

Public Law 99-641
99th Congress

An Act

Nov. 10, 1986
[H.R. 4613]

To reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Futures Trading
Act of 1986.
Agriculture and
agricultural
commodities.
7 USC 1 note.

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Futures Trading Act of 1986”.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.

TITLE I—FUTURES TRADING

Sec. 101. Fraudulent practices.

Sec. 102. Options transactions.

Sec. 103. Extraterritorial service of subpoenas.

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Sec. 107. Registered futures association disciplinary actions and membership restrictions.

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Sec. 109. Leverage transactions.

Sec. 110. Technical corrections.

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Sec. 201. Cross compliance for producers of extra long staple cotton.

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Sec. 203. Valencia peanuts.

Sec. 204. Local agricultural stabilization and conservation committees.

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TITLE I—FUTURES TRADING

SEC. 101. FRAUDULENT PRACTICES.

Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

Commerce and
trade.

Contracts.

(1) by striking out “on or subject to the rules of any contract market,” the second place it appears in the first sentence; and

(2) by adding at the end thereof the following new paragraph:
“Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of a commodity for future delivery that is made, or to be made, on or subject to the rules of such board of trade, exchange, or market.”

SEC. 102. OPTIONS TRANSACTIONS.

Subsection (c) of section 4c of the Commodity Exchange Act (7 U.S.C. 6c(c)) is amended to read as follows:

Regulations.

“(c) Not later than 90 days after the date of the enactment of the Futures Trading Act of 1986, the Commission shall issue regulations—

“(1) to eliminate the pilot status of its program for commodity option transactions involving the trading of options on contract markets, including any numerical restrictions on the number of commodities or option contracts for which a contract market may be designated; and

Contracts.

“(2) otherwise to continue to permit the trading of such commodity options under such terms and conditions that the Commission from time to time may prescribe.”

SEC. 103. EXTRATERRITORIAL SERVICE OF SUBPENAS.

Section 6(b) of the Commodity Exchange Act (7 U.S.C. 15) is amended—

(1) in the third sentence, by inserting “(except as provided in the fifth sentence of this subsection)” immediately before “may administer oaths and affirmations, subpoena witnesses”;

(2) in the fourth sentence, by striking out “or any State” and inserting in lieu thereof “, any State, or any foreign country or jurisdiction”; and

(3) by inserting after the fourth sentence the following new sentence: “A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.”

28 USC app.

SEC. 104. EX PARTE APPOINTMENT OF TEMPORARY RECEIVERS.

The proviso of the first sentence of section 6c of the Commodity Exchange Act (7 U.S.C. 13a-1) is amended by inserting within the parenthetical phrase before the closing parenthesis the following: “, and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate”.

SEC. 105. CERTAIN PROHIBITED TRANSACTIONS.

Securities.

Section 9(d) of the Commodity Exchange Act (7 U.S.C. 13(d)) is amended—

(1) by inserting immediately before the period at the end of the first sentence the following: “if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission”; and

(2) by striking out the second and third sentences and inserting in lieu thereof the following new sentence: “The foregoing prohibitions shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this subsection.”.

SEC. 106. AUTHORIZATION FOR APPROPRIATIONS.

Subsection (d) of section 12 of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended to read as follows:

“(d) There are authorized to be appropriated to carry out this Act such sums as may be necessary for each of the fiscal years during the period beginning October 1, 1986, and ending September 30, 1989.”.

SEC. 107. REGISTERED FUTURES ASSOCIATION DISCIPLINARY ACTIONS AND MEMBERSHIP RESTRICTIONS.

Subsections (h) and (i) of section 17 of the Commodity Exchange Act (7 U.S.C. 21 (h) and (i)) are amended to read as follows:

“(h)(1) If any registered futures association takes any final disciplinary action against a member of the association or a person associated with a member, denies admission to any person seeking membership therein, or bars any person from being associated with a member, the association promptly shall give notice thereof to such member or person and file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule or regulation, may prescribe as necessary or appropriate to carry out the purposes of this Act.

