



32. UNITED STATES GRAIN STANDARDS ACT  
[As Amended Through Public Law 109–83, Sept. 30, 2005]



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January 11, 2006

## 32. UNITED STATES GRAIN STANDARDS ACT

To provide for United States standards and a national inspection system for grain, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That the United States Grain Standards Act, consisting of part B of "An Act Making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved August 11, 1916 (39 Stat. 446, and 482), as amended (7 U.S.C. 71-87), is hereby amended to read as follows:*

### SHORT TITLE

SECTION 1. [7 U.S.C. 71] This Act may be cited as the "United States Grain Standards Act".

### DECLARATION OF POLICY

SEC. 2. [7 U.S.C. 74] (a) 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, 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.

(b) It is also declared to be the policy of Congress—

(1) to promote the marketing of grain of high quality to both domestic and foreign buyers;

(2) that the primary objective of the official United States standards for grain is to certify the quality of grain as accurately as practicable; and

(3) that official United States standards for grain shall—

(A) define uniform and accepted descriptive terms to facilitate trade in grain;

(B) provide information to aid in determining grain storability;

(C) offer users of such standards the best possible information from which to determine end-product yield and quality of grain;

(D) provide the framework necessary for markets to establish grain quality improvement incentives;

(E) reflect the economic value-based characteristics in the end uses of grain; and

(F) accommodate scientific advances in testing and new knowledge concerning factors related to, or highly correlated with, the end use performance of grain.

DEFINITIONS

SEC. 3. [7 U.S.C. 75] 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 delegates of the Secretary;

(b) the term “Department of Agriculture” means the United States Department of Agriculture;

(c) the term “person” means any individual, partnership, corporation, association, or other business entity;

(d) 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) 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) the term “interstate or foreign commerce” means commerce from any State to or through any other State, or to or through any foreign county;

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

(h) the term “export grain” means grain for shipment from the United States to any place outside thereof;

(i) 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, under standards provided for in this Act, 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; or other facts relating to grain under other criteria approved by the Secretary under this Act (the term “officially inspected” shall be construed accordingly);

(j) the term “official inspection personnel” means persons licensed or otherwise authorized by the Secretary pursuant to section 8 of this Act to perform all or specified functions involved in official inspection, official weighing, or supervision of weighting, or in the supervision of official inspection, official weighing or supervision of weighting;

(k) the term "official mark" means any symbol prescribed by regulations of the Secretary to show the official determination of official inspection or official weighting;

(l) 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 agency" means any State or local governmental agency, or any person, designated by the Secretary pursuant to subsection (f) of section 7 of this Act for the conduct of official inspection (other than appeal inspection), or subsection (c) of section 7A of this Act for the conduct of official weighing or supervision of weighing (other than appeal weighting);

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

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

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

(r) 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) 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) the terms "false", "incorrect", and "misleading" mean, respectively, false, incorrect, and misleading in any particular;

(u) 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 under this Act;

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

(w) the term "export port location" means a commonly recognized port of export in the United States or Canada, as determined by the Secretary, from which grain produced in the United States shipped to any place outside the United States;

(x) the term "official weighing" means the determination and certification by official inspection personnel of the quantity of a lot of grain under standards provided for in this Act, based on the actual performance of weighing or the physical supervision thereof, including the physical inspection and testing for accuracy of the weights and scales and the physical inspection

of the premises at which the weighing is performed and the monitoring of the discharge of grain into the elevator or conveyance (the terms “officially weight” and “official weighed” shall be construed accordingly);

(y) the term “supervision of weighing” means such supervision by official inspection personnel of the grain-weighing process as is determined by the Secretary to be adequate to reasonably assure the integrity and accuracy of the weighing and of certificates which set forth the weight of the grain and such physical inspection by such personnel of the premises at which the grain weighing is performed as will reasonably assure that all the grain intended to be weighed has been weighed and discharged into the elevator or conveyance; and

(z) the term “intracompany shipment” means the shipment, within the United States, of grain lots between facilities owned or controlled by the person owning the grain. The shipment of grain owned by a cooperative, from a facility owned by that cooperative, to an export facility which it jointly owns with other cooperative, qualifies as an intracompany shipment.

#### STANDARDS

SEC. 4. [7 U.S.C. 76] (a) The Secretary 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, sorghum, soybeans mixed grain, and such other grains as in the judgment of the Secretary the usages of the trade may warrant and permit, and (2) standards or procedures for accurate weighing and weight certification and controls, including safeguards over equipment calibration and maintenance or procedures for grain shipped in interstate or foreign commerce; and the Secretary is authorized to amend or revoke such standards or procedures whenever the necessities of the trade may require.

(b)(1) Before establishing, amending, or revoking any standards under this Act, the Secretary 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, the public health, interest, or safety require that they become effective sooner.

(2)(A)(i) If the Secretary determines that the establishment or amendment of standards regarding cleanliness conditions of wheat, corn, barley, sorghum and soybeans that meet the requirements for grade number 3 or better (as set forth in subparagraph (B)) would—

(I) enhance the competitiveness of exports of wheat, corn, barley, sorghum and soybeans from the United States with wheat, corn, barley, sorghum and soybean exports marketed by other major exporters;

(II) results in the maintenance or expansion of the United States export market share for wheat, corn, barley, sorghum and soybeans;

(III) result in the maintenance or increase of United States producer income; and

(IV) be in the interest of United States agriculture, taking into consideration technical constraints, economic benefits and costs to producers and industry, price competitiveness, and importer needs;

the Secretary shall establish or amend the standards to include economically and commercially practical levels of cleanliness for wheat, corn, barley, sorghum and soybeans.

(ii) The Secretary shall make a finding under this subsection for grain of the type described in clause (i) as soon as practicable after the date of enactment of this paragraph.

(B)(i) In establishing requirements for cleanliness characteristics, the Secretary shall—

(I) consider technical constraints, economic benefits and costs to producers and industry, the price competitiveness of United States agricultural production, and levels of cleanliness met by major competing nations that export wheat, corn, barley, sorghum and soybeans;

(II) promulgate regulations after providing for notice and an opportunity for public comment; and

(III) phase in any requirements for cleanliness characteristics by incrementally decreasing the levels of the objectionable material permitted in shipments of grade number 3 or better wheat, corn, barley, sorghum and soybeans.

(ii) Following the phase-in period referred to in clause (i)(III), subsequent revision of cleanliness requirements shall be conducted consistent with the schedule of the Secretary for reviewing grain standards.

(C) If the Secretary determines to establish requirements for cleanliness characteristics under this section, the Secretary shall ensure that such requirements are fully implemented not later than 6 years after the date of enactment of this paragraph.

(c)(1) In establishing standards under subsection (a) for each grain for which official grades are established, the Secretary shall establish for each such grain official grade-determining factors and factor limits that reflect the levels of soundness and purity that are consistent with end-use performance goals of the major foreign and domestic users of each such grain. Such factors and factor limits for grades number 3 and better shall provide users of such standards the best possible information from which to determine end-use product quality. The Secretary shall establish factors and factor limits that will provide that grain meeting the requirements for grades number 3 and better will perform in accordance with general trade expectations for the predominant uses of such grain.

(2) In establishing factors and factor limits under paragraph (1), the Secretary shall provide for notice and an opportunity for public comment prior to making changes in the grade-determining factors and factor limits that shall be applicable under this section to grain that is officially graded.

(d) If the Government of any country requests that moisture content remain a criterion in the official grade designations of grain, such criterion shall be included in determining the official grade designation of grain shipped to such country.

