

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 116-334

UNITED STATES GRAIN STANDARDS
REAUTHORIZATION ACT OF 2020

R E P O R T

OF THE

COMMITTEE ON AGRICULTURE, NUTRITION,
AND FORESTRY

ON

S. 4054



DECEMBER 16, 2020.—Ordered to be printed

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SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

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

R E P O R T

[To accompany S. 4054]

The Committee on Agriculture, Nutrition and Forestry, having considered an original bill (S. 4054) to reauthorize the United States Grain Standards Act, and for other purposes, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to reauthorize expiring authority for federal grain inspection. The bill makes improvements to increase certainty, predictability, and transparency in the federal grain inspection system for U.S. farmers and other market participants.

The reported bill provides authority for federal grain inspection programs through fiscal year 2025.

BACKGROUND AND NEEDS

The Secretary, acting through the Federal Grain Inspection Service, is responsible for establishing official marketing standards for U.S. grains and oilseeds and for managing grain inspection. The reported bill reauthorizes various provisions in the United States Grain Standards Act (USGSA) relating to federal grain inspection through fiscal year 2025. The statute was last reauthorized in 2015 when authorities for federal grain inspection programs were extended through September 30, 2020.

SUMMARY OF PROVISIONS

The bill reauthorizes various provisions in the United States Grain Standards Act (USGSA) relating to federal grain inspection

through fiscal year 2025, including authority for delegated state agencies and designated official agencies to collect fees, the cap on administrative and supervisory costs, authority for appropriations, and the authority for the Grain Inspection Advisory Committee. In addition to reauthorization, the bill enhances publicly available information and improves certainty, predictability, and transparency for U.S. commodity producers, exporters, and trading partners.

Section 2 of the bill improves predictability by requiring State agencies that intend to temporarily discontinue official inspection or weighing services to notify customers or applicants for these services in writing at least 72 hours in advance of the discontinuation date. This will provide these market participants with the same notice that is currently afforded to the Secretary of Agriculture.

Section 5 of the bill requires the Secretary to publish, on a quarterly basis, certain inspection program data for intrinsic quality factors and food safety factors, exceptions for inspections across geographic boundaries either requested or granted, and waivers for official weighing or inspection either requested or granted. The bill also authorizes the Secretary to publish additional data related to testing, inspection, and weighing activities under the Act, after consultation with State agencies, official agencies, and the grain industry.

The intrinsic quality factors and food safety factors required to be published on a quarterly basis by the new section 17B(d)(1) of the USGSA, as added by section 5 of the bill, include eight factors that have been reported for the five fiscal years 2014 through 2018 in the Federal Grain Inspection Service (FGIS) annual reports to Congress for fiscal years 2016 through 2018. These factors include the:

1. Number of Barley Protein Inspections.
2. Number of Corn Protein, Oil, and Starch inspections.
3. Number of Wheat Protein Inspections.
4. Number of Soybean Protein and Oil Inspections.
5. Number of Sunflower Seed Oil inspections.
6. Number of Aflatoxin Inspections.
7. Number of Deoxynivalenol Inspections.
8. Number of Fumonisin Tests.

FGIS performs a number of other intrinsic and extrinsic quality tests. The new section 17B(e) of the USGSA, as added by section 5 of the bill, authorizes FGIS to publish data relating to testing for other intrinsic quality factors or food safety factors, or collected from inspection and weighing activities, to the extent determined appropriate by the Secretary in consultation with certain State agencies, official agencies, and grain industries.

Grain industry participants have expressed an interest in enhanced reporting from the United States Department of Agriculture (USDA) on non-mandatory, non-grade determining tests requested or performed. Demand for some of these tests has reportedly increased from a wide range of customers. Industry participants believe it could benefit sellers, buyers, and others in the grain value chain to have a better understanding of the demand for these tests, as provided through reports to USDA.

New section 19(b) of the USGSA, as added by section 6 of the bill, prohibits the fees collected under specified authorities in the

USGSA from being used for activities related to the development or maintenance of grain standards, or any other activity that is not directly related to the performance of an “official inspection or weighing service” (as that term is defined in new section 19(b)(1)(A)). Among these services, FGIS conducts residue and quality surveys for grain exports, in collaboration with nonprofit U.S. agricultural trade organizations that participate in the Foreign Market Development Program as cooperators. Currently, fees for these services may be collected from cooperators under the authority of the Agricultural Marketing Act of 1946. The collection and use of the fees for export surveys are in no way limited by new section 19(b).

