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BY THE COMPTROLLER GENERAL

Report To The Congress OF THE UNITED STATES

Department Of Agriculture Should Have More Authority To Assess User Charges



114923

Federal appropriations could be reduced as much as \$48 million annually if the recipients of Department of Agriculture special benefit services were charged for all costs, except those which can be readily identified with public benefits. Marked differences now exist in the degree to which recipients bear the costs of these services. As a result, certain sectors of the agricultural marketing industry are receiving preferential treatment at taxpayers' expense.

In most cases, eliminating the inconsistencies and inequities in the Department's user charge practices will require congressional action--a new or amended general User Charge Statute, amendments to the funding provisions of some program acts, and repeal of other program acts. Further Department study is needed, however, to determine appropriate funding policies for some services.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the financing of certain marketing and regulatory services provided by agencies of the Department of Agriculture. It describes the marked differences that exist in the degree to which the costs associated with providing these services are borne by the users of the services and recommends legislative changes which would give the Department the authority to recover from the users the full cost of providing the services.

We made this review because the Comptroller General made a commitment to the Congress to aid in the fight against inflation by directing more of GAO's work in 1980 to bringing about reductions in the budgets of executive branch agencies. We also wanted to determine whether opportunities to reduce appropriations identified in two prior reports existed in other similar programs.

We are sending copies of this report to the Director, Office of Management and Budget, and the Secretary of Agriculture.

Milton J. Rowland
Acting Comptroller General
of the United States

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D I G E S T

B [The Department of Agriculture provides a wide range of marketing and regulatory services.) Currently, (marked differences exist in the degree to which recipients bear the costs of providing these services. As a result, certain sectors of the agricultural marketing industry are receiving preferential treatment at taxpayers' expense.)

fc. [If recipients were charged for all costs except those which can be readily identified with public benefits, the current inconsistencies and inequities would be eliminated and Federal appropriations could be reduced) as much as \$48 million annually. This amount is based on conditions that existed in fiscal year 1980 and covers only those services which appear to offer the greatest potential for greater user charge funding.

[The Department could also realize substantial savings if it were to move to a system of periodic unannounced inspections at federally inspected meat and poultry processing plants and if the plants were required to have total in-plant quality control systems,] as GAO recommended in a 1977 report. The Department recently implemented a voluntary quality control program for which it estimates a 5-year savings of \$4 million to \$8 million, assuming less than 10-percent participation. No reliable savings estimates exist for an industry-wide, mandatory program, but they undoubtedly would be much greater.

CURRENT LEGISLATIVE AUTHORITIES
ARE INCONSISTENT AND INEQUITABLE

[Current inconsistencies and inequities in the Department's application of user charges are caused by (1) differences in the legislative funding provisions covering individual programs and (2) problems in implementing user charges when no specific legislative authority exists.) (See pp. 9 to 12.)

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would be provided under the Agricultural Marketing Act on a reimbursable basis. (See pp. 25 and 26.)

In the past, the Department prepared several legislative proposals to achieve more uniformity in financing its commodity inspection, grading, and classing programs, but they either were withdrawn or were not enacted by the Congress. Legislative proposals have been sent to the 97th Congress that would repeal the Naval Stores Act, authorize user fees for cotton classing and tobacco grading services, and include supervision and certain overhead costs in user fees for grain inspection and weighing services. (See pp. 12, 13, 19, and 23.)

Under its program for inspecting domestic plants and plant products offered for export, the Department is authorized to certify to shippers and interested parties that the products are free of injurious insect pests and plant disease and that they meet the sanitary requirements of the importing countries. Department officials have determined that this program's authorizing act does not allow them to charge the requestors for the costs of this phytosanitary inspection service--\$1.4 million in fiscal year 1980. User charges are imposed, however, for similar export inspection and certification services, such as those for weed seeds in shipments of grain and seeds, provided pursuant to the Agricultural Marketing Act. (See pp. 26 and 27.)

The Department's market news service, with annual costs of \$14 million in recent years, provides those engaged in producing and marketing farm products with a wide range of information. Although this service provides special benefits, only a small portion of its annual costs--\$660,000 for postage, printing, and handling of mailed reports in 1980--can be readily associated with identifiable users. Charging for these services would be appropriate but may not be practical because instituting and administering a fee collection system may not be cost effective. (See pp. 28 to 31.)

Regulatory services

The Department provides a number of regulatory services, funded with appropriations, which benefit the recipients. GAO believes that

Marketing services

The Department administers programs to inspect, grade, or class a wide variety of agricultural commodities. These services are intended to facilitate orderly marketing, and all of them provide similar "special benefits" to identifiable persons or groups. For certain commodities (such as cotton, grain, tobacco, and naval stores), the services are authorized by legislation that covers the specific commodity. For other commodities (such as meat, poultry, livestock, fruits and vegetables, rice, and grain products), the services are provided under the general authority of the Agricultural Marketing Act of 1946.

Differences in the funding provisions of the authorizing acts result in certain costs associated with providing services for some commodities being financed with user charges while the costs of similar services for other commodities are financed with appropriated funds. In every case, the acts covering specific commodities, although differing among themselves, result in a higher proportion of appropriations funding than the Agricultural Marketing Act.