“(2) Any action with respect to which a registered futures association is required by paragraph (1) to file notice shall be subject to review by the Commission on its motion, or on application by any person aggrieved by the action. Such application shall be filed within 30 days after the date such notice is filed with the Commission and received by the aggrieved person, or within such longer period as the Commission may determine.

“(3)(A) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

“(B) The Commission shall establish procedures for expedited consideration and determination of the question of a stay.

“(i)(1) In a proceeding to review a final disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity

for the presentation of supporting reasons to affirm, modify, or set aside the sanction imposed by the association)—

“(A) if the Commission finds that—

“(i) the member or person associated with a member has engaged in the acts or practices, or has omitted the acts, that the association has found the member or person to have engaged in or omitted;

“(ii) the acts or practices, or omissions to act, are in violation of the rules of the association specified in the determination of the association; and

“(iii) such rules are, and were applied in a manner, consistent with the purposes of this Act,

the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the association, modify the sanction in accordance with paragraph (2), or remand the case to the association for further proceedings; or

“(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the sanction imposed by the association and, if appropriate, remand the case to the association for further proceedings.

“(2) If, after a proceeding under paragraph (1), the Commission finds that any penalty imposed on a member or person associated with a member is excessive or oppressive, having due regard for the public interest, the Commission, by order, shall cancel, reduce, or require the remission of the penalty.

“(3) In a proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the action of the association)—

“(A) if the Commission finds that—

“(i) the specific grounds on which the denial or bar is based exist in fact;

“(ii) the denial or bar is in accordance with the rules of the association; and

“(iii) such rules are, and were applied in a manner, consistent with the purposes of this Act,

the Commission, by order, shall so declare and, as appropriate, affirm or modify the action of the association, or remand the case to the association for further proceedings; or

“(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the action of the association and require the association to admit the applicant to membership or permit the person to be associated with a member, or, as appropriate, remand the case to the association for further proceedings.

“(4) Any person (other than a registered futures association) aggrieved by a final order of the Commission entered under this subsection may file a petition for review with a United States court of appeals in the same manner as provided in section 6(b).”

Ante, p. 3557.

SEC. 108. RULE REVIEW PROCEDURES.

Section 17(j) of the Commodity Exchange Act (7 U.S.C. 21(j)) is amended by striking out the third sentence.

SEC. 109. LEVERAGE TRANSACTIONS.

Section 19 of the Commodity Exchange Act (7 U.S.C. 23) is amended to read as follows:

Contracts.

"SEC. 19. (a) Except as authorized under subsection (b), no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

Metals.
Regulations.
Fraud.

"(b)(1) Subject to paragraph (2), no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum under a standardized contract described in subsection (a), contrary to the terms of any rule, regulation, or order that the Commission shall prescribe, which may include terms designed to ensure the financial solvency of the transaction or prevent manipulation or fraud. Such rule, regulation, or order may be made only after notice and opportunity for hearing. The Commission may set different terms and conditions for transactions involving different commodities.

"(2) No person may engage in any activity described in paragraph (1) who is not permitted to engage in such activity, by the rules, regulations, and orders of the Commission in effect on the date of the enactment of the Futures Trading Act of 1986, until the Commission permits such person to engage in such activity in accordance with regulations issued in accordance with subsection (c)(2).

"(c)(1)(A) Not later than 2 years after the date of the enactment of the Futures Trading Act of 1986, the Commission shall—

"(i) with the assistance of a futures association registered under this Act, conduct a survey concerning the persons interested in engaging in the business of offering to enter into, entering into, or confirming the execution of, the transactions described in subsection (b)(1); and

Reports.

"(ii) transmit a report of the results of the survey to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

Reports.

"(B) Notwithstanding any other provision of law, for purposes of completing such report the Commission may direct, by rule, regulation, or order, a futures association registered under this Act to render such assistance as the Commission shall specify.

Reports.

"(C) Such report shall include the findings and any recommendations of the Commission concerning—

"(i) whether such transactions serve an economic purpose;

"(ii) the most efficient manner, consistent with the public interest, to permit additional persons to engage in the business of offering to enter into, entering into, and confirming the execution of such transactions; and

"(iii) the appropriate regulatory scheme to govern such transactions to ensure the financial solvency of such transactions and to prevent manipulation or fraud.

