

grain upon the request of the interested party applying for inspection.

Subsec. (m). Pub. L. 95-113, §1604(a)(2), substituted “or subsection (c) of section 79a of this title for the conduct of official weighing or supervision of weighing (other than appeal weighing)” for “or subsection (b) of section 79a of this title for the conduct of supervision of weighing”.

Subsec. (x). Pub. L. 95-113, §1604(a)(3), substituted “under standards provided for in this chapter” for “under standards provided in this chapter”.

Subsec. (y). Pub. L. 95-113, §1604(a)(4), substituted “such supervision by official inspection personnel of the grain-weighing process as is determined by the Administrator 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” for “the supervision of the weighing process and of the certification of the weight of grain, and the physical inspection of the premises at which the weighing is performed to assure that all the grain intended to be weighed has been weighed and discharged into the elevator or conveyance represented on the weight certificate or other document”.

1976—Subsec. (i). Pub. L. 94-582, §3(a), substituted “Administrator” for “Secretary”, and expanded definition of “official inspection” to include determination “(by original inspection, and when requested, reinspection and appeal inspection)” and determination and certification of the condition of vessels and other carriers or receptacles for the transportation of grain insofar as it may affect the quality or condition of the grain.

Subsec. (j). Pub. L. 94-582, §3(b), in redefining “official inspection personnel”, substituted provision declaring term to mean “persons licensed or otherwise authorized by the Administrator pursuant to section 84 of this title to perform all or specified functions involved in official inspection, official weighing, or supervision of weighing, or in the supervision of official inspection, official weighing or supervision of weighing” for “employees of State or other governmental agencies or commercial agencies or other persons who are licensed to perform all or specified functions involved in official inspection under this chapter; employees of the Department of Agriculture who are authorized to supervise official inspection and to conduct appeal inspection or initial inspection of United States grain in Canadian ports”.

Subsec. (k). Pub. L. 94-582, §3(c), substituted “Administrator” for “Secretary” and “official inspection or official weighing” for “an official inspection”.

Subsec. (l). Pub. L. 94-582, §3(d), substituted “standards relating to kind, class, quality, and condition of grain,” for “standards”.

Subsec. (m). Pub. L. 94-582, §3(e), substituted definition of “official agency” meaning “any State or local governmental agency, or any person, designated by the Administrator pursuant to subsection (f) of section 79 of this title for the conduct of official inspection (other than appeal inspection), or subsection (b) of section 79a of this title for the conduct of supervision of weighing” for definition of “official inspection agency” meaning “the agency or person located at an inspection point designated by the Secretary for the conduct of official inspection under this chapter”.

Subsec. (n). Pub. L. 94-582, §3(f), substituted “Administrator” for “Secretary”.

Subsec. (u). Pub. L. 94-582, §3(g), included within term defined and its definition the concept of “weighing” and substituted “Administrator” for “Secretary”.

Subsecs. (v) to (aa). Pub. L. 94-582, §3(h), added subsecs. (v) to (aa).

1968—Pub. L. 90-487 substituted provisions defining terms used in the chapter for provisions that the standards fixed and established by the Secretary of Agri-

culture be known as the official grain standards of the United States.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-156, §16, Nov. 24, 1993, 107 Stat. 1530, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act [amending this section and sections 75a to 77, 79 to 79b, 79d, 84 to 87e, 87f, 87f-1, 87h, 87j, and 87k of this title and repealing provisions set out as a note under section 79 of this title] shall take effect on the date of the enactment of this Act [Nov. 24, 1993].

“(b) SPECIAL EFFECTIVE DATE FOR CERTAIN PROVISIONS.—The amendments made by sections 2, 3, and 13(a) [amending sections 79d and 87h of this title and repealing provisions set out as a note under section 79 of this title] shall take effect as of September 30, 1993.”

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.

§ 75a. Repealed. Pub. L. 103-354, title II, § 293(a)(2), Oct. 13, 1994, 108 Stat. 3237

Section, act Aug. 11, 1916, ch. 313, pt. B, §3A, as added Oct. 21, 1976, Pub. L. 94-582, §4, 90 Stat. 2868; amended Sept. 29, 1977, Pub. L. 95-113, title XVI, §1604(b), 91 Stat. 1026; Nov. 24, 1993, Pub. L. 103-156, §15, 107 Stat. 1530, established Federal Grain Inspection Service in Department of Agriculture and provided for cost containment plan to make the Service more efficient.

