizations supervise grain weighing at most locations, this supervision is inadequate because, (1) there are no national standards and procedures to obtain uniformity, (2) it is generally performed on only 25 percent of the grain weighed, and (3) it is only effective if a State has strong supervision of the weighing of grain.

Both our foreign customers who must rely on these insufficiently supervised weights and many persons in the domestic grain trade who must rely on destination weights have voiced widespread dissatisfaction.

The many indictments and other documented cases of weighing irregularities include the short-weighing of grain both in-bound and out-bound, theft of grain, and complex methods to divert grain from scales or from being loaded into vessels. All these violations and problems demonstrate the need for Federal control and supervision of grain weighing.

Also, the General Accounting Office in its report recommended that weighing be coordinated with the inspection process, to increase the integrity of inspection.

The Committee believes that S. 3055 meets all these needs. Official weighing and the provision of certified weights of lots of grain, by Federal employees, would be provided at export elevators. At the major inland elevators, there would also be such Federal weighing, unless the State in which the elevator is located has laws and regulations which will meet Federal criteria, in which case the State may perform the weighing.

A SEPARATE AGENCY IS REQUIRED TO ADMINISTER THE INSPECTION  
AND WEIGHING OF GRAIN

Grain inspection is now the responsibility of the Administrator of the Agricultural Marketing Service, USDA, and represents only one of his many responsibilities. The Secretary, USDA, now appoints that Administrator who reports through an Assistant Secretary.

This bill establishes the Federal Grain Inspection Agency with the statutory authorities vested in its Administrator under the general direction and supervision of the Secretary. The Administrator shall be appointed by the President with the advice and consent of the Senate.

The separate Agency is needed to allow greater independence because of the significance of grain as the largest single export source of income our country has in terms of individual commodities. Therefore, grain inspection and weighing warrant the kind of special attention a separate agency can provide.

In light of the greatly increased responsibilities under this bill and the problems we have faced, what is needed is someone that can give almost total attention to these matters. The responsibilities should be squarely placed upon the shoulders of one person who will administer an objective, well-enforced grain inspection and weighing system. There is a need to have one person that the Congress and the public can hold accountable. This bill meets all of these needs.

A NEED FOR REGISTRATION REQUIREMENTS FOR LARGE GRAIN FIRMS

Almost all major export grain companies are private companies and, therefore, do not have to file reports concerning their organization or business operations with the Securities Exchange Commission or any other Federal Agency. When violations of the law or other irregularities occur, it is most difficult to determine who is responsible and who benefits from the illegal acts.

The bill would provide for minimal information such as ownership, names of directors, and locations where the business has substantial grain operations. The limited amount of information required does not encroach upon trade secrets and other properly private information. The type of information required is necessary to enforce effectively the provisions of the bill.

This registration requirement applies only to merchandisers who sell more than 2,500,000 bushels of grain in a calendar year or operate grain elevators with total storage capacity of more than one million

bushels. It generally excludes producers and others who only occasionally sell or transport grain.

This provision provides an important enforcement tool because those companies who are substantial dealers in grain must have a registration certificate from the Administrator to operate their facilities. If they commit a violation of the Act, the Administrator is authorized to suspend or revoke that certificate and thereby stop operations of the facility. This enforcement tool will have a much greater impact in discouraging illegal operations than the civil and criminal fines which can be imposed.

OTHER PROVISIONS

Other provisions of S. 3055 are also designed to restore integrity and confidence to the system, discourage violations and identify potential problems of the future, and provide orderly and equitable transition.

In addition to the provisions mentioned above to restore integrity and confidence to the grain inspection system, S. 3055:

(1) would require that all grain exported from the United States be officially inspected and weighed so that all United States grain in foreign countries will be represented with an accurate grade and weight,

(2) would eliminate potential and actual conflicts of interest in the inspection that is not conducted by the Federal Government,

(3) would provide for a new system of contracting with only those States and persons of demonstrable competence and ability (the contract would be a binding document showing the requirements of the service to be provided, and would place the direct responsibility on the Administrator for ensuring that adequate service is provided), and

(4) would provide for periodic testing of equipment used in the inspection and weighing process to assure accurate results.

Other provisions to discourage violations of the Act are the increased civil and criminal penalties. The identification of potential problems in the future is provided for in S. 3055 through the added record keeping requirements and the new reporting requirements. Investigative authorities have been strengthened and broadened.

To insure that an orderly and equitable transition to this strengthened system is achieved and the timely and orderly marketing of grain continues, the bill allows from 6 months to 2 years to phase the system into operation. In addition, the bill provides "grandfather" clauses applicable to those State personnel who become a part of the Federal Grain Inspection Agency so that their income and benefits can be preserved.

REPORT OF THE GENERAL ACCOUNTING OFFICE

Last summer, in response to charges of scandal in grain inspection and in anticipation of having to draft remedial legislation, Senator

Hubert H. Humphrey, Chairman, Subcommittee on Foreign Agricultural Policy, and Representative Thomas S. Foley, Chairman, House Committee on Agriculture, jointly requested the Comptroller General to investigate thoroughly the United States grain marketing system. Thereafter, the General Accounting Office assigned this project a high priority, conducted an independent investigation, and subsequently issued its report on the grain inspection system on February 12, 1976.

That report presents an objective, far-reaching analysis of that system and calls for changes in, and the strengthening of, the grain inspection system. S. 3055, the Committee believes, directly addresses the recommendations made by the General Accounting Office. A copy of the letter requesting the GAO investigation and the digest of the 118 page report read as follows:

LETTER FROM HON. HUBERT H. HUMPHREY AND HON. THOMAS S. FOLEY  
REQUESTING AN INVESTIGATION BY THE GENERAL ACCOUNTING OFFICE

U.S. SENATE,  
COMMITTEE ON AGRICULTURE AND FORESTRY,  
Washington, D.C., June 24, 1975.

HON. ELMER B. STAATS,  
Comptroller General of the United States, General Accounting Office,  
Washington, D.C.

DEAR MR. STAATS: The current grain inspection scandal is a matter that deserves the immediate attention of Congress. It threatens the credibility of the United States as the largest exporter of agricultural commodities in the world.

In 1974, the United States exported \$22 billion of agricultural products. Of this amount \$12.5 billion of products were subject to inspection under the U.S. Grain Standards Act.

The United States had a trade deficit of \$5.8 billion in 1974. Had it not been for the fact that our net favorable balance of trade in agriculture was almost \$12 billion, we would have had a devastating trade deficit of almost \$18 billion.

Thus, it is imperative that we thoroughly examine and reform our grain export system, not only for the sake of American farmers, but for the strength of our entire economy.

We must have the resources and expertise of the General Accounting Office to accomplish this goal.

Specifically, we wish the General Accounting Office to assume the responsibility for a full and complete evaluation of the entire marketing chain for grain—from farm to foreign port. This evaluation must be directed at the impact of each aspect of the marketing process on the quality of U.S. grain.

This evaluation would include, but would not be limited to the following particulars:

(1) Determine the quality of grain at point of first sale and at each subsequent step in the marketing process.

(2) Determine the method of sale, handling, drying, and transportation and effect on quality at each such step.

(3) Determine the effectiveness of the organizational and management structure of the Federal inspection system and the reliability of its supervisory function on the entire inspection system. Include an evaluation of the contractual arrangements for inspector supervision by official inspection agencies. Determine the corporate relationship, if any, that exists between official inspection agencies and the firms for which inspection is performed.

(4) Determine the effectiveness and reliability of the present inspection system and weighing procedures from the farm to port. Evaluate the existing U.S. standards and grades for grain.

(5) Describe the legal and contractual responsibilities of buyers and sellers at each step in the marketing chain as they relate to quality and weights.

(6) Determine the operating procedures at port elevators both with respect to incoming and outgoing grain, particularly as they might affect quality of grain. In addition to general and specific treatment of management practices this should include data on surveillance, sampling, and loadings.

(7) Determine what happens on ships prior to, during, and after grain is loaded. Follow shipments from domestic port elevators to foreign ports and unloading. Also, determine the responsibilities of the ship owners and captains.

(8) Address the problems, if any, in P.L. 480 shipments and determine if they differ from commercial transactions.

(9) Evaluate the complaints received, method of handling, procedures, and responsiveness of the Federal government to such complaints, both formal and informal, regarding grain quality and weights for the last 10 years.

We suggest that you have investigators visit Canada or other major grain exporting nations for purposes of better evaluating the U.S. system.

The Senate Committee on Agriculture and Forestry and the House Committee on Agriculture desire to use the report of the General Accounting Office in their consideration of permanent changes in the existing U.S. Grain Standards Act, the U.S. Warehouse Act, and other statutes. Because of the importance of this subject to the national economy, it is imperative that this request receive priority rating and a final report be made to the Committees no later than February 15, 1976. We also anticipate that the General Accounting Office would keep the Committees posted at intervals by letter on the progress of the on-going investigation.

We appreciate your fine cooperation on prior investigations and look forward to an excellent effort on this investigation.

With best wishes.

Sincerely,

THOMAS S. FOLEY,  
Chairman, Committee on Agriculture,  
U.S. House of Representatives.

HUBERT H. HUMPHREY,  
Chairman, Subcommittee on Foreign Agricultural Policy.

## DIGEST

Serious problems exist in the national grain inspection system authorized by the U.S. Grain Standards Act. The Department of Agriculture's role as overall supervisor has serious inherent limitations. It has not been able to insure the integrity of a system operated by a widely dispersed group of over 100 State and private agencies and trade associations.

Although some inspection services have been satisfactory, the system generally has:

- Operated without effective controls, procedures, or lines of authority;

- Tolerated conflicts of interest between the grain inspection and merchandising operations; and

- Not been responsive to the limited supervision provided by the Department's Agricultural Marketing Service.

Grain exports are an extremely important factor in the U.S. balance-of-trade position. The 1974 crop of U.S. grains covered by the Act was valued at about \$33 billion. During fiscal year 1975, U.S. exports of grain subject to inspection under the Act totaled about \$12.5 billion. (See p. 6.)\*

Weaknesses in the national inspection system have led to extensive criminal abuses, such as intentional misgrading of grain, shortweighing, and using improperly inspected carriers. (See ch. II.) Disclosure of these matters in the world press and in congressional hearings has resulted in an erosion of confidence in the system in the United States and internationally.

Action is needed to restore credibility in the system, promote orderly grain marketing, protect buyers' and sellers' interests, and build confidence in the quality and consistency of U.S. grain at home and in world markets. Accordingly, fundamental changes are required in the system. An essentially all-Federal inspection system is needed to:

- Restore integrity and confidence in the inspection system.

- Provide greater uniformity and consistency in inspection procedures and operations.

- Establish an independent system, eliminating actual and potential conflicts of interest.

- Increase foreign trade or at least reduce chances of customers choosing to buy from other sources.

- Develop an inspection force conforming to uniform hiring and training requirements.

- Permit rotation of the inspection force among specific localities.

- Provide for maximum use of standardized equipment and better maintenance of equipment.

- Reduce the number of multiple or duplicate inspections presently required.

- Reduce the number of inspection agencies to increase administrative efficiency.

- Place inspectors under direct control of Agriculture, to provide more effective authority to deal with inspector deficiencies.

\*Parenthetical page references are from the GAO report.

Eliminate present inequities whereby some inspectors earn annual salaries or incomes from \$30,000 to, in some cases, \$78,000.

Give Agriculture direct responsibility and authority to deal with elevators whose complex grain-handling systems allow for easy circumvention of controls over drawing of representative samples. (See p. 44.)\*

Recognizing that creating an essentially all-Federal system will take time and that, while some changes can be effected immediately, other changes, although urgently needed, will for practical reasons take more time to fully accomplish, GAO recommends that the system be established in phases as follows:

*The Congress should*

## PHASE I

Provide Agriculture with authority to take over inspection services immediately from those States or firms where serious problems are disclosed.

Direct Agriculture to intensify surveillance over on-going inspection services being provided by the States, trade associations, and private agencies until phases II and III are implemented.

## PHASE II

Authorize and direct Agriculture to assume responsibility at the earliest possible date for providing inspection services—sampling, grading, and weighing—and for issuing official inspection certificates at all port elevators.

## PHASE III

Authorize and direct Agriculture to extend the Federal inspection system (including sampling, grading, and weighing) to the main inland terminals, after sufficient experience has been obtained at the ports, and

Direct Agriculture to provide inspection services, on a request basis and under contracting or licensing arrangements, at minor inland terminals and country elevators. Such services should be provided under Agriculture-prescribed standards and procedures and should be subject to departmental review and supervision. (See p. 45.)\*

The Congress should also establish the system on a reimbursable basis whereby the fair costs of operating the system would be recovered through fees.

Legislation and regulations developing standards and procedures for the system should give appropriate consideration to the following matters:

- Conflicts of interest.* The system should prohibit all of these, actual and potential, and should impose appropriate penalties for violations on the part of grain handlers and inspection personnel. (See pp. 12 and 45.)\*

\*Parenthetical page references are from the GAO report.

*Sampling grain.* Adequate controls and procedures should be established for this process, including equipment operation and maintenance. Automated equipment should be mandatory to the extent feasible. (See pp. 14 and 45.)\*

*Weighing grain.* Grain weighing should be made an integral part of the inspection system. Adequate controls, standards, and procedures should be established, including safeguards over equipment calibration and maintenance. (See pp. 20 and 45.)\*

*Grading grain.* The need for improved accuracy and uniformity should be met through continuing research and training. (See pp. 23 and 45.)\*

*Personnel administration.* Uniform standards for recruiting, training, and supervising inspection personnel should be established and maintained, and a rotation program and work production standards for inspectors should be established. (See pp. 30 and 45.)\*

*General administration.* Quick and thorough reviews and investigations of reported discrepancies and abuses should be required. (See pp. 36 and 45.)\*

Inspection certificates should clearly show whether Agriculture or other agencies prepared them. (See p. 45.)\*

The provision that superseded certificates be surrendered when repeat inspections are requested should be stringently enforced. (See pp. 25 and 45.)\*

Instructions on examinations of stowage space in carriers should be revised to set forth training and performance requirements and to describe all situations where examinations should be required. (See pp. 27 and 45.)\*

Appropriate annotations should be made on inspection certificates for grain loaded at Great Lakes ports stating that such certificates are not valid for transshipped grain. (See pp. 29 and 45.)\*

To the extent practicable, grain inspection operations should be open to public scrutiny by foreign buyers or other interested parties. (See p. 45.)\*

Agriculture officials reemphasized to GAO the Administration's desire to maintain the existing basic organizational structure for the national grain inspection system. Present problems and deficiencies, they maintained, can be corrected through improved administration, granting Agriculture additional authorities, and imposing more stringent penalties. Agriculture expressed agreement with most other aspects of GAO's recommendations. (See p. 46 and app. VII.)\*

GAO's view is that the Administration's proposal would retain many of the present system's fundamental disadvantages and limitations and that the deeply entrenched and pervasive problems of the past and present could not be dealt with effectively under such a system.

#### FOREIGN BUYERS' COMPLAINTS ABOUT U.S. GRAIN

Inquiries in nine foreign countries revealed much dissatisfaction with U.S. grain sold abroad. Many customers believed they regularly

\*Parenthetical page references are from the GAO report.

received lower quality and weight than they paid for. The resulting cost in terms of diminished foreign sales and other effects is not calculable. Many buyers said the United States would continue to be their principal grain supplier but that they had reduced their purchases of U.S. grain and were buying more from other countries. A few said they had stopped buying U.S. grain altogether. (See pp. 51 to 56.)\*

Agriculture has not been sufficiently sensitive to foreign buyers' problems and has offered little assistance to them. Most Foreign Agricultural Service attachés GAO visited were not fully aware of the extent of foreign buyers' problems and said they lacked the authority, expertise, and resources for investigating complaints.

Procedures for handling foreign complaints were poorly defined and generally ineffectual. No central coordinating agency was designated to insure that all complaints were recorded, investigated, and responded to and that the combined results were analyzed for possible use in reexamining inspection procedures. (See pp. 56 to 61.)\*

Recommendations to the Secretary of Agriculture for improving the handling of foreign complaints are on page 62.\* Agriculture agreed with the recommendations and outlined actions it was taking or would take. (See p. 63.)\*

#### THE U.S. GRAIN STANDARDS

Many persons pointed out that the U.S. grain standards do not include certain important grain quality indicators but include other relatively unimportant or unreliable indicators. According to one authority, the standards were developed and amended over the years primarily to meet the minimal needs of grain merchandisers, and the needs of growers and food processors were not considered adequately.

Certain respondents said greater emphasis was needed on developing standards which (1) stressed qualities relating to grain's end use, such as protein in wheat and oil and protein in soybeans, and (2) provide incentives to farmers to produce higher quality grain. Before certain refinements or changes can be made to the grain standards, however, new equipment or inspection techniques must be developed to readily ascertain grade in accordance with the proposed standards. (See pp. 65 to 69.)\*

Agriculture has not been sufficiently concerned about the need for adequately directed and coordinated research on the grain standards by its several agencies. The Secretary should intensify research and development on the U.S. grain standards and provide for greater coordination among the departmental agencies with research and marketing responsibilities. (See p. 71.)\*

Agriculture concurred in the need for intensified research and development and said its agencies would jointly design and cost out priority research proposals. (See p. 71.)\*

\*Parenthetical page references are from the GAO report.

## SUMMARY OF MAJOR PROVISIONS OF THE BILL

[The section references that are starred are references to the United States Grain Standards Act as amended in its entirety by section 1 of S. 3055.]

The bill being reported by the Committee makes major changes in the United States Grain Standards Act relating to (1) increased Federal authority and responsibility, (2) increased civil and criminal penalties, (3) required registration of grain dealers, and (4) studies and reports.

### INCREASED FEDERAL AUTHORITY AND RESPONSIBILITIES

The bill—

1. Establishes the Federal Grain Inspection Agency headed by an Administrator who is to administer the Act under the general direction and supervision of the Secretary of Agriculture (sec. 4\*).

2. Provides that all grain inspections at export elevators and major inland terminal elevators are to be made by Agency employees (sec. 8(e)\*).

3. Provides that all grain transferred into or out of export elevators be officially weighed and all grain officially inspected at major inland terminal elevators be officially weighed (when feasible) (sec. 6(a)\*).

4. Provides that all grain weighed at export elevators be weighed by Agency employees and all grain weighed at major inland terminal elevators be weighed either by Federal employees or by State employees under Federal supervision (sec. 9(d)\*).

5. Eliminates "official inspection agencies" over which the Secretary of Agriculture has exercised little control under present law by requiring inspection in rural and other inland areas (where inspection by Agency employees is not required) to be made by Agency employees or a State or persons under contract with the Administrator (sec. 3(1)\* and (o)\* and sec. 8(f)\*). Before the Administrator may contract with a State or person, he must determine that the State or person is capable and qualified (sec. 11(a)\*).

6. Extends the requirement that exported grain sold by grade be inspected, to include all exported grain, whether sold by grade or not; and further requires that it also be officially weighed (sec. 6(a)\*).

7. Requires that a certificate be issued showing the official grade and weight of all grain exported (sec. 6(a)\*).

8. Authorizes the Secretary of Agriculture to enter into an agreement with Canada to provide for the required inspection and weighing of export grain transhipped through Canada (sec. 8(g)\* and sec. 9(f)\*).

9. Authorizes the Administrator to provide for periodic testing of all mechanical equipment used in the inspection, grading, and weighing of grain (sec. 10(a)\*).

10. Expands the Administrator's licensing authority to include (a) persons performing official weighing, (b) persons monitoring grain shipments overseas, and (c) State employees performing functions under a cooperative agreement to perform official weighing (sec. 13\*).

11. Provides for the periodic rotation of personnel of the Agency as the Administrator deems necessary to preserve the integrity of the inspection system (sec. 13(e)\*).

12. Requires the Administrator to set and implement uniform standards for recruiting, training, and supervising official personnel and work production standards (sec. 13(f)\*). Further, to the extent that the bill will take over weighing and inspections now performed by States, the bill would allow the Administrator to take into Federal service qualified State employees whose jobs would be eliminated. In going into Federal service, their pay rate, position in grade, pension and sick leave rights, and seniority would also be transferred intact (sec. 4).

13. Authorizes the Administrator to require by regulation as a condition for official inspection, the installation of specified sampling and monitoring equipment in elevators and the approval of the condition of carriers and containers for transporting and storing grain (sec. 21(a)\*).

14. Requires the Administrator to develop regulations prescribing procedures for promptly investigating complaints and taking action on complaints (sec. 21(b)\*).

15. Empowers the Department's Office of Investigation to make such investigations into grain inspection and weighing under the Act as the Director thereof deems necessary (sec. 21(d)\*).

### INCREASED CIVIL AND CRIMINAL PENALTIES

The bill—

1. Would classify all violations under the Act as either knowing, intentional, reckless, or negligent violations—for the purpose of determining the applicable penalty (sec. 18\*).

2. Remove the prohibition against assaulting or impeding Department employees from the Act and place it within the more stringent prohibitions of 18 U.S.C. 111 and 1114 (sec. 18\* and sec. 5).

3. Would delete the bribery section in conjunction with another amendment to the Act (sec. 13(d)\*) placing official personnel within the stricter bribery prohibitions of 18 U.S.C. 201.