In fiscal year 1980 about \$37.8 million of appropriated funds--\$22.8 million for supervision and overhead costs associated with grain inspection and weighing services and \$15 million for cotton classing and tobacco grading services--were used to finance costs associated with commodities covered by specific acts, whereas user charges were used to fund similar costs for most Agricultural Marketing Act commodity inspection programs. Also, for many years the Congress has provided special appropriations to defray national supervision costs related to two commodity groups whose services are provided pursuant to the Agricultural Marketing Act. In fiscal year 1980 these special appropriations amounted to \$1.2 million: \$856,000 for the fresh fruit and vegetable program and \$327,000 for the poultry program. (See pp. 15 to 25.)

Under the Naval Stores Act, only a small portion of program costs--\$1,000 of \$23,000 in fiscal year 1980--is recovered by user charges. If this act were repealed, the program services

covering a service being provided does not address user funding.

The Department's use of the statute has been restricted, however, by its interpretation that Federal court decisions require that the value of benefits to the general public be subtracted from the Government's total cost of providing the service when calculating the user charge. In many if not most cases, this is not possible. As a result, the Department's agencies have decided not to use this authority.

GAO believes that Federal court interpretations of the User Charge Statute allow agencies to collect from identifiable beneficiaries the full cost of special services. This could be made clear by amending the statute or enacting new legislation to provide that an agency may set fees to recover the full cost of a program that primarily benefits identifiable users. (See pp. 9 to 12.)

IN-PLANT QUALITY CONTROL SYSTEMS
SHOULD BE MANDATORY AT MEAT AND
POULTRY PROCESSING PLANTS

The Department could realize substantial savings if inspections of meat and poultry processing plants could be made on a periodic unannounced basis and the plants were required to have in-plant quality control systems, as GAO recommended in 1977. The Department has initiated a voluntary quality control program but has not set a deadline for deciding whether to support a legislative proposal to make the program mandatory. (See pp. 47 to 52.)

RECOMMENDATIONS TO THE CONGRESS

The Congress should

- either amend the User Charge Statute or enact new general user charge legislation to make it clear that an agency may set fees to recover the full cost of a service that primarily benefits identifiable users (see p. 14);
- delete from existing program legislation provisions which limit the Department's authority to charge for services which primarily benefit recipients; that is, provisions limiting charges for cotton classing, tobacco

these beneficiaries should be charged for some of these services. For example:

- Examinations of federally licensed warehouses where agricultural commodities are stored primarily benefit the warehousemen and depositors and should be user funded. (See pp. 34 to 37.)
- Inspection costs for other imported animals should be recovered through fees as they now are for imported birds. (User fees for imported bird inspections are now based on the legislative history of one of the Department's annual appropriation acts. GAO believes that specific legislative authority should be obtained for these user charges.) (See pp. 40 to 42.)
- Imported seed inspections should be user funded, if the Department determines that the importers are the principal beneficiaries of this service. (See pp. 43 and 44.)

In 1940 legislation was enacted requiring export permits for tobacco seed and plants to prevent the development and expansion of flue-cured tobacco to areas outside the United States. Since then, however, tobacco production and research have become well established in foreign tobacco-producing countries. Accordingly, the Department believes, and GAO agrees, that this legislation no longer serves a useful purpose and should be repealed. (See p. 42.)

For another service, plant variety certifications, the fee that is charged was set arbitrarily and does not cover all costs. More information is needed on the effect of a fee increase on participation by small companies and individuals before a decision can be made on whether the fee should cover all program costs and, if not, what the fee criteria should be. (See pp. 37 to 40.)

User Charge Statute

Title V of the Independent Offices Appropriation Act, 1952, known as the User Charge Statute, gives Federal agencies general authority to institute user charges when program legislation

AGENCY COMMENTS

The agencies provided information to update and correct factual data presented in the draft report. (See app. II.) This information did not affect the report conclusions and recommendations and has been incorporated in this report.

The agencies were unable to provide the new administration's position on user fees within the 30 days provided for commenting on the draft report. However, the President's revised budget of March 10, 1981, included legislative proposals to allow the Department to recover all the costs associated with cotton classing; tobacco and naval stores grading; warehouse examinations, inspections, and licensing; and supervision of grain grading and weighing operations. (See pp. 19, 23, 26, 34, and 37.)

grading and market news, and grain inspection and weighing (see pp. 32 and 33.);

{-authorize the Department, through amended legislation, to charge recipients for all costs associated with examinations of federally licensed warehouses and inspections/testing of imported birds and animals} (see p. 45);

{-amend legislation to authorize the Department to require all federally inspected meat and poultry processing plants to develop and implement quality control systems} (see p. 52);

{-repeal the Naval Stores Act and the Tobacco Seed and Plant Exportation Act} (see pp. 33 and 45); and

{-discontinue special appropriations for national supervision costs associated with the fresh fruit and vegetable and poultry grading programs} (see p. 33).

RECOMMENDATIONS TO THE
SECRETARY OF AGRICULTURE

{ The Secretary should:

- Direct that independent studies be made to determine the cost effectiveness of a user fee system for printed market news reports and to develop objective criteria for setting and adjusting fees charged for plant variety certifications. (See pp. 33 and 45.)
- Determine whether mandatory inspections of imported seeds primarily benefit the importers and, if so, seek authorizing amendments to the Federal Seed Act and direct the appropriate agency administrator to develop and implement a user fee for the service. (See p. 46.)
- Direct the appropriate agency administrator to charge requesters of phytosanitary inspections user fees which cover the costs of providing the service, either under authority contained in the User Charge Statute or by seeking specific legislative authority. } (See p. 33.)