The bill amends the provisions governing the Grain Inspection Advisory Committee to allow members to serve up to two consecutive three-year terms. This will allow members to have more consistent and predictable involvement in the advisory committee, and provide continuity in the committee’s work over time.

The bill requires the Secretary to conduct a comprehensive nationwide review of the official agency geographic areas, and report the results of the review and any recommendations to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives no later than 18 months after the date of enactment.

Uniformity in inspection and weighing among grain buying facilities through which farmers’ grain enters the marketplace is essential to maintaining the confidence of grain sellers and buyers throughout the domestic and international value chain. USDA and the grain industry should work collaboratively to ensure that individuals responsible for inspecting or grading any lot of grain undergo appropriate training both before the individual inspects or grades any grain, and annually thereafter.

Industry partners should work with FGIS, official agencies, and farmer-led organizations to develop and carry out inspection and grading training to ensure consistent application of the inspection and grading standards under the Act. Continuing to foster consistency among official agencies and private facilities in their training requirements, inspections, and grading will enhance certainty for American farmers and their domestic and international customers.

The Committee remains concerned about an ongoing non-tariff trade barrier that negatively affected U.S. soybean exports to China. In January 2018, the USDA Animal and Plant Health Inspection Service (APHIS) and the Chinese government began enforcing a requirement that all U.S. soybean consignments exceeding 1 percent foreign material (FM) carry an additional declaration (AD) on phytosanitary certificates—a certificate that is reserved solely for communicating plant pest or plant health risks. This action led to a decline in U.S. soybean shipments to China beginning in early 2018, depressing commodity prices for U.S. farmers.

The Committee believes that this misuse of the FM AD on phytosanitary certificates for U.S. soybean exports to China creates an undesirable precedent and unnecessary economic risk for U.S. commodity exports to China and other countries. Grain quality factors, such as FM, should not be reflected on phytosanitary certificates, either now or in the future.

The Committee strongly urges USDA and the Office of the U.S. Trade Representative, in the course of trade consultations with their Chinese counterparts, to insist and ultimately ensure that phytosanitary certificates issued by APHIS do not include references to any grain quality factor, other factor (including FM), or grain quality standards. These do not pertain directly to plant health or plant pest risks reflected on phytosanitary certificates. In addition, any related import measures must be based on sound science and be in conformance with the World Trade Organization's agreement on the Application of Sanitary and Phytosanitary Measures, including those developed by the International Plant Protection Convention.

LEGISLATIVE HISTORY

On July 31, 2019, the Committee held a hearing, "Perspectives on Reauthorization of the U.S. Grain Standards Act," to hear testimony from experts on the U.S. grain inspection system.

On June 24, 2020, the Committee held a business meeting to consider an original bill, "The United States Grain Standards Reauthorization Act of 2020." During the business meeting, the original bill was ordered reported favorably without amendment by voice vote.

ESTIMATED COSTS

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

In compliance with subsection (b)(2) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of subsection (b)(1) of paragraph 11 of rule XXVI in order to expedite the business of the Senate. The Committee does not expect that significant new regulatory burdens will result from the regulations issued pursuant to the reported bill. The regulations issued will prescribe and define implementation of the changes authorized in the reported bill.

NUMBER OF PERSONS COVERED

S. 4054 would make improvements to increase effectiveness, certainty, and transparency in existing programs. Accordingly, the number of persons covered should be largely consistent with the current levels of individuals and businesses covered by the provisions of law addressed in the bill. To the extent there are new individuals or businesses covered, such expansion is generally supported by the persons or entities added.

ECONOMIC IMPACT

The reported bill will not have an adverse economic impact on the United States. To the contrary, the legislation makes improve-

ments to increase the effectiveness, certainty, and transparency in the federal grain inspection programs for U.S. farmers and other market participants. By supporting economic activity in the United States, the bill will have a positive impact on the national economy.

PRIVACY

The reported bill will not have a negative impact on the personal privacy of individuals.