“(2) The report shall also include Commission regulations governing such transactions. The regulations shall provide for permitting additional persons to engage in such transactions. The regulations shall become effective on the expiration of 90 calendar days on which either House of Congress is in session after the date of the transmittal of the report to Congress. The regulations—

Reports.
Regulations.

“(A) may authorize or require, notwithstanding any other provision of law, a futures association registered under this Act to perform such responsibilities in connection with such transactions as the Commission may specify; and

“(B) may require that permission for additional persons to engage in such business be given on a gradual basis, so as not to place an undue burden on the resources of the Commission.

“(d) This section shall not affect any rights or obligations arising out of any transaction subject to this section, as in effect before the date of the enactment of the Futures Trading Act of 1986, that was entered into, or the execution of which was confirmed, before the date of the enactment of such Act.”.

SEC. 110. TECHNICAL CORRECTIONS.

The Commodity Exchange Act is amended—

(1) in the third sentence of section 2(a)(1)(B)(iv)(I) (7 U.S.C. 2a(iv)(I)), by striking out “Securities Exchange Commission” and inserting in lieu thereof “Securities and Exchange Commission”;

(2) in the fourth full sentence of section 5a(12) (7 U.S.C. 7a(12)), by striking out “participate” and inserting in lieu thereof “participate”;

(3) in the first sentence of section 9(c) (7 U.S.C. 13(c)), by striking out “section 4k.” and inserting in lieu thereof “section 4k.”;

(4) in the first sentence of section 9(d) (7 U.S.C. 13(d)), by striking out “advance guarantee” and inserting in lieu thereof “advance guaranty”;

(5) by repealing section 11 (7 U.S.C. 14 note);

7 USC 14.

(6) in the second full sentence of section 17(b)(2) (7 U.S.C. 21(b)(2)), by striking out “with in” and inserting in lieu thereof “within”; and

(7) in section 17(k)(1) (7 U.S.C. 21(k)(1)), by striking out “title” and inserting in lieu thereof “section”.

SEC. 111. GAO STUDY OF TRADING IN CATTLE FUTURES CONTRACTS.

7 USC 20 note.

(a) **STUDY.**—The Comptroller General of the United States shall conduct and complete a comprehensive study of the effect of trading in contracts for the future delivery of live cattle on the cash market price of live cattle, with particular emphasis on—

(1) whether the reaction of the live cattle futures market to the results of the milk production termination program in March 1986, conducted under section 201(d)(3) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)(3)), was based on and accurately reflected the then prevailing conditions of supply and demand;

(2) the effect of the trading in contracts for the future delivery of live cattle on—

(i) the price relationship between feeder cattle and fed cattle;

- (ii) the price discovery process with respect to live cattle; and
- (iii) price competition within the cattle industry;
- (3) the effect of the use of packer contracts, as a means of obtaining slaughter cattle, on the increase in short hedging in contracts for the future delivery of live cattle and the effect of this increase in short hedging on prices in the futures and cash markets;
- (4) the effect on the ability of the cash markets to accurately reflect prevailing conditions of supply and demand if packer contracts become the prevalent method of marketing fed cattle;
- (5) whether the present delivery system for contracts for the future delivery of live cattle creates any bias (either upward or downward) in the cash price for cattle;
- (6) whether the present delivery system for contracts for the future delivery of live cattle creates price volatility during the delivery month; and
- (7) whether there are advantages or disadvantages to a cash settlement system in lieu of the present delivery system in the case of contracts for the future delivery of live cattle.

(b) REPORTS.—

- (1) PRELIMINARY REPORT.—Not later than January 15, 1987, the Comptroller General shall submit a preliminary report on the results of the study required under subsection (a) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.
- (2) FINAL REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to such committees a detailed final report of the results of the study required under subsection (a).

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. CROSS COMPLIANCE FOR PRODUCERS OF EXTRA LONG STAPLE COTTON.

Loans.

