

or in lieu of, refusal of official inspection or services related to weighing in accordance with this section, the Secretary may assess against any person who has knowingly committed any violation of section 87b of this title or has been convicted of any violation of other Federal law with respect to the handling, weighing, or official inspection of grain a civil penalty not to exceed \$75,000 for each such violation as the Secretary determines is appropriate to effectuate the objectives stated in section 74 of this title.

**(d) Opportunity for hearing; temporary refusal without hearing pending final determination**

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

**(e) Collection and disposition of civil penalties**

Moneys received in payment of such civil penalties shall be deposited in the general fund of the United States Treasury. Upon any failure to pay the penalties assessed under this section, the Secretary may request the Attorney General of the United States to institute a civil action to collect the penalties in the appropriate court identified in subsection (h) of section 87f of this title for the jurisdiction in which the respondent is found or resides or transacts business, and such court shall have jurisdiction to hear and decide any such action.

(Aug. 11, 1916, ch. 313, pt. B, §10, 39 Stat. 485; Pub. L. 90-487, §1, Aug. 15, 1968, 82 Stat. 765; Pub. L. 94-582, §12, Oct. 21, 1976, 90 Stat. 2879; Pub. L. 103-156, §12(i), Nov. 24, 1993, 107 Stat. 1528; Pub. L. 103-354, title II, §293(a)(7), Oct. 13, 1994, 108 Stat. 3237.)

**Editorial Notes**

AMENDMENTS

1994—Subsecs. (a), (c) to (e). Pub. L. 103-354 substituted “Secretary” for “Administrator” wherever appearing.

1993—Pub. L. 103-156, §12(i), which directed amendment of “Section 10”, without specifying the name of the Act being amended, was executed to this section, which is section 10 of the United States Grain Standards Act, to reflect the probable intent of Congress.

Subsec. (a). Pub. L. 103-156, §12(i)(1), substituted “the Administrator” for “he” in two places.

Subsec. (b). Pub. L. 103-156, §12(i)(2), substituted “the person” for “he”.

1976—Subsec. (a). Pub. L. 94-582 substituted “Administrator” for “Secretary”, “grain offered for such services” for “grain offered for inspection”, “has know-

ingly committed any violation of section 87b of this title or has been convicted of any violation of other Federal law with respect to the handling, weighing, or official inspection of grain, or that official inspection or the services related to weighing have been refused” for “has been convicted of any violation of section 87b of this title, or that official inspection has been refused”, and “integrity of the service” for “integrity of the official inspection service”, and authorized refusal of provision of services relating to weighing.

Subsec. (c). Pub. L. 94-582 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 94-582 redesignated provisions of former subsec. (c) as (d), inserted “or services related to weighing” before “is refused”, inserted “or a civil penalty is assessed against any person under this section” after “to any person”, provided for the hearing under sections 554, 556, and 557 of title 5, and inserted provisions relating to temporary refusal without hearing pending final determination.

Subsec. (e). Pub. L. 94-582 added subsec. (e).

1968—Pub. L. 90-487 substituted provisions authorizing the Secretary to refuse official inspection and affording an opportunity for a hearing in such a case, for provisions setting the penalty for interference with the execution of official duties.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-582 effective 30 days after Oct. 21, 1976, see section 27 of Pub. L. 94-582, as amended, set out as a note under section 74 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90-487, see section 2 of Pub. L. 90-487, set out as a note under section 78 of this title.

**§ 87. Conflicts of interest**

**(a) Prohibition with respect to persons licensed or authorized by Secretary to perform official functions**

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

**(b) Prohibition with respect to personnel of official or State agencies and business or governmental entities related to such agencies; substantial stockholder; use of official inspection service; authority delegation; report to Congressional committees**

(1) No official agency or a State agency delegated authority under this chapter, or any mem-

ber, director, officer, or employee thereof, and no business or governmental entity related to any such agency, shall be employed in or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any business involving the commercial transportation, storage, merchandising, or other commercial handling of grain, or the use of official inspection service (except that in the case of a producer such use shall not be prohibited for grain in which the producer does not have an interest); and no business or governmental entity conducting any such business, or any member, director, officer, or employee thereof, and no other business or governmental entity related to any such entity, shall operate or be employed by or directly or indirectly have any stock or other financial interest in, any official agency or a State agency delegated inspection authority. Further, no substantial stockholder in any incorporated official agency shall be employed in or otherwise engaged in, or be a substantial stockholder in any corporation conducting any such business, or directly or indirectly have any other kind of financial interest in any such business; and no substantial stockholder in any corporation conducting such a business shall operate or be employed by or be a substantial stockholder in, or directly or indirectly have any other kind of financial interest in, any official agency.