4. Would increase maximum penalties as follows:

—for knowing or intentional violations, the maximum (felony) penalties would be: 5 years imprisonment, a \$10,000 fine, or both; and

—for reckless or negligent violations, the maximum penalties would be: 9 months imprisonment, \$5,000 fine, or both (sec. 19\*).

5. Would add a prohibition against falsifying weights or grades by any means, including the use of inaccurate, faulty or defective equipment (sec. 18(a)(7)\*).

6. Would permit the Administrator to refuse inspection or weighing to any person who he finds has violated the provisions of the Act. In addition to or in lieu of refusal, he is also authorized to assess a civil penalty (maximum: \$100,000) as he deems necessary to effectuate the objectives of the Act (sec. 15(a)\*).

7. Extends the Administrator's authority with regard to refusal of inspection so that he may temporarily suspend the provision of inspection services for up to 7 days, pending a hearing (sec. 15(c)\*).

8. Authorizes the Administrator to revoke summarily the license of any licensee convicted of a crime prohibited by the Act or relating to his duties under the Act (sec. 14\*).

#### REQUIRED REGISTRATION OF GRAIN DEALERS

The bill—

1. Would require (with certain exceptions) the registration of any person engaged in the business of buying grain for sale in interstate or foreign commerce *and* in the business of handling, weighing, or transporting of grain for sale in interstate or foreign commerce.

The registration requirement does not apply to:

(a) a person only incidentally or occasionally involved in the grain trade;

(b) producers of grain who are only incidentally or occasionally involved in the grain trade;

(c) persons who transport grain for hire and have no financial interest in the grain;

(d) persons who buy grain for feeding and processing and not for the purpose of reselling; or

(e) any merchandiser of grain who sells less than 2,500,000 bushels of grain in a calendar year, or owns or operates grain elevators with total storage capacity of less than 1,000,000 bushels (sec. 24(a)\*).

2. Would require that persons to be registered submit the following information:

(a) the name and principal address of the business;

(b) the names of all directors of the business;

(c) the names of the principal officers of the business;

(d) the names of all persons in a control relationship with respect to the business;

(e) a list of locations where the business conducts substantial operations; and

(f) such other information as the Administrator deems necessary (sec. 24(b)\*).

3. Would require the Administrator to issue a certificate to those businesses that comply with the registration requirements. The certification must be renewed annually, and the registrant must notify the Administrator of any changes in information within 30 days (sec. 24(c)\*).

4. Forbids any persons to engage in the business of buying grain for sale in interstate or foreign commerce and in the business of han-

dling, weighing, or transporting of grain in interstate or foreign commerce unless he has registered and has an unsuspended or unrevoked certificate of registration (sec. 24(c)\*).

5. Authorizes the Administrator to suspend or revoke any certificate of registration under this section when, after affording the registrant an opportunity for a hearing, the Administrator determines that the registrant has violated any provision of the Act or the regulations, or has been convicted of any violation under the U.S. Criminal Code involving the weighing, handling, or inspection of grain. The Secretary may temporarily suspend certificates without a hearing for up to 30 days, pending his final determination, if he deems such action to be in accordance with the purposes of the Act (sec. 24(d)\*).

#### STUDIES AND REPORTS

The bill—

1. Authorizes and directs the Administrator to perform a study regarding the adequacy of current grain standards. The study is to address specifically: removal of subjective human judgment from grading; subclassing grain by color; protein as a factor; and grouping broken grain with foreign material. On the basis of the results of the study, the Administrator is directed to make such changes in the grain standards as he determines necessary and appropriate, and, not later than two years after the enactment of the legislation, submit a report to the Congress on the findings of the study (sec. 6).

2. Would require the Administrator to report to the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry every December 1st:

(a) regarding the effectiveness of the official grain inspection system under the Act for the prior fiscal year (sec. 23(a)\*); and

(b) giving a summary of all complaints (and the resolution thereof) received by the Department from foreign customers for United States grain. The summary is not to include complaints that the Administrator determines have no reasonable basis (sec. 23(c)\*).

3. Directs the Administrator to report to the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry within 30 days regarding:

(a) any complaint from a foreign purchaser concerning a shipment of United States grain, after he determines that there is reasonable cause to believe the grain delivery was in fact faulty; and

(b) the cancellation of any contract for the export of more than 100,000 tons of grain (sec. 23(b)\*).

4. Directs the Administrator to report to the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry every three months with respect to investigative activity taken into complaints of improper activity and abuses in the official inspection of grain under the Act (sec. 21(b)\*).

## COMMITTEE CONSIDERATION

## I.

The Committee on Agriculture and Forestry initiated efforts to obtain reform of the grain inspection and weighing program in May 1975.

In the meeting of the Committee on May 21, 1975, the Committee discussed the growing scandal in the grain inspection system authorized by the United States Grain Standards Act. Concern was expressed about the impact on farmers of the recent grand jury indictments and the reports of wrongdoing in grain inspection in the press. After some discussion of the serious nature of this problem, the Committee authorized the Foreign Agricultural Policy Subcommittee to conduct a full and thorough investigation of the problem.

The Committee staff was directed to provide assistance to the Subcommittee for the purposes of this investigation and an immediate effort was made to obtain the additional staff assistance necessary to do a thorough job. The General Accounting Office agreed to provide the Committee with two experienced investigators, with the understanding that the agency would receive reimbursement for the investigators' salaries and expenses at such time as the Committee could obtain additional funding for this purpose.

Because the subject matter of the investigation involved the jurisdiction of the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices, the Committee determined that the investigation would be conducted jointly by that subcommittee and the Subcommittee on Foreign Agricultural Policy.

On June 18, the Committee agreed to a supplemental budget request which would permit the hiring of an additional lawyer to assist in the investigation, allow reimbursement to the General Accounting Office for its investigators, permit the hiring of clerical assistance for the investigatory staff, and provide the travel funds and other necessary expenses of the investigation.

The Senate approved the Committee's supplemental budget request on July 26, 1975.

It quickly became apparent that the scope of the scandal in grain inspection and the complexity of the issues to be addressed would require more investigative resources than would be available on the Committee staff. Therefore, in a letter dated June 24, 1975, Senator Humphrey and Congressman Foley requested, on behalf of the Senate Committee on Agriculture and Forestry and the House Committee on Agriculture, a complete and comprehensive investigation of our grain marketing system.

(20)

The Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices and the Foreign Agricultural Policy Subcommittee held thorough hearings, on June 19 and July 28, 1975, on S.J. Res. 88, a bill introduced on June 4 to provide emergency authority to the Secretary of Agriculture to restore confidence in the United States grain inspection system. S.J. Res. 88 reflected the view that during the thorough investigation that must take place, the Secretary of Agriculture should have some interim emergency authorities to immediately begin effectuating improvements in our grain inspection system. S.J. Res. 88 as introduced took a two-fold approach:

1. It made certain changes in the law to protect Federal grain inspectors and to make bribery of an inspector a felony.
2. It provided one-year emergency authority for the Secretary of Agriculture to strengthen the grain inspection system of the Department of Agriculture.

On June 19, the Subcommittees heard testimony from Administration officials. J. Phil Campbell, Under Secretary of the Department of Agriculture, appeared together with several other USDA officials. Also, testimony was received from Carl W. Belcher of the Department of Justice.

On July 8, the Subcommittees continued hearings on S.J. Res. 88 and heard testimony from all public witnesses who wished to testify. Several individuals expressed a desire for an opportunity for further comment before the Committee considered permanent legislation to make basic changes in our grain inspection system.

Subsequent to the introduction of S.J. Res. 88, bills to make permanent and basic changes in the grain inspection system were introduced. However, it was the view of the majority of the subcommittees and the full Committee that action on these permanent bills should be deferred until a thorough investigation had been completed by both the Committee staff and the General Accounting Office.

## II.

On September 11, the Subcommittees held an Executive Session on S.J. Res. 88. After the adoption of several amendments, the Joint Resolution was reported to the full Committee.

The Subcommittees adopted an amendment to strengthen the prohibitions against the criminal offenses provided for in S.J. Res. 88 and increase penalties.

In addition, the amendment adopted by the Committee would make misweighing and deceptive weighing of grain a violation of the Grain Standards Act.

As for the temporary authorities that S.J. Res. 88 would provide for the Secretary of Agriculture, some additions were made. The Subcommittees adopted an amendment to require that the Secretary review the designation of all official inspection agencies. An amendment was adopted to direct the Comptroller General to evaluate previous and current compliance with the United States Grain Standards Act by the major grain exporters, with special emphasis on the impact of these exporters on the prices received by farmers and the quality of grain that is exported.

Another major amendment adopted by the Subcommittees would require the registration of the grain trade. Under this registration amendment registrants would have to provide certain basic information. The Secretary would be authorized to suspend or revoke a registrant's certificate if he finds that a registrant has violated the law.

The Subcommittees adopted an amendment to require the Secretary to notify the Congress within 30 days of any complaints regarding faulty grain delivery made to him by foreign governments or of any cancellation of any contract for the export of more than 100,000 metric tons of grain. The Secretary would be required to file an annual report summarizing the complaints that he has received from foreign buyers.

Another amendment adopted by the Subcommittees would require the Secretary to conduct a study of the current grain standards.

Another amendment would require the Secretary to make a study concerning contamination, transportation, and handling of United States agricultural products and to submit a report to the Congress on this study within one year.

### III.

On September 17, the Committee considered in Executive Session S.J. Res. 88, as amended by the Subcommittees. The Committee accepted all of the amendments adopted by the Subcommittees, with some modifications.

Some Committee Members expressed concern about the Subcommittees' amendment that would authorize the Secretary to supervise and regulate all weighing of grain shipped in interstate or foreign commerce and to inspect all weights and scales used for such purpose. The Committee agreed on a compromise that would authorize the Secretary to supervise the weighing of grain under cooperative agreements with the States who have a program of regulation and supervision of weighing and the inspection and testing of weights and scales.

There was considerable concern by some Committee Members about the application of the Subcommittees' amendment requiring registration of the grain trade. Some Committee Members expressed strong opposition to including small grain merchandisers and grain elevator operators under the provisions of this section. Therefore, the Committee agreed upon a compromise amendment which would exempt from the registration requirements merchandisers of grain who sell less than 2,500,000 bushels of grain in a calendar year or own or operate, or otherwise control grain elevators with total storage capacity of less than 1,000,000 bushels.

In addition, the Committee struck from the Subcommittees' amendment the requirement that the Secretary suspend certificates of registration for at least six months for any person who is convicted more than once of violating any provisions of law regarding the handling or inspection of grain.

The Committee modified the Subcommittees' amendment with regard to the reporting of foreign complaints. Under the Committee modification, the Secretary of Agriculture would only have to report foreign complaints after the determination is made that there is reasonable cause to believe that a grain delivery was in fact faulty.

Senator Bellmon offered an amendment to prohibit any subclasses of "Hard Red Winter Wheat" in the official United States standards for grain. However, the Senator agreed instead to an amendment that would require the Secretary to submit his report on the adequacy of the current grain standards within six months, rather than one year, as provided in the Subcommittees' bill. It was the intent of the Committee that the Secretary devote special attention in this study to the problem of unwarranted discounts for Yellow Hard Winter Wheat.

### IV.

S.J. Res. 88 was reported in the Senate on September 23, 1975, and was passed by the Senate on September 25, 1975. It was referred on September 30, 1975, to the House Committee on Agriculture which has taken no action on the resolution.

### V.

The bills introduced in the Senate over the past year and referred to the Committee seek, in various ways, to improve grain inspection. The key provisions of these bills follow:

#### *S. 2256 by Mr. Clark*

1. Provides an all-Federal inspection system under jurisdiction of newly-created Federal Grain Inspection Agency.
2. Conflict of interest language prohibits inspection personnel from having any financial interest in or being employed by grain firms and from accepting gratuities.
3. Requires registration of all persons or firms engaged in handling, weighing, or transporting of grain.
4. Provides for inspection and testing of all weights and scales, including those in warehouses.
5. Provides new concept of criminal penalties modeled after S. 1 dependent on degree of culpability. Knowing or intentional violations made a felony. Reckless and negligent violations are made misdemeanors.
6. System financed through the collection of fees.

#### *S. 2297 by Mr. Dole*

1. Continues present system of federally-licensed State and private inspection agencies.
2. Provides authority for original Federal inspection on interim basis as needed.
3. Gives Secretary authority and appropriations for foreign monitoring activities.
4. Provides stringent conflict of interest provisions which preclude any agency from performing inspection whose employees, officers, members, or stockholders are engaged in or have an interest in a business involved in transportation, storage, merchandising or handling of grain.
5. Provides for triennial redesignation of inspection agencies to allow for review of performance, with authority for Secretary to revoke or suspend designations.

6. Authorizes the Secretary to assess a civil penalty of up to \$50,000 for violation of the Act.

7. Extends period for which back records must be kept by 3 years.

8. Requires installation of specified sampling and monitoring equipment.

9. Increases criminal penalties by making improper influence, assault, intimidation, bribery, and interference with official inspection personnel a felony.

10. Funding through a combination of collected fees and appropriated monies as at present.

*S. 2326 by Mr. Huddleston*

1. Provides that reinspection and appeal inspection be performed in foreign ports by Department employees, when necessary to assure correctness of official certificate.

2. Provides that all export grain be officially inspected by employees of the Department.

3. System financed through the collection of fees.

4. Permits the Secretary to contract with and license any individual for the performance of the specific inspection functions of sampling or laboratory work for the Department.

5. Requires the Secretary to report annually to the Congress on the effectiveness of the system with recommendations for legislative changes.

6. Requires installation of specified sampling and monitoring equipment.

7. Requires the Secretary to investigate and report to the Congress, within a year after enactment, on the suitability of present grain standards.

*S. 3055, by Messrs. Humphrey, Clark, Talmadge, and McGovern*

1. Establishes a Federal Grain Inspection Agency within the Department of Agriculture headed by an Administrator appointed by the President to administer the U.S. Grain Standards Act and set policies and procedures for grain inspection.

2. Directs the Administrator of the Federal Grain Inspection Agency to have all grain inspection at export and major inland terminal elevators performed by Agency employees.

3. Authorizes the Administrator to have grain inspection in interior areas of the country performed by Agency employees, or, in lieu of that, by State or private agencies under contract. Contractors would receive payment under the contract rather than the present fee basis.

4. Sets stringent qualifying criteria for States or persons who apply to contract with the Administrator to inspect in the interior of the country.

5. Directs the Administrator to regulate the weighing of grain shipped in interstate and foreign commerce, and, at export elevators, to supervise the weighing of grain and inspect weights and scales.

6. Authorizes the Administrator to enter into agreements with States for the supervision of weighing and the inspection of weights and scales in other areas of the United States, under prescribed guidelines and regulations.

7. Authorizes the Administrator to charge and collect fees to cover the costs of official inspection and the supervision of weighing. This will enable the system to, as near as possible, be self-supporting.

8. Increases the criminal penalties for intentional or knowing violations of the Act by making them felonies punishable by up to 5 years imprisonment.

9. Authorizes the Administrator to impose civil penalties not to exceed \$100,000 upon persons or companies violating the Act.

10. Places the crimes of bribery of inspection personnel and intimidating or assaulting Agency employees performing official inspection, under the felony statutes contained in title 18 of the Criminal Code.

11. Prevents boards of trade or other business entities owned, controlled, or operated by grain elevators, merchandisers, or employees thereof, from operating as official inspection contractors.

12. Requires the Administrator to submit an annual report to the Congress on the effectiveness of grain inspection, with his recommendations for legislative changes necessary and helpful to accomplish the objectives of the Grain Standards Act; and on serious foreign complaints concerning the faulty delivery of grain.

13. Authorizes the Administrator to monitor in foreign countries, grain exported from the United States to determine whether the grain received is of the same quantity and comparable quality it was certified to be.

14. Authorizes the Administrator to perform a study for Congress of the current grain standards to determine whether they are adequate to encourage production of grain of high quality.

15. Directs the Administrator to rotate supervisory and other inspection personnel at periodic intervals, to preserve the integrity of the inspection system.

16. Provides a phase in of the changes with Federal inspection at export areas in place within 6 months and all Federal or contracted inspection in place within 2 years of the enactment of this legislation.

*S. 3141 by Mr. Dole and Mr. Bellmon*

1. Provides that grain which requires official inspection be sampled after final elevation as near the final spout through which it passes as possible, or while in the carrier.

2. Authorizes the Secretary to negotiate an agreement with Canada for required inspection of all transshipped grain.

3. Provides that export grain be inspected by employees of the Department or by employees of State agencies which the Secretary determines have demonstrated capability to continue to perform inspection services.

4. Provides for the physical supervision of weights and scales and the weighing process, the monitoring in a warehouse of the flow of the grain being weighed.

5. Authorizes the Secretary to develop standards for accurate weighing and certification procedures and controls, including safeguards over equipment calibration and maintenance, and procedures for the supervision of weighing grain.

6. Provides for periodic rotation of supervisory personnel and of inspectors located at export areas (among elevators) as the Secretary deems necessary.

7. Conflict of interest language prohibits inspection personnel from having any financial interest in or being employed by grain firms.

8. Authorizes the Secretary to assess a civil penalty up to \$100,000 for violation of the Act.

9. Increases criminal penalties.

10. Requires the Secretary to report annually regarding the effectiveness of the system with recommendations for legislative changes, and a summary of complaints received from foreign customers.

11. Directs the Secretary to make a study of grain standards and report the results within 6 months.

12. Gives the Secretary authority for foreign monitoring activities.

13. Provides for installation of specified sampling and monitoring activities.

#### VI.

The Subcommittees held several hearings to gather further information on the nature and extent of the problems in grain inspection.

On August 14 and August 15, 1975, many representatives from various segments of agriculture (including farmers, grain inspectors, farmer and trade organizations, researchers, co-operatives, and other interested parties) testified about problems relating to the present grain inspection system. Statements were obtained from two persons with first-hand knowledge of irregularities and corruption in grain inspection and from Harlan Ryan, the chief Federal grain official in New Orleans who first discovered the scandal in that area.

On September 25 and September 26, 1975, Mr. Gerald Gallinghouse, the U.S. Attorney who is in charge of the Department of Justice inquiry in New Orleans, testified as to the nature of the problem as he found it in New Orleans, his analysis of the failings of the present law, and his recommendations for changes in the law. Statements from three other first-hand witnesses to the criminal activities in the Gulf area were also obtained.

On February 20, 1976, the Subcommittees heard testimony from Mr. Elmer Staats, the Comptroller General of the United States, who appeared together with several other GAO representatives. He reviewed the GAO findings, as previously published on February 17, 1976 in the *Report on Irregularities in the Marketing of Grain*, and answered questions from the subcommittees with respect to those findings. Many of the GAO recommendations were incorporated into this bill.

On March 11 and March 12, 1976, the Subcommittees held hearings to receive additional testimony. They heard Mr. Jess M. Rosen, on March 11, testify with respect to corruption in the grain trade and subversion of the U.S. Grain Standards Act from the point of view of a person who worked in a managerial capacity inside several of the nation's largest grain companies. On March 12, representatives of the Agricultural Marketing Service of the Department of Agriculture testified about the "Rysy II" incident involving a large shipment of grain bound for Poland that appeared to have been improperly loaded in January, 1976, with low quality grain, in contravention of the U.S.

Grain Standards Act and the regulations issued pursuant thereto. Mr. Edward Cook, president of the company that had sold and loaded that particular shiplot of grain, presented evidence in rebuttal to the Department's allegations.

On March 16, 1976 the Subcommittees held a hearing to elicit further testimony from the grain trade, farmers, grain inspectors and other interested persons on reform of the U.S. Grain Standards Act and on the several bills pending before the Committee.

During the same period of time, the special Committee staff assigned to the grain inspection investigation visited several cities, examined the operation of numerous grain inspection agencies, went to Canada to look at their grain inspection system, interviewed many experts in the field, and otherwise gathered information on grain inspection which was submitted to the Senators on the Subcommittees.

#### VII.

On March 24, the Subcommittees held an Executive Session on S. 2256, S. 2297, S. 2326, S. 3055, and S. 3141. After the adoption of several amendments, S. 3055 was ordered reported to the full Committee.

#### A.

The Subcommittees adopted an amendment to remove "supervision of weighing" from the definition of official inspection in S. 3055, placing the whole matter of weighing in a separate section of the bill.

The Subcommittees adopted an amendment to clarify that all official inspection and weighing was to be supervised by Federal personnel, even that work performed by Federal employees.

The Subcommittees approved other provisions of S. 3055 relating to official inspection to be authorized by the U.S. Grain Standards Act.

The Subcommittees approved the provisions of S. 3055 calling for inspection at export and major inland terminal elevators to be performed by Federal employees. Also, the Subcommittees approved those provisions of S. 3055 doing away with the present system under the Act of "designating" States or private persons as official agencies for the performance of official inspection. The Subcommittees substituted a system whereby, in those areas which do not have inspection by Federal employees, the Federal Government would be responsible for providing inspection services, and could do so by contracting with States or private persons for the actual performance of inspection.

#### B.

The Subcommittees adopted several amendments to the provisions of S. 3055 dealing with grain weighing. As noted above, the concept of "official weights" was severed from the definition of official inspection. Provision for mandatory official weighing at export elevators by Federal personnel was approved. The provision for official weighing at other points was modified to include rural elevators or elevators not located at major inland terminal areas. These elevators would be permitted to request and receive official weighing under this Act, even if

they did not have official inspection services. It was agreed that these elevators would be required to use these services for a period not less than one year.