Paragraph (16) of section 103(h) of the Agricultural Act of 1949 (7 U.S.C. 1444(h)(16)) is amended to read as follows:

“(16)(A) Notwithstanding any other provision of law, except as provided in subparagraph (B), compliance on a farm with the terms and conditions of any other commodity program may not be required as a condition of eligibility for loans or payments under this subsection.

“(B) In the case of each of the 1989 and 1990 crops of extra long staple cotton, the Secretary may require that, as a condition of eligibility of producers for loans or payments under this subsection, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect shall not exceed the crop acreage base established for the farm for that commodity.

“(C) Notwithstanding any other provision of law, in the case of each of the 1987 and 1988 crops of extra long staple cotton, compliance with the terms and conditions of the program authorized by this subsection may not be required as a condition of eligibility for loans, purchases, or payments under any other commodity program.”.

SEC. 202. BASIS FOR COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(c)(1)(E)(ii)) is amended by striking out "marketing year for such crop" and inserting in lieu thereof "first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

SEC. 203. VALENCIA PEANUTS.

New Mexico.

Section 108B(4)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445c-2(4)(A)) is amended by inserting after "additional peanuts" the following: "(other than net gains on additional peanuts in separate type pools established under paragraph (3)(B)(i) for Valencia peanuts produced in New Mexico)".

SEC. 204. LOCAL AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEES.

The fifth paragraph of section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) (as amended by section 3 of Public Law 99-253 (100 Stat. 36)) is amended—

(1) by inserting after the third sentence the following new sentence: "Notwithstanding the preceding sentence, there may be one local administrative area in any county for which there had been established less than three local administrative areas as of December 23, 1985."; and

(2) in the sixth sentence (as it existed before the amendment made by paragraph (1)), by striking out "*Provided*," and all that follows through the period and inserting in lieu thereof a period.

SEC. 205. ELIGIBILITY OF CERTAIN LAND UNDER THE CONSERVATION RESERVE PROGRAM.

Section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831) is amended by adding at the end thereof the following new subsection:

"(f) For purposes of this subtitle, alfalfa and other multiyear grasses and legumes, in a rotation practice approved by the Secretary, shall be considered agricultural commodities."

SEC. 206. MARKETING PRACTICES AND TRAINING.

7 USC 2271a
note.

(a) MARKETING PRACTICES OF FMHA APPLICANTS AND BORROWERS.—

(1) **STUDY.**—The Comptroller General of the United States shall conduct a study of marketing practices used by applicants for and borrowers of farm loans made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.). The study shall include an examination of the methods used by the applicants and borrowers in marketing agricultural commodities, livestock, and aquacultural products and the extent to which the applicants and borrowers use advanced marketing techniques for such sales.

(2) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the study conducted under paragraph (1), together with any appropriate recommendations.

7 USC 2271a.

(b) **ADVANCED MARKETING TRAINING FOR FARMERS AND RANCHERS.**—The Secretary of Agriculture may establish a program to train farmers and ranchers in advanced techniques for the marketing of agricultural commodities, livestock, and aquacultural products produced by such farmers and ranchers, including (where appropriate as determined by the Secretary) training in the use of futures and options markets.

TITLE III—GRAIN QUALITY IMPROVEMENT

Grain Quality
Improvement
Act of 1986.
7 USC 71 note.

SEC. 301. SHORT TITLE.

This title may be cited as the "Grain Quality Improvement Act of 1986".

SEC. 302. DECLARATION OF POLICY.

Section 2 of the United States Grain Standards Act (7 U.S.C. 74) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end thereof the following new subsection:

"(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;

"(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; and

"(D) provide the framework necessary for markets to establish grain quality improvement incentives."

SEC. 303. FOREIGN MATERIAL RECOMBINATION.

(a) **PROHIBITED ACT.**—Section 13 of the United States Grain Standards Act (7 U.S.C. 87b) is amended by adding at the end thereof the following new subsection:

"(d)(1) Subject to paragraphs (2) and (3), to ensure the quality of grain marketed in or exported from the United States—

"(A) no dockage or foreign material, as defined by the Secretary, once removed from grain shall be recombined with any grain; and

"(B) no dockage or foreign material of any origin may be added to any grain.