## OFFICIAL INSPECTION AND WEIGHING REQUIREMENTS

SEC. 5. [7 U.S.C. 77] (a) Whenever standards or procedures, are effective under section 4 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 in accordance with such standards or procedures, and unless a valid official certificate showing the official grade designation and certified weight of the lot of grain has been provided by official inspection personnel and is promptly furnished by the shipper, or the agent of the shipper, to the consignee with the bill of lading or other shipping documents covering the shipment: *Provided*, That the Secretary may waive the foregoing requirement in emergency or other circumstances which would not impair the objectives of this Act: *Provided further*, That the Secretary shall waive the requirement for official inspection whenever the parties to a contract for such shipment of a lot of grain (which is not sold, offered for sale, or consigned for sale by grade) from the United States to any place outside thereof mutually agree under the contract to ship such lot of grain without official inspection being performed and a copy of the contract is furnished to the Secretary prior to shipment;

(2) except as the Secretary may provide in emergency or other circumstances which would not impair the objectives of this Act, all other grain transferred out of and all grain transferred into an export elevator at an export port location shall be officially weighed in accordance with such standards or procedure: *Provided*, That, unless the shipper or receiver requests that the grain be officially weighed, intracompany shipments of grain into an export elevator by any mode of transportation, grain transferred into an export elevator by transportation modes other than barge, and grain transferred out of an export elevator to destinations within the United States shall not be officially weighed; and

(3) except as otherwise authorized by the Secretary, whenever a lot of grain is both officially inspected and officially weighed while being transferred into or out of a grain elevator, warehouse, or other storage or handling facility, 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 employees of the Secretary or any other person licensed under section 8 of this Act, shall be supervised by representatives of the Secretary, in accordance with such regulations as the Secretary may provide.

(c) The Secretary is authorized and directed to require that all corn exported from the United States be tested to ascertain whether it exceeds acceptable levels of aflatoxin contamination, unless



the contract for export between the buyer and seller stipulates that aflatoxin testing shall not be conducted.

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

SEC. 6. [7 U.S.C. 78] (a) Whenever standards relating to kind, class, quality, or condition of grain are effective under section 4 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 or lading, other documents, 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 criteria 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, or 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. [7 U.S.C. 79] (a) The Secretary is authorized to cause official inspection under the standards provided for in section 4 of this Act to be made of all grain required to be officially inspected as provided in section 5 of this Act, in accordance with such regulations as the Secretary may prescribe.

(b) The Secretary is further authorized, upon request of any interested person, and under such regulations as the Secretary 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 under standards provided for in section 4 of this Act, or, upon request of the interested person, under other criteria approved by the Secretary for determining the kind, class, quality, or condition of grain, or other facts relating to grain, whenever in the judgment of the Secretary providing such service will effectuate any of the objectives stated in section 2 of this Act.

(c) The regulations prescribed by the Secretary under this Act shall include provisions for reinspections and appeal inspections; cancellation and surrender of certificates superseded by reinspections and appeal inspections; and the use of standards forms for official certificates. The Secretary may provide by regulation that samples obtained by or for employees of the Secretary 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 Services Act of 1949, as amended (40 U.S.C. 471 et seq.).

(d) 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)(1) Except as otherwise provided in paragraph (2) of this subsection, the Secretary shall cause official inspection at export port locations, for all grain required or authorized to be inspected by this Act, to be performed by official inspection personnel employed by the Secretary or other persons under contract with the Secretary as provided in section 8 of this Act.

(2) If the Secretary determines, pursuant to paragraph (3) of this subsection, that a State agency is qualified to perform official inspection, meets the criteria in subsection (f)(1)(A) of this section, and (A) was performing official inspection at an export port location under this Act on July 1, 1976, or (B)(i) performed official inspection at an export port location at any time prior to July 1, 1976, (ii) was designated under subsection (f) of this section on the date of enactment of the Agriculture and Food Act of 1981 to perform official inspections at locations other than export port locations, and (iii) operates in a State from which total annual exports of grain do not exceed, as determined by the Secretary, 5 per centum of the total amount of grain exported from the United States annually, the Secretary may delegate authority to the State agency to perform all or specified functions involved in official inspection (other than appeal inspection) at export port locations within the State, including export port locations which may in the future be established, subject to such rules, regulations, instructions, and oversight as the Secretary may prescribe, and any such official inspection shall continue to be the direct responsibility of the Secretary. Any such delegation may be revoked by the Secretary, at the discretion of the Secretary, at any time upon notice to the State agency without opportunity for a hearing.

(3) Prior to delegating authority to a State agency for the performance of official inspection at export port locations pursuant to paragraph (2) of this subsection, the Secretary shall (A) conduct an investigation to determine whether such agency is qualified, and (B) make findings based on such investigation. In conducting the investigation, the Secretary shall consult with, and review the available files of the Department of Justice, the Office of Investigation of the Department of Agriculture (or such other organization or agency within the Department of Agriculture which may be delegated the authority, in lieu thereof, to conduct investigations on behalf of the Department of Agriculture), and the General Accounting Office.

(4) The Secretary may provide that grain loaded at an 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 manner provided in this subsection or subsection (f) of this section, as the Secretary determines will best meet the objectives of this Act.

(f)(1) With respect to official inspections other than at export port locations, the Secretary is authorized, upon application by any State or local governmental agency, or any person, to designate such agency or person as an official agency for the conduct of all

or specified functions involved in official inspection (other than appeal inspection) at locations where the Secretary determines official inspection is needed, if—

(A) the agency or person shows to the satisfaction of the Secretary that such agency or person—

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

(ii) will provide for the periodic rotation of official inspection personnel among the grain elevators, warehouses, or other storage or handling facilities at which the State or person provides official inspection, as is necessary to preserve the integrity of the official inspection service;

(iii) will meet training requirements and personnel standards established by the Secretary under section 8(g) of this Act;

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

(v) will not charge official inspection fees that are discriminatory or unreasonable;

(vi) if a State or local governmental agency, will not use any moneys collected pursuant to the charging of fees for any purpose other than the maintenance of the official inspection operation of the State or local governmental agency;

(vii) and any related entities do not have a conflict of interest prohibited by section 11 of this Act;

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

(ix) if a State or local governmental agency, will employ personnel on the basis of job qualifications rather than political affiliations;

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

(xi) meets other criteria established in regulations issued under this Act relating to official functions under this Act; and

(B) the Secretary determines that the applicant is better able than any other applicant to provide official inspection service.

