

UNITED STATES GRAIN STANDARDS ACT
REAUTHORIZATION ACT OF 2015

MAY 29, 2015.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. CONAWAY, from the Committee on Agriculture,
submitted the following

R E P O R T

[To accompany H.R. 2088]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 2088) to amend the United States Grain Standards Act to improve inspection services performed at export elevators at export port locations, to reauthorize certain authorities of the Secretary of Agriculture under such Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

BRIEF EXPLANATION

The United States Grain Standards Act Reauthorization Act of 2015, H.R. 2088, reauthorizes provisions of the United States Grain Standards Act until September 30, 2020, and provides a safeguard mechanism in the event of an interruption of official inspection services. In addition, H.R. 2088 revises the process for the delegation and designation of authority by the Secretary to provide official inspection services and allows for the review of current delegations. Finally, the legislation amends the United States Grain Standards Act to provide a basis for fees based on export tonnage and for the adjustment of those fees.

PURPOSE AND NEEDS

Witnesses testifying before the subcommittee, as well as producer organizations submitting statements for the hearing record, affirmed that it remains FGIS's ultimate responsibility to provide accurate, reliable, consistently available, and cost-effective grain in-

spection and weighing services. Though proposals varied, each organization underscored the importance of adopting a workable safeguard mechanism to ensure continuation of grain inspection and weighing services in the event that a delegated State agency is unable or unwilling to carry out their responsibility, and FGIS fails to fulfill its statutory mandate and provide inspection and weighing services. The Committee therefore adopted a safeguard mechanism that provides flexibility to the export elevators at export port locations receiving services to petition other delegated or designated State agencies to step in if FGIS fails to do so. This structure will maintain inspection and weighing services at a level consistent with the current expectations of our trading partners.

Extension of operations

Under the United States Grain Standards Act (USGSA) of 1916, the Federal Government is authorized to establish official marketing standards for grains and oilseeds, and to provide procedures for grain inspection and weighing. Most of the Act is permanently authorized, including mandatory inspection and weighing of exported grain, as well as authority to amend grain standards of quality. However, several provisions expire on September 30, 2015. A lapse in authorization could disrupt the current grain inspection and weighing program.

The provisions expiring on September 30, 2015, are:

- Authority for appropriations (7 U.S.C. 87h)
- Federal Grain Inspection Service (FGIS) authority for charging fees required for Federal supervision of State agencies' export inspections and weighing (7 U.S.C. 79(j)(4) and 7 U.S.C. 79a(1)(3))
- Administrative/supervisory cost cap of 30% (7 U.S.C. 79d)
- Authority for an advisory committee (7 U.S.C. 87j(e))

Safeguard against interruption of official inspection services

In early July 2014, Washington State Department of Agriculture (WSDA), the delegated State agency providing export inspections at the United Grain Corporation terminal at the Port of Vancouver (Washington), discontinued its export inspection service amid an ongoing labor dispute between United Grain, two other exporting companies, and the International Longshore and Warehouse Union. The United Grain terminal is a major grain export facility on the West Coast. Under the USGSA, when a delegated agency, in this case WSDA, fails to perform their duties, FGIS is statutorily required to step in to resume export inspections.

In a letter released by WSDA, the agency offered that their justification for removing inspectors was based on the belief that the "continued provision of inspections services appears to have been unhelpful in leading to any foreseeable resolution" of the labor dispute. Many observers interpreted these comments to suggest the service disruption was driven by politics associated with labor policy, not employee safety as FGIS later stated.

In mid-July 2014, a number of agricultural groups urged FGIS to take immediate action to restore service, by using either Federal inspectors or qualified inspectors from other delegated agencies. The Grain Inspection Advisory Committee also called on FGIS to restore grain inspection service. They adopted the following resolution in its July 2014 meeting.

Therefore be it resolved that the Grain Inspection Advisory Committee urges in the strongest terms that FGIS take whatever actions are necessary to immediately restore official grain inspection and weighing service wherever and whenever it is disrupted, either by immediately replacing absent inspectors with FGIS Official personnel or with inspectors from available qualified providers, including other designated or delegated Official Agencies.