## C.

Also, the Subcommittees adopted an amendment whereby whenever grain was both inspected and weighed, one certificate showing the results of both would be issued. The authority of the Administrator to enter into agreements with States to permit States to perform official weighing at other than export elevators was extended to include minor inland points also.

## D.

The Subcommittees adopted an amendment to the provision authorizing the Administrator to develop standards for inspecting and testing weighing equipment. The amendment would require him to have the Agency physically inspect and test that equipment used in official inspection and weighing. Further, this requirement was extended to include all equipment used in grading and inspecting, as well. Also, the Administrator would be authorized to provide Federal supervision of all other equipment inspection and testing by States or private companies.

## E.

The Subcommittees approved the appropriations section and those provisions of S. 3055 authorizing the Administrator to charge and collect all fees for the performance of official inspection and official weighing. They agreed that the fees should support the entire system, except for national administrative costs not directly related to official inspection, official weighing, or the supervision thereof, and that the fees should be as nearly as uniform for each geographic area of the United States as possible. In regard to official weighing unrelated to the official inspection system at rural or minor inland terminal elevators, it was agreed that the fees for this service should be separate from the general fee structure.

## F.

The Subcommittees adopted the provisions of S. 3055 with respect to the changes in the Act relating to licenses and authorizations, with three amendments. The Subcommittees adopted an amendment which would require the development and implementation of uniform standards for recruiting, training, and supervision of official personnel and work production standards. Also, the bill was amended to allow employees of State or private inspection or weighing agencies, a number of which would probably be immediately hired by the Agency when the bill (if enacted) took effect, to be appointed to Federal service without regard to these standards if they were otherwise qualified to perform duties and they agreed to take required additional training courses. In line with this amendment, the Subcommittees also approved an amendment which would allow those employees of State agencies appointed under the same circumstances to bring with them into Federal service, or otherwise retain, their pay rate and any senior-

ity rights, sick leave benefits, and pension benefits they may have accumulated in State service. Also, the Administrator would be authorized to hire, without regard to normal Civil Service Commission rules on appointments to the competitive service, these State employees or qualified employees of private agencies performing official inspection or those weighing services to be assumed under the Act on the date of enactment.

## G.

The provisions of S. 3055 relating to the new conflicts of interest standards for official contractors, increased civil sanctions and criminal penalties for violations of the Act, changes in the provisions itemizing prohibited acts under the Act, and changes in the record-keeping requirements were adopted by the Subcommittees.

## H.

With regard to new investigatory powers given to the Administrator under the provisions of S. 3055, the Subcommittees adopted an amendment expanding the section to include provisions that: (i) the Administrator must develop regulations setting out procedures for promptly investigating complaints and contract cancellations and taking action thereon; (ii) the Administrator must report to the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry every three months with respect to investigative action taken on complaints; and (iii) giving the Department's Office of Investigation authority to independently investigate abuses of the provisions of the Act.

The Subcommittees adopted an amendment to the General Authorities provision of S. 3055. The Administrator, by this amendment, would be given the authority to conduct a continuing program of research to improve grain grading.

## I.

The provision creating an independent Agency headed by an Administrator appointed by the President was adopted as amended by the Subcommittees. The Subcommittees agreed to change the S. 3055 provision by adding phrases whereby the Administrator would exercise his powers under the general direction and supervision of the Secretary and by setting for him a term of 10 years, making his position similar to that held by the REA Administrator.

## J.

The Subcommittees adopted one other amendment to modify the provisions of S. 3055. With respect to the section authorizing and directing the Administrator to perform a study of present grain standards, the time frame was extended from 18 months to 2 years. Also, the scope of the study was sharpened to include the tasks of determining: (1) if standards might be developed which would reduce human error; (2) whether grain should be subclassified by color; (3)

whether protein should be included in the standards; and (4) whether broken grain should be grouped with foreign material.

The Subcommittees then adopted all other provisions of S. 3055 as it was written.

## K.

In addition to the modification of provisions which were included in S. 3055, the Subcommittees also adopted as a new provision to S. 3055 the same registration provision adopted by the Committee for the emergency grain legislation, S.J. Res. 88, earlier in September.

This provision would require that all persons engaged in the business of buying and selling grain for sale in interstate and foreign commerce and in the business of handling, weighing, and transporting grain be registered with the Department of Agriculture. Certain persons would be exempted from this registration requirement: (1) occasional or incidental traders; (2) producers; (3) transporters; (4) feeders and processors; and (5) small merchandisers and elevator operators.

Under this registration amendment, registrants would have to provide certain basic information. The Secretary would be authorized to suspend or revoke a registrant's certificate if he finds that a registrant has violated the law.

## VIII.

On April 7, the Committee considered in Executive Session S. 3055, as amended by the Subcommittees. The Committee accepted all of the amendments adopted by the Subcommittees.

## A.

There was considerable concern expressed about three specific provisions of S. 3055 as amended by the Subcommittees. One of these was the provision in the bill calling for performance of official inspection and official weighing at export and major inland terminal elevators by Agency employees. The Chairman submitted the matter of whether to accept the bill's provision for such performance of official duties at export elevators by Agency employees to a vote by a show of hands. The Committee agreed to this provision. Senator Dole then introduced an amendment calling for State or private inspection, rather than Federal inspection, at major inland terminal elevators. This amendment was rejected by the Committee by a show of hands.

## B.

A second matter of concern to some members of the Committee was the establishment of an independent Agency to administer the official grain inspection and weighing system under the Grain Standards Act. Senator Dole introduced an amendment to delete that section of the bill establishing an Agency. By a show of hands, this amendment was not accepted.

## C.

Finally, the Committee considered several Senators' concerns about the registration provision of S. 3055. Senator Dole offered an amendment to delete this section from the bill. By a show of hands, this amendment was not accepted.

## D.

The Committee adopted an amendment offered by Senator Dole to those sections of the bill dealing with rotation of official personnel. The change would require the rotation of Federal supervisory personnel, as well as of nonsupervisory personnel employed by the Agency. Also, contractors would be required, under this amendment, to rotate their personnel.

## E.

The Committee adopted another amendment which added a clarifying phrase to the bill's authorization for the monitoring in foreign countries of grain shipped from the United States. With this amendment, offered by Senator Dole, personnel monitoring shipments overseas to determine if the grain received was of a comparable quality would be required to consider the deleterious effect of handling methods and conveyances utilized at the time of loading.

## F.

One other amendment offered by Senator Dole was adopted by the Committee. It added a new provision to the bill which would require that the Agency provide adequate personnel that will assure the continued normal movement of grain at all inspection points without delay caused by new inspection requirements under this bill. Along with this, it amended the policy section of the U.S. Grain Standards Act as amended by this bill to include in the declaration of Congressional policy that a purpose of that Act shall be to assure the timely marketing of grain.

## BACKGROUND

### THE DEVELOPMENT OF GRAIN INSPECTION

#### I.

The grain inspection program we have today stems from a need that surfaced early in our Nation's history.

We had no Federal or State standards or inspection and grading systems when commercial marketing of grain began in the United States in the early 1800's.

Early sales were entirely local; longer-distance transportation systems to deliver grain did not exist.

Within local markets, grain traders gradually evolved their own sets of rough standards to denote differences in quality and condition of grain.

As railroad and barge transportation capacity increased throughout grain-producing areas by the late 1800's, surplus grain from producing areas in the Mississippi River basin began moving eastward to consuming and trading centers.

To fill the need for more uniform grades and standards, some States began inspection and grading systems.

By the turn of the century, many grain traders realized that it would be difficult to expand interstate and foreign grain trading without uniform standards.

After several years of hearings and deliberation, Congress enacted the United States Grain Standards Act on August 11, 1916.

The new law provided mandatory national grade standards and a "two-level" national inspection and grading system. The first level was operated by State, trade, and privately-owned inspection agency employees licensed by the U.S. Department of Agriculture. A second level of supervisory and appeal inspectors was employed by the Department.

The Act authorized the Secretary of Agriculture to establish national quality standards for grain. The first standards, effective December 1, 1916, were for corn. Subsequently, standards were developed for wheat, oats, rye, sorghum, barley, flaxseed, mixed grain, and soybeans.

The national standards permitted trading grains on the basis of an official description of quality and condition, rather than a physical sample. The 1916 Act prohibited describing grain by any grade other than official grade, and it required inspection for grain sold by grade and shipped in interstate commerce to or from an inspection point or exported.

The Act permitted the Secretary to license competent individuals to perform inspection and grading services, and to revoke such licenses for cause. The original Act did not provide for designating, or revok-

ing the designation of, official inspection agencies which employed licensed personnel.

Nor was there any provision for the Department of Agriculture to perform original inspections; its role was limited to supervision and inspecting or grading when one party in a sale appealed the decision of a licensed inspector.

Licensed inspectors were required to keep complete records; the Act required the Secretary to report by volume and grade the grain delivered to and shipped by each elevator.

The Act provided penalties for shipping grain without inspection; for grading grain improperly; for issuing a false certificate of grade; for accepting bribes; and for forcibly interfering with an inspector.

By inference all inspectors were eligible for licenses, provided they were not interested, financially or otherwise, directly or indirectly, in any grain elevator or warehouse, or in the merchandising of grain, and were not employed by a grain elevator or warehouse.

#### II.

The grain industry operated under the 1916 Act until 1968. During that period, the industry expanded from a largely domestic operation into a multibillion dollar domestic and export operation.

Several bills to repeal or to amend the 1919 Act were introduced from the 1920's to the 1960's, but only three bills were enacted; one in 1940 to add soybeans as a grain subject to the Act; one in 1956 to make it unlawful to deceptively load, handle, or sample grain; and one in 1968 to completely revise and update the Act.

Except for U.S. grain in Canada, which is inspected by Federal personnel, the revised Act of 1968 retained the two-level national inspection system; removed most of the inspection requirements for grain shipped by grade in interstate commerce; provided flexibility and safeguards in the inspection and grading procedures to meet ongoing changes in grain production, harvesting, merchandising, and transportation; and added safeguards for grain exports.

In 1918, there were about 75 inspection agencies performing inspections under the United States Grain Standards Act. Of these, an estimated six agencies were State, 42 agencies were trade, and 26 agencies were privately owned. Presently, there are 110 inspection agencies performing inspections in the United States under the United States Grain Standards Act. Of these, 23 agencies are State, 41 agencies are trade, and 46 agencies are privately operated.

The volume of grain inspected under the Act in 1974 was 10.6 billion bushels. Of the amount of grain produced, about 3 billion bushels were consumed on farms. Of the amount moving into commercial grain trade channels, 3.3 billion bushels were exported at a value of \$15 billion. While not all of the 8 billion bushels sold off farms were inspected, a substantial volume of grain is inspected more than once as it moves from country elevators to domestic consumers and export.

#### U.S. WAREHOUSE ACT

The United States Warehouse Act, substantially unchanged since 1916, authorizes the Secretary of Agriculture to license, inspect, in-

investigate, and otherwise regulate public storage warehouses, including grain elevators, that voluntarily apply for licenses and meet departmental standards. In June 1975, about 1,480 of the more than 8,000 grain elevators in the U.S. were licensed under this Act.

The Act also provides for licensing persons to inspect, sample, classify, grade, or weigh grain stored or to be stored in a licensed elevator. The Act, designed to protect grain depositors, authorizes issuance of warehouse receipts intended to be generally acceptable to bankers as loan collateral. The receipts are supported by inspection and weight certificates issued by warehouse graders and weighers licensed under the Act.

The licensed graders and weighers under this Act are usually employees of the licensed elevators and can perform duties only at specified licensed elevators. Inspection certificates issued to these licensees are only valid if they hold grain inspectors' licenses under the United States Grain Standards Act.

Daily operations of these licensees are not supervised directly by the Federal Government. Each licensed elevator is examined about twice a year on an announced basis to, among other matters, reconcile inventory records with receipts of the quantity and quality of grain on hand.

The U.S. Warehouse Act makes no provision for the competency of the persons licensed under its authority and the provisions relative to grain elevators' licenses are entirely voluntary.

The need for some type of national system has not gone unnoticed even without the Federal guidance. At major elevators in the U.S., there are so-called "official" weight certificates issued. The criteria for these weights have been established by the Association of American Railroads and the grain is weighed under varying amounts of supervision by supposedly disinterested parties.

The degree of supervision is governed by the AAR Classifications which are Class 1 (100 percent supervision), Class 2 (25 percent supervision), Class 3 (little or no supervision), and Class 4 (primarily only testing of scales). This supervision, together with many other requirements of the AAR, are the private concerns' recognition of the need for a uniform and credible system to insure the accuracy of grain weighing.

Representatives of the Western and Eastern Weighing and Inspection Bureaus of the AAR testified before our subcommittees on March 16, 1976, and endorsed the need for Federal standards, authority, and regulation of the weighing of grain. They agreed at that time to provide the subcommittees with provisions they believed would be necessary for a federally regulated system of weights of grain for all methods of weighing. Very detailed recommendations have been submitted and will be printed as a part of the March 16 hearing record.

Except for the above mentioned limited and unsupervised Federal weighing provisions and the attempts by private concerns, there is essentially no Federal standard, authority or regulation for the weighing of grain. We have a complex system that is known world-wide for determining the quality of grain; yet, we have no system that applies to determining the quantity of grain.

#### THE COMMITTEE'S INVESTIGATION

In the meeting of the Committee on Agriculture and Forestry on May 21, 1975, the Committee discussed the growing scandal in the grain inspection system. Concern was expressed about the scandal and its impact on farmers. The Committee authorized the Foreign Agricultural Policy Subcommittee to conduct a full and thorough investigation of the problem and the Committee staff was directed to provide assistance to the Subcommittee for the purposes of this investigation. Additional staff assistance necessary to do a thorough job was obtained. The General Accounting Office furnished the Committee with two experienced investigators. Also, the Committee hired an additional staff attorney to spend full time working on grain inspection during the pendency of the investigation.

Because the subject matter of the investigation involved the jurisdiction of the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices, the Committee determined that the investigation would be conducted jointly by that subcommittee and the Subcommittee on Foreign Agricultural Policy.

It quickly became apparent that the scope of the scandal in grain inspection and the complexity of the issues to be addressed would require more investigative resources than would be available on the Committee staff. Therefore, in a letter dated June 24, 1975, Senator Humphrey and Congressman Foley requested, on behalf of the Senate Committee on Agriculture and Forestry and the House Committee on Agriculture, a complete and comprehensive investigation of our grain marketing system. This letter requested that the Comptroller General submit a final report to the Committees by February 15, 1976.

The Comptroller General responded on February 17, 1976, with a comprehensive and objective report on his evaluation. The Committee is pleased with the very positive response that the Comptroller General has made to the joint request. A copy of the digest of that report is contained in the section of this report entitled "Need for Legislation".

#### *June 19, 1975, Hearing*

Even before the joint request to the Comptroller General, the members and staff were studying the scope and nature of the grain inspection problem. The first of seven hearings was conducted on June 19, 1975. The hearings were conducted by the Subcommittee on Foreign Agricultural Policy and the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices.

Before the first hearing, Senator Humphrey introduced Senate Joint Resolution 88, which was designed as emergency legislation to enable the Department of Agriculture to clear up the grain inspection problem in an expeditious fashion.

The bill, as subsequently amended by the Committee, would have—

(1) Granted the Secretary of Agriculture one-year, emergency powers to enable him to take immediate action to strengthen the system for the inspection, handling, and export of grain. Under such emergency powers, the Secretary could—among other things—use funds of the Commodity Credit Corporation to hire additional Federal inspection personnel, assign personnel to perform original inspection functions on an interim basis, rotate Federal supervisory personnel, revoke the designation of an official inspection agency if he found that the agency had a conflict-of-interest relationship with a grain elevator or merchandiser, require that all export grain be inspected, and, under certain conditions, prescribe the procedures for the weighing and the certification of the weight of grain when delivered from any elevator or warehouse for transportation in interstate or foreign commerce.

(2) Required the Secretary to review the designation of all official inspection agencies to determine if they were in compliance with the provisions of the United States Grain Standards Act.

(3) Made several changes in the United States Grain Standards Act and the United States Criminal Code to (a) increase the sanctions for violations of the United States Grain Standards Act, (b) protect from assault and death Department of Agriculture personnel assigned to perform inspection, weighing, or grading functions, and (c) make it clear that bribery of licensed inspectors is punishable as a felony.

(4) Directed the Comptroller General to make a one-year study concerning the compliance by major grain exporters with the United States Grain Standards Act.

(5) Amended the United States Grain Standards Act to require (with certain exceptions) the registration of any person engaged in the business of buying grain for sale in interstate or foreign commerce and in the business of handling, weighing, or transporting of grain for sale in interstate or foreign commerce.

(6) Amended the United States Grain Standards Act to require the Secretary to notify the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry of (a) complaints made by foreign purchasers regarding faulty grain deliveries and (b) cancellation of any contract for the export of more than 100,000 metric tons of grain.

(7) Required the Secretary to make studies regarding (a) the adequacy of the current grain standards established under the United States Grain Standards Act, and (b) the contamination, transportation, and handling of United States agricultural products.

(8) Required the Secretary to make periodic reports during the one-year period after enactment of the joint resolution concerning (a) the steps being taken to implement the joint resolution, and improve the system for the inspection, handling, and export of grain, (b) any legislative recommendations to strengthen the system, and (c) the status of investigations of irregularities involving the inspection of grain.

Statements were received from representatives of the Department of Agriculture and the Department of Justice, and information was obtained for the record concerning (1) complaints from grain buyers,

(2) reports on corruption in grain merchandising and inspection, and (3) newspaper articles from the Des Moines Register calling attention to corruption in grain inspection and handling.

*July 8, 1975, Hearing*

The second hearings continued the gathering of information about the problem. Statements were received from representatives of private inspection agencies, boards of trade, farmers' organizations, an agricultural researcher, grain associations, users of feed grain, organized labor, and a State Department of Agriculture. Information was obtained for the record concerning (1) newspaper articles about the problem, (2) statistics and information about inspections and complaints from buyers, and (3) indictments stemming from grand jury investigations.

*August 14 and 15, 1975, Hearings*

The third hearings were conducted in Bondurant, Iowa, on August 14, 1975, and in Walcott, Iowa, on August 15, 1975. Statements were obtained from (1) a former Louisiana grain inspector who had pled guilty to a charge of bribery, (2) a former grain grader and weigher, (3) a Federal grain inspector from the New Orleans area, and (4) many representatives of agriculture-related occupations. The former Louisiana grain inspector testified that, under the present grain inspection system, it is very difficult for grain samplers and inspectors to remain honest. The former grain grader and weigher testified that his bosses instructed him to misgrade and to load barges deceptively.

*September 25 and 26, 1975, Hearings*

The fourth hearings featured testimony from Gerald J. Gallinghouse, U.S. Attorney for the eastern district of Louisiana, current and retired USDA grain inspection officials, and several former grain inspectors who had either witnessed or participated in illegal grain inspection practices.

Mr. Gallinghouse described the numerous indictments resulting from his work and concluded that the actual situation was even worse than that indicated by the indictments. He said:

Many of the personnel at the elevators are in collusion with the employees of the private inspection agencies and others were committing thefts for their own benefit.

One of the most tragic things we have seen throughout this entire investigation was to see how people, little people working hard trying to support their families, seem to be corrupted by the system. They are employed in a low-level position. They are locked into the system. Either they go along with the system or they never move up in the system. It is tragic to us to see little people get involved in something like this who may well have been essentially honest when they came into the system. But survival requires that they go along with the system. Mr. Chairman and members of the committee, we want you to know that many of the employees of the elevator companies were stealing not only for themselves. Some were not getting anything other than preservation of

their jobs out of it. They were stealing for the elevator companies, and the companies were the beneficiaries of the thefts.

\* \* \* \* \*

We are convinced that the dishonesty, deception, theft and fraud in the inspection, grading, weighing and handling of grain have been much more serious and pervasive in our area than described in the indictments that have returned by our Federal grand juries in our jurisdiction, despite the best efforts of many in and out of Government to prevent dishonesty, deception, theft, or fraud.

We are also convinced that the widespread crime and corruption that have been uncovered in our area are symptomatic of similar activities and practices that exist in some other areas of our country where large quantities of grain are handled under similar conditions.

While we cannot forecast precisely what conditions will be in the grain industry in the years ahead, we have very serious doubts that uniformity and integrity can ever be fully achieved in our area under existing laws, regulations and policies, through the five official inspection agencies that service the eight export elevators, despite the best efforts of many in and out of Government to achieve uniformity and integrity.

We likewise doubt that uniformity and integrity can ever be fully achieved in any other area, under existing laws, regulations and policies, despite the best efforts of many in and out of Government, with 111 diversified official inspection agencies performing official grain inspection functions at 183 designated inspection points—23 operated by States; 41 operated by boards of trade, chambers of commerce and/or grain exchanges; and 47 operated by individuals under private ownership arrangements.

It seems to us, Mr. Chairman and members of the committee, that many of the serious problems and troubles presented to the U.S. Department of Agriculture in the administration of the regulatory system and to law enforcement authorities in the enforcement of the laws and regulations are inherent in the national grain inspection system that has been established under existing laws and regulations.