(2) GEOGRAPHIC BOUNDARIES FOR OFFICIAL AGENCIES.—Not more than one official agency designated under paragraph (1) or State delegated authority under subsection (e)(2) to carry out the inspection provisions of this Act shall be operative at the same time in any geographic area defined by the Secretary, except that, if the Secretary determines that the presence of more than one designated official agency in the same geographic area will not undermine the policy stated in section 2, the Secretary may—

- (A) allow more than one designated official agency to carry out inspections within the same geographical area as part of a pilot program; and
- (B) allow a designated official agency to cross boundary lines to carry out inspections in another geographic area if the Secretary also determines that—
- (i) the current designated official agency for that geographic area is unable to provide inspection services in a timely manner;
  - (ii) a person requesting inspection services in that geographic area has not been receiving official inspection services from the current designated official agency for that geographic area; or
  - (iii) a person requesting inspection services in that geographic area requests a probe inspection on a barge-lot basis.
- (3) Except as authorized by the Secretary, no official agency or State delegated authority pursuant to subsection (e)(2) of this section shall officially inspect under this Act any official or other sample drawn from a lot of grain and submitted for inspection unless such lot of grain is physically located within the geographic area assigned to the agency by the Secretary at the time such sample is drawn.
- (4) No State or local governmental agency or person shall provide any official inspection for the purposes of this Act except pursuant to an unsuspended and unrevoked delegation of authority or designation by the Secretary, as provided in this section, or as provided in section 8(a) of this Act.
- (g)(1) Designations of official agencies shall terminate at such time as specified by the Secretary but not later than triennially and may be renewed in accordance with the criteria and procedure prescribed in subsection (f) of this section.
- (2) A designation of an official agency may be amended at any time upon application by the official agency if the Secretary determines that the amendment will be consistent with the provisions and objectives of this Act; and a designation will be cancelled upon request by the official agency with ninety days written notice to the Secretary. A fee as prescribed by regulations of the Secretary shall be paid by the official agency to the Secretary for each such amendment, to cover the costs incurred by the Secretary in connection therewith, and it shall be deposited in the fund created in subsection (j) of this section.
- (3) The Secretary may revoke a designation of an official agency whenever, after opportunity for hearing is afforded the agency, the Secretary determines that the agency has failed to meet one or more of the criteria specified in subsection (f) of this section or the regulations under this Act for the performance of official functions, or otherwise has not complied with any provision of this Act or any regulation prescribed or instruction issued to such agency under this Act, or has been convicted of any violation of other Federal law involving the handling or official inspection of grain: *Provided*, That the Secretary may, without first affording the official agency an opportunity for a hearing, suspend any designation pending final determination of the proceeding whenever the Secretary has

reason to believe there is cause for revocation of the designation and considers such action to be in the best interest of the official inspection system under this Act. The Secretary shall afford any such agency an opportunity for a hearing within thirty days after temporarily suspending such designation.

(h) If the Secretary determines that official inspection by an official agency designated under subsection (f) of this section is not available on a regular basis at any location (other than at an export port location) where the Secretary determines such inspection is needed to effectuate the objectives stated in section 2 of this Act, and that no official agency within reasonable proximity to such location is willing to provide or has or can acquire adequate personnel and facilities for providing such service on an interim basis, official inspection shall be provided by authorized employees of the Secretary, and other persons licensed by the Secretary to perform official inspection functions, as provided in section 8 of this Act, until such time as the service can be provided on a regular basis by an official agency.

(i) The Secretary is authorized to cause official inspection under this Act to be made, as provided in subsection (a) of section 5 of this Act, 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. All or specified functions of such inspection shall be performed by official inspection personnel employed by the Secretary or, except for appeals, by persons operating under a contract with the Secretary or as otherwise provided by agreement with the Canadian Government.

(j)(1) The Secretary shall, under such regulations as the Secretary may prescribe, charge and collect reasonable inspection fees to cover the estimated cost to the Secretary incident to the performance of official inspection except when the official inspection is performed by a designated official agency or by a State under a delegation of authority. The fees authorized by this subsection shall, as nearly as practicable and after taking into consideration any proceeds from the sale of samples, cover the costs of the Secretary incident to its performance of official inspection services in the United States and on United States grain in Canadian ports, including administrative and supervisory costs related to such official inspection of grain. 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 Secretary incident to providing services under this Act.

(2) Each designated official agency and each State agency to which authority has been delegated under subsection (e) of this section shall pay to the Secretary fees in such amount as the Secretary determines fair and reasonable and as will cover the estimated costs incurred by the Secretary relating to supervision of official agency personnel and supervision by the Secretary of the Secretary's field office personnel, except costs incurred under paragraph (3) of subsection (g) of this section and sections 9, 10, and 14 of this Act. The fees shall be payable after the services are per-

formed at such times as specified by the Secretary and shall be deposited in the fund created in paragraph (1) of this subsection. Failure to pay the fee within thirty days after it is due shall result in automatic termination of the delegation or designation, which shall be reinstated upon payment, within such period as specified by the Secretary, of the fee currently due plus interest and any further expenses incurred by the Secretary because of such termination. The interest rate on overdue fees shall be as prescribed by the Secretary, but not less than the current average market yield on outstanding marketable obligations of the United States of comparable maturity, plus an additional charge of not to exceed 1 per centum per annum as determined by the Secretary and adjusted to the nearest one-eighth of 1 per centum.

(3) Any sums collected or received by the Secretary under this Act and deposited to the fund created in paragraph (1) of this subsection and any late payment penalties collected by the Secretary and credited to such fund may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. The interest earned on such sums and any late payment penalties collected by the Secretary shall be credited to the fund and shall be available without fiscal year limitation for the expenses of the Secretary incident to providing services under this Act.

(4) The duties imposed by paragraph (2) on designated official agencies and State agencies described in such paragraph and the investment authority provided by paragraph (3) shall expire on September 30, 2015. After that date, the fees established by the Secretary pursuant to paragraph (1) shall not cover administrative and supervisory costs related to the official inspection of grain.

#### WEIGHING AUTHORITY

SEC. 7A. [7 U.S.C. 79a] (a) The Secretary shall cause official weighing under standards or procedures provided for in section 4 of this Act to be made of all grain required to be officially weighed as provided in section 5 of this Act, in accordance with such regulations as the Secretary may prescribe.

(b) The Secretary is authorized to cause official weighing or supervision of weighing under standards or procedures provided in section 4 of this Act to be performed at any grain elevator, warehouse, or other storage or handling facility located other than at export elevators at export port locations at which official inspection is provided pursuant to the provisions of this Act, in such manner as the Secretary deems appropriate and under such regulations as the Secretary may provide.

(c)(1) With respect to official weighing or supervision of weighing for locations at which official inspection is provided by the Secretary, the Secretary shall cause such official weighing or supervision of weighing to be performed by official inspection personnel employed by the Secretary.

(2) With respect to official weighing or supervision of weighing for any location at which official inspection is provided other than by the Secretary, the Secretary is authorized, with respect to export port locations, to delegate authority to perform official weigh-

ing or supervision of weighing to the State agency providing official inspection service at such location, and with respect to any other location, to designate the agency or person providing official inspection service at such location to perform official weighing or supervision of weighing, if such agency or person qualifies for a delegation of authority or designation under section 7 of this Act, except that where the term "official inspection" is used in such section it shall be deemed to refer to "official weighing" or "supervision of weighing" under this section. If such agency or person is not available to perform such weighing services, or the Secretary determines that such agency or person is not qualified to perform such weighing services, then (A) at export port locations official weighing or supervision of weighing shall be performed by official inspection personnel employed by the Secretary, and (B) at any other location, the Secretary is authorized to cause official weighing or supervision of weighing to be performed by official inspection personnel employed by the Secretary or designate any State or local governmental agency, or any person to perform official weighing or supervision of weighing, if such agency, or person meets the same criteria that agencies must meet to be designated to perform official inspection as set out in section 7 of this Act, except that where the term "official inspection" is used in such section it shall be deemed to refer to "official weighing" or "supervision of weighing" under this section. Delegations and designations made pursuant to this subsection shall be subject to the same provisions for delegations and designations set forth in subsection (g) of section 7 of this Act.

(d) The Secretary is authorized to cause official weighing under this Act to be made, as provided in subsection (a) of section 5 of this Act, in Canadian ports of United States export grain transhipped through Canada; and pursuant thereto the Secretary is authorized to enter into an agreement with the Canadian Government for such official weighing. All or specified functions of such weighing shall be performed by official inspection personnel employed by the Secretary or, except for appeals, by persons operating under a contract with the Secretary or as otherwise provided by agreement with the Canadian Government.

