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AMEND THE GRAIN STANDARDS ACT

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HEARING BEFORE THE COMMITTEE ON AGRICULTURE HOUSE OF REPRESENTATIVES NINETIETH CONGRESS

SECOND SESSION

ON

H.R. 14261

FEBRUARY 5, 1968

Serial II

Printed for the use of the Committee on Agriculture

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AMEND THE GRAIN STANDARDS ACT

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(11)



CONTENTS

H.R. 14261, a bill to provide for U.S. standards and a national inspection system for grain, and for other purposes.....	Page 1
Brooks, William F., president and general counsel, National Grain Trade Council, statement of.....	9
Goodfellow, Thomas M., president, Association of American Railroads, letter of Feb. 1, 1968.....	26

(III)

CONTENTS

1	U.S. 1931, a bill to provide for U.S. standards and a national system for grain, and for other purposes
2	U.S. 1931, a bill to provide for U.S. standards and a national system for grain, and for other purposes
3	U.S. 1931, a bill to provide for U.S. standards and a national system for grain, and for other purposes
4	U.S. 1931, a bill to provide for U.S. standards and a national system for grain, and for other purposes

AMEND THE GRAIN STANDARDS ACT

MONDAY, FEBRUARY 5, 1968

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m. in room 1301, Longworth House Office Building, Hon. W. R. Poage, chairman of the committee, presiding.

Present: Representatives Poage, Gathings, Abernethy, Jones of Missouri, Stubblefield, Purcell, O'Neal, Foley, Vigorito, Jones of North Carolina, Nichols, Montgomery, Belcher, Teague, Dole, Miller, Burke, Mayne, Zwach, Kleppe, Price, Myers, and Resident Commissioner Polanco-Abreu.

The CHAIRMAN. The committee will please come to order. We have met today to consider the bill H.R. 14261, which is a bill to provide grain standards and national inspection of grain.

(H.R. 14261, introduced by Mr. Purcell, follows:)

[H.R. 14261, 90th Cong., first sess.]

A BILL 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 America 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, at 482), as amended (7 U.S.C. 71-87), is hereby amended to read as follows:

"SHORT TITLE

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

"DECLARATION OF POLICY

"SEC. 2. Grain is an essential source of the world's total supply of human food and animal feed and is merchandised in interstate and foreign commerce. It is declared to be the policy of the Congress, for the promotion and protection of such commerce in the interests of producers, merchandisers, warehousemen, processors, and consumers of grain, and the general welfare of the people of the United States, to provide for the establishment of official United States standards for grain, to promote the uniform application thereof by official inspection personnel, and to provide for an official inspection system for grain; with the objectives that grain may be marketed in an orderly manner and that trading in grain may be facilitated.

"DEFINITIONS

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

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

"(b) the term '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 country;

"(g) the term 'grain' means corn, wheat, rye, oats, barley, flaxseed, grain sorghum, soybeans, mixed grain, and any other food grains, feed grains, and oilseeds for which standards are established under section 4 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 and the certification, by official inspection personnel, of the kind, class, quality, condition, or quantity of, or other facts relating to, grain, under standards provided for in this Act or, upon request of the interested person applying for inspection, other criteria approved by the Secretary under this Act (the term 'officially inspected' shall be construed accordingly);

"(j) the term 'official inspection personnel' means employees of the Department of Agriculture who are authorized, and employees of State or other governmental agencies or commercial agencies, or other persons, who are licensed, to perform all or specified functions involved in official inspection under this Act;

"(k) the term 'official inspection mark' means any symbol prescribed by regulations of the Secretary to show the official determination of the kind, class, quality, condition, or quantity of, or other facts relating to grain, under standards provided for in this Act or, upon request of the interested person applying for inspection, other criteria approved by the Secretary under this Act;

"(l) the term 'official grade designation' means a numerical or sample grade designation, specified in the standards provided for in this Act;

"(m) the term 'official inspection agency' means the agency or person with whom the Secretary enters into a cooperative agreement for the conduct of official inspection under this Act;

"(n) the term '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, or sampling' means any manner of loading, handling, or sampling that deceives or tends to deceive official inspection personnel, as specified by regulations of the Secretary under this Act.

"STANDARDS

"SEC. 4. (a) The Secretary is authorized to investigate the handling, grading, and transportation of grain and to fix and establish standards of kind, class, quality, and condition for corn, wheat, rye, oats, barley, flaxseed, grain sorghum, soybeans, mixed grain, and such other grains as in his judgment the usages of the trade may warrant and permit, and the Secretary is authorized to amend or revoke such standards whenever the necessities of the trade may require.

"(b) Before establishing, amending, or revoking any standards under this Act, the Secretary shall publish notice of the proposal and give interested persons

"(d) Certificates issued and not canceled under this Act shall be received by all officers and all courts of the United States as prima facie evidence of the truth of the facts stated therein.

"(e) The Secretary may, under such regulations as he may prescribe, charge and collect reasonable fees to cover the estimated total cost of official inspection except when the inspection is performed by employees of an official inspection agency under a cooperative agreement as provided in section 8 of this Act. The fees authorized by this paragraph shall, as nearly as practicable and after taking into consideration any proceeds from the sale of samples, cover the costs of the Department of Agriculture incident to the performance of the official inspection services for which the fees are collected, including supervisory and administrative costs. Such fees, and the proceeds from the sale of samples obtained for purposes of official inspection which become the property of the United States, shall be deposited into a fund which shall be available, without fiscal year limitation, for the expenses of the Department of Agriculture incident to providing official inspection services.

"COOPERATIVE AGREEMENTS

"SEC. 8. (a) The Secretary is authorized to enter into cooperative agreements for the conduct of inspection work under section 7 of this Act in any State with the State department of agriculture or other authorized State agency, any authorized local government agency, any commercial agency, or any person, that, in the opinion of the Secretary, will provide adequate facilities and qualified personnel for such inspection work. A cooperative agreement shall continue in force until terminated (1) by mutual consent of the inspection agency and the Secretary or (2) by either party giving written notice to the other thirty days in advance of a specified date of termination. The inspection agency shall be afforded an opportunity for a hearing before the Secretary may unilaterally terminate an agreement.

"(b) The estimated total cost incurred by the official inspection agency in providing such services under each cooperative agreement may be financed by fees to be charged and collected under the terms of such agreement. Such fees shall be reasonable and equal as nearly as practicable to such total cost of providing the services, after taking into consideration any proceeds from the sale of samples, and shall be used only for the purpose of performing and administering the official inspection services.

"(c) Not more than one cooperative agreement for carrying out the provisions of section 7 of this Act shall be effective at one time for any one city, town, or other area covered by any cooperative agreement.

"LICENSES AND AUTHORIZATIONS

SEC. 9. (a) The Secretary is authorized to issue a license to any individual upon presentation to him of satisfactory evidence that such individual is competent, and is employed by an official inspection agency to perform all or specified functions involved in official inspection; to authorize any competent employee of the Department of Agriculture to perform all or specified functions involved in official inspection; and to license any other competent individual to perform specified functions involved in official inspection under a contract with the Department of Agriculture. No person shall perform any official inspection functions for purposes of this Act unless he holds an unsuspended and unrevoked license or authorization from the Secretary under this Act.