\* \* \* \* \*

It is difficult to perceive a more difficult arrangement to insure integrity and uniformity, Mr. Chairman, from what we have learned, and diversity is assured with multiple-inspection agencies and a double tier of inspection personnel, private in some areas, State in some areas, and then Federal.

It seems to me to be so basic, Mr. Chairman and members of the committee, based on our experience; divided responsibility is nobody's responsibility. It is extremely difficult, if not impossible, in many serious situations, to pinpoint responsibility.

\* \* \* \* \*

We think, Mr. Chairman, that the tragic story of fraud and corruption that has been unfolded in our investigation speaks more eloquently than we can about the failure of the system that is provided under the law, the national inspection system.

Insofar as it relates to our area and insofar as information has been obtained by us relating to similar practices in other areas, we have learned something about what goes on in some of the other port areas where large volumes of grain are handled.

\* \* \* \* \*

We need essential reforms, Mr. Chairman, and I may say that one of the surprising things to Mr. Heusel and me was that as late as April of 1975, a year after this investigation got under way, and should have been known by everybody in the grain handling business, there was still systematic theft of grain being accomplished at at least two of the major export elevators in our area. This indicates that they felt quite confident with the system; and apparently they still thought that no one was watching them closely.

In response to Senator Humphrey's question concerning an amendment offered by Senator Clark to require the large grain dealers to register with the Department of Agriculture and to state the ownership, Mr. Gallinghouse said:

The more we know about them, the better it is. It should be an open record because we believe the grain industry is something that is now impressed with such public interest. It seems to me, Mr. Chairman and members of the committee, that the honor and the integrity of the United States of America is involved in this. I am impressed when I see that simple little certificate. I think some of these inspectors who have been taking bribes for 12 years or more, we have now learned, have signed something which, in effect, says the United States of America. I just believe that is something we had better get serious about in this country.

In response to Senator Dole's comment that Mr. Gallinghouse's testimony indicated we ought to turn to a total Federal system, Mr. Gallinghouse said:

Please understand, you suggested that I seemed to be talking about a federalized system. I want to make it clear, and I think you should know this so you could evaluate my observation, I am not one who believes that the arm of the Federal Government is long enough or strong enough to reach out into every part of the country and solve all the problems. I am not suggesting that the people in Federal Government have a monopoly on integrity. Basically, my philosophy is if we can do something through private enterprise, local or State government, we should try to do it and not extend the authority of the Federal Government.

I can tell you this, speaking as a man who has some pretty conservative philosophical viewpoints; and, I have studied government carefully and thoroughly. I have been a State official. I can tell you if I have ever seen anything that requires a national strategy, a national system, a national direction, and a national responsibility, it is in this very sensitive grain-handling area.

In response to Senator Clark's question concerning the relationship between private inspection agencies and the major grain companies they inspect, Mr. Gallinghouse said:

Well, it is such an intimate relationship. There is no arm's length. I am not saying in every instance, but so often there is a very intimate relationship between the personnel of the agency, the inspection agency, and the personnel of the elevator.

In fact, it is very interesting to see, looking back into the history of some of the inspection agencies, that some of the elevator companies seem to have been influential in getting some of these inspection agencies designated at these locations. I would think that this is a very unhappy situation. It lends itself to dishonesty or improper practices, irregularities. I would think that the elevator personnel would be much more careful with and respectful toward Federal inspectors.

Please understand, Senator, that we know that it is not going to be a guarantee in any system. It is going to be as good as the administration of the system. But it seems to me that some essential improvements can be made in the regulatory scheme to assure uniformity, and that should not be so difficult to achieve.

It seems to me that it is so logical. It makes so much sense that you can achieve uniformity through a federal system that you could never achieve through 111 independent inspection agencies.

In response to Senator Clark's question as to whether illegal grading and weighing was really a way of doing business at the ports investigated, Mr. Gallinghouse said:

I think that that is an accurate and very simple description of what we have seen. It seems to be accepted as a normal way of doing business by many of the people in it.

Now, once again we must caution ourselves and make it clear that we are not accusing everyone in the business of being dishonest. But it would seem from what we have learned, Senator, that that is correct; that it was almost a normal way of doing business. It happened on a continuing basis. People who knew about it and who might otherwise be honest in other things, just never did bring it to the attention of USDA or to anybody in law enforcement.

In response to Senator Clark's concern about what type of permanent legislation to write and his question as to whether this was simply a problem of a few rotten apples or was it the system that was the problem, Mr. Gallinghouse said:

Senator, we have given that some very serious thought. We have concluded the fault is within the system. The difficulties that we have experienced are within the system. It would sadden us, as law enforcement authorities, to be frustrated in our efforts to clean up a situation if the same system that has allowed these deplorable conditions to exist for so long is not corrected by reform legislation, the nature of which, of course is for you gentlemen, the lawmakers, and not for ourselves. But we would feel much more comfortable if some essential reforms were made in the existing legislation.

\* \* \* \* \*

When we first got into it, Senator, well, we thought maybe this is good, it is free enterprise, close to the free enterprise. As we learned about it, we learned there is no free enterprise about it.

The U.S. Department of Agriculture is giving an inspection agency, in many situations without any experience, background, training, competence, or expertise for this important, this very sensitive and serious governmental responsibility, to act on behalf of the United States of America. It is a monopoly within a geographical area, so there is no competition. So that proves not to be a redeeming feature. We think there are such inherent conflicts within the system as provided in the U.S. Grain Standards Act and the implementing regulations that you cannot hope that it is going to go away and be solved by law enforcement alone. It is like putting hot poultices on gangrenous parts of a body. That is the way I see it.

Please forgive me for putting it so simply, but I would think that is about it. It requires major legislative surgery to reform the system that we have seen.

In response to a question concerning the problem at the Port of New Orleans, Mr. Gallinghouse said:

The fault there is just like, it would seem to me, the fault throughout the system. It is in the intimate relationship, the mutuality of interests, that has developed between the elevator companies and the inspection agencies, where the personnel of the inspection agencies, in effect, feel that they are servicing the elevator. We have yet to see any real recognition in the private inspection agency personnel that their loyalty is to the United States of America. They don't realize that they are performing a very sensitive and important governmental function, that is, to make official inspections. This is a sad thing, a tragic thing.

It was never been brought home to them. In fact, they seem, many of them, this is not true of all, but many of them seem to feel that their loyalty is to the elevator. Many of them show a downright open hostility toward the U.S. Department of Agriculture.

Another informative witness at the fourth hearings had pled guilty to grain inspection irregularities after being indicted for accepting a \$2,500 bribe. His statement follows:

TESTIMONY OF CLARENCE P. BAKER, JR., FORMER LICENSED GRAIN INSPECTOR, DESTREHAN BOARD OF TRADE, NORCO, LA.

My name is Clarence Philip Baker, Jr. I make the following statement freely and voluntarily to Bert Williams and Hugh Williamson, who have identified themselves to me as investigators for the Senate Committee on Agriculture and Forestry, knowing that this statement will be used as my statement before the Senate subcommittee hearings.

I was born on May 10, 1934, at New Orleans. I am married and live with my family at No. 3 Princeton Place, Kenner, La. I am currently employed with Weakners, Inc., 8200 Earhart Boulevard, New Orleans, La., as a salesman.

From October 1961, to October 1969, I was employed by the Destrehan Board of Trade, Norco, La., at Bunge Elevator, Destrehan, La. From October 1969, to January 1970, I was employed by Kellogg and Reynolds Demolition Co. From January or February 1970, until August 1972, I was employed with DBOT at Bayside Elevator, Reserve, La.

I then returned to Bunge Elevator until October, 1972, at which time I changed jobs and went with Delta Weighing and Inspection Bureau at Mississippi River Grain Elevator at Myrtle Grove, La. I terminated this employment in May 1974. Throughout the employment, I was employed as a grain inspector, therefore licensed by the U.S. Department of Agriculture. This statement will concern only my activities with Destrehan Board of Trade at both the Bunge Grain Elevator and the Bayside Elevator.

While working at these two elevators my job consisted of ship hold inspection of vessels carrying export grain, grading of grain, both incoming and outgoing, and issuing those grade certificates, and issuing weight certificates for that grain.

The practices I am about to describe I have personally participated in, witnessed, or have been advised by my associates in the elevators. Irregularities in the grain inspection system can be most easily classified into five categories: (1) Stowage examinations of vessels; (2) Samplers and technicians; (3) Inspectors; (4) Weighers; and (5) Elevator operators.

STOWAGE EXAMINATION OF VESSELS

Irregularities that occur in stowage examinations consist of bribery, cash bonuses, free overtime, and other gratuities.

Ship captains, port captains, and boarding agents offer bribes to get their vessels passed and filed so that they may receive grain and will no longer pay demurrage costs. If the vessels are passed, they will also avoid the expense of having to clean the vessel.

Ship cleaning companies offer bribes to have a ship approved as to cleanliness in advance of actually cleaning the ship so that they can have an advantage over other cleaning companies by guaranteeing to the shipowner quick passage of his ship. In the latter instance, the ship is cleaned by the time it is ready to receive grain at an elevator.

Elevator companies influence the outcome of a stowage examination by way of cash bonuses, free overtime, and gratuities such as cases of whiskey, free fishing trips, and free materials for various purposes. They can also apply job-related pressures such as making the working environment uncomfortable. Elevator companies put pressure on the licensed inspector, normally, to reject a vessel because (a) grain is not available in elevator to load, thereby saving demurrage costs, and/or (b) they want to load another vessel first.

Then we get down to Licensed Samplers and Technicians:

Samplers and technicians are responsible for obtaining representative samples of both inbound and outbound grain and delivering it to licensed inspectors for grading. In the process, they also check portions of each sample for live insect infestation and odor.

These personnel, meaning licensed samplers and technicians, break down the grain inspection system by obtaining unrepresentative samples, substituting samples prepared in advance, and by removing foreign material, for the purpose of improving the quality of the grain sample.

INSPECTORS

Inspectors are responsible for grading grain to determine that the quality meets the grade called for in the contract, for issuing grade certificates indicating the grade onboard the vessel, and issuing weight certificates indicating the amount of grain onboard the vessel.

Inspectors tamper with samples similar to the way that samplers and technicians do, they accept tolerances for off-grade grain greater than the amount covered by the regulations, and because their incomes are dependent upon the operation of the elevator company, they feel obligated to the company and show favoritism to it in the performance of their duties.

WEIGHERS

Before the late 1960's, the elevator companies used first-class weights which require that a licensed weigher from the designated inspection agency be on duty at all times during elevator operation to certify weighing of incoming and outgoing

grain. Since that time, the elevators where I worked have switched to second-class weights which require only periodic checks by licensed weighers of the agencies and allow an elevator employee to be licensed to perform weight checks at the times the elevator is in operation. The elevator employee must be a licensed weigher which only requires that he know how to operate scales. Weighers can manipulate scales for the benefit of the elevator company by showing weights less than the amount of grain actually received and more than the amount of grain actually shipped out.

#### ELEVATOR OPERATORS

Elevator operators control all incoming and outgoing grain, usually by means of a control panel and, therefore, can control both the quantity and quality of grain in the elevator. The ways in which this can be accomplished were discussed orally with the two investigators. Because of the space that was allowed in my statement, we felt we would elaborate on this at another time.

The remainder of this statement will discuss particular instances that I am aware of at the two elevators where I was an inspector.

At Bayside Elevator, Reserve, La., I am aware that vessels were short loaded at the elevator and that drafts of grain were punched out without the grain being loaded onboard the vessels. Although I was not present when this happened, it was common knowledge among elevator and DBOT employees. This was done by putting the elevator scale on hold and adding a weight figure to the tape and then reaching under the scale on the side of the scale and pressing the plus button. The tare weight was then subtracted from the tape by subtracting a weight, such as 150 pounds, from the total that was added to the tape, then reaching under the scale calculator and pressing the minus button. The figures added to the tape would be exactly like the other drafts, and they could not be identified from each other.

It was common knowledge that when there was no Government supervision, on many occasions, there would be no sampler at the belts during the loading of a vessel. There were many times when certain DBOT inspectors would call and ask the samplers to come down to the laboratory to join them in a game of cards. Also those inspectors would ask someone to stand by the telephone while they went to one of the two local bars nearby the elevator to drink beer. On some of these occasions there would be no one in the laboratory or at the belts while a vessel would be loaded with export grain.

I will comment upon activities and irregularities known to me that prevailed at Bunge Elevator, Destrehan.

A former employee of DBOT accepted bribes in the form of money and materials from this elevator. I suspect that Bunge employees gave him money to see that another DBOT em-

ployee and myself were kept in line, more or less, to help the elevator whenever possible.

During my last year at Bunge, 1972, I altered samples at the request of a Bunge employee. I did this by substituting samples of the same grade as a contract called for and not the same grade as actually loaded onboard the vessel. The samples removed from the belts carrying grain onboard the vessel were dumped or thrown back onto the belts whenever possible. I did not receive any gratuity but an official of DBOT told me that any time I help the elevator, it would be appreciated and that I would receive bonuses during the year compensating me, which I did ultimately receive.

In the grading of grain, I have witnessed licensed inspectors make up samples and shake out foreign material from samples while grading, thereby increasing the quality of grain in order for the elevator to meet contract grade. This was done on almost each vessel being loaded. During the loading of vessels at night while not under Government supervision, the samples themselves would be thrown away. I, myself, have shaken out foreign material from samples while grading them, and I have also disregarded grading samples at night while not under Government supervision. Samples can no longer be discarded without providing a substitute sample due to a new regulation since that time requiring samples to be retained for certain periods of time. The foreign material can still be thrown away.

While employed at DBOT, an official made nightly telephone calls asking how everything was going at the elevator. He always reminded me that if the elevator needed help, to assist in any manner I could. I took this to mean that I should permit the loading of off-grade grain on board vessels.

While at Bunge Elevator and over a period of about 2 or 3 weeks, I refused to let the elevator load off-grade grain and tried to do my job in accordance with instructions contained in the U.S. Grain Standards Act. As a result, an official of the Board of Trade "invited" me to his office. At the office he wanted to know what was the problem with me and I told him that I did not like sticking my neck out for the elevator. He said that I was to help the elevator and that if I did not, then I was of no use to the DBOT and that I would be replaced. There were no witnesses to the meeting. I did as was requested to avoid losing my job.

I am willing to testify under oath as to the information furnished in this statement.

I have read this typewritten statement, consisting of four pages, and it is true and correct. I have signed or initialed each and every page and have been given an opportunity to make any corrections or additions.

Also, I would like to add, I had started working as a grain inspector and a sampler in 1959 at the New Orleans Board of Trade.

*February 20, 1976, Hearing*

The fifth hearings featured testimony from the Comptroller General concerning the report on his evaluation of the grain marketing problems.

*March 11 and 12, 1976, Hearings*

The sixth hearings were concerned with (1) testimony from Jess M. Rosen, a former elevator employee of a number of grain companies and (2) testimony from representatives from Cook Industries, Inc. and the Department of Agriculture concerning a controversy relating to the Department's charges that a ship—the RYSY II—was loaded by Cook Industries, Inc. in a manner that may have violated the United States Grain Standards Act and related regulations.

The highlight of these hearings involved the testimony of Mr. Rosen, who stated that a major grain firm provided him the necessary training to cheat on grades and weights, and further, that four other major grain firms utilized that expertise in cheating at their grain elevators.

*March 16, 1976, Hearing*

The seventh and final hearings received comments from a wide variety of organizations on the proposed legislation. Some of the witnesses favored retaining the present system of grain inspection and marketing while others believed that legislation should be enacted to correct abuses in the system.

## A MANDATE FOR ACTION

The Committee feels that its staff investigation, its extensive hearings, and the very thorough investigation and report by the General Accounting Office provide a sound basis for strong legislative action. The Committee bill is the result of one of the most thorough reviews that has ever been conducted over a short period of time in an effort to restore faith in the quality of an American product.

## SECTION-BY-SECTION ANALYSIS

[\*The section references that are starred (\*) are references to the United States Grain Standards Act as amended in its entirety by section 1 of S. 3055.]

*Amendments to the United States Grain Standards Act*

Section 1 of the bill amends the United States Grain Standards Act in its entirety, incorporating a Federal system for grain inspection, and numerous other provisions to reform the grain inspection system. Each section of the Grain Standards Act as amended by the bill is analyzed separately below.

*Section 1.\* Short title.*—Cites short title as “United States Grain Standards Act.”

*Section 2.\* Declaration of Policy.*—Declares it to be the policy of Congress to promote and protect commerce in grain, in the interests of producers, merchandisers, processors, and consumers of grain, and the general welfare of the people of the United States, to provide for establishment of official United States standards for grain, and the uniform application thereof by official inspection personnel, to provide for an official inspection system for grain, and to regulate the weighing and the certification of the weight of grain shipped in interstate or foreign commerce, in order that grain might be marketed in an orderly and timely manner and that trading in grain might be facilitated.

*Section 3.\* Definitions.*—Provides for definitions of terms used in the Act.

*Section 4.\* Federal Grain Inspection Agency.*—This is a new section inserted into the Act. Provides for the establishment of a separate Federal Grain Inspection Agency (FGIA) within the Department of Agriculture for the purposes of this Act. The Administrator of the FGIA shall be appointed by the President by and with the advice and consent of the Senate for a term of 10 years, and shall be responsible for the administration of the Act and the establishment of policies, guidelines and regulations for implementing the Act.

*Section 5.\* Standards.*—(a) Authorizes the Administrator of the FGIA to investigate the handling, weighing, grading and transportation of grain and to fix standards (i) of kind, class, quality, and condition of grain, and (ii) for accurate weighing and certification of weights; and (b) provides that the Administrator shall give persons the opportunity to submit data, views, and arguments before establishing, amending, or revoking any standards under the Act. Such standards shall not become effective in less than one year unless for certain specified reasons the Administrator determines otherwise.

*Section 6.\* Requirements.*—(a) (1) Provides that no person shall ship grain to any place outside the United States unless it has been officially weighed and officially inspected, pursuant to standards established under section 5, on the basis of official samples taken after final

elevation as near the final spot through which the grain passes as physically practicable while it is being loaded, or while it is in the final carrier. Further, provides that no grain shall be shipped unless a valid official certificate has been issued showing the official grade designation and certified weight of the lot of grain. Authorizes the Administrator to waive such requirements when impracticable. (2) Requires official weighing of all grain other than export grain that is transferred in or out of export elevators. (3) Requires that grain officially inspected going into or out of major inland terminals shall be weighed, although the Administrator is authorized to waive this requirement in emergency or other circumstances. (4) Provides for the issuance of single certificates showing both official grade designation and certified weight.

(b) Requires representatives of the FGIA to supervise official inspection, official weighing, and official testing.

*Section 7.\* Required Use of Grade Designations.*—(a) Prohibits the description (with certain exceptions) in advertising, contract of sale, invoice, bill of lading or other document describing grain, other than by official grade designation, of grain shipped in interstate or foreign commerce; but provides exceptions for proprietary brand names or trademarks that do not resemble an official grade designation, and the description of grain shipped in interstate commerce by individual grade factors.

(b) Prohibits the description of any export grain shipments by any description that is false or misleading.

*Section 8.\* Inspection Authorities.*—This section sets out what inspections are authorized under this Act and who is to perform them.

(a) Authorizes the Administrator to cause official inspection of all grain required to be officially inspected under section 6.

(b) Provides that, upon request of any interested person, official inspection be made on basis of official sample, submitted sample, or otherwise, of grain within the United States under standards provided for in section 5 of the Act, or under other criteria (e.g., protein content) approved by the Administrator.

(c) Provides that the Administrator shall issue regulations that include provisions for reinspections and appeal inspections; cancellation and surrender of certificates superseded by reinspections and appeal inspections, and use of standard forms for official certificates. Samples obtained for purposes of official inspection shall become the property of the United States.

(d) Provides that official inspection certificates be received as prima facie evidence in all courts of the United States.

(e) Provides that official inspections at export elevators and major inland terminals shall be performed by official inspection personnel. Further, provides that grain loaded at any interior point in the United States in the final carrier for transport from the United States be inspected in the same manner.

(f) Provides that official inspections at locations other than export elevators or major inland terminal elevators at which the Administrator determines official inspection should be provided, shall be per-

formed by official inspection personnel of the FGIA or by States or private persons under contract to the FGIA.

(g) Provides that official inspections in Canadian ports of United States grain transshipped through Canadian ports shall be performed like any other grain export inspection and by official personnel of the FGIA, and authorizes the Secretary to enter into an agreement with the Canadian Government for such inspections.

(h) Prohibits unauthorized persons and States from performing official inspection functions under this Act.

*Section 9.\* Weighing Authorities.*—This new section sets out what weighing is authorized by the Act and who performs it.

(a) Authorizes the Administrator to cause official weighing to be made of all grain required in section 6 to be officially weighed, to wit: all grain transferred in or out of export elevators and all grain officially inspected in or out of major inland terminal elevators, in accordance with prescribed standards.

(b) Provides that the Administrator may cause official weighing of any grain officially inspected under section 8 (or at elevators where official inspection is performed) but only on request of an interested person.

(c) Provides that any elevator not otherwise subject to this Act may request, for a period of not less than one year, official weighing service at cost of such service.

(d) Provides that weighing shall be performed by employees of the Agency at export elevators; that the Administrator is authorized to enter cooperative agreements with States for weighing at major inland terminal and any other inland elevators; and that weighing at major inland terminal elevators shall be performed by either employees of the Agency or States under cooperative agreements.