(e) The Secretary is further authorized to cause official weighing or supervision of weighing under standards or procedures provided for in section 4 of this Act to be made at grain elevators, warehouses, or other storage or handling facilities not subject to subsection (a) or (b) of this section, upon request of the operator of such grain elevator, warehouse, or other storage or handling facility and in accordance with such regulations as the Secretary may prescribe.

(f) No official weighing or supervision of weighing shall be provided for the purposes of this act at any grain elevator, warehouse, or other storage or handling facility until such time as the operator of the facility has demonstrated to the satisfaction of the Secretary that the operator (1) has and will maintain, in good order, suitable grain-handling equipment and accurate scales for all weighing of grain at the facility, in accordance with the regulations of the Secretary; (2) will permit only competent persons with a reputation for honesty and integrity and who are approved by the Secretary to op-

erate the scales and to handle grain in connection with weighing of the grain, in accordance with this Act; (3) when weighing is to be done by persons other than official inspection personnel, will require such persons to operate the scales in accordance with the regulations of the Secretary and to require that each lot of grain for delivery from any railroad car, truck, barge, vessel, or other means of conveyance at the facility is entirely removed from such means of conveyance and delivered to the scales without avoidable waste or loss, and each lot of grain weighed at the elevator for shipment from the facility is entirely delivered to the means of conveyance for which intended, and without avoidable waste or loss, in accordance with the regulations of the Secretary; (4) will provide all assistance needed by the Secretary for making any inspection or examination and carrying out other functions at the facility pursuant to this Act; and (5) will comply with all other requirements of this Act and the regulations hereunder.

(g) Official certificates setting out the results of official weighing or supervision of weighing, issued and not cancelled 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 herein.

(h) No State or local governmental agency or person shall weigh or state in any document the weight of grain determined at a location where official weighing is required to be performed as provided for in this section except in accordance with the procedures prescribed pursuant to this section.

(i) UNAUTHORIZED WEIGHING PROHIBITED.—

(1) IN GENERAL.—No State or local governmental agency or person other than an authorized employee of the Secretary shall perform official weighing or supervision of weighing for the purposes of this Act except in accordance with the provisions of an unsuspended and unrevoked delegation of authority or designation by the Secretary as provided in this section or as otherwise provided in section 7(i) and subsection (d).

(2) GEOGRAPHIC BOUNDARIES FOR OFFICIAL AGENCIES.—Not more than one designated official agency referred to in paragraph (1) or State agency delegated authority pursuant to subsection (c)(2) to carry out the weighing provisions of this Act shall be operative at the same time in any geographic area defined by the Secretary, except that, if the Secretary determines that the presence of more than one designated official agency in the same geographic area will not undermine the policy stated in section 2, the Secretary may—

(A) allow more than one designated official agency to carry out the weighing provisions within the same geographical area as part of a pilot program; and

(B) allow a designated official agency to cross boundary lines to carry out the weighing provisions in another geographic area if the Secretary also determines that—

(i) the current designated official agency for that geographic area is unable to provide the weighing services in a timely manner; or

(ii) a person requesting weighing services in that geographic area has not been receiving official weigh-



ing services from the current designated official agency for that geographic area.

(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 Secretary shall be afforded access to any elevator, warehouse, or other storage or 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.

(1)(1) The Secretary shall, under such regulations as the Secretary may prescribe, charge and collect reasonable fees to cover the estimated costs to the Secretary incident to the performance of the functions provided for under this section except as otherwise provided in paragraph (2) of this subsection. The fees authorized by this paragraph shall, as nearly as practicable, cover the costs of the Secretary incident to performance of its functions related to weighing, including administrative and supervisory costs directly related thereto. Such fees shall be deposited into the fund created in section 7(j) of this Act.

(2) Each agency to which authority has been delegated under this section and each agency or other person which has been designated to perform functions related to weighing under this section shall pay to the Secretary fees in such amount as the Secretary determines fair and reasonable and as will cover the costs incurred by the Secretary relating to supervision of the agency personnel and supervision by the Secretary of the Secretary's field office personnel incurred as a result of the functions performed by such agencies, except costs incurred under sections 7(g)(3), 9, 10, and 14 of this Act. The fees shall be payable after the services are performed at such times as specified by the Secretary and shall be deposited in the fund created in section 7(j) of this Act. Failure to pay the fee within thirty days after it is due shall result in automatic termination of the delegation or designation, which shall be reinstated upon payment, within such period as specified by the Secretary, of the fee currently due plus interest and any further expenses incurred by the Secretary because of such termination. The interest rate on overdue fees shall be as prescribed by the Secretary, but not less than the current average market yield on outstanding marketable obligations of the United States of comparable maturity, plus an additional charge of not to exceed 1 per centum per annum as determined by the Secretary, and adjusted to the nearest one-eighth of 1 per centum.

(3) The authority provided to the Secretary by paragraph (1) and the duties imposed by paragraph (2) on agencies and other persons described in such paragraph shall expire on September 30, 2015. After that date, the Secretary shall, under such regulations as the Secretary may prescribe, charge and collect reasonable fees to cover the estimated costs of official weighing and supervision of weighing except when the official weighing or supervision of weighing is performed by a designated official agency or by a State under a delegation of authority. The fees authorized by this paragraph shall, as nearly as practicable, cover the costs of the Secretary inci-

dent to its performance of official weighing and supervision of weighing services in the United States and on United States grain in Canadian ports, excluding administrative and supervisory costs. The fees authorized by this paragraph shall be deposited into a fund which shall be available without fiscal year limitation for the expenses of the Secretary incident to providing services under this Act.

#### TESTING OF EQUIPMENT

SEC. 7B. [7 U.S.C. 79b] (a) The Secretary shall provide for the testing of all equipment used in the sampling, grading, inspection, and weighing for the purpose of official inspection, official weighing, or supervision of weighing of grain located at all grain elevators, warehouses, or other storage or handling facilities at which officials inspection or weighing services are provided under this Act, to be made on a random and periodic basis, under such regulations as the Secretary may prescribe, as the Secretary deems necessary to assure the accuracy and integrity of such equipment. Such regulations shall provide for the charging and collection of reasonable fees to cover the estimated costs to the Secretary incident to the performance of such testing by employees of the Secretary. Such fees shall be deposited into the fund created by section 7(j) of this Act.

(b) The Secretary is authorized to cause such testing provided for in subsection (a) to be performed (1) by personnel employed by the Secretary, or (2) by States, political subdivisions thereof, or persons under the supervision of the Secretary, under such regulations as the Secretary may prescribe.

(c) Notwithstanding any other provision of law, no person shall use for the purposes of this Act any such equipment not approved by the Secretary.

(7 U.S.C. 79b)

#### LIMITATION AND ADMINISTRATIVE AND SUPERVISORY COSTS

SEC. 7D. [7 U.S.C. 79d] The total administrative and supervisory costs which may be incurred under this Act for services performed (excluding standardization, compliance, and foreign monitoring activities) for each of the fiscal years 1989 through 2015 shall not exceed 30 per centum of the total costs for such activities carried out by the Secretary for such year.