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CHAPTER 1

INTRODUCTION

The U.S. Department of Agriculture (USDA) provides a wide range of services designed to aid the orderly marketing of agricultural commodities. These include (1) inspecting, grading, or classing a host of diversified commodities (ranging from meat, vegetables, and grain to tobacco, cotton, and turpentine), (2) disseminating price information via numerous market news reports, and (3) certain regulatory services, such as licensing and examining commodity warehouses, issuing plant variety certifications, inspecting meat and poultry plants, and inspecting animals, birds, plants, and seeds moving in interstate and foreign commerce.

The marketing/regulatory services discussed in this report are provided by four USDA agencies: Food Safety and Quality Service (FSQS), Federal Grain Inspection Service (FGIS), Agricultural Marketing Service (AMS), and Animal and Plant Health Inspection Service (APHIS). 1/ In fiscal year 1980 these program services cost about \$162 million, whereas user charge revenues amounted to only about \$95 million. (See p. 8.) Chapters 3 and 4 outline opportunities for collecting from the users a greater portion of the costs USDA incurs providing many of these services. If implemented, these measures could reduce USDA's annual appropriations by \$45 million to \$48 million. Other efficiencies and savings possible in USDA's meat and poultry processing plant inspection program are discussed in chapter 5.

USER FEE POLICIES

In the broadest sense, the term "user charge" refers to any charge collected from recipients of Government goods, services, or other benefits not shared by the public. Under this definition, user charges include

- fees collected to offset the costs of goods, services, or privileges supplied by the Government;
- charges for the sale, lease, or other use of Government property; and
- excise taxes designed to recover the costs of Government projects or services (such as taxes on gasoline and

1/We did not review all programs administered by the four agencies, nor does this report discuss all the programs we reviewed. Our reasons for excluding certain programs are provided on p. 5.

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ABBREVIATIONS

AMA	Agricultural Marketing Act
AMS	Agricultural Marketing Service
APHIS	Animal and Plant Health Inspection Service
ESS	Economics and Statistics Service
FGIS	Federal Grain Inspection Service
FSQS	Food Safety and Quality Service
GAO	General Accounting Office
OGC	Office of General Counsel
OMB	Office of Management and Budget
USDA	U.S. Department of Agriculture
USGSA	U.S. Grain Standards Act

as necessary to recover full costs. In setting and adjusting fees, agencies may make exceptions to the general policies when

- the cost of collecting the fee would be an unduly large part of the receipts from the service;
- furnishing the service free is an appropriate courtesy to a foreign country or international organization, or comparable fees are set on a reciprocal basis with a foreign country;
- the recipient is engaged in a nonprofit activity designed for public safety, health, or welfare; or
- payment of the full fee by a State, local government, or nonprofit group would not be in a program's interest.

When computing costs, the agencies must include all direct and indirect costs of providing the service, including salaries and other personnel costs (retirement, employee insurance, and employee leave); travel; rent; postage; maintenance, operation, and depreciation of buildings and equipment; and a proportionate share of the agency's management and supervisory costs.

In late 1979 OMB completed a review of its user charge policy. At that time OMB reaffirmed its belief that those who receive special benefits from the Government should bear the costs involved, but it also noted that court decisions involving agencies' authorities to impose fees presented practical problems in imposing user charges in some circumstances. Therefore, OMB felt that legislation was needed which would reaffirm the user charge policy contained in Circular No. A-25.

USDA policies

Although individual statutes prescribe the methods of financing for most USDA services discussed in this report, they leave USDA some latitude to decide which specific elements of a program's cost are to be recovered through user charges. USDA agency officials told us that they follow the general policy of public vs. special benefits and the guidance in OMB Circular No. A-25. In other words, USDA's general policy is to finance with user charges those programs or program elements which it believes provide special benefits--unless, of course, it is specifically directed otherwise by statute.

The various agencies responsible for administering these programs have used different criteria and rationales in establishing individual user fees within this general policy. As a result of this, and the differing legislative funding requirements, considerable differences exist in the degree to which user fees finance the costs of the programs/services discussed in this report. The specific financing methods and the agencies' rationales for each are discussed in chapters 3 and 4.

certain automotive parts that are paid into the highway trust fund.)

In this report the term "user fee" (or "user charge") refers only to fees collected to offset the costs of goods, services, or privileges supplied by the Government.

Legislative authorities

User fees are authorized either by specific legislation, as most USDA-imposed fees are, or by the general authority granted to Federal agencies in the so-called User Charge Statute. ^{1/} The specifically legislated user fee provisions often are inconsistent and sometimes lack specificity. Questions have also been raised about application of the User Charge Statute authority. The problems involving the current legislative authorities are discussed generally in chapter 2 and specifically in chapters 3 and 4 in connection with individual program services.

OMB guidance

Office of Management and Budget (OMB) Circular No. A-25, issued September 23, 1959, sets forth the user charge policies to be followed by all Federal activities (except certain specified exclusions). The general policies for special services are as follows.

--A charge, which recovers the full cost to the Federal Government, should be imposed for a service (or privilege) which provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large. A charge should be imposed when the service (1) enables the beneficiary to obtain more immediate or substantial gains or values (not necessarily monetary) than those which accrue to the general public, (2) provides business stability or assures public confidence in the business activity of the beneficiary, or (3) is performed at the recipient's request and is above and beyond the services regularly received by other members of the same industry or group, or by the general public.