"(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 inspection agency or to operate independently under the terms of a contract for the conduct of any functions involved in official inspection under this Act: *Provided further*, That subject to paragraph (c) of this section such license shall be reinstated if the licensee is employed by an official inspection agency 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 he may deem warranted to determine the competence of any applicants for licenses, licensees, or employees of the Department of Agriculture, to perform any official inspection function under this Act.

"(d) Persons employed by an official inspection agency and persons performing official inspection functions under or contracts with the Department of Agriculture shall not, unless otherwise employed by the Federal Government, be deemed to be employees of the Federal Government of the United States.

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

"SEC. 10. 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 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 otherwise inspected grain improperly under this Act, or has accepted any money or other consideration, directly or indirectly, for any neglect or improper performance of duty, or has used his license or allowed it to be used for any improper purpose, or has otherwise violated any provision of this Act or of the regulations prescribed or instructions issued to him by the Secretary 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.

"REFUSAL OF OFFICIAL INSPECTION

SEC. 11. (a) The Secretary may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this Act) refuse to provide official inspection otherwise available under the Act with respect to any grain offered for inspection, or owned, wholly or in part, by any person if he determines (1) that the individual (or in case such person is a partnership, any general partner; or in case such person is a corporation, any officer, director, or holder or owner of more than 10 per centum of the voting stock; or in case such person is an unincorporated association or other business entity, any officer or director thereof) has committed any repeated or flagrant violation of section 14 of this Act, or that official inspection has been refused for any of the above-specified causes (for a period which has not expired) to such person, or any other person conducting a business with which the former was, at the time such cause existed, or is responsibly connected; and (2) that providing official inspection with respect to such grain would be inimical to the integrity of the official inspection service.

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

"(c) Before official inspection is refused to any person under paragraph (a), such person shall be afforded opportunity for a hearing.

"PROHIBITION ON CERTAIN CONFLICTS OF INTEREST

"SEC. 12. No person licensed or authorized by the Secretary to perform any official inspection 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 he determines are consistent with the purposes of this Act.

"RECORDS

"SEC. 13. (a) Every official inspection agency and every person licensed to perform any official inspection 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.

"Every person who makes any shipment from the United States of grain for which inspection is required under section 5 of this Act, or who submits grain for inspection under this Act, shall maintain such complete and correct records with respect to the shipment and submitting for inspection of grain to the extent he is concerned therewith as the Secretary may by regulation prescribe for the purposes of administration and enforcement of this Act.

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

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

"PROHIBITED ACTS

"SEC. 14. (a) No person shall—

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

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

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

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

"(5) knowingly use any official grade designation or official inspection mark on any container of grain by means of a tag, label, or otherwise, unless the grain in such container was officially inspected on the basis of an official sample taken while the grain was being loaded into or was in such container 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, condition, or quantity, or that particular facts have been established with respect to grain by official inspection under this Act;

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

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

"(9) falsely represent that he is licensed or authorized to perform an official inspection 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

"(11) violate any provision of sections 5, 6, 9, 12, or 13 of this Act.

"(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 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 of duty.

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

"PENALTIES

"SEC. 15. (a) Any person who commits any offense prohibited by section 14 shall be guilty of a misdemeanor and shall, on conviction thereof be subject to imprisonment for not more than six months, a fine of not more than \$3,000 or both such imprisonment and fine; but if such offense is committed after one conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than one year, or a fine of not more than \$5,000, or both such imprisonment and fine.

"(b) Nothing in this Act shall be construed as requiring the Secretary to report minor violations of this Act for criminal prosecution whenever he believes that the public interest will be adequately served by a suitable written notice or warning.

"RESPONSIBILITY FOR ACTS OF OTHERS

"SEC. 16. When construing and enforcing the provisions of this Act, the act, omission or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person.

"GENERAL AUTHORITIES

"SEC. 17. The Secretary is authorized to conduct such investigations, hold such hearings, require such reports from any official inspection agency or any person, and prescribe such rules and regulations as he deems necessary to effectuate the purposes or provisions of this Act. Whether any certificate, other form, representation, designation, or other description is false, incorrect, or misleading within the meaning of this Act shall be determined by tests made in accordance with such procedures as the Secretary may adopt to effectuate the objectives of this Act, if the relevant facts are determinable by such tests. Proceedings under section 8, 10, or 11 of this Act for termination of a cooperative agreement, for refusal to renew, or for suspension or revocation, of a license, or for refusal of official inspection service not required by section 5 of this Act, shall not be subject to the administrative procedure provisions in sections 554, 556, and 557 of title 5, United States Code.

"ENFORCEMENT PROVISIONS

"SEC. 18. (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, 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 depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

"(e) Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the Secretary, shall be guilty of a misdemeanor, and upon conviction thereof be subject to the penalties set forth in section 15 of this Act.

"(f) No person shall be excused from attending and testifying or from producing documentary evidence before the Secretary, or in obedience to the subpoena of the Secretary, or in any cause or proceeding, criminal or otherwise, based upon or

growing out of any alleged violation of this Act, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

"(g) Any officer or employee of the Department of Agriculture who shall make public any information obtained under this Act by the Department of Agriculture, without its authority, unless directed by the court, shall be guilty of a misdemeanor, and upon conviction thereof be subject to the penalties set forth in section 15 of this Act.

"(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.

"RELATION TO STATE AND LOCAL LAWS; SEPARABILITY OF PROVISIONS

"SEC. 19. (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 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. 20. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act to the extent that financing is not obtaining from the fees and sale of samples as provided for in section 7 of this Act.

"EFFECTIVE DATE

"SEC. 21. This Act shall become effective one hundred and eighty days after enactment hereof, except that the repeal of the mandatory inspection provisions with respect to grain shipped or delivered for shipment in interstate commerce shall become effective thirty days after enactment hereof and the provisions of paragraphs 6(a) and 14(a) (5) of this Act shall then become effective with respect to such grain."

The CHAIRMAN. This bill has been favorably reported by the subcommittee on livestock and grains and is before the full committee. But it has come to the attention of the chairman that there are some, or at least one or maybe more, who want to be further heard on this matter, and I felt we should let those who wanted to be further heard present any additional views they have.

I understand there were rather extensive hearings before the subcommittee, and they did hear everybody who at that time wanted to be heard.

It has been some time since this action was taken, and I just felt it was better to let everybody be heard.

Mr. Brooks of the National Grain Trade Council has asked to be heard, and he is present this morning, and we will be glad to hear Mr. Brooks at this time.

**STATEMENT OF WILLIAM F. BROOKS, PRESIDENT AND GENERAL
COUNSEL OF THE NATIONAL GRAIN TRADE COUNCIL**

Mr. BROOKS. Thank you, Mr. Chairman. We appreciate this opportunity to present our views on changes in amendments to the Grain Standards Act.

The council's views on H.R. 11162, the forerunner of H.R. 14261, were presented to your Subcommittee on Livestock and Grains on November 9, 1967. They are set out commencing at page 97 of part 2 of the hearings on that bill.

I am William F. Brooks, president and general counsel of the National Grain Trade Council.

The council again recommends that to bring the present act in tune with the current usages, needs, and necessities of the trade—all segments of the trade—the producers here and the consumers here and abroad—and with the present and foreseeable future needs of the trade and the Government, six, possibly seven amendments to present act will best accomplish these results. To adopt some or all of these specific amendments will be consistent with the usages, needs, and necessities of the trade and the Government, and will avoid creating a new frame of reference, other than the present U.S. Grain Standards Act, within which regulations will be promulgated and grain standards revised, and under which the grain marketing industry will operate.