#### LICENSES AND AUTHORIZATIONS

SEC. 8. [7 U.S.C. 84] (a) The Secretary is authorized (1) to issue a license to any individual upon presentation to the Secretary of satisfactory evidence that such individual is competent, and is employed (or is supervised under a contractual arrangement) by an official agency or a State agency delegated authority under section 7 or 7A of this Act, to perform all or specified functions involved in original inspection or reinspection functions involved in official inspection, or in the official weighing or the supervision of weighing, other than appeal weighing, or grain in the United States; (2) to authorize any competent employee of the Secretary to (A) perform all or specified original inspection, reinspection, or appeal in-

spection functions involved in official inspection of grain in the United States, or of United States grain in Canadian ports, (B) perform official weighing or supervision of weighing (including appeal weighing) of grain in the United States, or of United States grain in Canadian ports, (C) supervise the official inspection, official weighing, or supervision of weighing of grain in the United States and of United States grain in Canadian ports or the testing of equipment, and (D) perform monitoring activities in foreign ports with respect to grain officially inspected and officially weighed under this Act; (3) to contract with any person or government agency to perform specified sampling, laboratory testing, inspection, weighing, and similar technical functions and to license competent persons to perform such functions pursuant to such contract; and (4) to contract with any competent person for the performance of monitoring activities in foreign ports with respect to grain officially inspected and officially weighed under this Act. Except as otherwise provided in sections 7(i) and 7A(d), no person shall perform any official inspection or weighing function for purposes of this Act unless such person holds an unsuspended and unrevoked license or authorization from the Secretary under this Act.

(b) All classes of licenses issued under this Act shall terminate triennially on a date or dates to be fixed by regulation of the Secretary: *Provided*, That any license shall be suspended automatically when the licensee ceases to be employed by an official agency or by a State agency under a delegation of authority pursuant to this Act or to operate under the terms of a contract for the conduct of any functions under this Act: *Provided further*, That subject to subsection (c) of this section such license shall be reinstated if the licensee is employed by an official agency or by a State agency under a delegation of authority pursuant to this Act or resumes operation under such a contract within one year of the suspension date and the license has not expired in the interim.

(c) The Secretary may require such examinations and reexaminations as the Secretary may deem warranted to determine the competence of contract with the Secretary shall not, unless otherwise employed by the Federal Government, be determined to be employees of the Federal Government of the United States: *Provided*, That such persons shall be considered in the performance of any official inspection, official weighing, or supervision of weighing function as prescribed by this Act or by the rules and regulations of the Secretary, as persons acting for or on behalf of the United States, for the purpose of determining the application of section 201 of title 18 of the United States Code, to such persons and as employees of the Department of Agriculture assigned to perform inspection functions for the purposes of sections 1114 and 111 of title 18 of the United States Code.

(d) Persons employed or supervised under a contractual arrangement by an official agency (including persons employed or supervised under a contractual arrangement by a State agency under a delegation of authority pursuant to this Act) and persons performing official inspection functions under contract with the Secretary shall not, unless otherwise employed by the Federal Government, be determined to be employees of the Federal Government of the United States: *Provided*, That such persons shall be consid-

ered in the performance of any official inspection, official weighing, or supervision of weighing function as prescribed by this Act or by the rules and regulations of the Secretary, as persons acting for or on behalf of the United States, for the purpose of determining the application of section 201 of title 18 of the United States Code, to such persons and as employees of the Department of Agriculture assigned to perform inspection functions for the purposes of sections 1114 and 111 of title 18 of the United States Code.

(e) The Secretary may hire (without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service) as official inspection personnel any individual who is licensed (on the date of enactment of the United States Grain Standards Act of 1976) to perform functions of official inspection under the United States Grain Standards Act and as personnel to perform supervisory weighing or official weighing functions any individual who, on the date of enactment of the United States Grain Standards Act of 1976, was performing similar functions: *Provided*, That the Secretary determines that such individual is of good moral character and is technically and professionally qualified for the duties to which the individual will be assigned. The Secretary may compensate such personnel at any rate within the appropriate grade of the General Schedule as the Secretary deems necessary without regard to section 5333 of title 5 of the United States Code.

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

(g) The Secretary shall develop and effectuate standards for the recruiting, training, and supervising of official inspection personnel and appropriate work production standards for such personnel, which shall be applicable to the Secretary, all State agencies under delegation of authority pursuant to this Act, and all official agencies and all persons licensed or authorized to perform functions under this Act: *Provided*, That persons licensed or authorized on the date of enactment of the United States Grain Standards Act of 1978 to perform any official function under this Act, shall be exempted from the uniform recruiting and training provisions of this subsection and regulations or standards issued pursuant thereto if the Secretary 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 Secretary deems necessary.

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

SEC. 9. [7 U.S.C. 85] The Secretary may refuse to renew, or may suspend or revoke, any license issued under this Act whenever, after the licensee has been afforded an opportunity for a hearing, the Secretary shall determine that such licensee is incompetent, or has inspected or weighed or supervised the weighing of 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 or supervised the weighing of 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 the license 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 the licensee by the Secretary under this Act. The Secretary may, without first affording the licensee an opportunity for a hearing, suspend any license temporarily pending final determination whenever the Secretary deems such action to be in the best interests of the official inspection system under this Act. The Secretary may summarily revoke any license whenever the licensee has been convicted of any offense prohibited by section 13 of this Act or convicted of any offense proscribed by title 18 of the United States Code, with respect to performance of functions under this Act.

REFUSAL OF INSPECTION AND WEIGHING SERVICES AND CIVIL  
PENALTIES

SEC. 10. [7 U.S.C. 86] (a) The Secretary may (for such period, or indefinitely, as the Secretary deems necessary to effectuate the purposes of this Act) refuse to provide official inspection or the services related to weighing otherwise available under this Act with respect to any grain offered for such services, or owned, wholly or in part, by any person if the Secretary 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; or in case of any such business entity, any individual who is otherwise responsibly connected with the business) has knowingly committed any violation of section 13 of this Act or has been convicted of any violation of other Federal law with respect to the handling, weighing, or official inspection of grain, or that official inspection or the services related to weighing have 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 such service with respect to such grain would be inimical to the integrity of the service.

(b) For purposes of paragraph (a) of this section, a person shall be deemed to be responsibly connected with a business if the person 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) In addition to, or in lieu of, penalties provided under section 14 of this Act, or in addition to, or in lieu of, refusal of official inspection or services related to weighing in accordance with this section, the Secretary may assess against any person who has knowingly committed any violation of section 13 of this Act or has been convicted of any violation of other Federal law with respect to the handling, weighing, or official inspection of grain a civil penalty not to exceed \$75,000 for each such violation as the Secretary deter-

mines is appropriate to effectuate the objectives stated in section 2 of this Act.

(d) Before official inspection or services related to weighing is refused to any person or a civil penalty is assessed against any person under this section, such person shall be afforded opportunity for a hearing in accordance with sections 554, 556, and 557 of title 5 of the United States Code: *Provided*, That the Secretary may, without first affording the person a hearing, refuse official inspection or services related to weighing temporarily pending final determination whenever the Secretary has reason to believe there is cause for refusal of inspection or services related to weighing and considers such action to be in the best interest of the official inspection system under this Act. The Secretary shall afford such person an opportunity for a hearing within seven days after temporarily refusing official inspection or services related to weighing; and such hearing and ancillary procedures related thereto shall be conducted in an expedited manner.

(e) Moneys received in payment of such civil penalties shall be deposited in the general fund of the United States Treasury. Upon any failure to pay the penalties assessed under this section, the Secretary 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 (h) of section 17 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. [7 U.S.C. 87] (a) No person licensed or authorized by the Secretary to perform any official function under this Act, or employed by the Secretary 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 as involving a conflict of interest: *Provided, however*, That the Secretary may license qualified employees of any grain elevators or warehouses to perform official sampling functions, under such conditions as the Secretary may by regulation prescribe, and the Secretary may by regulation provide such other exceptions to the restrictions of this section as the Secretary determines are consistent with the purposes of this Act.