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

(3) Each State agency delegated official weighing authority under section 79a of this title and each State or local agency or other person designated by the Secretary under such section to perform official weighing or supervision of weighing shall be subject to the provisions of subsection (b) of this section. The term "use of official inspection service" shall be deemed to refer to the use of the services provided under such a delegation or designation.

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

(5) Notwithstanding the foregoing provisions of this subsection, the Secretary may delegate authority to a State agency or designate a governmental agency, board of trade, chamber of commerce, or grain exchange to perform official inspection or perform official weighing or supervision of weighing except that for purposes of supervision of weighing only, the Secretary may also designate any other person, if the Secretary determines that any conflict of interest which may exist between the agency or person or any member, director, officer, employee, or stockholder thereof and any business involving the

transportation, storage, merchandising, or other handling of grain or use of official inspection or weighing service is not such as to jeopardize the integrity or the effective and objective operation of the functions performed by such agency. Whenever the Secretary makes such a determination and makes a delegation or designation to an agency that has a conflict of interest otherwise prohibited by this subsection, the Secretary shall, within thirty days after making such a determination, submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, detailing the factual bases for such determination.

**(c) Official agencies or State agencies not prevented from engaging in business of weighing grain**

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

(Aug. 11, 1916, ch. 313, pt. B, §11, 39 Stat. 485; Pub. L. 90-487, §1, Aug. 15, 1968, 82 Stat. 766; Pub. L. 94-582, §13, Oct. 21, 1976, 90 Stat. 2880; Pub. L. 95-113, title XVI, §§1604(h), 1606(g), Sept. 29, 1977, 91 Stat. 1028, 1030; Pub. L. 103-156, §12(j), Nov. 24, 1993, 107 Stat. 1529; Pub. L. 103-354, title II, §293(a)(7), Oct. 13, 1994, 108 Stat. 3237; Pub. L. 103-437, §4(a)(1), Nov. 2, 1994, 108 Stat. 4581.)

**Editorial Notes**

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103-354 substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (b)(5). Pub. L. 103-437 substituted "Committee on Agriculture, Nutrition, and Forestry" for "Committee on Agriculture and Forestry".

1993—Pub. L. 103-156, §12(j), which directed amendment of "Section 11", without specifying the name of the Act being amended, was executed to this section, which is section 11 of the United States Grain Standards Act, to reflect the probable intent of Congress.

Subsec. (a). Pub. L. 103-156, §12(j)(1), substituted "the Administrator" for "he" before "determines".

Subsec. (b)(1). Pub. L. 103-156, §12(j)(2)(A), substituted "the producer" for "he".

Subsec. (b)(5). Pub. L. 103-156, §12(j)(2)(B), substituted "the Administrator" for "he" in two places.

1977—Subsec. (b)(3). Pub. L. 95-113, §1604(h)(1), substituted "to perform official weighing or supervision of weighing" for "to perform supervision of weighing".

Subsec. (b)(4). Pub. L. 95-113, §1606(g), substituted "official weighing or supervision of weighing" for "official weighing".

Subsec. (b)(5). Pub. L. 95-113, §1604(h)(2), substituted "to perform official inspection or perform official weighing or supervision of weighing except that" for "to perform official inspection or perform supervision of weighing except that" and "member, director, officer" for "member, officer".

Subsec. (c). Pub. L. 95-113, §1604(h)(3), inserted "or State agency delegated authority under this chapter" after "official agency".

1976—Subsec. (a). Pub. L. 94-582, §13(a)-(c), substituted "Administrator" for "Secretary" wherever appearing and "perform any official function" for "perform any official inspection function", and designated first paragraph provisions, as amended, as subsec. (a), respectively.

Subsecs. (b), (c). Pub. L. 94-582, §13(c), added subsecs. (b) and (c).

1968—Pub. L. 90-487 substituted provisions prohibiting a conflict of interest on the part of inspectors who are

interested financially in a grain elevator or in grain merchandising, for provisions covering the separability of provisions of this chapter.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-113 effective Oct. 1, 1977, see section 1901 of Pub. L. 95-113, set out as a note under section 1307 of this title.

##### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-582 effective 30 days after Oct. 21, 1976, see section 27 of Pub. L. 94-582, as amended, set out as a note under section 74 of this title.

##### EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90-487, see section 2 of Pub. L. 90-487, set out as a note under section 78 of this title.

### § 87a. Records

#### (a) Samples of grain

Every official agency, every State agency delegated authority under this chapter, and every person licensed to perform any official inspection or official weighing or supervision of weighing function under this chapter shall maintain such samples of officially inspected grain and such other records as the Secretary may by regulation prescribe for the purpose of administration and enforcement of this chapter.

#### (b) Period of maintenance

Every official agency, every State agency delegated authority under this chapter, and every person licensed to perform any official inspection or official weighing or supervision of weighing function under this chapter required to maintain records under this section shall keep such records for a period of five years after the inspection, weighing, or transaction, which is the subject of the record, occurred: *Provided*, That grain samples shall be required to be maintained only for such period not in excess of ninety days as the Secretary, after consultation with the grain trade and taking into account the needs and circumstances of local markets, shall prescribe; and in specific cases other records may be required by the Secretary to be maintained for not more than three years in addition to the five-year period whenever in the judgment of the Secretary the retention of such records for the longer period is necessary for the effective administration and enforcement of this chapter.

#### (c) Access to records; audits

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

#### (d) Maintenance of records by persons or entities receiving official inspection or weighing services; access to records and facilities

Every State, political subdivision thereof, or person who is the owner or operator of a commercial grain elevator, warehouse, or other storage or handling facility or is engaged in the merchandising of grain other than as a producer, and who, at any time, has obtained or obtains official inspection or weighing services shall maintain such complete and accurate records for such period of time as the Secretary may, by regulation, prescribe for the purpose of the administration and enforcement of this chapter, and permit any authorized representative of the Secretary, at all reasonable times, to have access to, and to copy, such records and to have access to any grain elevator, warehouse, or other storage or handling facility used by such persons for handling of grain.

(Aug. 11, 1916, ch. 313, pt. B, §12, as added Pub. L. 90-487, §1, Aug. 15, 1968, 82 Stat. 766; amended Pub. L. 94-582, §14, Oct. 21, 1976, 90 Stat. 2882; Pub. L. 95-113, title XVI, §§1601, 1604(i), Sept. 29, 1977, 91 Stat. 1024, 1029; Pub. L. 103-156, §12(k), Nov. 24, 1993, 107 Stat. 1529; Pub. L. 103-354, title II, §293(a)(5)-(7), Oct. 13, 1994, 108 Stat. 3237.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 12 of act Aug. 11, 1916, ch. 313, pt. B, 39 Stat. 485, which appropriated a sum of \$250,000 for expenses of carrying into effect this chapter, was not classified to the Code.

##### AMENDMENTS

1994—Pub. L. 103-354 struck out “or Administrator” after “representative of the Secretary” in subsec. (c), struck out “or the Administrator” after “representative of the Secretary” in subsec. (d), and substituted “Secretary” for “Administrator” wherever appearing.

1993—Pub. L. 103-156, §12(k), which directed amendment of “Section 12”, without specifying the name of the Act being amended, was executed to this section, which is section 12 of the United States Grain Standards Act, to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 103-156, §12(k)(1), substituted “the judgment of the Administrator” for “his judgment”.

Subsec. (c). Pub. L. 103-156, §12(k)(2), substituted “the Administrator” for “he”.

1977—Subsecs. (a), (b). Pub. L. 95-113, §1604(i)(1), inserted “, every State agency delegated authority under this chapter,” after “official agency”.

Subsec. (c). Pub. L. 95-113, §1604(i)(1), (2), inserted “, every State delegated authority under this chapter,” after “official agency” and corrected a typographical error in Pub. L. 94-582 under which “delegate authority of this chapter” had been erroneously used instead of “delegated authority under this chapter”.

Subsec. (d). Pub. L. 95-113, §1601, substituted “shall maintain such complete and accurate records for such period of time as the Administrator may, by regulation, prescribe for the purpose of the administration and enforcement of this chapter” for “shall, within the five-year period thereafter, maintain complete and accurate records of purchases, sales, transportation, storage, weighing, handling, treating, cleaning, drying, blending, and other processing, and official inspection and official weighing of grain,”.

1976—Subsec. (a). Pub. L. 94-582 substituted “official agency” for “official inspection agency” and “Administrator” for “Secretary” and inserted reference to licensed performance of official weighing or supervision of weighing function.