Although export inspections are mandatory under USGSA, FGIS has discretion to grant a waiver of inspection in an emergency (as determined by the Secretary of Agriculture). In July, USDA granted United Grain a single inspection waiver but failed to provide similar waivers in response to other requests. To address the urgency of the situation created by FGIS's failure to either provide waivers of inspection or to fulfill their statutory mandate, the company relocated grain to other facilities for inspection significantly increasing shipping costs.

In early August 2014, FGIS again declined using Federal inspectors at the United Grain Corporation terminal at the Port of Vancouver because FGIS implied the situation does not ensure that FGIS inspectors will have safe access to the facility.

Safety inspectors from the U.S. Department of Agriculture (USDA) were sent to assess employee safety at the facility. To date, USDA has chosen to withhold those safety assessments from the Committee despite repeated requests to review those reports. Committee staff interviewed the USDA official who audited security at the port and was informed that the official reported what security issues he could identify were easily mitigated, and he saw no reason why USDA could not immediately assume grain inspection services. USDA originally indicated that no report was filed, then recently asserted that the Department determined that it cannot share these reports with Congress due to concerns that sharing such reports would be inconsistent with Departmental regulation 3440-2 pertaining to public disclosure of classified or sensitive information. The Supreme Court has held that Congress may obtain confidential or even classified information in order to fulfill its constitutional authority to enact legislation. Contrary to USDA's assertion, giving a report to Congress is not making a report public. Further, USDA regulations do not apply to Congress. USDA's insistence on withholding information from Congress raises even more questions regarding their decision to withhold inspectors.

Finally, in August 2014, after a prolonged period without official inspection services, the grain companies and union reached an agreement to end the dispute, and inspections resumed at the United Grain company terminal.

In order to address significant concerns that future disruptions could adversely affect the reputation of U.S. grain exporters as reliable suppliers and cause more economic harm, H.R. 2088 provides a safeguard mechanism in the event of another disruption in service.

In the event of an anticipated disruption in service not caused by a major disaster, the delegated State agency shall give FGIS at least 72 hours prior notice. Once the disruption in service occurs, FGIS must resume official inspection and weighing services within six hours. If no prior notice was given, FGIS has 12 hours to pro-

vide the services. FGIS may use either Federal inspectors or inspectors from another delegated State agency to remedy the situation. If for any reason FGIS cannot resume official inspection and weighing services within the applicable timeframe, the interested person at an export elevator at an export port location may request that another delegated or designated State agency perform official inspection and weighing services.

If a disruption in service occurs, the Secretary must review the delegated State agency and report to Congress: (1) the reason(s) for the service interruption, and (2) the determination and justification for revoking or retaining the State agency's delegated status. Receipt of 72 hour prior notice will be a mitigating factor in the Secretary's determination.

Delegation process for State agencies

The bill ends the permanent delegation of State agencies to carry out export inspection and weighing services. Within two years of enactment, FGIS must review current State agency delegations by existing statutory criteria. The review will also have a public notice and comment period. The delegations will be for a maximum five-year period, at the end of which, the delegated State agency must reapply for their delegated status. This process will bring transparency to a currently opaque process. The bill also makes other state agencies eligible to apply for delegated authority to perform official inspection and weighing services.

Length of designations

The bill increases the length of domestic inspection designations from three years to five years. This change will allow officially designated entities more stability for planning purposes. GIPSA will still be able to suspend or revoke the entity's designation if it is warranted per current law.

User fee calculation

The bill changes the fee calculation for inspection and weighing services based on export tonnage to be based on a five-year rolling average of export tonnage volumes. The five year rolling average will be more predictable and reflective of the market. It also directs the Secretary of Agriculture to annually adjust the fees to maintain a three to six month operation reserve.

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1. Short title

Section 1 of the bill designates the title of the bill as "United State Grain Standards Act Reauthorization Act of 2015".

Section 2. Reauthorization of United States Grain Standards Act

Subsection (a) amends the purposes of the Act, found in section 2(b) (7 U.S.C. 72(b)), by amending paragraph (1) and adding a new paragraph (4). Paragraph (1) is amended to provide that it is the policy of Congress to promote the marketing of high quality grain responsive to the purchase specifications of domestic and foreign buyers. Paragraph (4) provides that, it is the policy of Congress to

provide an accurate, reliable, consistently available and cost-effective official grain inspection and weighing system.

Subsection (b) amends section 3 of the Act (7 U.S.C. 75) to include a new paragraph (aa) and to make technical and conforming amendments to section 3. Paragraph (aa) defines the term “major disaster”.