(b)(1) No official agency or a State agency delegated authority under this Act, or any member, director, officer, or employee thereof, and no business or governmental entity related to any such agency, shall be employed in or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any business involving the commercial transportation, storage, merchandising, or other commercial handling of grain, or the use of official inspection service (except that in the case of a producer such use shall not be prohibited for grain in which the producer does not have an interest); and no business or government entity conducting

any such business, or any member, director, officer, or employee thereof, and no other business or governmental entity related to any such entity, shall operate or be employed by or directly or indirectly have any stock or other financial interest in, any official agency or a State agency delegated inspection authority. Further, no substantial stockholder in any incorporated official agency shall be employed in or otherwise engaged in, or be a substantial stockholder in any corporation conducting any such business, or directly or indirectly have any other kind of financial interest in any such business; and no substantial stockholder in any corporation conducting such a business shall operate or be employed by or be a substantial stockholder in, or directly or indirectly have any other kind of financial interest in, any official agency.

(2) A substantial stockholder of a corporation shall be any person holding 2 per centum or more, or one hundred shares or more, of the voting stock of the corporation, whichever is the lesser interest. Any entity shall be considered to be related to another entity if it owns or controls, or is owned or controlled by, such other entity, or both entities are owned or controlled by another entity.

(3) Each State agency delegated official weighing authority under section 7A and each State or local agency or other person designated by the Secretary under such section to perform official weighing or supervision of weighing shall be subject to the provisions of subsection (b) of this section. The term "use of official inspection service" shall be deemed to refer to the use of the services provided under such a delegation or designation.

(4) If a State or local governmental agency is delegated authority to perform official inspection or official weighing or supervision of weighing, or a State or local governmental agency is designated as an official agency, the Secretary shall specify the officials and other personnel thereof to which the conflict of interest provisions of this subsection (b) apply.

(5) Notwithstanding the foregoing provisions of this subsection, the Secretary may delegate authority to a State agency or designate a governmental agency, board of trade, chamber of commerce, or grain exchange to perform official inspection or perform official weighing or supervision of weighing except that for purposes of supervision of weighing only, the Secretary may also designate any other person, if the Secretary determines that any conflict of interest which may exist between the agency or person or any member, director, officer, employee, or stockholder thereof and any business involving the transportation, storage, merchandising, or other handling of grain or use of official inspection or weighing service is not such as to jeopardize the integrity or the effective and objective operation of the functions performed by such agency. Whenever the Secretary makes such a determination and makes a delegation or designation to an agency that has a conflict of interest otherwise prohibited by this subsection, the Secretary shall, within thirty days after making such a determination, submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, detailing the factual bases for such determination.

(c) The provisions of this section shall not prevent an official agency or State agency delegated authority under this Act from engaging in the business of weighing grain.

## RECORDS

SEC. 12.<sup>1</sup> [7 U.S.C. 87a] (a) Every official agency, every State agency delegated authority under this Act, and every person licensed to perform any official inspection or official weighing or supervision of weighing function under this Act shall maintain such samples of officially inspected grain and such other records as the Secretary may by regulation prescribe for the purpose of administration and enforcement of this Act.

(b) Every official agency, every State agency delegated authority under this Act, and every person licensed to perform any official inspection or official weighing or supervision of weighing function under this Act required to maintain records under this section shall keep such records for a period of five years after the inspection, weighing, or transaction, which is the subject of the record, occurred: *Provided*, That grain samples shall be required to be maintained only for such period not in excess of ninety days as the Secretary, 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 or to be maintained for not more than three years in addition to the five-year period whenever in the judgment of the Secretary the retention of such records for the longer period is necessary for the effective administration and enforcement of this Act.

(c) Every official agency, every State agency delegated authority under this Act, and every person licensed to perform any official inspection or official weighing or supervision of weighing function under this Act required to maintain records under this section shall permit any authorized representative of the Secretary or the Comptroller General of the United States to have access to, and to copy, such records at all reasonable times. The Secretary shall, from time to time, perform audits of official agencies and State agencies delegated authority under this Act in such manner and at such periodic intervals as the Secretary deems appropriate.

(d) Every State, political subdivision thereof, or person who is the owner or operator of a commercial grain elevator, warehouse, or other storage or handling facility 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 weighing services shall maintain such complete and accurate records for such period of time as the Secretary may, by regulation, prescribe for the purpose of the administration and enforcement of this Act, and permit any

<sup>1</sup> The undesignated paragraph under the heading "SALARIES AND EXPENSES" under the heading "FEDERAL GRAIN INSPECTION SERVICE" in title I of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994 (Public Law 103-111; 107 Stat. 1055; 7 U.S.C. 87a note) provides in the second proviso as follows: "*Provided further*, That hereafter, none of the funds available to the Federal Grain Inspection Service may be used to pay the salaries of any person or persons who require, or who authorize payments from fee-supported funds to any person or persons who require nonexport, nonterminal interior elevators to maintain records not involving official inspection or official weighing in the United States under Public Law 94-582 [the United States Grain Standards Act of 1976 (90 Stat. 2867)] other than those necessary to fulfill the purposes of such Act."



authorized representative of the Secretary, at all reasonable times, to have access to, and to copy, such records and to have access to any grain elevator, warehouse, or other storage or handling facility used by such persons for handling of grain.

## PROHIBITED ACTS

SEC. 13. [7 U.S.C. 87b] (a) No person shall—

(1) knowingly falsely make, issue, alter, forge, or counterfeit any official certificate or other official form or official 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 mark, or knowingly possess, without promptly notifying the Secretary or the representative of the Secretary, 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 or supervision of weighing knowing that it has been deceptively loaded, handled, weighed, or sampled, without disclosing such knowledge to the official inspection personnel before official sampling or official weighing or supervision of weighing;

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

(5) knowingly use any official grade designation or official 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, or officially inspected and found to be of a particular kind, class, quality, or condition, or that particular facts have been established with respect to grain by official inspection under this Act, or that any weighing service under this Act has been performed with respect to grain;

(7) improperly influence, or attempt to improperly influence, any official inspection personnel or personnel of agencies delegated authority or of agencies or other persons designated under this Act or any officer or employee of the Department of Agriculture with respect to the performance of the duties of the officer, employee, or other person under this Act;

(8) forcibly assault, resist, oppose, impede, intimidate, or interfere with any official inspection personnel or personnel of agencies delegated authority or of agencies or other persons designated under this Act or any officer or employee of the Department of Agriculture in, or on account of, the performance of the duties of the officer, employee, or other person under this Act;

(9) falsely represent that the person is licensed or authorized to perform an official inspection or official weighing or supervision of 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 supervision of weighing;

(11) violate section 5, 6, 7, 7A, 7B, 8, 11, 12, 16, or 17A;

(12) knowingly engage in falsely stating or falsifying the weight of any grain shipped in interstate or foreign commerce by any means, including, but not limited to, the use of inaccurate, faulty, or defective weighing equipment; or

(13) knowingly prevent or impede any buyer or seller of grain or other person having a financial interest in grain, or the authorized agent of any such person, from observing the loading of the grain inspected under this Act and the weighing, sampling, and inspection of such grain under conditions prescribed by the Secretary.