--A charge should not be imposed for a service when the identity of the ultimate beneficiary is obscure and the service can be primarily considered as broadly benefiting the general public.

The circular also requires agencies to review annually the costs of providing a special service and to adjust fees

^{1/}Title V of the Independent Offices Appropriation Act, 1952 (31 U.S.C. 483a).

recommendations on the appropriateness of either existing or alternative methods.

OBJECTIVES, SCOPE, AND METHODOLOGY

We reviewed various USDA services to identify ways in which appropriations could be reduced. We made this review because

- the Comptroller General made a commitment to the Congress to aid in the fight against inflation by directing more of GAO's work in 1980 to bringing about budget reductions in the executive branch and
- two of our prior reports (see p. 4) identified opportunities to reduce appropriations for certain USDA services, and we wanted to determine if those opportunities existed in other similar programs.

We focused the review on services that aid in the orderly marketing of agricultural commodities because such services are likely to provide special benefits to the industry and thus are likely candidates for user fees. Time constraints did not permit us to review all USDA services of this nature. Therefore, we selected for review those services which appeared to offer good potential for greater user fee funding. We are not reporting on those programs/services whose current financing methods appeared to us to be appropriate. (The specific programs/services included in this report are listed on p. 8.)

We did not evaluate the effectiveness or efficiency of the programs/services reported on. However, we ascertained USDA's actions on our prior recommendations for improving the efficiency of meat and poultry processing plant inspections (see p. 48), and where appropriate, we recommend discontinuance of programs/services that USDA has decided no longer serve a useful purpose. (See pp. 33 and 45.)

We examined the funding policies prescribed in program authorizing acts and their legislative histories and the Government's broad user charge policies contained in the User Charge Statute, OMB guidelines, and related court decisions. To determine how USDA interpreted these policies and applied them to specific program services and what its positions were on greater user funding for the services, we (1) examined agency regulations and directives, (2) reviewed departmental legal decisions, (3) interviewed program management and budget officials in USDA and its subordinate agencies, and (4) reviewed various departmental legislative proposals. We combined the information from these sources into what we judge to be an accurate description of the existing situation and a practical approach for making greater use of user charges in the future.

Over the years USDA agencies have prepared various legislative proposals to make greater use of user fees or to provide greater consistency among existing user fees. However, none of these proposals have been implemented because they either were not approved by the Department or were not enacted by the Congress. These legislative proposals are summarized in appendix I.

PRIOR REPORTS

We have issued three reports in recent years which directly relate to matters discussed in this report.

- "The Congress Should Consider Exploring Opportunities To Expand and Improve the Application of User Charges by Federal Agencies" (PAD-80-25, Mar. 28, 1980). This report concluded that user charges (in the broad sense) promote Government economy and efficiency and can help reduce Federal tax collections. The report described principles and pricing practices which, from the standpoint of economic efficiency, would be beneficial if adopted by the Congress in formulating user charge guidelines.
- "The Department of Agriculture Should Be Authorized To Charge for Cotton Classing and Tobacco Grading Services" (CED-77-105, Aug. 2, 1977). This report recommended that the Congress pass legislation authorizing USDA to charge for these services because providing them free was inconsistent with the Government's general user fee policy and because the original reasons for the free services no longer applied. (See p. 16 for more details on this report.)
- "A Better Way for the Department of Agriculture To Inspect Meat and Poultry Processing Plants" (CED-78-11, Dec. 9, 1977). This report concluded that USDA could more efficiently and effectively use its resources to inspect meat and poultry processing plants by requiring the plants to implement effective quality control systems. It recommended that the Congress provide USDA with the necessary legislative authority. (See p. 48 for more details on this report.)

In April 1980 USDA issued a report entitled "Analysis of Alternative Sources of Funding and Program Effectiveness of Agricultural Commodity Inspection, Grading and Market Monitoring." The report, requested by the Senate Committee on Appropriations, was prepared by a task force led by USDA's Office of Budget, Planning, and Evaluation with members from cognizant program administering agencies. The report identified program costs, primary beneficiaries of the services, and legislative bases and rationales for how each program (many of which are addressed in this report) is funded. It analyzed alternative methods of financing the programs with user fees but made no

CHAPTER 2

CURRENT LEGISLATIVE AUTHORITIES

ARE INCONSISTENT AND INEQUITABLE

User charges could be used to fund a much greater portion of USDA's budget for marketing and regulatory services if all recipients of special benefits were required to pay the full cost of providing these services. Currently, inconsistencies and inequities exist in USDA's user charge policies. These are caused by (1) differences in the legislative funding provisions covering individual programs and (2) problems perceived by USDA in implementing user charges under the User Charge Statute. Correcting the current inconsistencies and inequities and recovering the costs of all special benefit services will require amending existing program legislation which contains restrictions on user charges and either amending the User Charge Statute or enacting new legislation to clarify general user charge authority.

In fiscal year 1980 the programs discussed in this report, exclusive of the meat and poultry inspection program, cost about \$162 million, as shown in the table on page 8. User charges for these program activities amounted to about \$95 million, or only 59 percent, of total costs. Although it may not be practical to recover the total cost of these programs, we believe that it would be possible to reduce appropriations by as much as \$48 million.