Subsection (c) amends section 5(a) of the Act (7 U.S.C. 77(a)(1)) to remove the Secretary’s discretionary waiver authority in emergency situations in paragraph (1) and amends paragraph (2) to provide that transfers of grain into an export elevator by any mode of transportation are not required to be officially weighed.

Subsection (d) amends section 7(e) of the Act (7 U.S.C. 79(e)) to revise the process that the Secretary uses to delegate authority to State agencies. The amended process includes an application process, public notice and comment period, investigation, and, ultimately, findings and decision by the Secretary. This section also provides for a 72-hour notice to the Secretary should any delegated State agency intend to temporarily discontinue official inspection services. In addition, this subsection provides that, should any delegated State agency fail to perform official inspection services, the Secretary is required to review the delegation of authority, make a finding as to whether or not the State agency should retain its delegated authority, and report this information to Congress within 90 days. A State agency delegated authority by the Secretary retains the ability to request a cancellation of authority for any reason upon 90-days advance notice to the Secretary. Subsection (d) further amends the term of delegation to a period not to exceed five years. Finally, subsection (d) provides for the review by the Secretary of all State agencies delegated authority within two years of the date of enactment of this Act.

Subsection (e) further amends section 7(e) (7 U.S.C. 79(e)) by providing that official inspection services are to be provided in an uninterrupted manner. Where official inspection services are interrupted, the Secretary has a period of time to reestablish services using USDA personnel or personnel from another delegated State agency. Where a delegated State agency gives advance notice, the Secretary has six hours to resume services. Where a delegated State agency does not give advance notice, the Secretary has twelve hours to resume service. Where the Secretary is unable to reestablish official inspection services within the time period allotted, the export elevator at the export port location may request services from any other delegated or designated State agency. Should any other delegated or designated State agency agree to provide such services, such an agency may, at their own discretion, provide those services up to 90 days from the date such service is initiated. The Secretary is further required to maintain a list of such delegated State agencies and all official agencies contact information for such agencies on USDA’s website.

In developing this legislation, FGIS provided the Committee with invaluable technical assistance. Among the issues that were discussed between the FGIS and Committee were the need for FGIS to audit each export elevator at an export port location in order to evaluate and correct any concerns with employee safety before those concerns manifest into a service disruption. Further, the FGIS agreed to develop location specific contingency plans to en-

sure that FGIS can fulfill its statutory obligation of providing uninterrupted weighing and grading services at each export elevator at an export port location. The Committee appreciates this input and requests that such contingency plans be developed in cooperation with stakeholders and be made final within one year of enactment.

The Committee engaged FGIS on several logistical questions pertaining to implementation of this safeguard provision, and whether the agency had regulatory authority to deal with these items, or if the agency would require statutory direction. The FGIS confirmed both the underlying authority to address these logistical items by regulation, and their willingness to do so expeditiously. Those logistical items include, but are not limited to ensuring any delegated or designated State agency providing temporary inspection services in the event of a service interruption would be granted unhindered access to equipment and facilities to carry out weighing and grading services; and provisions to establish an appropriate fee structure to cover weighing and grading service costs, including costs associated with transportation and lodging of temporary inspectors.

Subsection (f) amends section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) by removing paragraphs (A) and (B)(ii); redesignating clauses (i) and (ii) as subparagraphs (A) and (B) and inserting a new subparagraph (C) and making other technical and conforming changes. New subparagraph (C) allows the Secretary to waive the geographic boundaries for designated agencies where an official agency and an adjacent official agency have agreed in writing to waive the geographic boundaries.

Subsection (g) amends Section 7(g)(1) of the Act (7 U.S.C. 79(g)(1)) by amending the duration of designations of official agencies from three to five years.

Subsection (h) amends Section 7(j)(1) of the Act (7 U.S.C. 79(j)(1)) to allow the portion of fees for official inspections and weighing that is based on export tonnage to be based on a rolling five-year average of export tonnage volumes and to allow for the adjustment of those fees on at least an annual basis. Section 7(j)(1) is also amended to allow for fees to be adjusted to maintain an operating reserve of three to six months and to extend until September 30, 2020, the application of fees to cover the administrative and supervisory costs related to the official inspection of grain.