§ 75b. Omitted

CODIFICATION

Section, Pub. L. 101-624, title XX, §2002, Nov. 28, 1990, 104 Stat. 3928, provided for establishment of Committee on Grain Quality and Grain Quality Coordinator, established duties of Coordinator with respect to grain quality and competitiveness, and provided for termination of section on Jan. 1, 2001.

§ 76. Standards and procedures; establishment, amendment, and revocation

(a) Authority of Secretary

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

(b) Notice and opportunity for comment; standards regarding cleanliness of grain

(1) Before establishing, amending, or revoking any standards under this chapter, the Secretary

shall publish notice of the proposals and give interested persons opportunity to submit data, views, and arguments thereon and, upon request, an opportunity to present data, views, and arguments orally in an informal manner. No standards established or amendments or revocations of standards under this chapter shall become effective less than one calendar year after promulgation thereof, unless in the judgment of the Secretary, the public health, interest, or safety require that they become effective sooner.

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

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

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

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

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

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

(ii) The Secretary shall make a finding under this subsection for grain of the type described in clause (i) as soon as practicable after November 28, 1990.

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

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

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

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

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

(C) If the Secretary determines to establish requirements for cleanliness characteristics under this section, the Secretary shall ensure that such requirements are fully implemented not later than 6 years after November 28, 1990.

(c) Grade determining factors related to physical soundness and purity; notice and opportunity for comment

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

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

(d) Moisture content criterion

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

(Aug. 11, 1916, ch. 313, pt. B, § 4, 39 Stat. 483; Pub. L. 90-487, § 1, Aug. 15, 1968, 82 Stat. 762; Pub. L. 94-582, § 5, Oct. 21, 1976, 90 Stat. 2869; Pub. L. 95-113, title XVI, § 1604(c), Sept. 29, 1977, 91 Stat. 1027; Pub. L. 99-198, title XVI, § 1671, Dec. 23, 1985, 99 Stat. 1632; Pub. L. 101-624, title XX, § 2005, 2006, Nov. 28, 1990, 104 Stat. 3930; Pub. L. 103-156, § 12(b), Nov. 24, 1993, 107 Stat. 1528; Pub. L. 103-354, title II, § 293(a)(7), Oct. 13, 1994, 108 Stat. 3237.)

AMENDMENTS

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

1993—Subsec. (a)(1). Pub. L. 103-156, which directed amendment of “Section 4(a)(1)” by substituting “the judgment of the Administrator” for “his judgment”, without specifying the name of the Act being amended, was executed to this section, which is section 4 of the United States Grain Standards Act, to reflect the probable intent of Congress.

1990—Subsec. (b). Pub. L. 101-624, § 2005, designated existing provisions as par. (1) and added par. (2).

Subsecs. (c), (d). Pub. L. 101-624, § 2006, added subsec. (c) and redesignated former subsec. (c) as (d).

1985—Subsec. (c). Pub. L. 99-198 added subsec. (c).

1977—Subsec. (a). Pub. L. 95-113 substituted “sorghum” for “grain sorghum”, “standards or procedures” for “standards”, “weight certification and controls” for “weight certification procedures and controls”, and “calibration and maintenance, for grain” for “calibration and maintenance for grain”.

1976—Subsec. (a). Pub. L. 94-582, § 5(a), authorized weighing of grain, designated existing provisions as cl. (1), inserted cl. (2), and reenacted provision for amendment or revocation of standards.

Subsec. (b). Pub. L. 94-582, § 5(b), substituted “Administrator” for “Secretary” in two places.

1968—Pub. L. 90-487 substituted provisions authorizing Secretary to establish, amend, and revoke standards for provisions making the use of official standards compulsory, setting out exceptions, and providing for the right of appeal.

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.

BENEFITS AND COSTS ASSOCIATED WITH IMPROVED GRAIN QUALITY

Pub. L. 101-624, title XX, §2003, Nov. 28, 1990, 104 Stat. 3929, provided that: "The Administrator of the Federal Grain Inspection Service shall estimate the economic impact, including the benefits and costs and the distribution of such benefits and costs, of any major changes necessary to carry out the amendments made under this title to sections 4 and 13 of the United States Grain Standards Act (7 U.S.C. 76 and 87b) prior to making such changes."