(e) Provides that, at other elevators requesting official weights, the service may be provided by Federal, State, or private persons.

(f) Provides for an agreement to be made with the Canadian Government to allow official weighing of U.S. grain inspected at Canadian ports.

(g) Provides that official weight certificates shall be prima facie evidence in all courts of the United States.

(h) Provides that official weighing under the provisions of this Act shall be performed only by Agency employees, States under an agreement, or pursuant to a valid official contract.

(i) Provides that no person may weigh or certify the weight of any lot of any grain required to be officially weighed under the Act in any jurisdiction except in accordance with the regulations and procedures described in this section as they may apply to such lot of grain, unless the jurisdiction is under a cooperative agreement as provided in this section.

(j) Provides that this Act shall not limit the effect of the United States Warehouse Act.

(k) Would provide to representatives of the Administrator and personnel authorized to perform official weighing, access to grain ele-

vator and warehouse premises in order to perform official weighing, or to supervise official weighing.

*Section 10.\* Testing of Equipment.*—This is a new section inserted into the Act.

(a) Provides for the testing, on a random and periodic basis, but at least twice annually, of all equipment used in inspection, grading, and weighing of grain located at all elevators, warehouses, and other grain handling facilities at which official inspection or official weighing is provided.

(b) Authorizes FGIA to supervise, at intervals deemed necessary, the testing by States, political subdivisions of States, or private persons of equipment located in any grain elevator, warehouse, or other grain handling facility from which grain is shipped in interstate or foreign commerce.

(c) Prohibits the use of any such equipment disapproved by the Administrator.

*Section 11.\* Contracting Provisions.*—This new section provides authority for the Administrator to contract with a State or person for official inspection or weighing functions.

(a) Provides that before entering into a contract the Administrator will determine that (1) a State or person has adequate facilities and personnel; will conduct training and provide supervision of personnel; (or any of its employees) does not have a conflict of interest; will maintain complete and accurate records of organization and activities, as required; will comply with provisions of the Act, regulations, and instructions thereunder; meets other criteria established under the Act; and (2) the applicant is better able than any other applicant to provide official inspection service.

(b) Prohibits contracting with any State or person who owns, operates, or is employed by a commercial grain elevator or warehouse, is engaged in the merchandising of grain, or is financially interested in a business entity that owns or operates a commercial grain elevator or warehouse or is engaged in the grain business, or any business entity owned (fully or otherwise), operated, or managed by such a person. (This prohibition would prevent boards of trade or other similar entities that are owned (even partly) or operated by grain companies from performing inspection or weighing under the Act.)

(c) Contains provisions for supervision by authorized Agency personnel of all official activities performed under a contract, as the Administrator determines to be necessary.

(d) Provides for periodic termination of such contracts as determined by the Administrator, with a 5-year maximum limitation. Provides for renewal or amendment of contract upon approval by the Administrator with a fee prescribed for each change in contract, and for cancellation upon 90 days written notice to the Administrator.

(e) Provides conditions under which the Administrator may, after opportunity for hearing, revoke a contract for official inspection or weighing functions. Provides for temporary suspension before hearing if in the best interest of the inspection system. Provides that after temporary suspension, an opportunity for a hearing must be provided within 30 days.

*Section 12.\* Fees for Services.*—Provides for FGIA to collect fees for the costs of official inspection and weighing services, and testing of equipment, performed under the U.S. Grain Standards Act, including FGIA supervisory and administrative costs directly related thereto. Fees shall be reasonable, nondiscriminatory, and relatively uniform in each geographic area. Such fees, and the proceeds from the sale of samples which become the property of the United States, shall be deposited into a fund which shall be available without fiscal year limitation. Fees shall not be increased more than 10 per centum of the fee in the previous fiscal year without express authorization of the Administrator. Fees collected pursuant to contract shall include amounts to cover Federal supervision of contractor's activities.

*Section 13.\* Licenses and Authorizations.*—Provides the Administrator authority to issue licenses or authorizations to perform official inspection or official weighing, and sets out procedures for examination and termination of licenses.

(a) Allows the Administrator to (1) issue a license to any competent individual employed by a contractor, (2) issue a license to any competent individual employed by a State with which the Administrator has entered into an agreement to perform official weighing of grain, (3) authorize any competent employee of the Agency to perform all or specified functions involved in official inspection or official weighing of grain, and monitoring activities in foreign ports, (4) contract with any person to perform specified sampling or laboratory functions involved in official inspection of grain, and (5) contract with any person for monitoring activities of grain officially inspected or weighed, in foreign ports. Prohibits any person from performing official functions under the Act unless he holds an unsuspended or unrevoked license or authorization under the Act.

(b) Provides for triennial termination of all licenses and authorizations. A license or authorization is automatically suspended upon termination of employment and may be reinstated within 1 year upon reemployment if the license or authorization has not expired.

(c) Provides authority for examination or reexamination of applicants for licenses, licensees, or employees of the Agency, as determined necessary by the Administrator.

(d) Provides that persons employed by a contractor, or a State under an agreement, to perform official functions under the Act shall not be deemed employees of the United States Government. Such persons shall be considered acting on behalf of the United States for purposes of determining the application of section 201 of Title 18, United States Code.

(e) Provides for periodic rotation of FGIA supervisors, and official inspection and weighing personnel.

(f) Provides for the development and implementation of uniform standards for recruiting, training, supervision, and work production standards for official inspection, weighing, and testing personnel. Persons authorized or licensed as of June 1, 1976, are exempted from standards if they are determined technically and professionally qualified, and agree to additional training considered necessary.

*Section 14.\* Suspension and Revocation of Licenses.*—Provides the Administrator authority and criteria for refusal to renew, to suspend, and to revoke any license or authorization issued under the Act. The licensee or authorized person shall be afforded the opportunity for a hearing before any of such actions are implemented with the following exceptions: (1) A license may be temporarily suspended pending final determination whenever such action is deemed to be in the best interests of the inspection system; and (2) a license may be summarily revoked whenever the licensee or authorized person is convicted of any offense prohibited by section 18 of the Act, or proscribed by title 18 of the United States Code with respect to the performance of official duties under the Act.

*Section 15.\* Refusal of Official Inspection or Official Weighing and Civil Penalties.*—(a) Authorizes the Administrator to refuse official inspection or official weighing to any person who has committed a violation of section 18 of this Act or has been convicted of any violation of any other Federal law involving the handling, weighing, or inspection of grain if he determines that providing such official inspection or weighing would be inimical to the integrity of the service. Further, provides for civil penalties not to exceed \$100,000 in addition to, or in lieu of, refusal to provide official inspection or official weighing.

(b) Provides that persons deemed responsibly connected with a business include partners, officers, directors, or holders or owners of 10 per centum or more of its voting stock, or employees in managerial or executive capacities.

(c) Provides opportunity for hearing before refusal of official inspection or official weighing or assessment of civil penalty unless the Administrator determines that such refusal of inspection or weighing is in the best interest of the official inspection system. However, the person shall be given the opportunity for a hearing within 7 days after being refused inspection or weighing.

(d) Provides that payments of civil penalties are to be deposited in the general fund of the U.S. Treasury. Also, authorizes the Attorney General of the United States to institute a civil action to collect the penalties, if necessary.

*Section 16.\* Conflicts of Interest.*—Prohibits conflicts of interest by any person who is licensed, authorized, or employed to perform official functions under the Act. Provision is made for licensing qualified employees of elevators or warehouses and to provide by regulation such other exceptions as the Administrator may determine to be consistent with the purposes of the Act.

*Section 17.\* Records.*—(a) Requires official contractors and licensees to maintain file samples of officially inspected grain and other records as the Administrator may by regulation prescribe for the administration and enforcement of the Act.

(b) Requires official contractors to maintain such records for 5 years with the following exceptions: (1) file samples of grain need only be retained for a maximum of 90 days, and (2) whenever it is deemed necessary for the effective administration and enforce-

ment of the Act, some records may be required to be maintained for not more than 3 years in addition to the 5-year period.

(c) Permits any authorized representative of the Secretary or Administrator to have access to and to copy such records.

(d) Requires grain merchandisers and commercial elevator owners who obtain official inspection or official weighing to maintain complete and accurate records of grain dealings for 5 years. Also, permits any representative of the Secretary or Administrator to have access to these records and to any grain facility.

*Section 18.\* Prohibited Acts.*—This section prohibits certain acts.

(a) Provides that no person shall knowingly, intentionally, recklessly, or negligently (1) falsely make, alter, forge, counterfeit, or use any official certificate, form, or marks; (2) utter or represent as true any falsely made official certificate, or other official form or mark, or possess or fail to surrender such upon demand, or possess grain in a container with false, altered or counterfeit marks; (3) cause or attempt to cause the issuance of any false or incorrect official certificate or form by any means; (4) alter an official sample of grain or represent an altered official sample as an official sample; (5) use an official grade or weight designation or official mark on any container of grain by tag, label, or otherwise unless the grain in such container was officially inspected while loaded into the container or officially weighed and qualified for such designation or mark; (6) make any false representation of official inspection or weighing of grain, or of kind, class, quality, condition, or quantity with respect to grain inspected or weighed under this Act; (7) falsify weight, quality, or grade of grain by any means including faulty or defective testing equipment; (8) forcibly interfere with any licensed person in or on account of the performance of his duties under the Act; (9) falsely represent he is licensed or authorized to perform official inspection, weighing, or testing under the Act; (10) use any false or misleading means in making or filing application for inspection; or (11) violate any provision of section 6, 7, 8, 9, 10, 13, 16, or 17 of the Act.

(b) Provides that no person licensed or authorized under the Act shall (1) commit any offense prohibited by subsection (a); (2) perform improperly any official function; or (3) execute or issue any false or incorrect official certificate or other official form.

*Section 19.\* Criminal Penalties.*—(a) Provides for imprisonment of not more than 5 years, or a fine not more than \$10,000, or both, for knowing or intentional violations under section 18.

(b) Provides for imprisonment of not more than 9 months, or a fine not more than \$5,000, or both, for reckless or negligent violations under section 18.

(c) Provides that the Administrator need not report minor violations for criminal prosecution when he believes the public interest is adequately served by written notice of warning or by institution of a proceeding under section 15 of the Act.

*Section 20.\* Responsibility for Acts of Others.*—Provides that the act, omission, or failure of persons or officials acting within the scope

of their employment or office shall be deemed to be the act, omission or failure of their employer as well as that of the person.

*Section 21.\* General Authorities.*—(a) Provides authority to the Administrator to (1) conduct investigations; (2) hold hearings; (3) require reports from any inspection personnel, contractor, or other person; (4) require as a condition for official inspection or weighing the installation of specified sampling, handling, weighing and monitoring equipment in grain elevators; (5) require approval of the condition of carriers or containers for transporting or storing grain; and (6) prescribe such other rules, regulations and instructions as deemed necessary to enforce the purposes or provisions of this Act, including tests for determining whether any certificate, other form, representation, designation, or other description is false, incorrect, or misleading within the meaning of the Act. Also, provides that proceedings for refusing to renew or for suspension or revocation of a license shall not, unless requested by the respondent, be subject to the administrative procedure provisions in sections 554, 556, and 557 of title 5, United States Code.

(b) Provides authority to investigate complaints of discrepancies and abuses in the official inspection and official weighing of grain under this Act. A report shall be made to the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry every 3 months with respect to actions taken on complaints.

(c) Provides authority to monitor grain exported from the United States upon entry into foreign nations that are substantial importers of grain from the United States.

(d) Provides authority for the Office of Investigation of the Department (or such other duly authorized agency within the Department) to conduct such investigations regarding the operation, administration, or any transaction with which the Act is concerned, as deemed necessary.

(e) Provides authority to conduct a continuing research program to develop methods to improve accuracy and uniformity in grading grain.

(f) Requires that the Administrator at all times provide personnel to perform official inspection and official weighing in adequate numbers to avoid delay that might be caused by the additional inspection and weighing requirements of the Act.

*Section 22.\* Enforcement Provisions.*—(a) Authorizes the Administrator to (1) have access to any documentary evidence of any person with respect to whom such authority is exercised; (2) subpoena witnesses and require the production of all documentary evidence relating to any matter under investigation by the Administrator; (3) administer oaths; (4) examine witnesses; and (5) receive evidence.

(b) Requires the attendance of witnesses and the production of documentary evidence at any designated place of hearing.

(c) Provides the courts the authority to issue appropriate orders to any person refusing to appear before the Administrator or refusing to produce requested evidence. Failure to obey such an order may be considered as contempt.

(d) Provides for payment of fees and mileage to witnesses summoned.

(e) Provides for a maximum sentence or imprisonment of not more than 6 months, a fine of not more than \$3,000, or both, for any person who refuses to testify or refuses to produce documentary evidence in accordance with an issued subpoena.

(f) Lists the courts which have jurisdiction in cases arising under the Act.

*Section 23.\* Reporting Requirements.*—This is a new section inserted into the Act.

(a) Requires the Administrator to report by December 1 of each year to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate on the effectiveness of the official grain inspection system for the prior fiscal year and any legislative recommendations.

(b) Requires that the Administrator notify the same Committees within 30 days of any complaint to the Department, after he determines there is reasonable cause for it, regarding faulty grain delivery by a foreign purchaser, and (2) of any cancellation of any contract for the export of more than one hundred thousand metric tons of grain.

(c) Provides that Administrator also submit by December 1 of each year, to the same Committees, a summary of all valid complaints received in the Department during the prior fiscal year from foreign purchasers and prospective purchasers of U.S. grain and other foreign purchasers interested in the trade of grain, and the resolution thereof.

*Section 24.\* Registration Requirements.*—This is a new section inserted into the Act.

(a) Requires the registration as prescribed by regulations of the Administrator, of all persons (with certain exceptions) engaged in the business of buying grain, for sale in interstate or foreign commerce, and in the business of handling, weighing, or transporting of grain for sale.

(b) Requires all persons registered under the Act to submit certain itemized information to the Administrator.

(c) Provides that the Administrator issue a certificate of registration, to be renewed annually, to persons who comply with the provisions of this section. Further provides that no person shall engage in the business of buying grain for sale in interstate or foreign commerce, and in the business of handling, weighing, or transporting of grain in interstate or foreign commerce unless he holds an unsuspended and unrevoked certificate of registration.

(d) Authorizes the Administrator to suspend or revoke a certificate of registration, after affording the holder thereof opportunity for hearing, for violation of the Act or regulations, or a conviction involving the weighing, handling or inspection of grain under Title 18, United States Code, unless the Administrator deems that the suspension of the certificate of registration temporarily pending final determination is in accordance with the purpose of this Act.

(e) Authorizes the Administrator to charge and collect fees for persons registered under section 24.

*Section 25.\* Relation to State and Local Laws; Separability of Provisions.*—(a) Provides that no State or subdivision thereof may require grain inspection or quality description of grain as a condition for shipment in interstate or foreign commerce, or require that persons licensed under the Act be licensed under its laws. Otherwise provides that nothing contained in the Act shall invalidate any law or other provision of any State or subdivision thereof in the absence of a conflict with the Act. (b) Any provisions of this Act held invalid shall not affect the validity of the remainder of the Act.

*Section 26.\* Appropriations.*—Provides for appropriated funds for the effective implementation, administration, and enforcement of the Act to the extent that financing cannot be obtained from the fees and sale of samples as provided under section 12 of the Act.

*Section 2. Administrator of Federal Grain Inspection Agency.*

Section 2 of the bill amends section 5316 of Title 5, United States Code, to include the Administrator of the Federal Grain Inspection Agency, as an Executive Level V position.

*Section 3. Negotiation to perform inspection functions.*

Section 3 of the bill authorizes the Administrator to negotiate with persons presently licensed or designated to perform official inspection functions under the United States Grain Standards Act, for facilities or equipment as necessary for the conduct of official inspection.

*Section 4. Special hiring procedures.*

Section 4 of the bill contains special hiring procedures.

(a) This section authorizes the Administrator to hire (without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service) as official personnel any individual who is presently licensed or authorized or otherwise properly certified under this Act by a State or political subdivision thereof, to perform the functions assumed by the Federal Grain Inspection Agency if the Administrator determines such individuals are technically and professionally qualified for the duties for which they will be assigned.

(b) Provides that persons hired who were former employees of a State or political subdivision shall: (1) be hired at a rate of compensation equal to that on their last day of employment with the State or political subdivision; (2) receive full credit for the purposes of Civil Service Commission benefits for all service with the State or political subdivision; (3) receive credit for the balance of any sick leave outstanding on last day of employment with the State or political subdivision (sick leave balance at time of separation from Federal civil service shall not be recredited during another period of employment with Federal civil service); and (4) if eligible for an annuity or retirement credit with a State or political subdivision must transfer to the United States Government the benefit of such annuity or payment to qualify for the provisions of this section.

*Section 5. Amendment to Title 18.*

Section 5 of the bill amends section 1114 of Title 18 of the United States Code (which prohibits assaults on certain classes of Federal officers and employees and provides severe penalties therefor) by adding a reference to employees of the Federal Grain Inspection Agency assigned to perform official inspection or official weighing.

*Section 6. Study of Present Grain Standards.*

Section 6 of the bill provides for a study on the adequacy of the present grain standards. The study would attempt to determine: if grading errors and subjective human error could be reduced by changes in standards to utilize mechanical, electrical and chemical analysis; whether grain should be subclassed by color; whether the protein factor should be included; and whether broken grain should be grouped with foreign material. The Administrator shall submit a report not later than 2 years from enactment of this Act with the results of the findings.

*Section 7. Authority of the Secretary.*

Section 7 of the bill provides that the Secretary of Agriculture shall act for the Administrator of the Federal Grain Inspection Agency between time of enactment of this Act and appointment of the Administrator by the President.

*Section 8. Effective Date.*

Section 8 of the bill provides that the Act will be effective 30 days after its enactment, but that any State or person then providing official inspection services or weighing services to be assumed under this Act, and licensees employed thereby, may continue to operate in their area until whichever of the following events occurs first: (1) at export elevators, after a reasonable period not to exceed 6 months, specified in a notification that official inspection will be provided under this Act; or (2) the Administrator determines that the performance of official inspection or official weighing shall be taken over by the Agency or performed by the Agency pending the making of a contract with a State or person for the performance of functions; or (3) such person, or two or more members or employees thereof, have been convicted of (i) an offense involving the handling, weighing, or inspection of grain or with respect to official duties under the Grain Standards Act, proscribed in Title 18, United States Code; or (ii) a violation of the Grain Standards Act in effect immediately prior to enactment of this Act; or (iii) a violation of the Grain Standards Act as amended hereby.

The Administrator is authorized to cause official inspection and official weighing by Agency employees to begin immediately after the effective date at export elevators, if necessary; and no State or person shall provide official inspection or official weighing under this Act without contract or agreement with the Administrator after 2 years from date of enactment of the bill.

*Section 9. Short Title.*

Section 9 provides that the bill may be cited as the "Grain Inspection Reform Act of 1976".

## ADMINISTRATION VIEWS

In a letter to the Chairman dated April 9, 1976, the Department of Agriculture stated that it opposed enactment of S. 3055, as amended by the Committee. The letter reads as follows:

DEPARTMENT OF AGRICULTURE,  
OFFICE OF THE SECRETARY,  
Washington, D.C., April 9, 1976.

HON. HERMAN E. TALMADGE,  
Chairman, Committee on Agriculture and Forestry,  
U.S. Senate,  
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the Department's comments on S. 3055, a bill "To provide for United States standards and a national inspection system for grain, and for other purposes", as ordered reported by the full committee April 7, 1976.

The Department strongly opposes enactment of S. 3055. We favor in lieu thereof legislation similar to that proposed in S. 2297 which would retain the Federal-State-private structure for grain inspection. We would not object to the incorporation of weighing provisions embodying Federal supervision at export elevators only, utilizing the same Federal-State-private structure as for grain.

S. 3055 presents a number of major concerns to the Department which we shall enumerate:

(1) *Separate Agency*.—The bill provides for the creation of a separate Federal Grain Inspection Agency within the Department. The Department strongly objects to this feature of S. 3055. The bill would usurp the Department's management prerogatives to organize its program operations to maximize operating efficiencies and to administer its authorities at the least costs to the U.S. taxpayer.

A separate agency also presents other organizational problems.

The Agricultural Marketing Service (AMS) is charged with the administration of national inspection and grading programs for all commodities under authority of the Agricultural Marketing Act of 1946. To split out a single component function for grain would reduce the efficient manpower utilization and efficient program administration that could be achieved if the function remains in AMS.

The grain inspection system is now administered in conjunction with a number of other companion functions; i.e., grading, standardization, and market news carried out under authority of the Agricultural Marketing Act of 1946, as well as other statutory authorities—Plant Variety Protection Act, Federal Seed Act, and Wheat Research and Promotion Act. If grain inspection and weighing were separated from AMS, it would be necessary to develop a field staff for AMS grain

activities as well as one for activities to be administered by the new Agency. Thus, the establishment of a separate agency would create needless overhead and duplicate numerous support activities. Furthermore, the appointment of an Administrator of such an agency for a fixed term to a purely executive-type agency sets a bad precedent and would seriously erode accountability to the President of the United States.