One amendment which might be adopted to the present act would be to authorize the Secretary, or the Department, to make initial inspection available through employees of the Department at Canadian points where U.S.-produced grain is stored and from which this grain is moved to foreign destinations. This service is now made available under the Agricultural Marketing Act. According to the Department's testimony, the Department wishes to continue making this service available under the U.S. Grain Standards Act.

Six additional amendments to the present act may be warranted in view of the usages, needs, and necessities of the trade or the Government. These would—

(1) Require that all persons who are to be federally licensed inspectors should qualify under testing and examination procedures established by the Secretary of Agriculture.

(2) Provide that appeals fees not refunded should be available to USDA without fiscal year limitation, rather than be deposited in the Treasury as miscellaneous receipts of the Government.

(3) Provide that when samples are obtained by USDA for appeals purposes, the proceeds of the sales of these samples, if they are sold, should be available to USDA without fiscal year limitations, rather than be deposited in the Treasury as miscellaneous receipts of the Government.

(4) Permit the movement of grain in interstate commerce without an official inspection if the parties to a transaction agree that no official inspection is required and require official inspection of grain sold by grade in foreign commerce when that grain is shipped from a location where inspection is available.

(5) Permit the issuance of an official grade certificate under some circumstances when the grade is based on a submitted sample and

allow the use of an official certificate in such cases where the certificate clearly indicates the circumstances under which the submitted sample was obtained.

(6) Require that when grade designations or terminology are used in either interstate or foreign commerce, the designations and terminology be those of the official U.S. Grain Standards.

Our views on these suggested limited amendments are set out on pages 100 and 101 of the subcommittee's hearings on H.R. 11162. We have some amendments to the present act to bring about these recommendations. They may serve as a starting point for you if you decide to reach a number of desired results while retaining the present act as the frame of reference under which grain standards may be promulgated and must or may be used by persons growing, financing, marketing, transporting, or storing grain.

The council recommends against the enactment of a new frame of reference under which grain standards would be promulgated or regulations issued or grain graded. The council recommends against the approval of H.R. 14261.

Mr. Purcell, in his opening statement at hearings on H.R. 11162, aptly described that bill as "complex legislation." H.R. 14261 warrants the same description. To understand its scope and impact requires a somewhat detailed analysis joined with some knowledge of the purposes the act is supposed to serve, of the regulatory scheme under the present act, and of the differences between grain grading under that act and inspection under other acts and the regulatory activity of independent regulatory agencies like the Federal Trade Commission and the Federal Communications Commission.

Under the present act, standards are uniform whether grain is traded in domestic or foreign commerce. Under the present act, initial sampling and grading of grain is done by individuals who are licensed by, but not employees of the Federal Government. They may be independent contractors or they may be employees of State or of local governments or of boards of trade or of chambers of commerce or of other organizations. Their sampling and grading work is supervised by Federal employees. And an interested party who questions the findings of an initial inspection may appeal to the Secretary of Agriculture, who in turn has delegated the handling of this appeal procedure to people familiar with the grading system and grades.

The present act has no provision for the determination of quantity factors. The act limits the setting of standards of quality and condition in accordance with the usages of the trade and the modification of these standards as the necessities of the trade may require.

Some of the above enumerated provisions of the present act are incorporated in H.R. 14261 in section 3(g) and section 4 (a) and (b). Their incorporation, as recommended or approved by the Department, is evidence, possibly strong evidence, that the present act is not completely out of date.

Section 3 of the proposal defines 21 terms, but has no definition of the terms "public health, interest, or safety" as those terms are used in section 4 of H.R. 14261. This section, concerned with the establishment, amendment or revocation of standards apparently permits people interested in grain standards to submit views informally when changes in standards are under study. Under the present act, although the Department now holds otherwise, there are some who believe that

changes in standards constitute rulemaking under the Administrative Procedures Act.

We are of the opinion that changes in standards do constitute rule-making and should be subject to the Administrative Procedures Act's requirement of notice and hearing. We believe that to permit the Secretary to make new standards effective suddenly on the basis of the vague, indefinite, and uncertain requirements of "public interest" to say nothing of those characteristics as they may be applied to the term "public health" and "public safety" is unwise, unwarranted, and would tend to torture the purposes of a Grain Standards Act whose principal purpose, according to Mr. Grange, Deputy Administrator for Marketing Services, C. & M.S., is "to provide useful service to both seller and buyer, where you can trade on the basis of an established grade and on your general knowledge of the grade." (P. 28, pt. I of hearings on H.R. 11162.)

Your committee and the grain marketing industry are concerned here with a service statute under which financing and storing and buying and selling grain may be facilitated. Grain sampling and grading is quite unlike meat inspection, since that inspection procedure is primarily concerned with the public's health and the public's safety.

This distinction should be kept in mind as you consider other sections of H.R. 14261, particularly sections 11, 13, 14, 15, 17, and 18. In his testimony, Mr. Grange stressed this distinction on a number of instances.

In brief, sections 5, 6, and 7 of H.R. 11162 require inspection of grain sold by grade in foreign commerce, would authorize "on request" the Secretary to cause official inspection of grain moving in domestic trade or "outside the United States" based on official sample, submitted sample, or otherwise, and would permit, as does the present act, a statutory right of appeal from an initial grade.

Section 7 would permit initial inspection and grading by employees of the Department of Agriculture who might be licensed grain inspectors under section 9.

Section 8 specifically authorizes the Secretary to enter into "Co-operative Agreements" under which licensed grain inspectors, other than Department employees, must operate when officially grading grain. The section would authorize the Secretary to fix, within narrow limits, fees for initial inspection work. Cooperative agreements would be available to the Secretary to permit the Department to share part of these initial fees under legislation already recommended for enactment by the Department. This proposal is now S. 1480. The executive communication to the Speaker submitting this proposal to the House is apparently still on the Speaker's desk.

Cooperative agreements would be required if grain is to be graded by non-USDA employees. They might be terminated on notice with "an opportunity for hearing before the Secretary may unilaterally terminate and agreement."

The present act requires that grain be inspected when sold by grade in foreign commerce. Among our recommended amendments to the present act is (1) an amendment (No. 4 supra) to permit the sale by grade and shipment for sale by grade in interstate commerce without an official inspection and (2) an amendment (No. 5 supra) directed at dignifying and classifying the inspection documents which could be obtained on the basis of a submitted sample.

The objectives of these two amendments were endorsed by trade group witnesses who appeared at hearings on H.R. 11162. No witnesses endorsed that bill's provisions and the provision of H.R. 14261 to permit initial grading by USDA employees, with one minor exception. All groups and individuals who expressed views on H.R. 11162 objected to those provisions, and all expressed opposition to the so-called cooperative agreement provision as now found in section 8 of H.R. 14261.

In our judgment, the scope, terms and conditions of the sort of "cooperative agreement" contemplated by the Department would, in effect, coupled with the proposal that the Secretary might authorize Department employees to grade grain initially, remove all management decisions from State departments and organizations employing licensed inspectors and cause a breakdown in the present appeals procedure.

Under the proposal, the Department's position would be dominant. No longer would Department personnel act as referees. Licensed grain inspectors could well be regarded as Federal Government employees. This result, for obvious reasons, the Department wishes to avoid, and H.R. 14261, as did H.R. 11162 in section 9(d) provides that licensed inspectors shall not be deemed to be employees of the Federal Government.