"(2) Nothing in paragraph (1) shall be construed to prohibit—

"(A) the treatment of grain to suppress, destroy, or prevent insects and fungi injurious to stored grain;

"(B) the marketing, domestically or for export, of dockage or foreign material removed from grain if such dockage or foreign material is marketed—

"(i) separately and uncombined with any such whole grain;

"(ii) in pelletized form; or

“(iii) as a part of a processed ration for livestock, poultry, or fish;

“(C) the blending of grain with similar grain of a different quality to adjust the quality of the resulting mixture;

“(D) the recombination of broken corn or broken kernels, as defined by the Administrator, with grain of the type from which the broken corn or broken kernels were derived;

“(E) effective for the period ending December 31, 1987, the recombination of dockage or foreign material, except dust, removed at an export loading facility from grain destined for shipment as a cargo under one export official certificate of inspection if—

“(i) the recombination occurs during the loading of the cargo;

“(ii) the purpose is to ensure uniformity of dockage or foreign material throughout that specific cargo; and

“(iii) the separation and recombination are conducted in accordance with regulations issued by the Administrator; or

“(F) the addition to grain of a dust suppressant, or the addition of confetti or any other similar material that serves the same purpose in a quantity necessary to facilitate identification of ownership or origin of a particular lot of grain.

“(3)(A) The Secretary may, by regulation, exempt from paragraph (1) the last handling of grain in the final sale and shipment of such grain to a domestic user or processor if such exemption is determined by the Secretary to be in the best economic interest of producers, grain merchants, the industry involved, and the public.

“(B) Grain sold under an exemption authorized by this paragraph shall be consumed or processed into one or more products by the purchaser, but may not be resold into commercial channels for such grain or blended with other grain for resale. Neither products nor byproducts derived therefrom (except vegetable oils as defined by the Secretary and used as a dust suppressant) shall be blended with or added to grain in commercial channels.”

(b) **EFFECTIVE DATE.**—The amendments made by this section shall become effective on May 1, 1987.

Business and industry.

7 USC 87b note.

SEC. 304. INSECT INFESTATION.

Not later than 6 months after the date of enactment of this Act, 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.

Regulations.
7 USC 76 note.

SEC. 305. STUDY OF PREMIUMS FOR HIGH-QUALITY GRAIN.

(a) **STUDY.**—After public comment from and in consultation with grain producers, grain merchants, grain processors, and grain exporters, the Secretary of Agriculture shall conduct a study of the feasibility and appropriateness of adjusting Commodity Credit Corporation grain premium and discount schedules—

(1) to encourage the delivery, storage, and export of high-quality, clean grain; and

(2) to offer incentives to minimize the quantity of moisture, foreign material, dockage, shrunken and broken kernels, and damaged kernels in lots of grain pledged as collateral for

Commodity Credit Corporation loans or in grain owned by the Commodity Credit Corporation.

(b) **REPORT.**—Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit a report describing the results of the study required under subsection (a), together with recommendations, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 306. REVIEW OF OPTIMAL GRADE PROPOSAL.

(a) **NOTICE AND COMMENT.**—To evaluate the effects of moving to an optimal grain grading system, the Administrator of the Federal Grain Inspection Service shall—

(1) publish in the Federal Register a detailed description of the proposals contained in H.R. 5354, 99th Congress, the Optimal Grain Grading Act of 1986; and

(2) solicit public comment, during a period of not less than 60 days on—

(A) the optimal grain grading system as proposed in H.R. 5354; and

(B) the general objective of improving grain quality by revising the official United States grain standards to provide greater economic incentives for production and sale of high-quality grain.

(b) **REPORT.**—The Administrator shall report to Congress, by May 1, 1987, on the comments received and on the recommendations of the Administrator with respect to the matters on which comments were solicited.

SEC. 307. STUDY OF UNIFORM END-USE VALUE TESTS.

(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

Federal Register, publication.

Business and industry.

7 USC 76 note.

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.

(c) REPORTS.—

(1) STUDY AND REVISION OF PROCEDURES.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Federal Grain Inspection Service shall submit a report to Congress setting forth the results of the study conducted under subsection (a) and actions taken under subsection (b)(2).