(2) *Federal Inspection at Major Inland Locations*.—S. 3055 goes beyond S. 2297 and requires Federal original inspection and weighing at major inland locations (25 elevators have been identified as major inland locations). The Department strongly opposes Federal involvement in the inspection and weighing process to the magnitude specified in S. 3055. Federal involvement to this extent is not necessary to restore confidence in the U.S. grain inspection system, neither domestically or for foreign commerce purposes.

Problems currently surfacing in the grain inspection system have been focused at export locations. We have not had evidence presented that major malfeasance has occurred at inland points. Our position continues to be that the most effective and efficiently operated grain inspection and weighing system is one which encompasses the State and private sector which is supervised by Federal inspectors.

Any potential for operating deficiencies at major inland locations is currently being addressed by the hiring of additional supervisors with funds recently provided by Congress. To federalize inspection and weighing at major inland locations at this time would be a premature action on the part of Congress. The Department continues to believe that the availability of adequate resources, through increased supervision, will obviate the necessity for action on the part of Congress with respect to major inland terminals.

(3) *Registration*.—The bill would require the registration of all persons or firms engaged in the business of buying grain for sale in interstate or foreign commerce and those handling, weighing, or transporting grain for sale. The Department strongly opposes added requirements which will not result in increasing the efficient and effective marketing, handling, inspection and weighing of grain in the United States. Authorities provided in S. 3055 for recordkeeping, Federal access to records, investigation of foreign complaints, withholding of services, increased penalties, and prohibitions of conflicts of interest are sufficient to minimize violations of this Act. Registration provisions in Section 24 would cost \$1.6 million and require 87 man-years. Such further proliferation of costs and manpower is unnecessary in view of the authorities already provided in S. 3055 for enforcing the grain inspection and weighing system.

(4) *Grandfather Clause for Hiring State Employees*.—Authority is provided in S. 3055 to hire (without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service) any individual who is presently licensed, or authorized, or otherwise properly certified by a State or political subdivision thereof, to perform the inspection functions to be assumed by the Federal Grain Inspection Agency if the Administrator determines such individuals are technically and professionally qualified for the duties for which they will be assigned. The Department strongly recommends that the

established Civil Service Commission regulations governing conversions, as they apply to tenure and probationary periods, be applied in lieu of this provision in S. 3055.

The Department strongly opposes this provision of S. 3055 as well as those provisions relating to fringe benefits, including retirement, since they would be contrary to the basic merit principles governing Federal employment and to the policy that Federal retirement and other pay benefits apply only to Federal Service. These provisions would have a disastrous effect on the morale of our current employees. To include these provisions would discriminate to the benefit of one group of individuals, and thus create inequities as compared with normal procedures in Federal takeover of positions.

(5) *General Authorities.*—It would be difficult for the Department to respond effectively to Section 21 (b) (2) of the bill (report of cancellation of contracts) due to the kind of data available or required for the fulfillment of grain inspection and weighing functions. Such a reporting requirement would require additional resources over and above those normally required for inspection and weighing or supervision thereof particularly in the attempt to monitor the cancellation of contracts of certain export grain.

The Department, therefore, strongly recommends that this provision be deleted from the bill.

The Department concurs in the basic concepts of certain provisions of S. 3055 with respect to:

- (1) An aggressive program of investigation, development and implementation of the U.S. grain standards;
- (2) Increased levels of monitoring export shipments at destination;
- (3) Increased Departmental capability to revoke authority of non-Federal agencies to officially inspect and weigh grain;
- (4) The partial funding of Federal supervision and certain administrative functions through users fees;
- (5) Amended renewal provisions for licensing and non-Federal authority to inspect and weigh grain;
- (6) New Federal authority for the Secretary of Agriculture to be responsible for, and to cause, supervision of weighing and the testing and inspection of scales at export port locations;
- (7) Federal authority to perform original inspection and supervisory weighing functions when required;
- (8) Broadened Federal authority to withhold official inspection and weighing services under specific conditions;
- (9) Increased prohibitions against certain conflicts-of-interest;
- (10) The requirement of inspection and weighing agencies and other participants in the marketing system to keep and maintain appropriate records;
- (11) Amendment of list of prohibited acts; and
- (12) Increased penalty provisions.

While it will be necessary for the Department to develop and maintain an aggressive Federal supervision program and to continually improve upon supervision techniques, the Department is confident that under S. 2297 such positive actions can bring about the same basic results in grain inspection as have been claimed for an all-

Federal or predominantly Federal system. Although the Department has not submitted weighing legislation to the Congress, we are responding to the GAO report on this matter endorsing weight supervision at export port elevators only, utilizing the Federal-State-private concept.

The Department estimates the total cost of S. 3055, including State and private agency costs, to be \$121 million requiring 6,090 man-years for the first year, \$127 million the second year, \$134 million the third year, \$143 million the fourth year, and \$153 million the fifth year. The number of man-years required should remain relatively constant throughout the 5-year period. Time constraints prevent the calculation of possible additional costs that would be incurred by the transition of State and private employees to the Federal service.

In accordance with the provisions of Public Law 91-190, Section 102(2) (C), this legislation would have no significant impact on the quality of the environment.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN A. KNEBEL,  
*Acting Secretary.*

COST ESTIMATE

In accordance with section 252 of the Legislative Reorganization Act of 1970, the following is the Committee's estimate of the costs which would be incurred in carrying out the provisions of S. 3055:

(In millions of dollars)

	Fiscal year 1976	Transition quarter	Fiscal year—				
			1977	1978	1979	1980	1981
Total cost of system.....	\$14.6	\$22.9	\$92.2	\$97.5	\$100.3	\$105.9	\$111.3 <sup>1</sup>
Federal cost.....	1.6	2.4	7.8	7.0	5.5	5.8	6.

The Committee's estimate is based on the cost estimates supplied by the Congressional Budget Office pursuant to the Congressional Budget Act of 1974. However, the official CBO cost estimate was not available at the time this report was filed. The official and complete CBO estimate should be available in time for Senate consideration of this bill.

The validity of any cost estimate is, of course, dependent upon the soundness of the assumptions and supporting data. If the assumptions are changed, then the costs and savings involved would be different.

The Committee believes that the assumptions used by the CBO are sound and, therefore, bases its cost estimate on the assumptions used by that office. In addition, the GAO's estimate submitted for the hearing record before our subcommittees on February 20, 1976, also tends to support the CBO estimates.

The Committee also received the following cost estimate from the Department of Agriculture.

(In millions of dollars)

	1977	1978	1979	1980	1981
Total cost of system.....	\$121	\$127	\$134	\$143	\$153

(62)

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES GRAIN STANDARDS ACT

\* \* \* \* \*

SHORT TITLE

SECTION 1. This Act may be cited as the "United States Grain Standards Act".

DECLARATION OF POLICY

SEC. 2. Grain is an essential source of the world's total supply of human food and animal feed and is merchandised in interstate and foreign commerce. It is declared to be the policy of the Congress, for the promotion and protection of such commerce in the interests of producers, merchandisers, warehousemen, processors, and consumers of grain, and the general welfare of the people of the United States, to provide for the establishment of official United States standards for grain, to promote the uniform application thereof by official inspection personnel, [and] to provide for an official inspection system for grain, and to regulate the weighing and the certification of the weight of grain shipped in interstate or foreign commerce in the manner hereinafter provided; with the objectives that grain may be marketed in an orderly and timely manner and that trading in grain may be facilitated. *It is hereby found that all grain and other articles and transactions in grain regulated under this Act are either in interstate or foreign commerce or substantially affect such commerce and that regulation thereof as provided in this Act is necessary to prevent or eliminate burdens on such commerce and to regulate effectively such commerce.*

DEFINITIONS

SEC. 3. When used in this Act, except where the context requires otherwise—

(a) the term "Secretary" means the Secretary of Agriculture of the United States or his delegates;

(b) the term "Administrator" means the Administrator of the Federal Grain Inspection Agency established by section 4 of this Act or his delegates;

[b] (c) the term "Department of Agriculture" means the United States Department of Agriculture;

(63)

(d) the term "Agency" means the Federal Grain Inspection Agency established by section 4 of this Act;

[(c)] (e) the term "person" means any individual, partnership, corporation, association, or other business entity;

[(d)] (f) the term "United States" means the States (including Puerto Rico) and the territories and possessions of the United States (including the District of Columbia);

[(e)] (g) the term "State" means any one of the States (including Puerto Rico) or territories or possessions of the United States (including the District of Columbia);

[(f)] (h) the term "interstate or foreign commerce" means commerce from any State to or through any other State, or to or through any foreign country;

[(g)] (i) the term "grain" means corn, wheat, rye, oats, barley, flaxseed, [(grain)] sorghum, soybeans, mixed grain, and any other food grains, feed grains, and oilseeds for which standards are established under section [(4)] 5 of this Act;

[(h)] (j) the term "export grain" means grain for shipment from the United States to any place outside thereof;

[(i)] (k) the term "official inspection" means the determination (by original inspection and, when requested, reinspection and appeal inspection) and the certification, by official [(inspection)] personnel, of the kind, class, quality[(,)] or condition of grain, or the condition of vessels and other carriers or receptacles for the transportation of grain insofar as it may affect the quality or condition of such grain, under standards provided for in this Act; or, upon request of the interested [(person)] party applying for inspection, [(the quantity of sacks of grain, or)] other facts relating to grain under other criteria approved by the [(Secretary)] Administrator under this Act (the term "officially inspected" shall be construed accordingly);

[(j)] the term "official inspection personnel" means employees of State or other governmental agencies or commercial agencies or other persons who are licensed to perform all or specified functions involved in official inspection under this Act; employees of the Department of Agriculture who are authorized to supervise official inspection and to conduct appeal inspection or initial inspection of United States grain in Canadian ports;]

(l) the term "official personnel" means employees of the Agency, a State under agreement with the Administrator, or an official contractor licensed or otherwise authorized by the Administrator pursuant to section 13 of this Act to perform all or specified functions involved in official inspection, or official weighing, or in the supervision thereof, or in monitoring activities in foreign ports, with respect to grain regulated under this Act;

[(k)] (m) the term "official [(inspection)] mark" means any symbol prescribed by regulations of the [(Secretary)] Administrator to show the official determination of [(an)] official inspection or official weighing;

[(l)] (n) the term "official grade designation" means a numerical or sample grade designation, specified in the standards relating to kind, class, quality, and condition of grain, provided for in this Act;

[(m)] the term "official inspection agency" means the agency or person located at an inspection point designated by the Secretary for the conduct of official inspection under this Act;]

(o) the term "official contractor" means a State or person who has entered into a contract with the Administrator authorized by sections 8, 9, and 11 of this Act for the conduct of official inspection (other than appeal inspection) or official weighing under this Act at a point designated by the Administrator (the term "official contract" will be construed accordingly);

[(n)] (p) the terms "official certificate" and "official form" mean, respectively, a certificate or other form prescribed by regulations of the [(Secretary)] Administrator under this Act;

[(o)] (q) the term "official sample" means a sample obtained from a lot of grain by, and submitted for official inspection by, official [(inspection)] personnel (the term "official sampling" shall be construed accordingly);

[(p)] (r) the term "submitted sample" means a sample submitted by or for an interested person for official inspection, other than an official sample;

[(q)] (s) the term "lot" means a specific quantity of grain identified as such;

[(r)] (t) the term "interested person" means any person having a contract or other financial interest in grain as the owner, seller, purchaser, warehouseman, or carrier, or otherwise;

[(s)] (u) the verb "ship" with respect to grain means transfer physical possession of the grain to another person for the purpose of transportation by any means of conveyance, or transport one's own grain by any means of conveyance;

[(t)] (v) the terms "false", "incorrect", and "misleading" mean, respectively, false, incorrect, and misleading in any particular;

[(u)] (w) the term "deceptive loading, handling, weighing, or sampling" means any manner of loading, handling, weighing, or sampling that deceives or tends to deceive official [(inspection)] personnel, as specified by regulations of the [(Secretary)] Administrator under this Act[(,)];

(x) the term "export elevator" means any grain elevator, warehouse or other grain storage and handling facility in the United States as determined by the Administrator, from which grain is shipped from the United States to an area outside thereof;

(y) the term "major inland terminal elevator" means any terminal grain elevator, warehouse or other grain storage and handling facility in the United States, other than an export elevator, as determined by the Administrator, located in a terminal marketing area in the interior of the United States at which over 50,000,000 bushels of grain are officially inspected in an average year;

(2) the term "official weighing" means the determination and the certification by official personnel of the quantity of a lot of grain under standards provided in this Act, based on the actual performance of weighing or the physical supervision thereof, to include the physical inspection and testing for accuracy of the weights and scales and (where the weighing is done in an elevator or warehouse) the physical inspection of the elevator or warehouse premises and the monitoring of the flow of grain into and out of the elevator or warehouse (the term "officially weighed" shall be construed accordingly).

ESTABLISHMENT OF FEDERAL GRAIN INSPECTION AGENCY

SEC. 4. There is created and established in the Department of Agriculture an agency of the United States to be known as the Federal Grain Inspection Agency, all the powers of which shall be exercised by an Administrator, under the general direction and supervision of the Secretary, who shall be appointed by the President by and with the advice and consent of the Senate, for a term of ten years. The Administrator shall be responsible for the administration of this Act and for the establishment of policies, guidelines, and regulations by which the Agency is to carry out the provisions of this Act.

STANDARDS

SEC. [4.] 5. (a) The [Secretary] Administrator is authorized to investigate the handling, weighing, grading, and transportation of grain and to fix and establish (1) standards of kind, class, quality, and condition for corn, wheat, rye, oats, barley flaxseed, [grain] sorghum, soybeans, mixed grain, and such other grains as in his judgment the usages of the trade may warrant and permit[.]; and (2) standards for accurate weighing and weight certification procedures and controls including safeguards over equipment calibration and maintenance, for grain shipped in interstate or foreign commerce; and the [Secretary] Administrator is authorized to amend or revoke such standards whenever the necessities of the trade may require.

(b) Before establishing, amending, or revoking any standards under this Act, the [Secretary] Administrator shall publish notice of the proposal and give interested persons opportunity to submit data, views, and arguments thereon and, upon request, an opportunity to present data, views, and arguments orally in an informal manner. No standards established or amendments or revocations of standards under this Act shall become effective less than one calendar year after promulgation thereof, unless in the judgment of the [Secretary] Administrator, the public health, interest, or safety require that they become effective sooner.

OFFICIAL INSPECTION AND WEIGHING REQUIREMENTS [FOR CERTAIN EXPORT GRAIN]

[SEC. 5. Whenever standards are effective under section 4 of this Act for any grain, no person shall ship from the United States to any

place outside thereof any lot of such grain that is sold, offered for sale, or consigned for sale by grade, unless such lot is officially inspected in accordance with such standards on the basis of official samples taken after final elevation as the grain is being loaded abroad, or while it is in, the final carrier in which it is to be transported from the United States, and unless a valid official certificate showing the official grade designation of the lot of grain is promptly furnished by the shipper, or his agent, to the consignee with the bill of lading or other shipping documents covering the shipment: *Provided, however,* That the Secretary may waive any requirement of this section with respect to shipments from or to any area or any other class of shipments when in his judgment it is impracticable to provide official inspection with respect to such shipments.]

Sec. 6. (a) Whenever standards are effective under section 5 of this Act for any grain—

(1) no person shall ship from the United States to any place outside thereof any lot of such grain, unless such lot is officially weighed and officially inspected (on the basis of official samples taken after final elevation as near the final spout through which the grain passes as physically practicable as it is being loaded aboard, or while it is in, the final carrier in which it is to be transported from the United States) in accordance with such standards, and unless a valid official certificate showing the official grade designation and certified weight of the lot of grain has been provided by official personnel and is promptly furnished by the shipper, or his agent, to the consignee with the bill of lading or other shipping documents covering the shipment: *Provided, however,* That the Administrator may waive this requirement with respect to shipments from or to any area or any other class of shipments when in his judgment it is impracticable to provide official inspection or official weighing with respect to such shipments;

(2) all other grain transferred out of and all grain transferred into an export elevator shall be officially weighed in accordance with such standards;

(3) all grain that is officially inspected as it is being transferred into or out of a major inland terminal elevator shall also be officially weighed in accordance with such standards: *Provided, however,* That the Administrator may waive this requirement in emergency or other circumstances which would not impair the objectives of this Act; and

(4) whenever the same lot of grain is both officially inspected and officially weighed, an official certificate shall be issued showing both the official grade designation and the certified weight of the lot of grain.

(b) All official inspection and official weighing, whether performed by authorized Agency employees or any other person licensed under section 13 of this Act, shall be supervised by representatives of the Administrator, in accordance with such regulations as he may provide.

REQUIRED USE OF OFFICIAL GRADE DESIGNATIONS AND PROHIBITION OF CERTAIN ACTS WITH RESPECT TO CERTAIN GRAIN

SEC. [6] 7. (a) Whenever standards *relating to kind, class, quality, and condition of grain* are effective under section [4] 5 of this Act for any grain, no person shall in any sale, offer for sale, or consignment for sale, which involves the shipment of such grain in interstate or foreign commerce, describe such grain as being of any grade in any advertising, price quotation, other negotiation of sale, contract of sale, invoice, bill of lading, other document, or description on bags or other containers of the grain, other than by an official grade designation, with or without additional information as to specified factors: *Provided*, That the description of such grain by any proprietary brand name or trademark that does not resemble an official grade designation, or with respect to interstate commerce, by the use of one or more grade factor designations set forth in the official United States standards for grain, or by other factor information shall not be deemed to be a description of grain as being of any grade.

(b) No person shall, in any sale, offer for sale, or consignment for sale, of any grain which involves the shipment of such grain from the United States to any place outside thereof, [knowingly] describe such grain by any official grade designation, or other description, which is false or misleading.

OFFICIAL INSPECTION AUTHORITY [AND FUNDING]

SEC. [7] 8. (a) The [Secretary] *Administrator* is authorized to cause official inspection under the standards provided for in section [4] 5 of this Act to be made of all grain required to be officially inspected as provided in section [5] 6 of this Act, in accordance with such regulations as he may prescribe.

(b) The [Secretary] *Administrator* is further authorized, upon request of any interested person, and under such regulations as he may prescribe, to cause official inspection to be made with respect to any grain whether by official sample, submitted sample, or otherwise, within the United States [or with respect to United States grain in Canadian ports] under standards provided for in section [4] 5 of this Act[,] or upon request of the interested person, *official inspection* under other criteria approved by the [Secretary] *Administrator* for determining [the] kind, class, quality, or condition of grain, [or quantity of sacks of grain,] or other facts relating to grain, whenever in his judgment providing such service will effectuate any of the objectives stated in section 2 of this Act.

(c) The regulations prescribed by the [Secretary] *Administrator* under this Act shall include provisions for reinspections and appeal inspections; cancellation *and surrender* of certificates superseded by reinspections and appeal inspection; *and the use of standard forms for official certificates*. The [Secretary may] *Administrator* is authorized to provide by regulation that samples obtained by or for employees of the [Department of Agriculture] *Agency* for purposes of official inspection shall become the property of the United States, and such samples may be disposed of without regard to the provisions of the

Federal Property and Administrative Service Act of 1949, as amended (40 U.S.C. 471 et seq.).

(d) [Certificates] *Official certificates setting out the results of official inspection*, issued and not canceled under this Act shall be received by all officers and all courts of the United States as prima facie evidence of the truth of the facts stated therein.

[e] The Secretary may, under such regulations as he may prescribe, charge and collect reasonable fees to cover the estimated total cost of official inspection except when the inspection is performed by employees of an official inspection agency. The fees authorized by this paragraph shall, as nearly as practicable and after taking into consideration any proceeds from the sale of samples, cover the costs of the Department of Agriculture incident to the performance of appeal and Canadian port inspection services for which the fees are collected, including supervisory and administrative costs. Such fees, and the proceeds from the sale of samples obtained for purposes of official inspection which become the property of the United States, shall be deposited into a fund which shall be available without fiscal year limitation for the expenses of the Department of Agriculture incident to providing official inspection services.

[f] Not more than one inspection agency for carrying out the provisions of this section shall be operative at one time for any one city, town, or other area, but this subsection shall not be applicable to prevent any inspection agency from operating in any area in which it was operative on the date of enactment of this subsection.]