PAPERWORK

The Committee does not anticipate a major increase in paperwork burdens resulting from the reported bill.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, it is the opinion of the Committee that the reported bill does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 designates the short title for the legislation as the “United States Grain Standards Reauthorization Act of 2020.”

Section 2. Notification of discontinuance by State agencies

Section 7(e)(2)(C)(i) of the Act requires that if a delegated State agency intends to temporarily discontinue official inspection or weighing services, that State agency must notify the Secretary of Agriculture in writing at least 72 hours in advance of the discontinuation date. Section 2 of the bill requires the State Agency to provide the same notice to customers or applicants for inspection or weighing services.

Section 2 also amends section 7(j)(5) of the Act to extend the authority for the Secretary to charge and collect fees from official agencies and delegated State agencies to fund official inspections from September 30, 2020 until September 30, 2025.

Section 3. Weighing authority

Section 3 amends section 7A(1)(4) of the Act to extend the authority for the Secretary to charge and collect fees from delegated agencies to fund official weighing from September 30, 2020 until September 30, 2025.

Section 4. Limitation on administrative and supervisory costs

Section 4 amends section 7D of the Act to extend the cap on administrative and supervisory costs under the Act from September 30, 2020 until September 30, 2025.

Section 5. Reporting requirements

Section 17B of the Act requires the Secretary of Agriculture to report annually to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives regarding the effectiveness of official in-

spection and weighing under the Act, and include information on related matters.

Section 5 of the bill amends section 17B of the Act to require the Secretary to publish on a quarterly basis certain inspection program data for intrinsic quality factors and food safety factors that have been included in the FGIS annual report for the most recent five years (fiscal years 2014 through 2018).

Section 5 also requires the Secretary to publish, on a quarterly basis, the number of—

(1) exceptions for inspections across geographic boundaries either requested or granted under section 7(f)(2)(B) of the Act; and

(2) waivers for official weighing or inspection either requested or granted under section 5(a)(1) of the Act.

Section 5 also authorizes the Secretary to publish additional data related to testing, inspection, and weighing activities under the Act, after consultation with State agencies, official agencies, and the grain industry.

Finally, section 5 requires that any trade secrets or confidential business information collected by the Secretary under the authorities provided by section 5 shall not be publicly disclosed.

Section 6. Appropriations

Section 6 amends section 19 of the Act to require that user fees collected by the Federal Grain Inspection Service under sections 7, 7A, 7B, 16, or 17A of the Act may not be used for activities related to the development or maintenance of grain standards, or for any other activity that is not directly related to the performance of an “official inspection or weighing service” (as that term is defined in new section 19(b)(1)(A)).

Section 6 also amends section 19 of the Act to extend the authorization of appropriations to carry out the Act from September 30, 2020 until September 30, 2025.

Section 7. Advisory committee

Section 7(1) amends section 21 of the Act to provide that members of the advisory committee may serve up to two consecutive terms.

Section 7(2) extends the authorization of the advisory committee from September 30, 2020 until September 30, 2025.

Section 8. Review of geographic boundaries for official agencies

Section 8 requires the Secretary of Agriculture to conduct a comprehensive nationwide review of the official agency geographic areas, after taking into consideration a number of specific factors. The Secretary is required to report the results of the review and any recommendations to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives no later than 18 months after the date of enactment.

Section 9. Technical correction

Section 9 amends section 4(a)(1) of the Act to replace a comma that was inadvertently omitted in an earlier amendment made by section 5(a) of P.L. 94–582 (October 1, 1976).

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in *italic*, existing law in which no change is proposed is shown in roman):

UNITED STATES GRAIN STANDARDS ACT

[Public Law 90-487; Approved on August 15, 1968]

* * * * *

SEC. 4. STANDARDS.

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

* * * * *

SEC. 7. OFFICIAL INSPECTION AUTHORITY AND FUNDING.

* * * * *

(e)

* * * * *

(2) DELEGATION OF AUTHORITY TO STATE AGENCIES.—

* * * * *

(C) STATE AGENCY REQUIREMENTS.—

(i) IN GENERAL.—If a State agency that has been delegated authority under this paragraph intends to temporarily discontinue official inspection or weighing services for any reason, except in the case of a major disaster, the State agency shall notify the Secretary *and affected customers or applicants for service of official inspection or weighing services provided by the State agency* in writing of the intention of the State agency to do so at least 72 hours in advance of the discontinuation date.