(b) No person licensed or authorized to perform any function under this Act shall—

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

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

(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 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.

(d)(1) Subject to paragraphs (2) and (3), to ensure the quality of grain marketed in or exported from the United States—

(A) no dockage or foreign material, as defined by the Secretary, once removed from grain shall be recombined with any grain; and

(B) no dockage or foreign material of any origin may be added to any grain.

(2) Nothing in paragraph (1) shall be construed to prohibit—

(A) the treatment of grain to suppress, destroy, or prevent insects and fungi injurious to stored grain;

(B) the marketing, domestically or for export, of dockage or foreign material removed from grain if such dockage or foreign material is marketed—

(i) separately and uncombined with any such whole grain;

(ii) in pelletized form; or

(iii) as a part of a processed ration for livestock, poultry, or fish;

(C) the blending of grain with similar grain of a different quality to adjust the quality of the resulting mixture;

(D) the recombination of broken corn or broken kernels, as defined by the Secretary, with grain of the type from which the broken corn or broken kernels were derived;

(E) effective for the period ending December 31, 1987, the recombination of dockage or foreign material, except dust, removed at an export loading facility from grain destined for shipment as a cargo under one export official certificate of inspection if—

(i) the recombination occurs during the loading of the cargo;

(ii) the purpose is to ensure uniformity of dockage or foreign material throughout that specific cargo; and

(iii) the separation and recombination are conducted in accordance with regulations issued by the Secretary; or

(F) the addition to grain of a dust suppressant, or the addition of confetti or any other similar material that serves the same purpose in a quantity necessary to facilitate identification of ownership or origin of a particular lot of grain.

(3)(A) The Secretary may, by regulation, exempt from paragraph (1) the last handling of grain in the final sale and shipment of such grain to a domestic user or processor if such exemption is determined by the Secretary to be in the best economic interest of producers, grain merchants, the industry involved, and the public.

(B) Grain sold under an exemption authorized by this paragraph shall be consumed or processed into one or more products by the purchaser, but may not be resold into commercial channels for such grain or blended with other grain for resale. Neither products nor byproducts derived therefrom (except vegetable oils as defined by the Secretary and used as a dust suppressant) shall be blended with or added to grain in commercial channels.

(e)(1) The Secretary may prohibit the contamination of sound and pure grain, or prohibit disguising the quality of grain, as a result of the introduction of—

(A) nongrain substances;

(B) grain unfit for ordinary commercial purposes; or

(C) grain that exceeds action limits established by the Food and Drug Administration or grain having residues that exceed the tolerance levels established by the Environmental Protection Agency.

(2) No prohibition imposed under this section shall be construed to restrict the marketing of any grain so long as the grade or condition of the grain is properly identified.

(3) Prior to taking action under this subsection, the Secretary shall promulgate regulations after providing for notice and an opportunity for public comment, that identify and define actions and conditions that are subject to prohibition.

(4) In no case shall the Secretary prohibit the blending of an entire grade of grain.

(5) In implementing paragraph (1)(C), the Secretary shall report any prohibitions to other appropriate public health agencies.

## CRIMINAL PENALTIES

SEC. 14. [7 U.S.C. 87c] (a) Any person who commits an offense prohibited by section 13 (except an offense prohibited by paragraphs (a)(7), (a)(8), and (b)(4) in which case the person shall be subject to the general penal statutes in title 18 of the United States Code relating to crimes and offenses against the United States) shall be guilty of a felony and shall, on conviction thereof, be subject to imprisonment for not more than five years, or a fine of not more than \$20,000, or both such imprisonment and fine.

(b) Nothing in this Act shall be construed as requiring the Secretary to report minor violations of this Act for criminal prosecution whenever the Secretary 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 the Secretary believes that institution of a proceeding under section 10 of this Act will obtain compliance with this Act and the Secretary institutes such a proceeding.

(c) Any officer or employee of the Department of Agriculture assigned to perform weighing functions under this Act shall be considered as an employee of the Department of Agriculture assigned to perform inspection functions for the purposes of sections 1114 and 111 of title 18 of the United States Code.

## RESPONSIBILITY FOR ACTS OF OTHERS

SEC. 15. [7 U.S.C. 87d] 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 the employment or office of the official, agent, or other person 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. [7 U.S.C. 87e] (a) The Secretary is authorized to conduct such investigations; hold such hearings; require such reports from any official agency, any State agency delegated authority under this Act, license, or other person; and prescribe such rules, regulations, and instructions, as the Secretary deems necessary to effectuate the purposes or provisions of this Act. Such regulations may require, as a condition for official inspection or official weighing or supervision of weighing, among other things, (1) that there be installed specified sampling, handling, weighing, and monitoring equipment in grain elevators, warehouses, and other grain storage or handling facilities, (2) that approval of the Secretary be obtained as to the condition of vessels and other carriers or receptacles for the transporting or storing of grain, and (3) that persons having a financial interest in the grain which is to be inspected (or their agents) shall be afforded an opportunity to observe the weighing, loading, and official inspection thereof, under conditions prescribed by the Secretary. 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 may

adopt to effectuate the objectives of this Act, if the relevant facts are determinable by such tests. Proceedings under section 9 of this Act for refusal 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 of the United States Code.

(b) The Secretary is authorized to investigate reports or complaints of discrepancies and abuses in the official inspection and weighing of grain under this Act. The Secretary shall prescribe by regulation procedures for (1) promptly investigating (A) complaints of foreign grain purchasers regarding the official inspection or official weighing of grain shipped from the United States, (B) the cancellation of contracts for the export sale of grain required to be inspected or weighed under this Act, and (C) 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.

(c) The Secretary is authorized to cause official inspection 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 of Agriculture (or such other organization or agency within the Department of Agriculture which may be delegated the authority, in lieu thereof, to conduct investigations on behalf of the Department of Agriculture) shall 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 integrity of official inspection and weighing under this Act.

(e) The Secretary is authorized to conduct, in cooperation with 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 Secretary shall, notwithstanding any other provision of law, provide adequate personnel to meet the inspection and weighing requirements of this Act.

(g) TESTING OF CERTAIN WEIGHING EQUIPMENT.—(1) Subject to paragraph (2), the Secretary may provide for the testing of weighing equipment used for purposes other than weighing grain. The testing shall be performed—

(A) in accordance with such regulations as the Secretary may prescribe; and

(B) for a reasonable fee established by regulation or contractual agreement and sufficient to cover, as nearly as practicable, the estimated costs of the testing performed.

(2) Testing performed under paragraph (1) may not conflict with or impede the objectives specified in section 2.

(h) TESTING OF GRAIN INSPECTION INSTRUMENTS.—(1) Subject to paragraph (2), the Secretary may provide for the testing of grain inspection instruments used for commercial inspection. The testing shall be performed—

(A) in accordance with such regulations as the Secretary may prescribe; and

(B) for a reasonable fee established by regulation or contractual agreement and sufficient to cover, as nearly as practicable, the estimated costs of the testing performed.

(2) Testing performed under paragraph (1) may not conflict with or impede the objectives specified in section 2.

(i) ADDITIONAL FOR FEE SERVICES.—(1) In accordance with such regulations as the Secretary may provide, the Secretary may perform such other services as the Secretary considers to be appropriate.

(2) In addition to the fees authorized by sections 7, 7A, 7B, 17A, and this section, the Secretary shall collect reasonable fees to cover the estimated costs of services performed under paragraph (1) other than standardization and foreign monitoring activities.