(2) ONGOING REVIEW.—The Administrator shall report yearly to Congress on the ongoing review conducted under subsection (b)(1).

TITLE IV—FEDERAL MEAT INSPECTION

SEC. 401. SHORT TITLE.

This title may be cited as the “Processed Products Inspection Improvement Act of 1986”.

SEC. 402. PURPOSE.

The amendments made by this title are in furtherance of the findings made by Congress in section 2 of the Federal Meat Inspection Act (21 U.S.C. 602).

SEC. 403. AMENDMENTS TO FEDERAL MEAT INSPECTION ACT.

(a) MANNER AND FREQUENCY OF INSPECTION.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 6 of the Federal Meat Inspection Act (21 U.S.C. 606) is amended by striking out “That for the purposes” and all that follows through “*Provided, That*” and inserting in lieu thereof the following:

“(a)(1) For the purposes set forth in the preceding provisions of this Act, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment.

“(2) Such examination and inspection shall be conducted with such frequency and in such manner as the Secretary considers necessary, as provided in rules and regulations issued by the Secretary, taking into account such factors as the Secretary considers to be appropriate, including—

“(A) the nature and frequency of the processing operations at such establishment;

“(B) the adequacy and reliability of the processing controls and sanitary procedures at such establishment; and

“(C) the history of compliance with inspection requirements in effect under this Act, by the operator of such establishment or anyone responsibly connected with the business (as described in section 401(g)) that operates such establishment.

“(b)(1) All such products found by any of such inspectors and by the operator of such establishment to be not adulterated shall be marked, stamped, tagged, or labeled as ‘Inspected and passed’.

“(2) All such products found by any of such inspectors or by the operator of such establishment to be adulterated shall be marked, stamped, tagged, or labeled as ‘Inspected and condemned’. Each

Processed
Products
Inspection
Improvement
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21 USC 601 note.

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trade.

Post, p. 3568.
Labeling.

such condemned product shall be destroyed for human food purposes. The Secretary may suspend inspection at, and remove inspectors from, any establishment that fails to so condemn adulterated meat food products or fails to so destroy condemned meat food products.

“(c) For purposes of any examination and inspection, such inspectors shall have access to every part of an establishment at all times, by day or night, and without regard to whether such establishment is operated.

“(d) Notwithstanding the preceding provisions of this section,”.

(b) ENFORCEMENT METHODS.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 401 of the Federal Meat Inspection Act (21 U.S.C. 671) is amended—

(1) by inserting “(a)” after the section designation;

(2) in the first sentence—

(A) by striking out “applicant, for” and inserting in lieu thereof “applicant for”;

(B) by striking out “any felony, or (2)”;

(C) by inserting before the period at the end thereof “or (2) any felony”;

(3) in the second sentence—

(A) by indenting the first word so as to create a new paragraph; and

(B) by inserting “(f)” before the first word;

(4) by inserting “(g)” before the first word of the third sentence;

(5) in the fourth sentence—

(A) by striking out “The” and inserting in lieu thereof “(h) Except as provided in subsection (e)(2), the”;

(B) by striking out “this section” and inserting in lieu thereof “subsection (e)”;

(6) by inserting after subsection (a), as so designated by paragraph (1) of this subsection, the following new subsections:

“(b)(1) On the request of the Secretary at the time of the sentencing of an individual who is a person responsibly connected with any business requiring inspection under title I and who is convicted of a felony involving—

“(A) the intentional adulteration of food (except as defined in section 1(m)(8));

“(B) the adulteration of food, as defined in section 1(m)(8), with intent to defraud;

“(C) bribery; or

“(D) extortion;

the sentencing court shall issue a temporary order forbidding such individual to exercise operational control of, or to be physically present at, any establishment requiring inspection under title I if the court finds that the exercise of operational control by, or the presence of, such individual at any such establishment either poses a direct and substantial threat to the public health or safety or, if such individual is convicted of a felony described in subparagraph (B), poses a clear likelihood of significant economic harm to consumers.