USDA could also realize substantial savings for its meat and poultry processing plant inspections if it instituted a mandatory quality control program as we recommended in a previous report. (See p. 48.) USDA estimates savings of \$4 million to \$8 million for its recently implemented voluntary program during the first 5 years, assuming less than 10-percent participation. Savings would undoubtedly be greater for an industry-wide, mandatory program, but no reliable estimates exist of how much more could be saved.

In some cases recovering all special benefit costs may not be feasible, either because the fee would be prohibitive (for example, plant variety certification) or the cost of the fee collection system would be excessive compared with the amount to be recovered (market news reports). But even in these cases, a sound basis is needed for the practices followed, and they should be consistent with those of other Departments.

This chapter discusses user fees from an overall perspective. The individual program services and our conclusions and recommendations relating to them are discussed in chapters 3 and 4.

We obtained cost data on the services reviewed from USDA's budget submissions; more detailed, supplemental data was provided by agency budget and administrative officials. Because of time constraints, we did not independently verify the accuracy of this data. However, we analyzed this data to develop estimates of reductions to appropriations that would be possible by implementing our recommendations. The results of our analysis are summarized in tabular form (see p. 8) and discussed in chapters 3 and 4 in connection with the individual programs or services.

We coordinated our work with USDA's Office of Inspector General. We identified and reviewed relevant Inspector General audit reports, and where appropriate, we included information from them in our report.

Our review was made primarily at USDA headquarters in Washington, D.C. The programs/services we reviewed are administered by FSQS, FGIS, AMS, and APHIS. We also obtained information from USDA's Office of General Counsel (OGC) and Office of Budget, Planning, and Evaluation and from the National Marine Fisheries Service of the Department of Commerce's National Oceanic and Atmospheric Administration.

PROBLEMS WITH EXISTING LEGISLATIVE AUTHORITIES

USDA's user charge policies are inconsistent and result in inequitable treatment of certain sectors of the agricultural community. The primary causes for this are differing legislative authorities for user funding and problems perceived by USDA in implementing fees under the User Charge Statute.

Authorities contained in program legislation

The acts authorizing the program services discussed in this report were enacted over a long time span, by different legislatures, and for different reasons. The acts' funding provisions are worded differently and in some cases vaguely. As a result, the costs recoverable through user fees vary between programs even though the services provided may be similar.

The Agricultural Marketing Act (AMA) of 1946, as amended (7 U.S.C. 1621 et seq.), is USDA's authority for providing inspections, grading, and classing of commodities not covered by specific legislation. USDA agencies charge users for all costs, other than standardization, ^{1/} incurred for services provided under AMA authority--except for a portion of the national supervision costs of the fruit and vegetable and poultry programs which the Congress decided to fund with appropriations.

Similar services provided under specific program legislation, such as the classing of cotton and the inspection of tobacco and grain, are funded either totally or partially with appropriations. The legislation covering these specific programs was enacted by different legislatures (in 1935, 1937, and 1977) than the AMA (1946) and in response to concerns of the agricultural sectors covered by the legislation. The Congresses that authorized appropriations to fund, or partially fund, these programs gave reasons for doing so. We believe that these reasons are no longer sufficient to justify appropriations funding, however, and that these sectors of the agricultural community should pay the full cost of the special benefits being provided. (See pp. 15 to 25.)

User Charge Statute authority

If program legislation does not provide for user charges, the User Charge Statute authority may be used. USDA considered using this authority as a basis for charging importers for imported animal inspections but decided that this was impractical. (See pp. 41 and 42.) OMB also has noted practical problems

^{1/}Standardization activities consist primarily of developing and maintaining U.S. grade standards by which the quality of various commodities is judged.

Additional Annual User Fee Financing Possible
by Implementing Recommendations in This Report
Based on Fiscal Year 1980 Program Costs

<u>Program</u>	<u>Total costs</u>	<u>Now financed by fees</u>	<u>Additional fee financing possible</u>
	----- (thousands) -----		
Inspection, grading, and classing programs:			
Grain	\$ 54,506	\$31,677	\$22,829
Food commodities	62,993	60,319	1,183
Cotton	<u>a/12,902</u>	<u>b/366</u>	8,936
Tobacco	6,706	625	6,081
Naval stores	23	1	22
Other marketing services:			
Phytosanitary inspections	1,428	0	1,428
Market news reports	14,305	0	660
Regulatory services:			
Warehouse examinations	2,970	138	2,832
Plant variety certifications	440	116	<u>c/324</u>
Imported animal inspections (note d)	5,342	1,930	<u>3,228</u>
Imported seed inspections	465	0	<u>e/465</u>
Tobacco seed and plant export permits	<u>2</u>	<u>0</u>	<u>2</u>
Total	<u>\$162,082</u>	<u>\$95,172</u>	<u>\$47,990</u>

a/Excludes standardization activities, which were financed with appropriations. This data was not available.

b/Excludes \$3.6 million of other revenues received from the sale of samples and value of samples donated to Federal prisons.

c/This amount depends on fee criteria which USDA needs to develop. Once developed, the criteria may decrease this potential.

d/Excludes the Harry S Truman Animal Import Center which processes special import animal cases.

e/This amount assumes that USDA will decide that the service primarily provides special rather than public benefits. If USDA decides otherwise, there would be no additional fee financing potential for this program.