(e) *The Administrator shall cause all official inspection at export elevators and major inland terminal elevators for grain required or authorized to be inspected by this Act to be performed by official personnel employed by the Agency. The Administrator is authorized to provide that grain loaded at any interior point in the United States into a rail car, barge, or other container as the final carrier in which it is to be transported from the United States shall be inspected in the same manner.*

(f) *With respect to official inspection other than at export elevators or major inland terminal elevators at locations which the Administrator determines official inspection is needed for grain required or authorized to be inspected by this Act, the Administrator is authorized to cause such inspection to be performed by official personnel employed by the Agency or enter into a contract with any State or person for the conduct of all or specified functions involved in official inspection (other than appeal inspection) as provided in section 11 of this Act.*

(g) *The Administrator is authorized to cause official inspection under this Act to be made, as provided in subsection (a) of this section, in Canadian ports of United States export grain transshipped through Canadian ports, and pursuant thereto the Secretary is authorized to enter into an agreement with the Canadian Government for such inspection.*

(h) *No State or person other than an employee of the Agency shall perform any official inspection functions for the purposes of this Act except in accordance with the provisions of a valid official contract.*

## OFFICIAL WEIGHING AUTHORITY

SEC. 9. (a) *The Administrator is authorized to cause official weighing under standards provided for in section 5 of this Act to be made of all grain required to be officially weighed as provided in section 6 of this Act, in accordance with such regulations as he may prescribe.*

(b) *The Administrator is further authorized, upon the request of any interested person, and under such regulations as he may prescribe, to cause official weighing under standards provided for in section 5 of this Act, to be made with respect to any grain that is officially inspected as provided in section 8 of this Act or at any elevator, warehouse, or other grain storage and handling facility at which official inspection is provided, pursuant to the provisions of this Act.*

(c) *The Administrator is further authorized to cause official weighing under standards provided for in section 5 of this Act to be made at elevators not subject to subsections (a) and (b) of this section, upon request of such elevator and in accordance with such regulations as he may prescribe. Such official weighing service shall not be provided for periods of less than one year; and the fees therefor shall be set separately from those fees provided for in section 12 of this Act and shall be reasonable, nondiscriminatory, and equal, as nearly as possible, to the cost of providing such services.*

(d) *The Administrator shall cause all official weighing at export elevators and major inland terminal elevators for grain required or authorized to be officially weighed by this Act to be performed by official personnel employed by the Agency: Provided, however, That, with respect to official weighing other than at export elevators, the Administrator is authorized to enter into an agreement with a State for the conduct of such activities under the supervision of the Agency, with respect to elevators and warehouses subject to its jurisdiction if the Administrator finds that the State in which the weighing is done, conducts weighing under procedures equivalent to those prescribed under this section.*

(e) *With respect to official weighing other than at export elevators or major inland terminal elevators, at locations with respect to which the Administrator has not entered into an agreement with a State for the conduct of official weighing as provided in subsection (d) of this section, for grain required or authorized to be weighed by this Act, the Administrator is authorized to cause such weighing to be performed by official personnel employed by the Agency or enter into an official contract with any State or person for the conduct of all or specified functions involved in official weighing, as provided in section 11 of this Act.*

(f) *The Administrator is authorized to cause official weighing under this Act to be made, as provided in subsection (a) of this section, in Canadian ports of United States grain transshipped through Canadian ports; and pursuant thereto the Secretary is authorized to enter into an agreement with the Canadian Government for such official weighing.*

(g) *Official certificates setting out the results of official weighing, issued and not canceled under this Act, shall be received by all officers*

*and all courts of the United States as prima facie evidence of the truth of the facts stated therein.*

(h) *No State or person other than an authorized employee of the Agency shall perform official weighing for the purposes of this Act except in accordance with the provisions of an agreement as provided in subsection (d) of this section or a valid official contract.*

(i) *Notwithstanding any other provision of law, no person shall weigh, or state in any document the weight of, any lot of grain shipped in interstate or foreign commerce, in any State of the United States, except in accordance with any such regulations and procedures described in this section that may apply to such lot of grain unless such jurisdiction is enforcing equivalent procedures under its laws pursuant to an agreement under subsection (d) of this section.*

(j) *The provisions of this section shall not limit any authority vested in the Secretary under the United States Warehouse Act (39 Stat. 486, as amended; 7 U.S.C. 241 et seq.).*

(k) *The representatives of the Administrator and persons employed by a State under an agreement or an official contractor shall be afforded access to any elevator, warehouse, or other grain storage and handling facility from which grain is delivered for shipment in interstate or foreign commerce or to which grain is delivered from shipment in interstate or foreign commerce and all facilities therein for weighing grain, for the purpose of providing official weighing or performing supervision thereof under this section.*

## TESTING OF EQUIPMENT

SEC. 10. (a) *The Administrator shall provide for the testing of all equipment used in the inspection, grading, and weighing of grain located at all elevators, warehouses, and other grain storage and handling facilities at which official inspection or official weighing is provided under this Act, to be made on a random and periodic basis, but at least twice annually and under such regulations as the Administrator may prescribe, as he deems necessary to assure the accuracy and integrity of such mechanical equipment.*

(b) *Notwithstanding any other provision of law, the Administrator is authorized to supervise the testing, by States, political subdivisions thereof, and private persons, of equipment located at any grain elevator, warehouse, or other grain storage and handling facility from which grain is shipped in interstate or foreign commerce under such regulations as he may prescribe and at such intervals as he deems necessary to assure the accuracy and integrity of such equipment.*

(c) *Notwithstanding any other provision of law, no person shall use any equipment disapproved by the Administrator.*

## CONTRACTING AUTHORITY

SEC. 11. (a) *The Administrator shall, prior to entering into a contract with a State or person for the performance of official inspection or official weighing functions as provided in sections 8 and 9 of this Act, make a determination that—*

(1) *such State or person—*

(A) *has adequate facilities and qualified personnel for the performance of such official functions;*

(B) *will conduct such training and provide such supervision of its personnel as are necessary to assure that they will provide official inspection or official weighing in accordance with this Act and the regulations and instructions thereunder;*

(C) *or employees thereof do not have any conflicts of interest prohibited by subsection (b) of this section, and section 16 of this Act;*

(D) *will maintain complete and accurate records of its organization, staffing, official activities, and fiscal operations, and such other records as the Administrator may require by regulation;*

(E) *will comply with all provisions of this Act and the regulations and instructions thereunder;*

(F) *meets other criteria established in regulations issued under this Act relating to the performance of official inspection or official weighing;*

(G) *will provide for the periodic rotation of official personnel at the various elevators for which the State or person provides inspection or weighing, or both, as is necessary to preserve the integrity of the official inspection system; and*

(2) *The applicant is better able than any other applicant to provide official inspection or official weighing service.*

(b) *The Administrator shall not contract for the performance of these official functions as provided in sections 8 and 9 of this Act with (1) any person who owns, operates, or is employed by a commercial grain elevator or warehouse, is currently engaged in the merchandising of grain or is financially interested in (directly or otherwise) any business entity which owns or operates any commercial grain elevator or warehouse, or is currently engaged in the merchandising of grain; or (2) any corporation, partnership, association, or other business entity owned (fully or otherwise), operated, or managed by such person.*

(c) *Official contracts shall include provisions that permit employees of the Agency authorized to supervise the official inspection or weighing of grain to supervise the activities of the official contractor in such manner as the Administrator deems necessary.*

(d) *Official contracts shall terminate at such time as specified by the Administrator but not later than at the end of five years and may be renewed in accordance with the criteria prescribed in this section. Official contracts may be amended at any time upon application by the official contractor if the Administrator determines that the amendment will be consistent with the provisions and objectives of this Act; and such a contract will be canceled upon request by the official contractor with ninety days written notice to the Administrator. A fee as prescribed by regulations of the Administrator shall be paid to the Administrator for each such amendment to cover the costs incurred by the Agency in connection therewith, and it shall be deposited in the fund provided for in section 12.*

(e) *The Administrator may revoke an official contract whenever, after opportunity for hearing is afforded the official contractor, the Administrator determines that the official contractor has failed to meet one or more of the criteria specified in subsection (a) of this section or the regulations under this Act for the performance of functions under this Act, or otherwise has not complied with any provisions of this Act or any regulation prescribed or instruction issued to such contractor under this Act, or (with respect to a person contracting with the Administrator) has been convicted of any violation of other Federal law involving the handling, weighing, or official inspection of grain: Provided, That the Administrator may, without first affording the official contractor an opportunity for a hearing, suspend an official contract pending final determination of the proceeding whenever the Administrator has reason to believe there is cause for revocation of the official contract and considers such action necessary to effectuate the objectives and purposes of this Act. The Administrator shall afford such person an opportunity for a hearing within thirty days after temporarily suspending such contract.*

## FEES FOR SERVICE

SEC. 12. *The Administrator shall, under such regulations as he may prescribe, charge and collect fees for the performance of official inspection and official weighing in the United States and for United States grain transshipped through Canadian ports and testing of equipment. The fees authorized by this section shall be reasonable, nondiscriminatory, and as nearly equal as possible in each geographic area of the United States and, after taking into consideration any proceeds from the sale of samples, cover the costs of the Agency incident to the performance of these services and supervisory and administrative costs directly related thereto, except as provided in section 26 of this Act: Provided, however, That the amount of such fees shall not be increased during the course of any fiscal year more than 10 per centum over the amount of the fee in effect at the end of the previous fiscal year without the express authorization of the Administrator. Fees collected pursuant to an official contract shall include amounts to cover Agency supervision of the activities of the official contractor, except as provided for in section 26 of this Act. Such fees, and the proceeds from the sale of samples obtained for purposes of official inspection which become the property of the United States, shall be deposited into a fund which shall be available without fiscal year limitation for the expenses of the Agency incident to providing services under this Act.*

## LICENSES AND AUTHORIZATIONS

SEC. 8. (a) *The Secretary is authorized to issue a license to any individual upon presentation to him of satisfactory evidence that such individual is competent, and is employed by an official inspection agency to perform all or specified functions involved in official inspection; to authorize any competent employee of the Department of Agriculture to perform all or specified functions involved in super-*

visory or appeal inspection or initial inspection of United States grain in Canadian ports; and to license any other competent individual to perform specified functions involved in official inspection under a contract with the Department of Agriculture. No person shall perform any official inspection functions for purposes of this Act unless he holds an unsuspended and unrevoked license or authorization from the Secretary under this Act.]

SEC. 13. (a) *The Administrator is authorized to (1) issue a license to any individual upon presentation to him of satisfactory evidence that such individual is competent, and is employed by an official contractor, to perform all or specified functions involved in official inspection or official weighing of grain; (2) issue a license to any individual upon presentation to him of satisfactory evidence that such individual is competent, and is employed by a State with whom the Administrator has entered into an agreement pursuant to this Act, to perform official weighing of grain; (3) authorize any competent employee of the Agency to (i) perform all or specified original or appeal inspection functions involved in official inspection of grain, (ii) perform official weighing of grain, (iii) supervise the official inspection or official weighing of grain or the testing of equipment, and (iv) perform monitoring activities in foreign ports with respect to grain officially inspected and officially weighed under this Act; (4) contract with any person to perform specified sampling or laboratory functions involved in the official inspection of grain; and (5) contract with any person for the performance of monitoring activities in foreign ports with respect to grain officially inspected and officially weighed under this Act. No person shall perform any official inspection or official weighing functions for purposes of this Act unless he holds an unsuspended and unrevoked license or authorization from the Administrator under this Act.*

(b) All classes of licenses and authorizations issued under this Act shall terminate triennially on a date or dates to be fixed by regulation of the [Secretary] Administrator: *Provided*, That any license or authorization shall be suspended automatically when the licensee or authorized person ceases to be employed by [an official inspection agency or to operate independently under the terms of a contract for the conduct of and functions involved in official inspection] the Agency or under an official contract or agreement, for the conduct of any official function under this Act: *Provided further*, That subject to [paragraph] subsection (c) of this section, such license or authorization shall be reinstated if the licensee or authorized person is employed by [an official inspection agency or resumes operation under such a contract] the Agency or an official contractor or a State under an agreement, within one year of the suspension date and the license or authorization has not expired in the interim.

(c) The [Secretary] Administrator may require such examinations and reexaminations as he may deem warranted to determine the competence of any applicants for licenses, licensees, or employees of the [Department of Agriculture] Agency, to perform any official inspection or official weighing function under this Act.

(d) Persons employed by an official [inspection agency and persons performing official inspection functions under contracts with the De-

partment of Agriculture] contractor to perform official inspection or official weighing functions or by a State under an agreement to perform official weighing and persons performing specified sampling or laboratory functions under contract with the Administrator as provided in subsection (a) of this section shall not, unless otherwise employed by the [Federal] United States Government, be deemed to be employees of the [Federal] United States Government [of the United States]: *Provided, however*, That such persons shall be considered, in the performance of any official inspection or official weighing function as prescribed by this Act or by the regulations of the Administrator, as persons acting on behalf of the United States for the purpose of determining the application of section 201 of title 18, United States Code, to such persons.

(e) The Administrator shall provide for the periodic rotation of supervisory personnel and official personnel employed by the Agency as he deems necessary to preserve the integrity of the system for official inspection and official weighing provided by this Act.

(f) The Administrator shall develop and effectuate uniform standards for the recruiting, training, and supervising of official personnel and work production standards for such personnel, which shall be applicable to the Agency and all official contractors and all persons licensed or authorized to perform official functions under this Act: *Provided, however*, That persons licensed or authorized as of June 1, 1976, to perform any official function under this Act, shall be exempted from any of the uniform recruiting and training provisions of this subsection or regulations or standards issued pursuant thereto if the Administrator determines that such persons are technically and professionally qualified for the duties to which they will be assigned and they agree to complete whatever additional training the Administrator deems necessary.

#### REFUSAL OF RENEWAL, OR SUSPENSION OR REVOCATION, OF LICENSES AND AUTHORIZATIONS

SEC. [9] 14. The [Secretary] Administrator may refuse to renew, or may suspend or revoke, any license or authorization issued under this Act whenever, after the licensee or authorized person has been afforded an opportunity for a hearing, the [Secretary] Administrator shall determine that such licensee or authorized person is incompetent, or has inspected or weighed grain for purposes of this Act by any standard or criteria other than as provided for in this Act, or has issued, or caused the issuance of, any false or incorrect official certificate or other official form, or has knowingly or carelessly inspected or weighed grain improperly under this Act, or has accepted any money or other consideration, directly or indirectly, for any neglect or improper performance of duty, or has used his license or authorization or allowed it to be used for any improper purpose, or has otherwise violated any provision of this Act or of the regulations prescribed or instructions issued to him by the [Secretary] Administrator under this Act. The [Secretary] Administrator may, without first affording the licensee or authorized person an opportunity for a hearing, suspend any license or authorization temporarily pending final deter-

mination whenever the [Secretary] Administrator deems such action to be in the best interest of the official inspection system under this Act. The Administrator may summarily revoke any license whenever the license or authorized person has been convicted of any offense prohibited by section 18 of this Act or convicted of any offense proscribed by title 18, United States Code, with respect to performance of official duties under this Act.

REFUSAL OF OFFICIAL INSPECTION OR OFFICIAL  
WEIGHING AND CIVIL PENALTIES

SEC. [10] 15. (a) The [Secretary] Administrator may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this Act) refuse to provide official inspection or official weighing otherwise available under this Act with respect to any grain offered [in] for inspection or weighing, or owned, wholly or in part, by any person if he determines (1) that the individual (or in case such person is a partnership, any general partner; or in case such person is a corporation, any officer, director, or holder or owner of more than 10 per centum of the voting stock; or in case such person is an unincorporated association or other business entity, any officer or director thereof) has [been convicted of] committed any violation of section [13] 18 of this Act or has been convicted of any violation of any other Federal law involving the handling, weighing, or inspection of grain, or that official inspection or official weighing has been refused for any of the above-specified causes (for a period which has not expired) to such person, or any other person conducting a business with which the former was, at the time such cause existed, or is responsibly connected; and (2) that providing official inspection or official weighing with respect to such grain would be inimical to the integrity of the official inspection and official weighing service. In addition to, or in lieu of, penalties provided under section 19 of this Act, the Administrator may refuse to provide official inspection or official weighing in accordance with this section or assess against the respondent a civil penalty not to exceed \$100,000 for each such violation, or both, as the Administrator determines is appropriate to effectuate the objectives stated in section 2 of this Act.

(b) For purposes of [paragraph] subsection (a) of this section, a person shall be deemed to be responsibly connected with a business if he was or is a partner, officer, director, or holder or owner of 10 per centum or more of its voting stock, or an employee in a managerial or executive capacity.

(c) Before official inspection or official weighing is refused to any person or a civil penalty is assessed against any person under [paragraph] subsection (a), such person shall be afforded opportunity for a hearing[.] in accordance with sections 554, 556, and 557 of title 5, United States Code: Provided, That the Administrator may, without first affording the person a hearing, refuse official inspection or official weighing temporarily pending final determination whenever the Administrator has reason to believe there is cause for refusal of inspection or weighing and considers such action to be in the best interest of the official inspection and official weighing system under this Act. The Administrator shall afford such person an opportunity

for a hearing within seven days after temporarily refusing inspection or weighing.

(d) Moneys received in payment of such civil penalties shall be deposited in the general fund of the United States Treasury. Upon failure to pay the penalties assessed under this section, the Administrator may request the Attorney General of the United States to institute a civil action to collect the penalties in the appropriate court identified in subsection (f) of section 22 of this Act for the jurisdiction in which the respondent is found or resides or transacts business, and such court shall have jurisdiction to hear and decide any such action.

PROHIBITION ON CERTAIN CONFLICTS OF INTEREST

SEC. [11] 16. No person licensed or authorized by the [Secretary] Administrator pursuant to section 13 of this Act to perform any official [inspection] function under this Act, or employed by the [Secretary] Administrator in otherwise carrying out any of the provisions of this Act, shall, during the term of such license, authorization, or employment, (a) be financially interested (directly or otherwise) in any business entity owning or operating any grain elevator or warehouse or engaged in the merchandising of grain, or (b) be in the employment of, or accept gratuities from, any such entity, or (c) be engaged in any other kind of activity specified by regulation of the [Secretary] Administrator as involving a conflict of interest: Provided, however, That the [Secretary] Administrator may license qualified employees of any grain [elevators or warehouses] elevator or warehouse to perform official sampling functions, under such conditions as the [Secretary] Administrator may by regulation prescribe, and the [Secretary] Administrator may by regulation provide such other exceptions to the restrictions of this section as he determines are consistent with the purposes of this Act.

RECORDS

SEC. [12] 17. (a) Every official [inspection agency] contractor and every person licensed to perform any official inspection or official weighing function under this Act shall maintain such samples of officially inspected grain and such other records as the [Secretary] Administrator may by regulation prescribe for the purpose of administration and enforcement of this Act.

(b) Every official [inspection agency] contractor required to maintain records under this section shall keep such records for a period of [two] five years after the inspection or transaction, which is the subject of the record, occurred: Provided, however, That grain samples shall be required to be maintained only for such period not in excess of ninety days as the [Secretary] Administrator, after consultation with the grain trade and taking into account the needs and circumstances of local markets, shall prescribe; and in specific cases other records may be required by the [Secretary] Administrator to be maintained for not more than three years in addition to said [two] five-year period whenever in his judgment the retention of such records for the longer period is necessary for the effective administration and enforcement of this Act.

(c) Every official [inspection agency] contractor required to maintain records under this section shall permit any authorized representative of the Secretary or the Administrator to have access to, and to copy, such records at all reasonable times.

(d) Every State, political subdivision thereof, or person who is the owner or operator of a commercial grain elevator or warehouse or is engaged in the merchandising of grain other than as a producer, and who, at any time, has obtained or obtains official inspection or official weighing shall, within the five-year period thereafter, maintain complete and accurate records of purchases, sales, transportation, storage, weighing, handling, treating, cleaning, drying, blending, and other processing, and official inspection and official weighing of grain, and permit any authorized representative of the Secretary or the Administrator at all reasonable times, to have access to, and to copy, such records and to have access to any grain elevator or other facility used by such person for handling of grain, pursuant to sections 21 and 22 of this Act.

#### PROHIBITED ACTS

SEC. [13] 18. (a) No person shall [—] knowingly, intentionally, recklessly, or negligently—

(1) [knowingly] falsely make, issue, alter, forge, or counterfeit any official certificate or other official form or official [inspection] mark;

(2) [knowingly] utter, publish, or use as true any falsely made, issued, altered, forged, or counterfeited official certificate or other official form or official [inspection] mark, or [knowingly] possess, without promptly notifying the [Secretary] Administrator or his representative, or fail to surrender to such a representative upon demand, any falsely made, issued, altered, forged, or counterfeited official [inspection] certificate or other official form, or any device for making any official [inspection] mark or simulation thereof, or [knowingly] possess any grain in a container bearing any falsely made, issued, altered, forged, or counterfeited official [inspection] mark without promptly giving such notice;

(3) [knowingly] cause or attempt (whether successfully or not) to cause the issuance of a false or incorrect official certificate or other official form by any means, including but not limited to deceptive loading, handling, weighing, or sampling of grain, or submitting grain for official inspection or official weighing [knowing that it] that has been deceptively loaded, handled, weighed, or sampled, without disclosing such knowledge to the official inspection personnel before official sampling;

(4) alter any official sample of grain in any manner or, [knowing that] if an official sample has been altered, thereafter represent it as an official sample;

(5) [knowingly] use any official grade or weight designation or official [inspection] mark on any container of grain by means of a tag, label, or otherwise, unless the grain in such container was officially inspected on the basis of an official sample taken while the grain was being loaded into or was in such container or officially weighed, respectively, and the grain was found to qualify for such designation or mark;

(6) [knowingly] make any false representation that any grain has been officially inspected, officially weighed, or officially inspected or officially weighed and found to be of a particular kind, class, quality, condition, or quantity, or that particular facts have been established with respect to grain by official inspection or official weighing under this Act;

[(7) improperly influence, or attempt to improperly influence, an official inspection personnel or any officer or employees of the Department of Agriculture with respect to the performance of his duties under this Act;]

(7) engage in the falsifying of the weight, quality, or grade of any grain shipped in interstate or foreign commerce by any means, including, but not limited to, the use of inaccurate, faulty or defective testing equipment;

(8) forcibly assault, resist, oppose, impede, intimidate, or interfere with any [official inspection personnel or any officer or employee of the Department of Agriculture] person licensed to perform official inspection or official weighing in, or on account of, the performance of his duties under this Act;

(9) falsely represent that he is licensed or authorized to perform an official inspection or official weighing function under this Act;

(10) use any false or misleading means in connection with the making or filing of an application for official inspection or official weighing; or

(11) violate any provision of section [5, 6, 8, 11, or 12] 6, 7, 8, 9, 10, 13, 16, or 17 of this Act.