The present act has and needs no comparable language. To have significance, one must conclude that under its recommendation the Department contemplates that degree of control over licensed inspectors to permit reasonable men to believe that, absent a statutory disclaimer, all licensed grain inspectors might well be judicially determined to be in fact Federal employees as they might operate under a cooperative agreement.

We believe that initial sampling and grading of grain as now carried on with but minimal interference by the Federal Government in the management of State or local government or board of trade or chamber of commerce inspection departments is in the best interest of all sectors of the grain marketing industry.

This system has in fact facilitated the orderly marketing of grain.

Under this system, foreign buyers have been willing, and at times eager to buy on the basis of the finality—no questions asked—of grade certificates covering grain moving in foreign commerce. Under this system loan programs have operated successfully. Under this system A.S.C.S. and its predecessors have fixed the responsibilities of producers and warehouses. Under this system the Government has reconcentrated its stocks of grain and has been able to determine its inventory positions.

Under this system State warehouse authorities have supervised the receipt, storage, and delivery of grain. Under this system warehouse receipts covering grain are regarded by banks as adequate collateral for loans to owners of grain.

Under this system, grading and inspection fees cannot be discriminatory or unreasonable. These fees, set as they are now on the basis of local needs and local requirements, are modest, particularly when compared to comparable fees charged by the Department when the Department grades grain on appeals from grades on initial inspection.

Under all these circumstances, is it appropriate now, in the absence of compelling demonstrated reasons, to make a change?

This regulatory scheme of the present act provides a direct line of control from the Government to licensed grain inspectors. Through this the Department of Agriculture makes certain that fees are reasonable, uniform, and nondiscriminatory. Through this the Department of Agriculture sets down requirements for equipment and the conditions under which grain will be sampled, inspected, and graded. Under the present act, section 7 provides for the suspension or revocation of an inspector's license if the licensee is found to be incompetent or careless and negligent in the performance of his duty or violates the act or its regulations and for other reasons.

The council opposes any suggestion, through a cooperative agreement or otherwise, which would authorize or permit the Secretary to grant permission to a State government or to a board of trade and, by hypothesis, to deny permission to these agencies to operate an inspection department.

We are puzzled, and understandably concerned, with the procedures which may be required under section 7(b). By this, on request, the Secretary may permit grain to be officially inspected. We feel that this particular subsection is aimed to provide grading and inspection for grain moving in interstate commerce if grading is required by an interested party or parties.

We know that the Department, at earlier hearings, disclaimed any intention to change, abandon, or alter procedures currently in effect under the present act. Under that act, however, parties interested in having grain graded are not required to request the Secretary's permission to have grading service performed. Under that act, grain inspection is available through licensed inspectors as a service to facilitate the orderly marketing of grain. No franchise comparable to the licenses granted by the Federal Communications Commission and no permission comparable to the permission granted by the Federal Trade Commission, must now be obtained to have grain inspected and graded.

We will comment later in connection with our views on Sections 11, 13, 15 and 17 of H.R. 14261, on the Department's apparent desire to equate grain grading with meat inspection, with broadcasting licenses, and with permission to effect business mergers.

Under the proposal, how will requests be made? Must a request be made to cover each lot for which grading is desired? Will permission, once granted, be of a continuing nature—until revoked, perhaps under the broad, unusual and possibly arbitrary, authority granted by Section 11, entitled "Refusal of Official Inspection"?

Section 11 would grant to the Secretary authority to deny inspection on his determination (1) that there have been repeated violations (not convictions) of section 14 and (2) that to provide inspection would be inimical to the integrity of the official inspection service.

Because the dictionaries we have consulted give the primary meaning of "inimical" as of a character or constitution regarded as hurtful in tendency or opposed in influence; incompatible, adverse" and having the disposition of an enemy: hostile", we will not labor the point that this standard for denial of a necessary and required service is subjective and vague, and could be used in an arbitrary and capricious manner. The only redress provided for denial of inspection is the "opportunity for a hearing" under rules, regulations and procedures set down within the sole discretion of the Secretary.

Under the section, if the Secretary made a finding of "inimical character" or hostility and determined, from sources not defined and absent any conviction of record that section 14 of the act had been violated, persons who had sold or might sell grain in foreign commerce would be denied the inspection required under the act and thus be precluded from continuing in the export business. Persons engaged in interstate commerce in grain would be exposed to the same penalty and forfeiture.

The history of this provision by which the Secretary could penalize people by denying them access to the inspection service is interesting and in our judgment, significant.

In 1966 the Department recommended legislation to revise the Grain Standards Act. This was incorporated in H.R. 16918 of the 89th Congress.

Section 11 of that proposal contained the "inimical" provision and provided as the additional reason for denial of inspection, a determination by the Secretary that there had been a violation of the proposal's section 14 or any violation of one section of the Federal Trade Commission Act or any violation of the general fraud statute. The 1966 proposal provided for formal hearing on the question of refusal of inspection when required under the act.

Department representatives, as to this portion of their 1966 proposal, stated that this denial of inspection was similar to the authority which had been or would be requested in connection with amendments to the Meat Inspection Act and the Packers and Stockyards Act. The Department's apparent hope and intentions therefore, was to equate grain grading with meat inspection; to obtain new additional police authority in one field and then to parlay, if you please, the result into a second or third result in another unrelated statute.

For reasons best known to the Department, its 1967 original proposal as found in Section 11 of H.R. 11162, required a conviction of violation of the statutes enumerated in their 1966 recommendations. This at least was some improvement over the 1966 proposal. The denial of inspection authority was opposed by all trade groups in spite of the change from a determination by the Secretary as to violation to the need for finding a conviction. The proposal contained too large a possibility for harassment and posed the probability of too large and severe a penalty and forfeiture being imposed on the penalty which a court has already by hypothesis, regarded as adequate.

The 1967 proposal eliminates the protection of a formal appeal if inspection were to be withdrawn.

At some point, perhaps by mistake, because as we have already noted, this legislative area is at least complex, the clean bill setting forth the results of the subcommittee's deliberations, reverts to the 1966 position of the Department. There were no indications during hearings that this was or is the Department's present wish. We call your attention to this change from the Secretary's determination of conviction to the Secretary's determination of violation (absent conviction) as an additional reason, if any be needed, that to accomplish a limited number of results, Congress should amend the present act rather than establish an entirely new regulatory scheme by completely revising the law as contemplated by H.R. 14261.

For the record it should be noted that although grain grading and meat inspection fall into distinct separate categories, Congress, in the

recently approved meat inspection law, in section 401, has limited the Secretary's right to deny inspection to cases involving conviction for a felony or conviction for repeated violations and misdemeanors, not felonies. And those convictions, whether they be felonies or misdemeanors, must be connected with food transactions.

The Department has cited only one instance where at present a need exists for official grain grading by Department employees. This need exists in Canada where U.S.-produced grain is stored prior to its sale and shipment to foreign buyers. This need is now taken care of by the Department through the Agricultural Marketing Act of 1946. We have suggested that the Grain Standards Act might be specifically amended to permit the Secretary to license Department employees to grade U.S.-produced grain as it moves into foreign commerce when sold by grade and shipped from warehouses located in Canada.

We believe that Department employees should not be licensed to grade grain as it moves in domestic commerce and that the Secretary should not be authorized to make official inspection available outside the continental United States, except in Canada, under any circumstances.