Referring to these same court decisions, in November 1979 OMB told us that due to the court decisions the agencies' authority to impose user charges was questionable in some circumstances. OMB said that often Federal activities benefit both society as a whole and particular groups. Therefore, in such cases there are at least two problems in developing a user charge policy:

- Disagreement as to whether a particular activity is of benefit to society as a whole or to a particular group.
- Disagreement on the relative share of benefit, and therefore on the levels of specific user charges.

OMB said that barring a reversal of the Supreme Court decision, two approaches were available to solve this problem:

- New general legislation permitting recovery of the full costs of activities with special benefits, even in cases where there are general public benefits as well. 1/
- Case-by-case legislation coupled with a revised OMB circular (A-25) requiring agencies to seek legislative authority for specific user charges.

At that time OMB said that it would pursue the first approach by consulting with relevant congressional committees. As of January 1981 OMB had informally contacted some committees but had taken no further action.

OMB has also noted that case-by-case legislation would be likely to lead to inconsistencies because individual agencies and committees could be expected to react differently. As discussed in chapters 3 and 4, this has been the case with many of the statutes authorizing user fees for specific USDA services.

We believe that the OGC opinion was based on too restrictive an interpretation of the court decision. First, the Supreme Court approved OMB Circular No. A-25 as a proper interpretation of the User Charge Statute; the circular instructs agencies "to recover the full cost to the Federal Government" of providing the special service. 2/ Second, as we have indicated, the Court of Appeals stated that a proper fee may include the full cost of providing a special service, even if the service may result in some incidental public benefits.

1/In essence, such legislation would affirm OMB's policy in Circular No. A-25.

2/Federal Power Commission v. New England Power Company, 415 U.S. at 349-51.

with using this authority. The following Federal court decisions influenced both USDA's decision and OMB's concern about using the statute's authority.

In a 1974 decision 1/ the U.S. Supreme Court distinguished between fees (which the Congress may authorize an agency to assess) and taxes (which only the Congress may assess). It ruled that a fee may be exacted in exchange for a benefit which is not shared by the public and that an agency may not charge more than the value of the benefit to the recipient. A tax, on the other hand, need not be related to a specific benefit. In a second decision 2/ the Court ruled that a fee may be charged only to specific, identifiable recipients of a special Government benefit. An agency may not charge all the members of a group it regulates, regardless of whether each member actually benefits.

In two other decisions 3/ the United States Court of Appeals for the District of Columbia Circuit further refined the standards agencies must apply in assessing fees. It ruled that fees may include only those direct and indirect costs incurred in conferring a special benefit. Fees may not include the costs incurred in serving an independent public purpose. On the other hand, the fee may include the full cost of providing a service to a recipient, although the service may result in some incidental public benefits. 4/ Further, agencies cannot base a fee amount on the resultant return on investment or profit to be derived by the recipient. By including such factors, an agency would be unlawfully attempting to levy a tax rather than charging a fee.

In 1979 APHIS asked USDA's OGC if it could assess user fees for inspection, testing, and certain other services provided during the importation of animals into the United States. After reviewing the court cases and OMB Circular No. A-25, OGC concluded that using the authority in the User Charge Statute was impractical because of certain problems. One problem cited was the need to develop a fee schedule that would reflect only the value of special benefits received by the recipient and exclude any expense incurred to serve an independent public interest.

1/National Cable Television Association, Inc. v. United States,
415 U.S. 336 (1974).

2/Federal Power Commission v. New England Power Company, 415 U.S.
345 (1974).

3/National Cable TV Association, Inc. v. FCC, 554 F. 2d 1094
(D.C. Cir. 1976) and Electronic Industries Association v. FCC
554 F. 2d 1109 (D.C. Cir. 1976).

4/Electronic Industries Association v. FCC, 554 F. 2d at 1115.

considered to be of general public benefit--that is, all national headquarters costs--and (2) user fees be initiated for the special benefit costs associated with the cotton classing and mandatory tobacco inspection programs--the only two commodity inspection, grading, and classing programs administered by AMS that continued to be entirely financed by annual appropriations.

In November 1976 the responsibility for the grain and grain products inspection programs was transferred from AMS to a newly established agency, the Federal Grain Inspection Service, and in March 1977 the responsibility for the food inspection and grading programs was transferred from AMS to another newly established agency, the Food Safety and Quality Service. Since then AMS has prepared three user fee legislative proposals for its cotton classing and tobacco inspection/grading programs. Proposals for the 95th and 96th Congresses were withdrawn after being sent to OMB. Another proposal has been submitted to the 97th Congress along with USDA's fiscal year 1982 budget. No further attempts have been made, however, to develop a uniform USDA definition of public benefits or to achieve greater consistency in funding the commodity inspection, grading, and classing programs administered by USDA.

Under the User Charge Statute, amounts collected are to be paid into the Treasury as miscellaneous receipts. OMB favors this approach. Several USDA program and budget officials told us, however, that an agency has no incentive to request a user fee if the revenues will not be available for the agency's use. USDA's OGC also cited this as one reason for recommending that specific legislation be requested for any user fee covering the inspection of imported animals. Agency officials said that they would be more inclined to pursue user fee options for the warehouse examination and phytosanitary inspection programs if the revenues generated by the fees were available to fund program activities.

CONCLUSIONS

USDA agencies are inconsistent in charging recipients for similar marketing and regulatory services. Existing fees are based on funding provisions in individual laws covering specific programs. These provisions differ and in some cases are vague. Correcting the inconsistencies has not received the attention it should because, among other things, the programs are administered by different agencies and are under the jurisdiction of different legislative subcommittees.