Subsection (i) makes technical and conforming changes to Section 7A(c)(2) of the Act (7 U.S.C. 79a(c)(2)) to conform that section to the changes made by subsection (e).

Subsection (j) amends Section 7A(1)(3) of the Act (7 U.S.C. 79a(1)(2)) by extending until September 30, 2020, the collection of fees for weighing services.

Subsection (k) amends Section 7D of the Act (7 U.S.C. 79d) by extending until September 30, 2020, the limitation of administrative and supervisory costs.

Subsection (l) amends Section 8 of the Act (7 U.S.C. 84) by amending the duration of authorizations from three to five years and by amending the persons who may be hired as official inspection personnel.

Subsection (m) amends Section 19 of the Act (7 U.S.C. 87h) by extending until September 30, 2020, the authorization for appropriations.

Subsection (n) amends Section 21 of the Act (7 U.S.C. 87j(e)) by extending until September 30, 2020, the authorization of the advisory committee.

COMMITTEE CONSIDERATION

I. HEARINGS

On April 22, 2015, the Subcommittee on General Farm Commodities and Risk Management held a public hearing to review reauthorization of the United States Grains Standards Act.

Members of the Subcommittee heard testimony and discussed reauthorization of the United States Grains Standards Act. First enacted in 1916, the Act has been the cornerstone of the grain trade both for domestically and internationally. This law is relied upon not only by exporters and domestic shippers, but the whole United States agricultural sector. It established official marketing standards and procedures for the inspection and weighing of grains and oilseeds, providing a critical service to the grain marketplace. During the hearing, the following witnesses testified on matters included in H.R. 2088:

- Mr. David M. Winkles, Jr., President, South Carolina Farm Bureau, Columbia, SC
- Mr. David Cox, Sr., National President, American Federation of Government Employees, AFL-CIO, Washington, DC
- Mr. Nick Friant, Chairman, Grain Grades and Weights Committee, National Grain and Feed Association; Co-Chair, Grain Grades and Inspections Committee, North American Export Grain Association, Wayzata, MN

II. FULL COMMITTEE

The Committee on Agriculture met, pursuant to notice, with a quorum present, on April 30, 2015, to consider H.R. 2088, United States Grains Standards Act Reauthorization Act of 2015.

H.R. 2088 was placed before the Committee for consideration. Without objection, a first reading of the bill was waived and it was open for amendment at any point.

Chairman Conaway, Mr. Peterson, Mr. Crawford, and Mr. Walz were recognized for statements. There being no amendments, Mr. Peterson was recognized to offer a motion that the bill H.R. 2088 be reported favorably to the House with the recommendation that it do pass. The motion was subsequently approved by voice vote.

At the conclusion of the meeting, Chairman Conaway advised Members that pursuant to the rules of the House of Representatives Members had until May 4, 2015, to file any supplemental, minority, additional, or dissenting views with the Committee.

Without objection, staff was given permission to make any necessary clerical, technical or conforming changes to reflect the intent of the Committee. Chairman Conaway thanked all the Members and adjourned the meeting.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the House of Representatives, H.R. 2088 was reported by voice vote with a majority quorum present. There was no request for a recorded vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Agriculture's oversight findings and recommendations are reflected in the body of this report.

BUDGET ACT COMPLIANCE (SECTIONS 308, 402, AND 423)

The provisions of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and sections 402 and 423 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 13, 2015.

Hon. K. MICHAEL CONAWAY,
*Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2088, the United States Grain Standards Act Reauthorization Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jim Langley.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 2088—United States Grain Standards Act Reauthorization Act of 2015

Summary: H.R. 2088 would amend and extend, through 2020, the U.S. Department of Agriculture's (USDA's) authority to carry out activities under the United States Grain Standards Act. The bill would authorize annual appropriations of amounts necessary for the Grain Inspection, Packers, and Stockyards Administration (GIPSA, an agency of USDA) to carry out activities under that act and extend GIPSA's authority to collect and spend fees for certain grain inspection and weighing services. H.R. 2088 also would allow the Secretary of Agriculture to authorize state agencies and private entities to perform export inspection and weighing services and would specify procedures whereby such activities would continue during disaster conditions or other disruptions in services.

CBO estimates that implementing H.R. 2088 would cost \$106 million over the 2016–2020 period, assuming appropriation of the necessary amounts. Enacting the bill would affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that such effects would not be significant in any year. The bill would not affect revenues.