REVISION OF GRAIN INSPECTION PROCEDURES TO REFLECT LEVELS OF INSECT INFESTATION

Pub. L. 99-641, title III, §304, Nov. 10, 1986, 100 Stat. 3565, provided that: "Not later than 6 months after the date of enactment of this Act [Nov. 10, 1986], the Administrator of the Federal Grain Inspection Service shall issue a final rule that revises grain inspection procedures and standards established under the United States Grain Standards Act (7 U.S.C. 71 et seq.) to more accurately reflect levels of insect infestation."

STUDY OF UNIFORM END-USE VALUE TESTS FOR GRAIN

Pub. L. 99-641, title III, §307, Nov. 10, 1986, 100 Stat. 3566, as amended by Pub. L. 104-66, title I, §1011(i), Dec. 21, 1995, 109 Stat. 710, provided that:

"(a) STUDY.—The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to conduct a study of the need for and availability of uniform end-use value tests for grain. The study shall include the following:

"(1) A survey of domestic and foreign buyers of grain to identify the information about grain characteristics that would be most useful to such buyers. The survey shall take into account those factors that buyers specify in contracts, test for, measure, or would measure if tests were available, including—

"(A) the starch, oil, and protein content, breakage susceptibility, and individual kernel moisture of corn;

"(B) the baking characteristics, protein content, gluten content and quality, and milling hardness of wheat; and

"(C) the protein, oil, and free-fatty-acid content of soybeans.

"(2) A review of the development and availability of tests for the characteristics identified in the survey conducted under paragraph (1), including an evaluation of the costs of providing such tests.

"(b) END-USE TESTS.—

"(1) ONGOING REVIEW.—The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to maintain an ongoing review to determine the end-use tests that are of economic value to buyers, and the availability and costs of such tests.

"(2) REVISION OF PROCEDURES.—The Administrator of the Federal Grain Inspection Service, to the extent practicable, shall revise official grain inspection and certification procedures to include within official inspection (as defined in section 3(i) of the United States Grain Standards Act (7 U.S.C. 75(i))) those tests that are identified under the study conducted under subsection (a) as useful, available, and economically feasible."

NEW GRAIN CLASSIFICATIONS

Pub. L. 99-198, title XVI, §1672, Dec. 23, 1985, 99 Stat. 1632, provided that:

"(a) The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to cooperate in developing new means of establishing grain classifications taking into account characteristics other than those visually evident.

"(b) The Secretary shall report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, semiannually, with the first report due not later than December 31, 1985, on the status of cooperative efforts required under subsection (a), as such efforts relate to more accurately classifying types of wheat and other grains currently in use."

INVESTIGATION AND STUDY REGARDING ADEQUACY OF GRAIN STANDARDS; CHANGES IN STANDARDS; REPORT TO CONGRESS BY OCTOBER 21, 1978

Pub. L. 94-582, §24, Oct. 21, 1976, 90 Stat. 2888, which provided for investigation and study by Administrator of the Federal Grain Inspection Service regarding adequacy of grain standards established under this chapter in relation to needs and concerns of domestic and foreign grain buyers, with Administrator, as result of such study, to make necessary changes in grain standards, and to submit report to Congress setting forth findings of study and actions taken as result thereof not later than two years after Oct. 21, 1976, was repealed by Pub. L. 106-472, title I, §110(b), Nov. 9, 2000, 114 Stat. 2061.

§ 77. Official inspection and weighing requirements; waiver; supervision by representatives of Secretary

(a) Official samples and certificates; waiver; excepted grains

Whenever standards or procedures are effective under section 76 of this title for any grain—

(1) no person shall ship from the United States to any place outside thereof any lot of such grain, unless such lot is officially weighed and officially inspected in accordance with such standards or procedures, and unless a valid official certificate showing the official grade designation and certified weight of the lot of grain has been provided by official inspection personnel and is promptly furnished by the shipper, or the agent of the shipper, to the consignee with the bill of lading or other shipping documents covering the shipment: *Provided*, That the Secretary may waive the foregoing requirement in emergency or other circumstances which would not impair the objectives of this chapter: *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;