(3) To the extent practicable, the fees collected under paragraph (2), together with any proceeds from the sale of any samples, shall cover the costs, including administrative and supervisory costs, of services performed under paragraph (1).

(j) DEPOSIT OF FEES.—Fees collected under subsections (g), (h), and (i) shall be deposited into the fund created under section 7(j).

(k) OFFICIAL COURTESIES.—The Secretary may extend appropriate courtesies to official representatives of foreign countries in order to establish and maintain relationships to carry out the policy stated in section 2. No gift offered or accepted pursuant to this subsection shall exceed \$20 in value.

#### ENFORCEMENT PROVISIONS

SEC. 17. [7 U.S.C. 87f] (a) For the purposes of this Act, the Secretary 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 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 Secretary 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 subpoena the Secretary may invoke the aid of any court designated in paragraph (h) 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 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 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 the power of the person to do so, in obedience to the subpoena or lawful requirement of the Secretary shall be guilty of a misdemeanor, and upon conviction thereof be subject to imprisonment for not more than 1 year or a fine of not more than \$10,000 or both the imprisonment and fine.

[(f) & (g) are Repealed.]

(h) 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.

#### REGISTRATION REQUIREMENTS

SEC. 17A. [7 U.S.C. 87-1] (a) The Secretary shall provide, by regulation, for the registration of all persons engaged in the business of buying grain for sale in foreign commerce, and in the business of handling, weighing, or transporting of grain for sale in 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 the producer has purchased;

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

(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.

(b)(1) All persons required to register under this Act shall submit the following information to the Secretary:

(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 Secretary deems necessary to carry out the purposes of this Act.

Persons required to register under this section shall also submit to the Secretary the information specified in clauses (A) through (F) of this paragraph with respect to any business engaged in the busi-

ness of buying grain for sale in interstate commerce, and in the business of handling, weighing, or transporting of grain for sale in interstate commerce, if, with respect to such business, the person otherwise required to register under this section is in a control relationship.

(2) For the purposes of this section, a person shall be deemed to be in a "control relationship" with respect to a business required to register under subsection (a) and with respect to applicable interstate business 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.

(3) For purposes of clauses (A) and (B) of paragraph (2) of this subsection, 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 Secretary shall issue a certificate of registration to persons who comply with the provisions of this section. The certificate or 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 Secretary of such change. No person shall engage in the business of buying grain for sale in foreign commerce, and in the business commerce unless the person has registered with the Secretary as required by this Act and has an unsuspended and unrevoked certificate of registration.

(d) The Secretary 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 in accordance with sections 554, 556, and 557 of title 5 of the United States Code, the Secretary 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 handling, weighing, or inspection of grain under title 18 of the United States Code.

(e) The Secretary shall charge and collect fees from any person registered under this section. The amount of such fees shall be determined on the basis of the costs of the Secretary in administering the registering required by this section. Such fees shall be deposited in, and used as part of, the fund described in section 7(j) of this Act.

#### REPORTING REQUIREMENTS

SEC. 17B. [7 U.S.C. 87f-2] (a) On December 1 of each year, the Secretary shall submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate regarding the effectiveness of the official inspection and weighing system under this Act for the prior fiscal year, with recommendations for any legislative changes necessary to accomplish the objectives stated in section 2 of this Act.



(b) The Secretary shall notify the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate (1) of any complaint regarding faulty grain delivery made to the Department of Agriculture by a foreign purchaser of United States grain, within thirty days after a determination by the Secretary that there is reasonable cause to believe that the grain delivery was in fact faulty, and (2) notwithstanding the provisions of section 812 of the Agricultural Act of 1970, as added by the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c-3), within thirty days after receipt by the Secretary or the Secretary of notice 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 Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a summary of all other complaints received by the Department of Agriculture during the prior fiscal year from foreign purchasers and prospective purchasers of United States grain and other foreign purchasers interested in the trade of grain, and the resolution thereof: *Provided*, That the summary shall not include a complaint unless reasonable cause exists to believe that the complaint is valid, as determined by the Secretary.

#### RELATION TO STATE AND LOCAL LAWS; SEPARABILITY OF PROVISIONS

SEC. 18. [7 U.S.C. 87g] (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 weighing function under this Act by official inspection personnel. 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. [7 U.S.C. 87h] There are hereby authorized to be appropriated such sums as are necessary for standardization and compliance activities, monitoring in foreign ports grain officially inspected and weighed under this Act, and any other expenses necessary to carry out the provisions of this Act for each of the fiscal years 1988 through 2015, to the extent that financing is not obtained from fees and sales of samples as provided for in sections 7, 7A, 7B, 16, and 17A.

#### ADVISORY COMMITTEE

SEC. 21. [7 U.S.C. 87j] (a) Not later than ninety days after the date of enactment of this section, the Secretary shall establish an

advisory committee to provide advice to the Secretary with respect to implementation of this Act consistent with the declarations of policy in section 2 of this Act. The advisory committee shall consist of fifteen members, appointed by the Secretary, who represent the interests of all segments of the grain producing, processing, storing, merchandising, consuming, and exporting industries, including grain inspection and weighing agencies and scientists with expertise in research related to the policies established in section 2 of this Act. Members of the advisory committee shall be appointed to three-year terms, except that of the initial fifteen members of the advisory committee first appointed following the enactment of this section, five shall be appointed for terms of one year and five shall be appointed for terms of two years. No member of the advisory committee may serve successive terms.

(b) The advisory committee shall be governed by the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) The Secretary shall provide the advisory committee with necessary clerical assistance and staff personnel.

(d) Members of the advisory committee shall serve without compensation, if not otherwise officers or employees of the United States, except that members shall, while away from their homes or regular places of business in the performance of services under this Act, be allowed travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of title 5, United States Code.

(e) The authority provided to the Secretary for the establishment and maintenance of an advisory committee under this section shall expire on September 30, 2015.

**SEC. 22. [7 U.S.C. 87k] STANDARDIZING COMMERCIAL INSPECTIONS.**

(a) **TESTING EQUIPMENT.**—To promote greater uniformity in commercial grain inspection results, the Secretary may work in conjunction with the National Institute for Standards and Technology, the National Conference on Weights and Measures, or other appropriate governmental, scientific, or technical organizations to—

(1) identify inspection instruments requiring standardization under subsection (b);

(2) establish performance criteria for commercial grain inspection instruments;

(3) develop a national program to approve grain inspection instruments for commercial inspection; and

(4) develop standard reference materials or other means necessary for calibration or testing of approved instruments.

(b) **GENERAL INSPECTION PROCEDURES.**—To ensure that producers are treated uniformly in delivering grain, the Secretary shall develop practical and cost-effective procedures for conducting commercial inspections of grain with respect to the application of quality factors, that result in premiums and discounts. The procedures shall be made available to country elevators and others making first-point-of-delivery inspections.

(c) **INSPECTION SERVICES AND INFORMATION.**—To encourage the use of equipment and procedures developed in accordance with subsections (a) and (b), the Secretary shall provide for official inspection services by the Secretary, States, and official inspection agen-

cies and provide information on the proper use of sampling and inspection equipment, application of the grain standards, and availability of official inspection services, including appeals under this Act.

(d) STANDARDIZED AFLATOXIN EQUIPMENT AND PROCEDURES.—  
The Secretary shall—

- (1) establish uniform standards for testing equipment; and
  - (2) establish uniform testing procedures and sampling techniques;
- that may be used by processors, refiners, operators of grain elevators and terminals, and others to accurately detect the level of aflatoxin contamination of corn in the United States.
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