Although we believe the Federal court interpretations of the User Charge Statute allow agencies to charge identifiable beneficiaries the full cost of special services, OMB and USDA indicate that these decisions may be impeding Federal agencies from assessing fees under the statute.

Legislation is needed to correct the inconsistencies and inequities caused by existing program legislation and to provide

Further, in a more recent decision, the U.S. Court of Appeals for the Fifth Circuit discussed the cost which agencies may include in charging a fee under the User Charge Statute. 1/ When a service is provided to a private beneficiary, the agency may recover the service's full cost regardless of whether the service may also incidentally benefit the public. There is no need to allocate the cost of providing the service between the recipient and the public. The Comptroller General has reached a similar conclusion. 2/

WHY PROBLEMS WITH LEGISLATIVE
AUTHORITIES HAVE NOT BEEN CORRECTED

In the past 15 years USDA agencies have prepared several legislative proposals for implementing additional user charges, but these proposals have been either turned down within USDA, withdrawn after submission to OMB, or not enacted by the Congress. (See app. I.) Furthermore, little has been done to achieve greater uniformity in applying user charges for similar services among various commodity sectors. This situation is due, at least in part, to

- the fact that individual commodity programs are administered by four USDA agencies and overseen by several different legislative subcommittees,
- differing degrees of influence exerted by individual sectors of the agricultural community, and
- lack of incentive for USDA agencies to seek user fees if they are not able to use the fee revenues.

The parochial interests of certain USDA agency staffs and Members of Congress and the influence of certain agricultural sectors are evidenced by the (1) special appropriations provided to the fresh fruit and vegetable and poultry inspection programs, (2) amendment of the United States Grain Standards Act to provide appropriated funds for field supervision costs, and (3) failure to propose/enact legislation for cotton classing and tobacco inspection. These matters are discussed in greater detail in chapter 3.

Until 1981 the last concerted effort within USDA to achieve a more uniform approach to funding the commodity inspection, grading, and classing programs was made in conjunction with the Agricultural Marketing Service's fiscal year 1976 budget. At that time AMS proposed that (1) those programs that were already funded with user fees receive appropriations for those costs

1/ Mississippi Power and Light Company v. N.R.C., 601 F. 2d 223 (1979), cert. denied, 444 U.S. 1102 (1980).

2/ 59 Comp. Gen. 389 (1980).

CHAPTER 3

INCONSISTENT USE OF FEES TO

FINANCE MARKETING SERVICES

Greater consistency is needed in the methods by which USDA's marketing services are funded. Currently, marked differences exist in the degree to which user fees are used to finance the costs of similar inspection, grading, and classing services; market news services; and export inspection services. These differences have been caused by varying congressional and agency interpretations, over the years, as to the specific program costs which should be financed with user fees. In certain cases (that is, the grading or classing of tobacco, cotton, and naval stores), reasons once used to justify appropriations funding no longer apply.

The diversity of funding methods results in certain sectors of the agricultural marketing industry receiving preferential treatment at taxpayers' expense. For certain commodities, user fees cover almost the entire cost of a service which for other commodities is funded totally or mostly from appropriations.

Correcting these inequities will, in most cases, require deleting provisions from existing legislation which prevent recovery of certain costs associated with providing marketing services. 1/ In the case of market news services, however, further study is needed to determine if imposing user charges would be cost effective.

INSPECTION, GRADING, AND CLASSING PROGRAMS

USDA administers programs to inspect, grade, or class a wide variety of agricultural commodities. All of these programs are intended to facilitate orderly marketing, and all provide similar "special benefits" to identifiable persons or groups.

Specific legislation covers the cotton, tobacco, grain, and naval stores programs. Services involving other agricultural commodities are provided under the general authority of the Agricultural Marketing Act of 1946.

AMA services are financed mostly by user charges, except for standardization costs and certain national supervision costs related to the fresh fruit and vegetable program and the poultry program. The legislation authorizing specific commodity programs provides for significant amounts of appropriations funding. As a result, appropriations are used to finance most cotton classing

1/These amendments are in addition to amendments to the User Charge Statute we recommend in chapter 2. (See p. 14.) They should be made even if the User Charge Statute is not amended.

a basis for implementing uniform and equitable user fees where existing legislation does not cover the use of user fees. Our recommendations to the Congress for amending existing program legislation are at the ends of chapters 3 and 4.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress either amend the User Charge Statute or enact new general user charge legislation to make it clear that an agency may set fees to recover the full cost of a program that primarily benefits identifiable users.

or donated to the Federal prison system 1/ (about \$1.1 million worth in fiscal year 1980).

Free cotton classing services began in 1937 primarily as an incentive to producers participating in cotton improvement groups. The services were designed to improve the quality of cotton the groups produced and to place producers in a better bargaining position in the marketplace by furnishing them with quality information on each bale produced. As we reported in 1977, however, these groups are now firmly established in most U.S. cotton-producing areas, and the improvement programs have stabilized to the point where they now consist of no more than normal farming practices--that is, planting recommended varieties and following recommended cultivation and harvesting practices.