Sections 9 and 10 provide for the issuance, renewal, suspension, and revocation of licenses to inspect grain and the licensing of all personnel connected with grain grading.

At present, licenses must be issued to persons authorized under State law to inspect grain. We recommend (see proposed amendment 1 supra) that all licensees should qualify under testing and examination procedures established by the Secretary irrespective of the nature of their employment.

We question the need for triennial reexamination for licensed inspectors. The great majority of licensed inspectors have spent varying periods of apprenticeship as grain samplers. In this apprenticeship process, they are trained to grade first one grain and then another. They are expected to qualify one day as inspectors and by virtue of their qualifications advance to a position of responsibility. The tasks of a grain sampler are difficult. It is hard work. The qualifications of a grain inspector are not easily obtained. And obtained to that point where the Department will grant an inspector's license, the work of an inspector requires constant education and reeducation as standards change, as new regulations are issued, and as instructions, notices, and memoranda pour forth from the grain division, C. & M. S.

These instructions (not always in writing, we understand), notices and memoranda are in general incorporated in the Grain Inspectors Manual. Apparently all documents in these classifications are sent to all licensed inspectors. Our experience is that in their distribution the grain division has more than one mailing list and that those of us who have requested continuing information on changes and amendments to the manual, do not receive all the instructions sent to inspectors.

The present act is silent as to failure to follow "instructions." The pending bill makes this failure a ground for suspension or revocation of a license.

We believe that the present act's provisions covering suspension and revocation of licenses are an adequate protection to the integrity of the official inspection service, and will continue, combined with proper Federal supervision of initial grading, to result in the orderly marketing of grain.

Federal employees can and do supervise initial grading by licensees. These Federal supervisors have access to and do examine the conditions under which grain is graded and the equipment used in grading grain. Part of their effective supervision results from grading by Federal employees when appeals are taken from initial grades. In these supervisory processes, Federal employees can, in our judgment, easily determine the competency or incompetency of a licensee, whether he has knowingly or carelessly graded grain improperly, whether he has issued a false certificate or grade or has violated the act or its regulations, or otherwise violated the law. On the present state of the record we find no reason to alter or amend the present statute as it applies to the revocation of an inspector's license, particularly to the extent that section 17 of H.R. 14261 would deny a licensed grain inspector the rights and privileges of the administrative procedures provisions of the Administrative Procedures Act.

We find no justification in the record or elsewhere for section 17, "General Authorities" which, in effect, without guidelines or criteria, would authorize a secretarial fishing expedition on broad fronts with unlimited tackle, no bag or area limit, and classification and identity tests the Secretary's sole choice.

Section 18, "Enforcement Provisions" is an attempt to equate the objectives of the Federal Trade Commission Act and of the Federal Communications Act with the objectives of the Grain Standards Act as those acts are administered by independent regulator agencies exercising quasi-legislative and quasi-judicial functions.

These agencies operate in specific areas under fairly well defined limits and objectives set by Congress. The Federal Trade Commission polices business, with some exceptions, to prevent and eliminate unfair methods of competition and deceptive trade practices. That agency may approve or disapprove planned mergers of business enterprises and does review and comment on codes covering business practices. The Federal Communications Commission allocates, by license, wave bands as it were to competent and qualified organizations for the transmission of radio and television programs. Holders of these licenses are required, inter alia, to present at least a limited number of public service programs and their responsibilities are fairly well defined by Commission rulings and interpretations. Both Commissions employ the expertise of their substantial staffs to prevent violation of the basic statutes and the rules and regulations of each agency.

The predecessor bills to the bill now being considered would have incorporated by reference certain specific sections of the Federal Trade Commission Act and the Federal Communications Act. These are now specifically incorporated in section 18. My first references are to incorporation in the bill from the act governing the Federal Trade Commission.

Section 18(a) would grant extensive visitorial authority to the Secretary and subpoena power for any purposes of the act. Section 18(b) would grant judicial aid to the Secretary to require compliance with a subpoena. Section 18(c) would authorize the issuance of a contempt citation and require compliance with a Secretary issued subpoena. Section 18(d) provides for witness fees and (e) makes it a misdemeanor to fail to respond to a subpoena.

Section 18(f) is borrowed or lifted from the Federal Communications Act (see 47 U.S.C.A. 409 (1)). This section would not excuse the

production of records or the testimony of witnesses on the grounds that to do so might be incriminating or subject the witness to a penalty or forfeiture. A witness having claimed his constitutional privilege and having been compelled to testify would not thereafter be subject to penalty or forfeiture on account of anything he has been compelled to disclose. So it says in section 18(f).

This saving clause would probably prevent prosecution in a Federal court and avoid any forfeiture under Federal statutes. The clause would not prevent prosecution under State law, and would not avoid civil liability if any could be found. The constitutional privileges against self-incrimination should not be regarded so lightly as to require that it be forcibly given up on the specious and spurious ground that the administration of a service statute requires such an intrusion into a citizen's constitutional rights.

We believe that to grant to the head of a department, any department, including the Department of Agriculture, the broad investigative and visitorial authorities found in H.R. 14261, particularly sections 17 and 18, is unwise, improper, and may well be unconstitutional. We are convinced that no need exists to grant to the Secretary of Agriculture any of new and unusual authorities of H.R. 14261. We recommend that, in those limited instances where changes in the act appear warranted, these changes be accomplished by amendments to the present act. We believe that these changes can be accomplished by using some of the amendments set out earlier in this statement.

The CHAIRMAN. Mr. Brooks, apparently we do not have anything like the agreement that the Chair has been led to believe we did have. I thought there was pretty general agreement. I thought there was pretty general agreement that we needed something of this kind. Your testimony is like the injunction on swimming—it is perfectly all right to go, but don't go near the water. I take it we are a long ways from agreement now.

Mr. BROOKS. On two or three points there is no disagreement, Mr. Chairman. This is the question of the permission to trade on the basis of official grades by agreement of the parties without the need of having an official inspection.

The CHAIRMAN. If the parties agree that somebody should grade it, there is no law in the world to prevent you from agreeing to it.

Mr. BROOKS. The U.S. Grain Standards Act at this point, if you ship grain in interstate commerce from or to a point where official inspection is available, or if prior to shipment or consignment for sale you make a sale by grade—it is required under the act that either at origin or destination, if inspection is available at either place, that an officially licensed inspector grade this grain.

One of our amendments would eliminate this mandatory aspect.

The CHAIRMAN. Both you and the subcommittee agree on this point.

Mr. BROOKS. Yes, and the industry agrees to that, although there may be some differences of opinion. The industry is in agreement on that point. That is one of the amendments we suggest be made and developed in the present act.

The CHAIRMAN. Did you submit all these objections to the subcommittee?

Mr. BROOKS. No, I guess I made a mistake. Everybody else talked about these incorporations by reference to sections of the Federal

Trade Commission. I merely said we object to the inclusion of these broad grants of authority and any similar amendments to the act and let it go at that. I made the assumption that the weight of the evidence which already had been presented to the subcommittee had made an impression on them. I was in error. I was the last witness and should not have tried to judge the impression other witnesses made.

Mr. JONES. Following up what the chairman has said a moment ago—this does not sound reasonable to me but it may be.

You mean that if I have some grain that I want to sell and there is a man in St. Louis who wants to buy that grain and we reach agreement, that if I ship that grain from my hometown to St. Louis, Mo. that that grain has to be graded by Federal inspectors although the seller and the buyer have agreed?