H.R. 2088 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 2088 would impose a private-sector mandate, as defined in UMRA, on grain exporters by extending GIPSA's authority to collect fees for grain inspection and weighing services. Based on information from GIPSA, CBO estimates that the cost of complying with the mandate would fall below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2015, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 2088 is shown in the following table. The costs of this legislation fall within budget function 350 (agriculture).

| | By fiscal year, in millions of dollars— | | | | | 2016–2020 |
|--|---|------|------|------|------|-----------|
| | 2016 | 2017 | 2018 | 2019 | 2020 | |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Estimated Authorization Level | 20 | 21 | 21 | 22 | 22 | 106 |
| Estimated Outlays | 20 | 21 | 21 | 22 | 22 | 106 |

Basis of estimate: For this estimate, CBO assumes that H.R. 2088 will be enacted by October 1, 2015, and that the necessary amounts will be appropriated in each of the next five years.

The legislation would reauthorize, through 2020, annual appropriations of amounts necessary for GIPSA to establish standards and monitor grain inspection and weighing services provided on a fee-for-service basis under the United States Grain Standards Act. (Under current law, such authorities will expire on September 30, 2015). For 2015, GIPSA received \$20 million for those activities. Assuming that GIPSA's costs under H.R. 2088 would remain in line with current funding levels and adjusting for anticipated inflation, CBO estimates that fully funding GIPSA's activities would require appropriations totaling \$20 million in 2016 and \$106 million over the 2016–2020 period.

The bill also would extend GIPSA's authority to collect and spend fees for inspection and weighing services conducted at various export elevators at export port locations. GIPSA establishes such fees to recover the costs of providing those services, and to maintain a three- to six-month operating reserve to finance accrued liabilities. CBO estimates that offsetting receipts from such fees will total \$47 million in 2015 and \$55 million in 2016. Because fee collections would be adjusted at least annually to offset the cost of inspection and weighing services, CBO estimates that the legislation would have no significant net effect on direct spending in any year.

Pay-As-You-Go considerations: None.

Impact on state, local, and tribal governments: H.R. 2088 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The bill would extend the USDA's authority to collect fees from state agencies to which it has delegated certain responsibilities under the Grain Standards Act, but the agencies pay those fees as a condition of participating in a voluntary federal program.

Estimated impact to the private sector: H.R. 2088 would impose a private-sector mandate, as defined in UMRA, on grain exporters by extending GIPSA's authority to collect fees for grain inspection

and weighing services. Inspection and weighing services are mandatory for most grain exported from the United States. Fees for inspection and weighing services are collected by GIPSA, State agencies, or private entities approved by the Secretary of Agriculture. Based on information from GIPSA, CBO estimates that the fees paid by grain exporters for mandatory inspection and weighing services would amount to \$50 million to \$60 million annually. Consequently, the cost of complying with the mandate would fall below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2015, adjusted annually for inflation).

Estimate prepared by: Federal costs: Jim Langley; Impact on state, local, and tribal governments: J'nell Blanco Suchy; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to amend the United States Grain Standards Act to improve inspection services performed at export elevators at export port locations, to reauthorize certain authorities of the Secretary of Agriculture under such Act, and for other purposes.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee report incorporates the cost estimate prepared by the Director of the Congressional Budget Office pursuant to sections 402 and 423 of the Congressional Budget Act of 1974.

ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

FEDERAL MANDATES STATEMENT

The Committee adopted as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

EARMARK STATEMENT REQUIRED BY CLAUSE 9 OF RULE XXI OF THE RULES OF HOUSE OF REPRESENTATIVES

H.R. 2088 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House Representatives.

DUPLICATION OF FEDERAL PROGRAMS

This bill does not establish or reauthorize a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee does not believe that the legislation directs an executive branch official to conduct any specific rule making proceedings within the meaning of 5 U.S.C. 551.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES GRAIN STANDARDS ACT

* * * * *

DECLARATION OF POLICY

SEC. 2. (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]** *responsive to the purchase specifications of 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[.]; and
- (4) to provide an accurate, reliable, consistently available, and cost-effective official grain inspection and weighing system.