* * * * *

(j) FEES.—

* * * * *

(5) 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, [2020] 2025. 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.

* * * * *

SEC. 7A. WEIGHING AUTHORITY.

* * * * *

(1) FEES.—

* * * * *

(4) 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, [2020] 2025. 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.

* * * * *

SEC. 7D. LIMITATION AND ADMINISTRATIVE AND SUPERVISORY COSTS.—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 [2020] 2025 shall not exceed 30 per centum of the total costs for such activities carried out by the Secretary for such year.

* * * * *

SEC. 17B. REPORTING REQUIREMENTS.—

* * * * *

(d) ENHANCEMENT OF CURRENT REPORTING.—

(1) INCREASED FREQUENCY OF INSPECTION PROGRAM DATA REPORTING.—

(A) IN GENERAL.—Beginning not later than 1 year after the date of enactment of this subsection, the Secretary shall publish quarterly reports describing data from the tests and inspections for intrinsic quality factors (including protein, oil, and starch) and food safety factors, as reported, in the aggregate, for fiscal years 2014 through 2018 in the tables in section V (relating to providing official grain inspection and weighing services) of the 2016 through 2018 annual reports to Congress by the Federal Grain Inspection Service.

(B) *DELINEATION.*—The data from the tests and inspections under subparagraph (A) shall be delineated to reflect whether the tests and inspections were requested of or performed by—

(i) the Secretary; or

(ii) a State agency delegated authority under section 7 or 7A or an official agency.

(2) *EXCEPTIONS AND WAIVERS.*—Beginning not later than 1 year after the date of enactment of this subsection, the Secretary shall publish quarterly reports describing—

(A) the number of exceptions requested under section 7(f)(2)(B);

(B) the number of exceptions granted under section 7(f)(2)(B);

(C) the number of waivers requested under section 5(a)(1); and

(D) the number of waivers granted under section 5(a)(1).

(e) *ADDITIONAL REPORTING; CONSULTATION.*—The Secretary may, to the extent determined appropriate by the Secretary, in consultation with State agencies delegated authority under sections 7 and 7A, official agencies, and the grain industries described in the second sentence of section 21(a), publish—

(1) data relating to testing for other intrinsic quality or food safety factors; and

(2) other data collected from inspection and weighing activities conducted under this Act.

(f) *PROTECTION OF CONFIDENTIAL BUSINESS INFORMATION.*—Any trade secrets or information described in section 552(b)(4) of title 5, United States Code, that is provided to or collected by the Secretary in carrying out subsection (d) or (e) shall not be included in a report under subsection (d) or (e) or otherwise publicly disclosed.

* * * * *

【SEC. 19. APPROPRIATIONS.—There are hereby】

SEC. 19. FUNDING.

(a) *AUTHORIZATION OF APPROPRIATIONS.*—There are 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 【2020】 2025, 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.**

(b) *LIMITATIONS ON USES OF USER FEES.*—

(1) *DEFINITIONS.*—In this subsection:

(A) *OFFICIAL INSPECTION OR WEIGHING SERVICE.*—The term “official inspection or weighing service” means official inspection, official weighing, supervision of weighing, supervision of agency personnel, supervision of the field office personnel of the Secretary, testing of equipment or instruments, other services, or registration, the cost to the Secretary of which is authorized to be covered by the collection of a user fee pursuant to section 7, 7A, 7B, 16, or 17A, as applicable.

- (B) *USER FEE.*—The term “user fee” means a fee collected by the Secretary under section 7, 7A, 7B, 16, or 17A.
- (2) *REQUIREMENT.*—A user fee—
 - (A) shall be used solely to cover—
 - (i) the cost to the Secretary for carrying out official inspection or weighing services; and
 - (ii) administrative costs to the Secretary directly relating to official inspection or weighing services; and
 - (B) shall not be used for—
 - (i) activities relating to the development or maintenance of grain standards; or
 - (ii) any other activity that is not directly related to the performance of official inspection or weighing services.

* * * * *

SEC. 21. ADVISORY COMMITTEE.

(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] *successively for more than 2 terms.*

* * * * *

(e) The authority provided to the Secretary for the establishment and maintenance of an advisory committee under this section shall expire on September 30, [2020] 2025.