“(2) Such order shall terminate—

“(A) whenever the Secretary determines by order, after a hearing on the record, whether such individual should exercise operational control of, or be physically present at, any establish-

Law enforcement and crime.
Courts, U.S.
Health and medical care.
Safety.
21 USC 601.

21 USC 601.

Records.

ment requiring inspection under title I, and judicial review, if any, of such determination is completed; or

“(B) 90 days after the issuance of such temporary order by the court if the Secretary does not commence such hearing before the expiration of such 90 days;

whichever occurs earlier.

“(c) Any determination and order of the Secretary issued under subsection (a) or (b) shall be conclusive and enforceable unless the affected applicant for, or recipient of, inspection service or the affected individual files, not later than 30 days after the effective date of such order, a petition for review of such order in the United States Court of Appeals for the District of Columbia Circuit or the court of appeals for the circuit in which the relevant establishment is doing business. Judicial review of such order shall be on the record on which the determination and order are based.

“(d)(1) Subject to paragraph (3), the Secretary may commence a civil action in an appropriate court, as provided in section 404, to withdraw inspection service under title I with respect to any establishment or to prevent any individual responsibly connected with any business requiring inspection under title I from exercising operational control of, or being present at, any establishment requiring inspection under title I.

“(2) If the court finds, on the basis of clear and convincing evidence, that the recipient of inspection service or such individual has repeatedly failed to comply with the requirements of this Act, or the rules and regulations issued under this Act, in a manner that poses a direct and substantial threat to the public health or safety, the court shall issue an order—

“(A) withdrawing inspection at such establishment; or

“(B) forbidding such individual to exercise operational control of, or to be physically present at, such establishment, for such period as the court determines is necessary to carry out the purposes of this Act.

“(3) Not less than 90 days, and not more than 450 days, before commencing a civil action under paragraph (1), the Secretary shall provide to each recipient of inspection service, and each individual responsibly connected with the business, with respect to which such action is commenced, a written notice that includes—

“(A) a statement that the Secretary intends to commence such action;

“(B) a comprehensive description of the violations of this Act and the regulations issued under this Act alleged by the Secretary; and

“(C) a description of the actions the Secretary considers necessary to be taken by such recipient or such individual to comply with this Act and to eliminate the need to commence such civil action.

“(e)(1) The Secretary may temporarily withdraw inspection service under title I with respect to any establishment for such period as is necessary to ensure the safe and effective performance of official duties under this Act if the Secretary determines, after an opportunity for a hearing on the record, that an officer, employee, or agent of such establishment—

“(A) threatened to forcibly assault;

“(B) forcibly assaulted;

“(C) forcibly intimidated; or

“(D) forcibly interfered with,

21 USC 601.

District of
Columbia.
Courts, U.S.

Records.

Law
enforcement and
crime.
Courts, U.S.
21 USC 674.
21 USC 601.

Health and
medical care.
Safety.

Records.
21 USC 601.

Safety.
Records.

21 USC 601.

an employee of the United States engaged in, or on account of, the performance of any of such official duties.

"(2)(A) Notwithstanding paragraph (1), the Secretary may temporarily suspend inspection service under title I with respect to any establishment, pending an expedited administrative hearing on the record and judicial review of the order of the Secretary based on such record, if the Secretary determines that temporary suspension of such inspection service is necessary for the safety of any employee who performs official duties under this Act.

"(B) If the Secretary receives, before or after temporarily suspending such inspection service in accordance with subparagraph (A), adequate written assurances from the recipient of inspection service, or the individuals involved, that the conduct or circumstances that threatened the safety of such employee will not continue or recur, the Secretary may continue or restore such inspection service on condition that such assurances are fulfilled."

(c) **WARNING; REPORTING OF VIOLATIONS.**—Effective only during the 6-year period beginning on the date of enactment of this Act, section 406 of the Federal Meat Inspection Act (21 U.S.C. 676) is amended—

(1) in subsection (b), by adding at the end thereof the following new sentence: "In determining whether the public interest could be adequately served by a written notice of warning, the Secretary shall take into account, among other factors—

"(1) the compliance history of such establishment;

"(2) the magnitude of the violation;

"(3) whether compliance with this Act would likely be obtained as a result of such notice; and

"(4) whether such violation is of a minor or technical nature."; and

(2) by adding at the end thereof the following new subsection:

"(c) Unless the Secretary by regulation provides otherwise, before any violation of this Act is reported by the Secretary for prosecution in a criminal proceeding, the Secretary shall give the person alleged to have committed such violation—

"(1) reasonable notice that the Secretary intends to report such violation for prosecution; and

"(2) an opportunity to present to the Secretary, orally or in writing, views with respect to such proceeding."