DEFINITIONS

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

- (a) [the term] *The term* “Secretary” means the Secretary of Agriculture of the United States or delegates of the Secretary[;].
- (b) [the term] *The term* “Department of Agriculture” means the United States Department of Agriculture[;].
- (c) [the term] *The term* “person” means any individual, partnership, corporation, association, or other business entity[;].
- (d) [the term] *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] *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] *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] *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] *The term* “export grain” means grain for shipment from the United States to any place outside thereof[;].
- (i) [the term] *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] *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 func-

tions involved in official inspection, official weighing, or supervision of weighing, or in the supervision of official inspection, official weighing or supervision of weighing[;].

(k) **[the term]** *The term* “official mark” means any symbol prescribed by regulations of the Secretary to show the official determination of official inspection or official weighing[;].

(l) **[the term]** *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]** *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 weighing)[;].

(n) **[the terms]** *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]** *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]** *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]** *The term* “lot” means a specific quantity of grain identified as such[;].

(r) **[the term]** *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]** *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]** *The terms* “false”, “incorrect”, and “misleading” mean, respectively, false, incorrect, and misleading in any particular[;].

(u) **[the term]** *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]** *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]** *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]** *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]** *conveyance. The terms* “officially weigh” and “officially weighed” shall be construed **[accordingly);]** *accordingly.*

(y) **[the term]** *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]** *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.

(aa) *The term “major disaster” has the meaning given that term in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)), except that the term includes a severe weather incident causing a region-wide interruption of government services.*

* * * * *

OFFICIAL INSPECTION AND WEIGHING REQUIREMENTS

SEC. 5. (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]** *shall promptly 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,] *shipments of grain into an export elevator by any mode of transportation* 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.

* * * * *

OFFICIAL INSPECTION AUTHORITY AND FUNDING

SEC. 7. (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 of-

ficial 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.] (1) Except as otherwise provided in paragraphs (3) and (4) of this subsection, the Secretary shall cause official inspection at export elevators at export port locations, for all grain required or authorized to be inspected by this Act, to be performed—~~

~~(A) by official inspection personnel employed by the Secretary;~~

~~or~~

~~(B) by 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] and meets the criteria specified in subsection (f)(1)(A) of this section, 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] at export elevators at export port locations within the State, including at export elevators at 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] The delegation under this paragraph of authority to conduct official inspection services shall be for a term not to exceed five years, and may be renewed thereafter in accordance with this subsection, except that 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.】

(3) *Prior to delegating authority to a State agency for the performance of official inspection services at export elevators at export port locations pursuant to paragraph (2) of this subsection, the Secretary shall comply with the following:*

(A) *Upon receipt of an application from a State agency requesting the delegation of authority to perform official inspection services on behalf of the Secretary, publish notice of the application in the Federal Register and provide a minimum 30-day comment period on the application.*

(B) *Evaluate the comments received under subparagraph (A) with respect to an application and conduct an investigation to determine whether the State agency that submitted the application and its personnel are qualified to perform official inspection services on behalf of the Secretary. In conducting the investigation, the Secretary shall consult with, and review the available files of the Department of Justice, the Office of Inspector General of the Department of Agriculture, and the Government Accountability Office.*

(C) *Make findings based on the results of the investigation and consideration of public comments received.*

(D) *Publish a notice in the Federal Register announcing whether the State agency has been delegated the authority to perform official inspection services at export elevators at export port locations on behalf of the Secretary, and the basis upon which the Secretary has made the decision.*

(4)(A) *Except in the case of a major disaster, if a State agency that has been delegated the authority to perform official inspection services at export elevators at export port locations on behalf of the Secretary fails to perform such official services, the Secretary shall submit to Congress, within 90 days after the first day on which inspection services were not performed by the delegated State agency, a report containing—*

(i) the reasons for the State agency's failure; and

(ii) the rationale as to whether or not the Secretary will permit the State agency to retain its delegated authority.

(B) *A State agency may request that the delegation of inspection authority to the agency be canceled by providing written notice to the Secretary at least 90 days in advance of the requested cancellation date.*

(C) *If a State agency that has been delegated the authority under paragraph (2) of this subsection to perform official inspection services at an export elevator at an export port location on behalf of the Secretary intends to temporarily discontinue such official inspection services or weighing services for any reason, except in the case of a major disaster, the State agency shall notify the Secretary in writ-*

ing of its intention to do so at least 72 hours in advance of the discontinuation date. The receipt of such prior notice shall be considered by the Secretary as a mitigating factor in determining whether to maintain or revoke the delegation of authority to the State agency.