(b) No person licensed or authorized to perform any function under this Act shall [—] knowingly, intentionally, recklessly, or negligently—

(1) commit any offense prohibited by subsection (a);

(2) [knowingly] perform improperly any official sampling, inspection, weighing, or other official [inspection] function under this Act; or

(3) [knowingly] execute or issue any false or incorrect official certificate or other official form [; or].

[(4) accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty.]

[(c) An offense shall be deemed to have been committed knowingly under this Act if it resulted from gross negligence or was committed with knowledge of the pertinent facts.]

#### PENALTIES

[Sec. 14. (a) Any person who commits any offense prohibited by section 13 shall be guilty of a misdemeanor and shall, on conviction thereof, be subject to imprisonment for not more than six months, a fine of not more than \$3,000 or both such imprisonment and fine; but if such offense is committed after one conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than one year, or a fine of not more than \$5,000, or both such imprisonment and fine.]

Sec. 19. (a) Any person who knowingly or intentionally commits any offense prohibited by section 18 shall be guilty of a felony and shall, on conviction thereof, be subject to imprisonment for not more than five years, a fine of not more than \$10,000, or both such imprisonment or fine.

(b) Any person who recklessly or negligently commits any offense prohibited by section 18 shall be guilty of a misdemeanor and shall, on conviction thereof, be subject to imprisonment for not more than nine months, a fine of not more than \$5,000, or both such imprisonment or fine.

[(b)] (c) Nothing in this Act shall be construed as requiring the [Secretary] Administrator to report minor violations of this Act for criminal prosecution [whenever] when he believes that the public interest will be adequately served by a suitable written notice or warning[.], or to report any violation of this Act for prosecution when he believes that institution of a proceeding under section 15 of this Act will obtain compliance with this Act and he institutes such a proceeding.

#### RESPONSIBILITY FOR ACTS OF OTHERS

SEC. [15] 20. When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person.

#### GENERAL AUTHORITIES

SEC. [16] 21. (a) The [Secretary] Administrator is authorized to conduct such investigations, hold such hearings, require such reports from any official [inspection agency] contractor, licensee or [any] other person, require by regulation as a condition for official inspection or official weighing, among other things, the installation of specified sampling, weighing, handling, and monitoring equipment in grain elevators and approval of the condition of carriers and containers for transporting or storing grain, and prescribe such other rules [and], regulations and instructions as he deems necessary to effectuate the purposes or provisions of this Act. Whether any certificate, other form, representation, designation, or other description is false, incorrect, or misleading within the meaning of this Act shall be determined by tests made in accordance with such procedures as the [Secretary] Administrator may adopt to effectuate the objectives of this Act, if the relevant facts are determinable by such tests. Proceedings under section [9 or 10] 14 of this Act for refusal to renew, or for suspension or revocation of, a license, [or for refusal to official inspection service not required by section 5 of this Act.] shall not, unless requested by the respondent, be subject to the administrative procedure provisions in sections 554, 556, and 557 of title 5, United States Code.

(b) The Administrator is authorized to investigate reports or complaints of discrepancies and abuses in the official inspection and official weighing of grain under this Act. He shall prescribe by regulation procedures for (1) promptly investigating (i) complaints of

foreign grain purchasers regarding the official inspection or official weighing of grain shipped from the United States, (ii) the cancellation of any contract for the sale of grain required to be inspected or weighed under this Act, and (iii) any complaint regarding the operation or administration of this Act or any official transaction with which this Act is concerned, and (2) taking appropriate action on the basis of the findings of any investigation of such complaints. The Administrator shall report to the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry at the end of every three-month period with respect to investigative action taken on complaints, during the immediately preceding three-month period.

(c) The Administrator is authorized to cause official personnel to monitor in foreign nations which are substantial importers of grain from the United States, grain imported from the United States upon its entry into the foreign nation, to determine whether such grain is of a comparable kind, class, quality, and condition after considering the handling methods and conveyance utilized at the time of loading, and the same quantity that it was certified to be upon official inspection and official weighing in the United States.

(d) The Office of Investigation of the Department (or such other organization or agency within the Department which may be delegated the authority, in lieu thereof, to conduct investigations on behalf of the Department) is authorized and directed to conduct such investigations regarding the operation or administration of this Act or any official transaction with which this Act is concerned, as the Director thereof deems necessary to assure the continued integrity of official inspection and official weighing under this Act.

(e) The Administrator is authorized to conduct, in cooperation with the Department of Agriculture and other agencies within the Department of Agriculture, a continuing research program for the purpose of developing methods to improve accuracy and uniformity in grading grain.

(f) To assure the normal movement of grain at all inspection points in a timely manner consistent with the policy expressed in section 2 of this Act, the Administrator shall, notwithstanding any other provision of law, provide adequate personnel to avoid delay that might be caused by the additional inspection requirements of this Act.

#### ENFORCEMENT PROVISIONS

SEC. [17] 22. (a) For the purposes of this Act, the [Secretary] Administrator shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person with respect to whom such authority is exercised; and the [Secretary] Administrator shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation by the Administrator, and may administer oaths and affirmations, examine witnesses, and receive evidence.

(b) Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. In case of disobedience to a

subpena the [Secretary] Administrator may invoke the aid of any court designated in [paragraph (h)] subsection (f) of this section in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(c) Any such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the [Secretary] Administrator or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Witnesses summoned before the [Secretary] Administrator shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses from whom depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(e) Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the [Secretary] Administrator, shall be guilty of a misdemeanor, and upon conviction thereof be subject to [the penalties set forth in section 14 of this Act.] imprisonment for not more than six months, a fine of not more than \$3,000, or both such imprisonment and fine.

[(f) Repealed. Pub. L. 91-452, Title II, § 203, Oct. 15, 1970, 84 Stat. 928.]

[(g) Any officer or employee of the Department of Agriculture who shall make public any information obtained under this Act by the Department of Agriculture, without its authority, unless directed by the court, shall be guilty of a misdemeanor, and upon conviction thereof be subject to the penalties set forth in section 14 of this Act.]

[(h)] (f) The United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of the other territories and possessions of the United States shall have jurisdiction in cases arising under this Act.

#### REPORTING REQUIREMENTS

Sec. 23. (a) On December 1 of each year, the Administrator shall report to the Committee on Agriculture of the House of Representatives and to the Committee on Agriculture and Forestry of the Senate, regarding the effectiveness of the official grain inspection system under this Act for the prior fiscal year, with recommendations for any legislative changes he believes are necessary to accomplish the objectives stated in section 2 of this Act.

(b) The Administrator shall notify the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate (1) of any complaint regarding faulty grain delivery made to the Department by a foreign purchaser of United States grain, within thirty days after a determination by the

Administrator that there is reasonable cause to believe that the grain delivery was in fact faulty, and (2) within thirty days after receipt by him or the Secretary of the cancellation of any contract for the export of more than one hundred thousand metric tons of grain.

(c) On December 1 of each year, the Administrator shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate a summary of all other complaints from foreign purchasers and prospective purchasers of United States grain, and other foreign purchasers interested in the trade of grain, received by the Department of Agriculture and the resolution thereof during the prior fiscal year: Provided, That the summary shall not include a complaint unless reasonable cause exists to believe that the complaint is valid, as determined by the Administrator.

#### REGISTRATION REQUIREMENTS

Sec. 24. (a) The Administrator shall provide, under such regulations as he may prescribe, for the registration of all persons engaged in the business of buying grain for sale in interstate or foreign commerce, and in the business of handling, weighing, or transporting of grain for sale in interstate or foreign commerce. This section shall not apply to—

(1) any person who only incidentally or occasionally buys for sale, or handles, weighs, or transports grain for sale and is not engaged in the regular business of buying grain for sale, or handling, weighing, or transporting grain for sale;

(2) any producer of grain who only incidentally or occasionally sells or transports grain which he has purchased;

(3) any person who transports grain for hire and does not own a financial interest in such grain;

(4) any person who buys grain for feeding or processing and not for the purpose of reselling and only incidentally or occasionally sells such grain as grain; or

(5) any merchandiser of grain who sells less than two million five hundred thousand bushels of grain in a calendar year, or owns, operates, or otherwise controls grain elevators with total storage capacity of less than one million bushels.

(b) (1) All persons registered under this Act must submit the following information to the Administrator:

(A) the name and principal address of the business,

(B) the names of all directors of such business,

(C) the names of the principal officers of such business,

(D) the names of all persons in a control relationship with respect to such business,

(E) a list of locations where the business conducts substantial operations, and

(F) such other information as the Administrator deems necessary to carry out the purposes of this Act.

(2) For purposes of subparagraph (D) of paragraph (1), the word "person" shall mean any individual or any business entity of whatever form.

(3) For purposes of subparagraph (D) of paragraph (1), a person shall be deemed to be in a "control relationship" with respect to a business required to register under subsection (a) if—

(A) such person has an ownership interest of 10 per centum or more in such business, or

(B) a business or group of business entities, with respect to which such person is in a control relationship, has an ownership interest of 10 per centum or more in such business.

(4) For purposes of subparagraphs (A) and (B) of paragraph (3) above, a person shall be considered to own the ownership interest which is owned by his or her spouse, minor children, and relatives living in the same household.

(c) The Administrator shall issue a certificate of registration to persons who comply with the provisions of this section. The certificate of registration issued in accordance with this section shall be renewed annually. If there has been any change in the information required under subsection (b), the person holding such certificate shall, within thirty days of the discovery of such change, notify the Administrator of such change. No person shall engage in the business of buying grain for sale in interstate or foreign commerce, and in the business of handling, weighing, or transporting of grain in interstate or foreign commerce unless he has registered with the Administrator as required by this Act and has an unsuspended or unrevoked certificate of registration.

(d) The Administrator may suspend or revoke any certificate of registration issued under this section whenever, after the person holding such certificate has been afforded an opportunity for a hearing, the Administrator shall determine that such person has violated any provision of this Act or of the regulations promulgated thereunder, or has been convicted of any violation involving the weighing, handling or inspection of grain under title 18 of the United States Code. The Administrator may, without first affording such person an opportunity for a hearing, suspend any certificate of registration temporarily pending final determination whenever the Administrator deems such action to be in accordance with the purposes of this Act, except that the Administrator shall afford any such person an opportunity for hearing within thirty days after temporarily suspending such certificate of registration.

(e) The Administrator shall charge and collect fees from any person registered pursuant to subsection (a). The amount of such fees shall be determined on the basis of the costs of the Administrator in administering the registration directed by subsection (a). Such fees shall be deposited in, and used as part of, the fund described in section 12 of this Act.

RELATION TO STATE AND LOCAL LAWS; SEPARABILITY OF PROVISIONS

SEC. [18] 25. (a) No State or subdivision thereof may require the inspection or description in accordance with any standards of kind, class, quality, condition, or other characteristics of grain as a condition of shipment, or sale, of such grain in interstate or foreign commerce, or

require any license for, or impose any other restrictions upon, the performance of any official inspection or official weighing function [under this Act] by [official inspection personnel] [.] persons licensed or authorized under this Act. Otherwise, nothing in this Act shall invalidate any law or other provision of any State or subdivision thereof in the absence of a conflict with this Act.

(b) If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

APPROPRIATIONS

[SEC. 19. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act to the extent that financing is not obtained from the fees and sale of samples as provided for in section 7 of this Act.]

SEC. 26. There are hereby authorized to be appropriated such sums as are necessary for research and development as provided in section 21; development and issuance of rules, regulations, and instructions; establishment of the fund authorized in section 12 of this Act; monitoring in foreign ports grain officially inspected under this Act; other initial Federal costs for implementing a system for Federal official inspection and official weighing for United States grain; improvement of inspection and weighing procedures and equipment, and other activities authorized by section 5 of this Act; those Federal administrative and supervisory costs not directly related to the official inspection or official weighing of grain; the purchase or lease of any buildings, other facilities, or equipment; and any other expenses necessary to carry out the provisions of this Act to the extent that financing is not obtained from the fees and sale of samples as provided for in section 12 of this Act. Such facilities and equipment may be provided by the Administrator for the use of official contractors under arrangements whereby the cost thereof will be amortized and reimbursed to the current appropriation for administration of this Act from fees collected by such contractors over a reasonable period of time determined by the Administrator.

TITLE 5, UNITED STATES CODE

\* \* \* \* \*

§ 5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

\* \* \* \* \*

(137) Administrator, Federal Grain Inspection Agency, Department of Agriculture.

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## TITLE 18, UNITED STATES CODE

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§ 1114. Protection of officers and employees of the United States.

Whoever kills any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the secret service or of the Drug Enforcement Administration, any officer or enlisted man of the Coast Guard, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, *any employee of the Federal Grain Inspection Agency of the Department of Agriculture assigned to perform official inspection or official weighing, or the supervision thereof, under the United States Grain Standards Act*, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, any employee of the Bureau of Animal Industry of the Department of Agriculture, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions, while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title.

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MINORITY VIEWS OF SENATORS DOLE, YOUNG,  
CURTIS, BELLMON, AND HELMS

S. 3055, as reported by the Committee, is unacceptable. It provides the "federalize everything" approach, which most of our citizens have come to distrust and which has brought taxpayers increasingly to the point of rebellion. Further federalization of functions currently performed by State agencies and private agencies presently under the supervision of the Federal Government would appear to be based on what now is a discarded principle that only the Federal Government knows best and can do best.

The reported bill is impractical and unacceptable for many reasons to both the Administration and the House of Representatives. We maintain that our concern should be with proper legislation responsive to the need to improve the grain inspection system for American consumers and producers as well as for export markets. It would be far better to improve the Federal supervisory role—thus strengthening our present Federal-State-private partnership—rather than create a new Federal monopoly. Past experience has shown that placing an individual on a Federal payroll does not make him any more honest. The evidence clearly shows that the Federal Government failed in its role as supervisor of the Nation's grain inspection service. It defies reason to now completely federalize the system and reward the past failure with total Federal takeover. With only Federal employees involved, a serious question arises as to who will catch the Federal violators in the future.

What is needed is reform and improvement—not confrontation and a political issue. Under the reported bill, approximately 1500 more Federal employees—at a minimum—would be hired. Those ten States—whose export facilities are inspected by State inspection agencies—must surrender their authority to a new Federal agency. The House has overwhelmingly (246-33) approved a strong bill that holds far more promise of being enacted into law.

Three major provisions of S. 3055 are unnecessary and should be eliminated:

## FEDERAL INSPECTION AT MAJOR INLAND POINTS

Section 8 provides that Federal employees perform original inspection at major inland points. At the current time, problems surfacing in the inspection system have been focused at export situations. It is not evident that major malfeasance will be found at inland points and, therefore, we feel a total Federal system at major inland points is unnecessary.

The most cost effective and responsive grain weighing and inspection system is one which encompasses the State and private sector, and which is systematically and effectively supervised by Federal

inspectors. Major inland terminals are the intermediate link in the marketing system which supplies grain to both domestic and foreign markets. Federal inspection at major inland elevators will not provide greater marketing efficiencies than adequately supervised State and private agencies.

The problem with performance in the present grain inspection system at major inland locations has been the lack of proper Federal supervision of these inspection agencies. Members of the Committee were successful in obtaining additional funds to enable the Department to increase this supervision. Recruiting and training of these additional supervisors are already underway which should offer the Agricultural Marketing Service adequate resources to properly supervise at ports and major inland points. The Department has announced plans to increase and improve supervision of State and private inspection agencies, and the availability, on request, of appeal service for both buyers and sellers at origin (major inland markets) and at destination (export points).

Section 8 of the bill would add substantially to the Federal payroll, both in terms of dollars and man-years. State and private systems, generally, have been doing an adequate job; and with additional supervision, we feel that an all-Federal system at interior locations is an overreaction to problems which primarily have been at export locations.

#### SEPARATE FEDERAL GRAIN INSPECTION AGENCY

Section 4 of the bill provides for a separate Federal grain inspection agency to administer the amended U.S. Grain Standards Act. We oppose the separate agency concept because:

1. The current organization of the Agricultural Marketing Service, which is basically along functional and commodity lines, offers the most efficient, economical unit to carry out the functions proposed under the revised Act. A separate agency would be duplicative, creating needless overhead and numerous additional support activities. For instance, multiple functions currently in Grain and Transportation and Warehouse Divisions would still require similar divisions within AMS as well as the new agency. Currently, the programs under the Grain Standards Act play an important role in the agency's mission of servicing the marketing system. The split proposed would require additional coordination between the old Grain and Transportation and Warehouse Divisions and the new divisions with different program objectives. Accompanying inefficiencies would be generated because of multiple program objectives by different managers.

2. The current organizations within AMS administer several Acts, including the U.S. Grain Standards Act, the U.S. Warehouse Act, the Federal Seed Act, the Plant Variety Protection Act, and various elements of the Agricultural Marketing Act of 1946. A separate agency would necessitate five new divisions—two program divisions; i.e., weighing and inspection divisions, and three service divisions; i.e., personnel, administrative services, and financial services, as well as special staffs. These added functions would require approximately 160 personnel. If the Act remains within AMS, USDA estimates the servicing activities would require approximately 100 additional people.

3. The agency concept is an unnecessary infringement on the managerial prerogatives of the Secretary since he is currently delegated authority for the organizational structure of the Department.

4. Currently, there are three separate grain divisions in the Department; one each in the Agricultural Marketing Service, the Agricultural Stabilization and Conservation Service, and the Foreign Agricultural Service. Each carries out important functions relative to grain. A fourth grain division so isolated would add complexity to the current coordination efforts and decision making. In the future, under this provision, coordination with other commodity functions for efficiency and effectiveness would necessitate legislative amendment.

#### REGISTRATION OF GRAIN FIRMS

Section 24 of the bill proposes the registration of all persons or firms engaged in the business of buying grain for sale in interstate or foreign commerce and those handling, weighing, or transporting grain for sale. The proposal would cost \$1,630,000 and approximately 87 man-years per year. The cost involves preliminary registration, followup to assure accuracy of registration, and enforcement. The requirement would add an additional unit of Federal employees not justified from an efficiency standpoint and will not materially add to the efficient and effective marketing, handling, inspection, and weighing of grain in the United States. It appears that the benefits anticipated in this section could effectively be derived from section 17, which requires grain firms to keep records and allows Federal access to such records; section 21 which authorizes Federal authorities to investigate foreign complaints; section 22 which gives USDA subpoena authority; section 15 which authorizes the withholding of services and civil penalties; and section 16 which prohibits conflicts of interest. The requirement for registration is an additional infringement imposed on the industry which appears to be unnecessary. The authorities in other sections of the bill should be sufficient to minimize violations of the Act by grain firms without harassing the industry with the additional registration.

Deletion of these three provisions would leave a bill responsive to the demand for reform—sensible reform without disruptive infringement of State and individual rights. Deletion of these provisions was considered by both the subcommittees and full Committee and were included only by one and two vote margins.

Inclusion of these redundant enforcement provisions are wasteful. They ignore the many improvements made in the past year and those announced to be implemented in the near future.

We should rather that the Congress be concerned with proper reform that will assure our farmers and the grain firms that serve them the right to a good Federal-State-private inspection system, with close supervision and increased penalties for violations, than with overkill through the excesses of the Committee bill.

BOB DOLE.  
MILTON R. YOUNG.  
CARL T. CURTIS.  
HENRY BELLMON.  
JESSE HELMS.

## APPENDIXES

### TYPE OF INSPECTION IN STATES AND VOLUME AT MAJOR INLAND TERMINAL POINTS

State	Type of inspection	Percent inspections at major inland terminals <sup>1</sup>
Alabama	State	
Arizona	Private	
Arkansas	do	
California	State-Private	
Colorado	Private	75
Connecticut	State	
Delaware	do	
Florida	do	
Georgia	do	
Idaho	Private	
Illinois	State-Private	80
Indiana	Private	
Iowa	do	80
Kansas	State	90
Kentucky	Private	
Louisiana	State-Private	
Maine	State	
Maryland	State-Private	
Michigan	Private	
Minnesota	State	60
Mississippi	State-Private	
Missouri	State	90
Montana	do	
Nebraska	Private	90
New York	do	
North Carolina	State	
North Dakota	Private	
Ohio	do	90
Oklahoma	do	90
Oregon	State	
Pennsylvania	Private	
South Carolina	State	
South Dakota	Private	
Tennessee	do	
Texas	do	75
Utah	do	
Virginia	State	
Washington	do	
West Virginia	do	
Wisconsin	State-Private	
Wyoming	State	

<sup>1</sup> Estimated by USDA Grain Division.

(90)

### STATE INSPECTION SYSTEMS IN THE UNITED STATES

Name	Expert State	Domestic State	Both	Contains major Inland terminal
Alabama				X
California				X
Connecticut				
Delaware		X		
Florida		X		
Georgia		X		
Illinois		X		
Kansas		X		
Louisiana	X			X
Maryland		X		
Minnesota			X	X
Mississippi			X	
Missouri		X		X
North Carolina		X		
Oregon			X	
South Carolina			X	
Virginia			X	
Washington			X	
West Virginia		X		
Wisconsin			X	
Wyoming		X		