(d) **CONFORMING AMENDMENTS.**—

(1) **NIGHTTIME.**—Effective only during the 6-year period beginning on the date of enactment of this Act, section 9 of the Federal Meat Inspection Act (21 U.S.C. 609) is amended by inserting ", except as provided in section 6," after "equines, and" the first place it appears.

(2) **ADMINISTRATION.**—Effective only during the 6-year period beginning on the date of enactment of this Act, section 21 of the Federal Meat Inspection Act (21 U.S.C. 621) is amended by striking out "and meat food products" and inserting in lieu thereof "thereof, and of meat food products".

(e) **CONSTRUCTION OF AMENDMENTS.**—The amendments made by this section shall not be construed to authorize the Secretary of Agriculture to refuse to provide inspection under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) at an establishment solely because such establishment does not participate in a total plant quality-control program.

21 USC 606 note.

SEC. 404. SAVINGS PROVISION.

21 USC 606 note.

The expiration date provisions of section 403 shall not have the effect of releasing or extinguishing any penalty, forfeiture, or liability incurred under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), as amended by section 403, or under the rules or regulations issued under such Act.

SEC. 405. SENSE OF CONGRESS.

21 USC 606 note.

It is the sense of Congress that the Secretary of Agriculture should—

(1) carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.); and

(2) evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under title I of the Federal Meat Inspection Act, in order to identify the producer of such livestock.

SEC. 406. ANNUAL REPORT.

21 USC 606 note.

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

(1) any action proposed or taken by the Secretary to implement the amendments made by section 403;

(2) any action proposed or taken by the Secretary to carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.);

(3) any action proposed or taken by the Secretary to evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under such title, in order to identify the producer of such livestock; and

(4) any personnel action proposed or taken by the Secretary as a result of the amendments made by section 403 and any effort made by the Secretary to minimize any adverse economic effect of such amendments on employees of the Department of Agriculture.

SEC. 407. CONGRESSIONAL REEVALUATION.

21 USC 606 note.

It is the sense of Congress that, not later than 6 years after the date of the enactment of this Act, Congress shall—

(1) evaluate the operation and effects of the amendments made by section 403, for the purpose of determining whether to extend or modify the operation of such amendments; and

(2) enact such legislation as may be necessary to efficiently and effectively carry out the Federal Meat Inspection Act (21 U.S.C. 601 et seq.).

SEC. 408. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

21 USC 606 note.

(a) **GENERAL EFFECTIVE DATE.**—Except as provided in subsection (b) of this section, this title and the amendments made by this title shall become effective on the date of the enactment of this Act.

(b) **TEMPORARY APPLICATION OF EXISTING LAW.**—Sections 6, 9, and 21 of the Federal Meat Inspection Act (21 U.S.C. 606, 609, and 621), as in effect immediately before the date of the enactment of this Act, shall apply with respect to establishments until the Secretary of Agriculture first issues rules and regulations to implement the amendments made by section 403(a).

Approved November 10, 1986.

LEGISLATIVE HISTORY—H.R. 4613 (S. 2045):

HOUSE REPORTS: No. 99-624 (Comm. on Agriculture) and No. 99-995 (Comm. of Conference).

SENATE REPORTS: No. 99-291 accompanying S. 2045 (Comm. on Agriculture, Nutrition, and Forestry).

CONGRESSIONAL RECORD, Vol. 132 (1986):

July 16, considered and passed House.

Sept. 24, Oct. 6, S. 2045 considered in Senate; proceedings vacated and H.R. 4613, amended, passed in lieu.

Oct. 15, House rejected conference report; concurred in Senate amendment with an amendment.

Oct. 17, Senate concurred in House amendment.