Mr. BROOKS. I am assuming you are shipping it from a point in Missouri. Let us put it in Nebraska.

Mr. JONES. Put it across the line.

Mr. BROOKS. Yes, sir. Under the present statute it requires, according to Mr. Grange's testimony, and I agree, that if grain prior to shipment is sold by grade or consigned for sale by grade from or to a point, from one point or another point, at either of which official inspection is available, then the statute requires that it be officially graded, Nebraska to Missouri, and so on.

Mr. JONES. Can you tell me, any reason, why that was ever adopted?

Mr. BROOKS. I can't tell you any reason why it was adopted. All I can tell you is that it is a procedure which has been followed. An intermediate inspection was required and still is under some circumstances on Government grain moved from a country point where no inspection is available. Maybe it was to satisfy the whims or desires of people who were in the inspection business back in 1916.

I might say this to you, Mr. Jones: The U. S. Grain Standards Act was adopted in 1916. It was adopted after 13 years of hearings before Senate and House committees, Committees on Interstate and Foreign Commerce and Committees on Agriculture. There was any number of regulatory schemes and suggestions considered by these committees. Some 14 years ago I went into some detail regarding the legislative history and I was amazed at the changes which developed.

To your particular point, I cannot give you the answer.

Mr. MAYNE. I would like to ask the witness if in response to Mr. Jones' question it should not also be pointed out that if that shipment happens to move by truck rather than by rail there won't be any Federal inspection.

Mr. BROOKS. That is not quite correct.

Mr. MAYNE. What is correct?

Mr. BROOKS. It is correct that if you happen to ship by truck, grain which has been sold prior to shipment or consigned for sale, by truck, by grade, from or to points where inspection is available, then it should be inspected.

Mr. MAYNE. But it is not, is it?

Mr. BROOKS. Yes, it is. Not always, but many times it is.

Mr. MAYNE. We have heard testimony here which up until now I do not think has been disputed—that the great percentage of this grain moves by truck and is not subject to Federal inspection at all, but that the train-moving grain is.

Mr. BROOKS. The testimony was that a great volume of grain moves by truck and is not inspected. This is the Department's representation.

I would agree, one, a great volume of grain moves by truck.

Mr. MAYNE. What would you estimate that to be?

Mr. BROOKS. I have no figures and no ability to make an estimate.

Might I add that many of the grain shipments would not be required to be inspected under the act. Much of this grain is subject to a local sale. It is carried from, say, a point in one of the Dakotas into Sioux City by the owner of the grain in his own truck or a truck he has leased. It is not put in the chain of interstate commerce after it has been sold by grade nor is it consigned for sale by grade. It is carried by the farmer or perhaps a trucker who has purchased it at a country elevator or from a farm seeking the best market he can find.

What I think I am saying, Mr. Mayne, is this: I question whether there has been quite as broad a violation of this act as a result of this large trucking volume as has been represented. I have no way of proving it.

Mr. JONES. You say and always emphasize "if it is sold by grade."

Mr. BROOKS. Yes.

Mr. JONES. If I send a sample to this fellow I am selling the grain to and do not represent it as being anything except what the sample is, is that selling it by grade?

Mr. BROOKS. No, sir; it is a sale by sample and not by grade. It does not require inspection.

Mr. JONES. Does not require inspection there?

Mr. BROOKS. No, sir.

Mr. JONES. As long as he has confidence in my honesty that I have given him a fair sample, then it does not enter into it?

Mr. BROOKS. That is right.

Mr. JONES. How long does it take for an average person of average intelligence to qualify as a Federal grain inspector or as a licensed grain inspector? I presume the qualifications are the same for both, aren't they?

Mr. BROOKS. What were the two?

Mr. JONES. Licensed and Federal.

Mr. BROOKS. Except for initial inspections in Canada, Federal employees do not grade nor inspect grain in the United States.

I cannot answer your question except in a very general way. If you had a fellow in the Department of Agriculture whom the Secretary desired to qualify as a licensed grain inspector, assuming that he had already had some idea of the regulations under which he would be operating, the statute and the requirements, it probably would not take very long.

Mr. JONES. How long? A month?

Mr. BROOKS. I would hesitate to put a time on it. It depends on the fellow's native ability.

Mr. JONES. Closer to a month or year?

Mr. BROOKS. I would hesitate to have a fellow take less than 6 months, that kind of fellow.

Mr. JONES. In other words, a political appointment——

Mr. BROOKS. A civil servant who possesses substantial amount of native intelligence and is anxious to improve his lot within the classified service.

Take a fellow who gets through high school maybe, gets a job as a grain sampler. This apprenticeship process that I have described is a part-time kind of thing. It will depend on the fellow's ability, his real interest in the thing. He may lose interest after a while because it takes too long. This could have substantial bearing.

It is difficult to estimate with any accuracy because of individual differences and because of how busy a fellow might be.

Mr. JONES. Would it not be a rather unusual circumstance if, say, a young fellow who was interested in becoming a grain inspector and got a job as a grain sampler and he worked at it during the busy season for 3 months and tried to observe what was happening and watching the grades and samples, do you think it would be likely that he would be able to pass a test?

Mr. BROOKS. I would doubt it very much.

Mr. JONES. That is all.

Mr. BROOKS. I can say this to you: At the Denver Grain Exchange, as an accommodation to business in back of the exchange and beyond it, it has feedlots west of it and elevators east of it—in Nebraska, they have spent a little time training citizens, individuals in Nebraska towns, to be samplers. They bring them in, and the supervisor in Denver meets them, looks them over, runs a check on their credit and their general reputation, and this takes almost a month, to determine that he is competent enough to sample the grain.

After he qualifies as a sampler, depending on how busy the season is, they can bring them into the laboratory; the samplers go through a booklet—one of these inspector's manuals is not a simple thing, and the grades themselves get somewhat complicated—this is the procedure. They are rather lengthy.

Mr. PURCELL. Mr. Brooks, you did appear before the subcommittee as one of the last witnesses?

Mr. BROOKS. The last witness.

Mr. PURCELL. Was that by your request?

Mr. BROOKS. At that time?

Mr. PURCELL. At any time.

Mr. BROOKS. Yes; we requested to appear before the committee.

Mr. PURCELL. As one of the last witnesses?

Mr. BROOKS. Not as one of the last witnesses; no, sir.

Mr. PURCELL. During that testimony you covered the same points you covered in this statement this morning; did you not?

Mr. BROOKS. Not in the detail I did this morning.

Mr. PURCELL. I didn't ask you about the detail. You covered the points you covered this morning; did you not?

Mr. BROOKS. I tried to.

Mr. PURCELL. And other witnesses covered the same points and in some instances brought out more detail than you did. As you stated this morning you said you thought that made an impression but you were disappointed, so now you thought you would be a little more elaborate and detailed. Is that right?

Mr. BROOKS. Substantially so; yes, sir.

Mr. PURCELL. What is not substantial about it?

Mr. BROOKS. May I have it read back?

Mr. PURCELL. We don't have to have anything read back. Will you tell me what was not substantially correct?

Mr. BROOKS. I believe you asked me about something I said. I think I said that I had misgaged the impression that other witnesses before your subcommittee had make on the subcommittee.

Mr. PURCELL. Is that the answer you want to give?

Mr. BROOKS. If I get your question correctly; yes, sir.