(5) Except in the case of a major disaster, the Secretary shall cause official inspections at an export elevator at an export port location—

(A) to be performed without interruption by official inspection personnel employed by the Secretary or by a State agency delegated such authority under paragraph (2) of this subsection; or

(B) if interrupted, to be resumed at the export elevator by utilizing official inspection personnel employed by the Secretary or by another delegated State agency as provided under paragraph (2) of this subsection as follows:

(i) Within six hours after the interruption, if the interruption is caused by a State agency delegated such authority under this subsection and the Secretary received advance notice of the interruption pursuant to paragraph (4)(C) of this subsection.

(ii) Within 12 hours after the interruption, if the State agency failed to provide the required advance notice of the interruption.

(6)(A) If the Secretary is unable to restore official inspection services within the applicable time period required by paragraph (5)(B) of this subsection, the interested person requesting such services at the export elevator at an export port location shall be authorized to utilize official inspection personnel, as provided under section 8 of the Act, employed by another State agency delegated authority under paragraph (2) of this subsection or designated under subsection (f)(1) of this section.

(B) A delegated or designated State agency providing inspection services under subparagraph (A) may, at its discretion, provide such services for a period of up to 90 days from the date on which the services are initiated, after which time the Secretary may restore official inspection services using official inspection personnel employed by the Secretary or a State agency delegated such authority under this subsection, if available. The State agency shall notify the Secretary in writing of its intention to discontinue inspection services under subparagraph (A) at least 72 hours in advance of the discontinuation date.

(7) Not later than 60 days after the date of the enactment of this paragraph, the Secretary shall make available to the public, including pursuant to a website maintained by the Secretary, a list of all delegated States and all official agencies authorized to perform official inspections on behalf of the Secretary. This list shall include the name, contact information, and category of authority granted. The Secretary shall update the list at least semiannually.

(f)(1) With respect to official inspections [other than at export port locations] (other than at an export elevator at an export port location), 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 ap-

peal 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—**】** *the Secretary shall allow a designated official agency to cross boundary lines to carry out inspections in another geographic area if—*

[(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.]

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

(B) a person requesting inspection services in that geographic area requests a probe inspection on a barge-lot basis; or

(C) the current official agency for that geographic area agrees in writing with the adjacent official agency to waive the current geographic area restriction at the request of the applicant for service.

(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.

[(4)] (5) 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)] *or subsection (e)* of this section, as the Secretary determines will best meet the objectives of this Act.

(g)(1) Designations of official agencies shall terminate at such time as specified by the Secretary but not later than [triennially] *every five years* 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 amend-

ment, 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 transhipped 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) (A) 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.

(B) For official inspections and weighing at an export elevator at an export port location performed by the Secretary, performed by a State agency delegated the authority to perform official inspection services at the export elevator on behalf of the Secretary, or performed by a State agency utilized as authorized by subsection (e)(6)(A), the portion of the fees based upon export tonnage shall be based upon a rolling five-year average of export tonnage volumes. In order to maintain an operating reserve of between three to six months, the Secretary shall adjust such fees at least annually.

(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 performed 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]** *September 30, 2020*. 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. (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] *with respect to an export elevator at an export port location*, to delegate authority to perform official weighing 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] *subsection (e) and (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 trans-

shipped 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 operate 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—】** *the Secretary shall allow a designated official agency to cross boundary lines to carry out weighing in another geographic area if—*

【(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 weighing services from the current designated official agency for that geographic area.】

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

(B) the current official agency for that geographic area agrees in writing with the adjacent official agency to waive the current geographic area restriction at the request of the applicant for service.

(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** *September 30, 2020*. 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 incident 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.

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LIMITATION AND ADMINISTRATIVE AND SUPERVISORY COSTS

SEC. 7D. 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** *2020* 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. (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 inspec-

tion 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 inspection 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】** *every five years* 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 per-

forming 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 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.

(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] *this 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] *performs* 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.

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GENERAL AUTHORITIES

SEC. 16. (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, li-

cense, 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)】** *The Office of Inspector General 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.

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APPROPRIATIONS

SEC. 19. 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~~ 2020, 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. (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~~ September 30, 2020.

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