Mr. PURCELL. I will try to repeat my question.

My question is, in substance, that you had testified on these points. Other witnesses testified on these points. You said just a moment ago you thought that you and the other witnesses had failed in convincing the subcommittee not to go for this bill that you don't like. Am I correct so far?

Mr. BROOKS. I think I said with reference particularly to the investigatory authority which this bill would grant the Secretary, the use in the bill of the visitorial and investigatory authority to the Federal Trade Commission and the inclusion there of a section from the Federal Communications Act were not adequately covered by me at the time of these hearings.

Mr. PURCELL. All right. Now, then, you give the impression in this statement that no one was for this bill. The truth of the matter is this—do you remember any witnesses representing organizations or even individuals who were in opposition to the bill in principle except you and the grain grading union or whatever it was they had up here?

Mr. BROOKS. In opposition to the bill?

Mr. PURCELL. Yes, sir.

Mr. BROOKS. May I look at the list of witnesses?

Mr. PURCELL. You were familiar with it a while ago. I wondered about your impression.

Mr. BROOKS. I would say that the railroads were in favor of this bill. There is no doubt about that.

I would say that the Commissioner of Agriculture for the State of Virginia did not endorse the original bill.

As I recall it, Mr. Olsen, a House Member, favored it. Mr. Metcalf favored it.

My recollection of Mr. Moos' statement, Director of the Department of Agriculture in Washington, was that he did not favor the bill.

Mr. Hoelck, who was president of the National Association of Chief Grain Inspectors, did not favor the bill.

My recollection is that the North American Grain Export Association, for whom Mr. Bailey and Mr. Higgins appeared, did not favor the bill.

Mr. Koch, of the New Orleans Board of Trade, did not favor the bill.

The Millers National Federation is not clear to me to what extent they favored or did not favor the bill. They did favor the possibility of having inspection performed at the request of parties rather than be required as the present law apparently provides.

I am not certain of the position of the North Dakota Public Service or the Wisconsin State Employees Association.

I believe that the International Stanley Corp. favored the bill.

Mr. Gregg, Kansas City Board of Trade, favored the permissive inspection aspects of the thing.

Mr. Hendrickson did likewise.

Mr. Hendrickson and Mr. Gregg both had substantial reservations about a number of the sections of the bill.

The group for the grain and feed dealers endorsed again the permissive features of the bill. They expressed substantial misgivings about cooperative agreements, as did other witnesses, Mr. Hendrickson and others, as we did. They also objected to a grant of authority as found in the Federal Trade Commission Act.

Mr. Stanton for the grain and warehouse division of the State of Missouri opposed the bill.

I believe Mr. Welsh of the Kansas State Grain Inspection also opposed the bill.

They had various reasons for this.

I think my statement says, when I enumerate the people who favored or did not favor or opposed certain sections, I referred to trade witnesses. By that I would exclude for the purposes of this statement representatives of railroads, representatives of the Department, and I don't recall now—I would also to a degree exclude farm groups although they are as far as this act is concerned producers who are in my judgment concerned with this bill.

Mr. PURCELL. The fact is that after all the witnesses whose names you read and several whose names you did not read testified and were heard in various sets of meetings over a period of several weeks, that when the subcommittee passed the bill with everyone present voting for it except one, and his voting present only, it might indicate that the impression made upon the subcommittee was somewhat conclusive as being in favor of the final version of the bill which now exists as this clean bill. Would this be true?

Mr. BROOKS. The impression I should get is that no impression has been made on the committee as to the sections I referred to today.

Mr. PURCELL. That would be a pretty fair analysis.

Mr. BROOKS. I am glad to get a second bite at the apple under those circumstances.

Mr. PURCELL. You may have three or four bites at the apple, please just answer my question. After all these witnesses, and everything you have said having already been said, and all the other witnesses heard, amendments put in and refinements made; when a vote is nearly unanimous, then these things that you have said this morning did not impress that subcommittee particularly well. Would this be a fair analysis?

Mr. BROOKS. I would again agree with you this is a very complex matter. I would suggest—and I attended these hearings and your attendance was regular—the other members of the subcommittee, and not all of them, some of them only, were able to benefit from the observations of those who appeared.

It could well be that the hearings, part 2, had been available when you met. It could well be that other members of the subcommittee did study and read them.

For instance, though, Mr. Purcell, there is nothing in the hearings to indicate that the Department or any one else felt that this revocation of inspection could be based on a determination by the Secretary absent conviction, as in the bill you provided, could be based on the determination by the Secretary that violations had occurred. This is a change and I would have fallen into the same trap if I was using two or three bills, 14261 and the bill introduced in the 89th Congress. I found myself doing this in attempting to draft these amendments.

I think this is an error that the committee should appreciate knowing about.

It may be that the discussions in the subcommittee were based upon communications that were not part of the record because this change from an actual conviction to a mere finding by the Secretary that a conviction had occurred.

There is another section here I did not discuss—

Mr. PURCELL. I think you have testified and I don't want you to restate your statement here. In regard to this statement you just made, I for one do appreciate the fact you have called this to our attention, but I do not particularly appreciate the fact that you have tried to give the impression this morning that there was no one for this bill; that there was not adequate consideration given to it. I know of no bill which has been given more thorough consideration in terms of length of time, number of hearings, and items of that nature.

Thank you very much.

Mr. Chairman, let me just say, since you led right off with a statement that in your judgment it appeared there was not agreement reached in this, as you have been led to believe, for whatever it is worth, I will state to you that there is agreement reached.

In my judgment the vast preponderance of the trade is for this bill. I just hate for this committee as a whole to have the impression based on one witness who has been opposed to the bill from the beginning as representing at least what I think the committee concluded—that this was a good bill, that there was general agreement on it from the trade and pretty well across the board and from all others concerned with it.

The CHAIRMAN. I want to compliment the chairman of the subcommittee because I know that on this particular matter there were long and intensive hearings. I know there was a rather definitive discussion of this problem in the subcommittee.

Whether the members of the full committee agree with your judgment or not is something members of the full committee will decide when they vote on it.

Mr. PURCELL. I realize that.

The CHAIRMAN. I appreciate the kind of consideration that was given to this bill because it did get more consideration in the hands of the subcommittee than it is possible to give every measure that comes before us.

That does not mean that we should deny anybody an opportunity to present any new found areas.

I do not think it is profitable to go over the same areas. I am rather reluctant to try the same issues here that were tried before the subcommittee.

Mr. BELCHER. I most certainly intend to try every issue tried before the subcommittee. I don't ever just vote a bill approved by the subcommittee.

The CHAIRMAN. I agree with that. I think having been present here and having heard the same testimony apparently presented in the subcommittee, it seems to me that is letting the appellate court give a trial de novo and hear witnesses.

If we do not let the subcommittees hold hearings and present facts to us then we lose all the advantages of committee hearings.

I do think it is perfectly proper for us to discuss procedures of the subcommittee. I think we should determine whether we think they are right or not. I don't think all these subcommittees are correct in their decisions.

You will recall this same subcommittee brought out a meat inspection bill. What they brought out was all right but the one they passed I thought was outrageous and in a sense contradicted every species of constitutional government—but they supported it. I think they had a right to support it. Of course we also have a right to question their judgment.

Mr. BELCHER. That is exactly why I am questioning some parts of this bill because this looks to me like a whole lot of the meat subcommittee bill.

The CHAIRMAN. I think we should question any part of the bill.

Mr. BELCHER. They followed the same policy as they did in meat inspection. I am alone in meat inspection because I thought public health and sanitation was involved and we had a meat inspection bill for the protection of the public.

As I understand it, this bill is for a service rendered by the Secretary of Agriculture which permits a buyer and seller to use a licensed inspector to determine grade of grain. The public is not involved at all in this transaction as I see it right now.

Therefore I do not think the subcommittee should make the same mistake they made on the meat inspection bill which you so violently opposed.

Mr. KLEPPE. Mr. Chairman, I am a member of that subcommittee. We did spend a lot of time in listening to witnesses and we spent a lot of committee time on this bill. We thought we went through the objections and objectives pretty carefully at the time we did it.

I have had a fair amount of mail on this subject. I suppose this is indicative of the fact I come from a rather substantial grain-producing State.

Most of the mail that I have received since our subcommittee's action has been along the lines of section 8—the cooperative agreement section.

As Chairman Purcell will recall, we did have quite a problem with this section in our own subcommittee. We had many opinions given to us by the Department particularly as to how this section might work, and the fact we could write legislative history that would basically delineate the intent of the committee in approving this particular section.

Having made this statement I would like to ask the witness, Mr. Brooks, one question.

It has to do with the legal and enforcement and investigatory parts of this legislation versus the present act.

Do you believe that the present act is totally encompassing and is sufficient unto itself in the area of investigation and enforcement?

Mr. BROOKS. I would say yes. I haven't studied it from the point of view you refer to, but I am not aware of any mischief which the present act can't cure.

Mr. KLEPPE. You believe with regard to false certificates, and what have you, under provisions of the present act they are sufficient to operate for the future?

Mr. BROOKS. Yes. Having made the answer I did before I ought to backtrack a little bit. There is one section here which I never could quite understand. I wonder whether it has enough teeth. This is where the Secretary, after an investigation, is able to publish findings.

There have been a number of prosecutions for plugging cars. A number of licenses have been lifted.

One of the reasons we are anxious to amend the basic act to provide that all Federal licenses be subject to a testing procedure and all Federal licenses have to be subject to having their license revoked is the difficulty the Department has had, in one instance I know of, where an employee of the State of Minnesota was apparently suspect. He was not performing as he should. There was a desire on the part of the then Administrator or the then Chief of the Grain Division to do something about his license. He had been designated as qualified by the Minnesota Warehouse Commission.

Mr. KLEPPE. The basic point of my question is that you answered "Yes" to my first question. Now you have some qualification on it.

Mr. BROOKS. Yes, sir.

Mr. KLEPPE. Basically this qualification is not included in any of your six proposed amendments.

Mr. BROOKS. No, sir. I was not made aware of any areas where the present act will not adequately punish and does not contain adequate sanction to prevent wrongdoing.

Mr. GATHINGS. I want to ask Mr. Brooks about the history of the U.S. Grain Standards Act. I believe you testified this act was passed in about 1916? Is that right?

Mr. BROOKS. Yes, sir.

Mr. GATHINGS. And both the Interstate and Foreign Commerce Committees of the two bodies as well as the Agriculture Committee had studied this proposal for some time?

Mr. BROOKS. Thirteen years.

Mr. GATHINGS. What was done over that period of time that required 13 years to pass that act originally?

Mr. BROOKS. This was a case of the Congress working its will by considering in one session after another various variations of the initial proposal.

The initial proposal was introduced by Senator Macomber from North or South Dakota. It was based on the premise that there should be Federal inspection of grain by Federal employees. This met with some resistance.

I would like to submit to you, if you would like to have it, a memorandum prepared about 14 years ago.

Mr. GATHINGS. Make it available, please.

Mr. BROOKS. All right, I will make it available.

Mr. Macomber was the original sponsor of this bill. This was in 1903. This went to the Committee on Interstate and Foreign Commerce.

All this history is included here. These bills were considered by the Committees on Interstate and Foreign Commerce or on Agriculture. Then there was a Senate report in another session.

In 1909 there was a House committee again.

In 1912 there was Senate Committee on Agriculture and Forestry.

In 1914 the House Committee on Agriculture and Forestry.

All these hearings went on. This memorandum was an attempt to review this history for a different reason. It is not an attempt to de-

velope a narrative, but an attempt on my part to determine whether or not, when Congress enacted the Grain Standards Act, they intended at that time, to exempt grain in its raw and natural state from the provisions of the pure food law which had been passed in about 1905 or 1906 or 1907.

I came to the conclusion that you could justify such an exemption on the basis of legislative history but the question became academic when the Food and Drug Administration said they had jurisdiction over grain in its raw and natural state as it moved in interstate commerce.

Mr. GATHINGS. How many times has the U.S. Grain Standards Act been amended since 1913?

Mr. BROOKS. I participated in hearings favoring amendments on two occasions in the fifties, 1954 and 1958, I believe.

It was amended before that to add soybeans, if that is material, that being oil seed and not grain.

Mr. FOLEY. Could you briefly tell me what the membership of the National Grain Council is?

Mr. BROOKS. I refer you to regular hearings, part 2, where at Mr. Kleppe's request I inserted these in the record. They are at page 103.

Mr. FOLEY. Briefly tell me.

Mr. BROOKS. Amarillo Grain Exchange including grain exchanges and other organizations in the grain industry.

Mr. FOLEY. Does your membership include organizations performing grain inspection?

Mr. BROOKS. Some of the exchanges do have an inspection department among other departments.

Mr. FOLEY. You do not broadly represent private grain inspectors?

Mr. BROOKS. No, sir.

The CHAIRMAN. Any other questions of Mr. Brooks?

If not we are very much obliged to you, Mr. Brooks.

Mr. BROOKS. Thank you, Mr. Chairman.

The CHAIRMAN. Is there anyone else here who wants to testify in regard to this pending bill?

(No response.)

(The following letter was submitted to the committee:)

ASSOCIATION OF AMERICAN RAILROADS,

Washington, D.C., February 1, 1968.

DEAR MR. CHAIRMAN: The Association of American Railroads supports H.R. 14261 (90th Congress), a bill introduced on December 4, 1967, by Congressman Purcell "to provide for United States standards and a national inspection system for grain, and for other purposes," and urges that it be favorably reported by the Committee on Agriculture.

As we understand it, H.R. 14261 is a "clean bill" approved by the Subcommittee on Livestock and Grains and intended to supersede H.R. 11162 (90th Congress). During hearings conducted by the Livestock and Grains Subcommittee in November of last year, witnesses speaking for the Association of American Railroads testified in favor of H.R. 11162. We support H.R. 14261 for the same reasons our witnesses gave on the earlier bill. Their statements are to be found commencing at page 75 of Part 2 of the printed record of the hearings on H.R. 11162.

I ask that this letter be included in the record of your Committee's hearing on H.R. 14261.

Sincerely,

THOMAS M. GOODFELLOW.

The CHAIRMAN. Let the record show no one responded.

Since there appears to be no one else to testify and inasmuch as the hour has passed the planned hour, the committee will now go into executive session.

(Whereupon, at 11:20 a.m. the committee went into executive session.)

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The Commission has the record of the case against
 Since there appears to be no other case, it is assumed as
 the fact has been the person being the investigation will be very into
 executive session.
 (where) at 11:30 am, the committee went into executive
 session.