Tobacco grading

AMS provides tobacco grading services to producers under authority of the Tobacco Inspection Act (7 U.S.C. 511-511q) passed in August 1935. The act provides for free grading at "designated" auction markets and for grading on a reimbursable basis at nondesignated markets. USDA determines which markets to designate by producer referendums. If two-thirds of the producers voting favor designation, grading is made mandatory and provided free of charge at an auction market, subject to the availability of USDA inspectors.

During fiscal year 1980 about 97 percent of the 1.5 billion pounds of tobacco produced in the United States was graded free at 168 designated auction markets. Inspection program costs for fiscal year 1980 totaled \$6,706,000. Reimbursements resulting from inspections at nondesignated markets and for the Commodity Credit Corporation totaled about \$625,000.

The Congress opted for free tobacco grading services in 1935 because tobacco was the only crop for which all domestic consumption was subject to taxation. It was believed at that time that the tax limited consumption and therefore limited production and/or producers' profits. Time, however, has proven these assumptions false.

Despite increases in tobacco excise taxes and recent anti-smoking campaigns, domestic tobacco consumption has continually risen. Increased consumption, however, has not significantly affected production because manufacturers now use less tobacco per cigarette. Also, tobacco producers have higher per-acre returns on their crop than producers of other agricultural commodities, such as food and feed grains.

1/These donations are made pursuant to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

and tobacco grading services, all supervision and overhead costs involved in grain inspection, and most naval stores program costs.

Providing cotton classing and tobacco grading services free is no longer justified

In a 1977 report 1/ we recommended that the Congress pass legislation authorizing the Secretary of Agriculture to charge users for cotton classing and tobacco grading services. We noted that providing these services free, which was authorized in the 1930s, was inconsistent with the Government's general policy of charging fees for special services and with the practice of charging for the inspection and grading of other commodities. We also concluded that the reasons for providing these services free in the 1930s no longer applied. We believe that our 1977 recommendation is still valid.

Cotton classing

The Agricultural Marketing Service provides free cotton classing services, on request, to members of cotton improvement groups under the 1937 Smith-Doxey Amendment to the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 473a). Although AMS classes some cotton on a reimbursable basis under other statutes, 2/ free services provided under the Smith-Doxey Amendment comprise the vast majority of AMS' cotton classing workload. Of the roughly 14.8 million bales produced during 1980, 14.1 million bales (or 95 percent) were classed under the amendment.

Some cotton is classed more than once; that is, reclassified for export, for sale on futures markets, and for other miscellaneous reasons. Therefore, the number of classings in fiscal year 1980 totaled about 14.5 million. The cost of providing this service amounted to about \$12,902,000, or about 89 cents per classing. 3/

Actually, cotton classing is not entirely free because producers must submit samples which USDA retains. These samples are either sold (about \$2.5 million worth in fiscal year 1980)

1/"The Department of Agriculture Should Be Authorized To Charge for Cotton Classing and Tobacco Grading Services" (CED-77-105, Aug. 2, 1977).

2/United States Cotton Futures Act (7 U.S.C. 15b) and United States Cotton Standards Act, as amended (7 U.S.C. 51-65).

3/AMS estimates that the number of classings to be performed in fiscal year 1982 will be about 12 million and the cost to provide this service will be about \$14 million.

The new USDA administration, which took office January 20, 1981, had not yet developed a position on user charges at the time it provided comments on the draft report. Subsequently, however, the President's revised fiscal year 1982 budget, submitted to the Congress on March 10, 1981, included proposed legislation to allow recovery of all cotton classing and tobacco grading costs through user fees. USDA estimated that in fiscal year 1982 the proposed user fees would recover about \$23.5 million: \$14.8 million for cotton and \$8.7 million for tobacco.

Need for companion legislation

The USDA legislative proposal which cleared OMB in February 1978 would also have amended the Tobacco Inspection Act to prohibit auction sales except at designated markets. This amendment was proposed to give the Secretary necessary legal authority to control tobacco marketing by establishing efficient and equitable marketing methods. USDA believed that without this amendment, it would have no authority to control tobacco marketing if the legislative proposals covering fees were enacted. (See app. I.) Consequently, USDA recommended enactment of a user fee system for tobacco grading contingent on passage of the so-called "grower designation" amendment.

The President's revised fiscal year 1982 budget did not indicate whether the "grower designation" amendment would be included in the legislative proposals. However, an AMS official said that such a proposal would be submitted to the 97th Congress.

Legislation causes differences in user funding of grain and food inspection services

USDA provides similar inspection and grading services, on a reimbursable basis, for a wide range of agricultural commodities under authority of the AMA and the United States Grain Standards Act (USGSA), as amended (7 U.S.C. 71 et seq.). Through the USGSA and USDA's appropriations acts, however, the Congress has indicated its intent that fees not be used to recover the costs of providing certain services connected with certain commodities. As a result, appropriated funds currently finance certain costs incurred in USDA's grain, fresh fruit and vegetable, and poultry programs, while these same costs are financed by user fees in other, similar commodity programs--a situation which we believe is neither equitable nor appropriate.

In fiscal year 1980 user fees financed only about 58 percent of the grain program costs (\$31.7 million of \$54.5 million). On the other hand, fees financed about 96 percent of the costs of AMA program services (\$60.3 million of \$63 million). Two AMA programs, however, have been singled out to receive special appropriations to defray a portion of the supervision and overhead costs. In fiscal year 1980 the fresh fruit and vegetable program received a special \$856,000 appropriation and the poultry program a \$327,000 appropriation. Two other small AMA programs--

Cotton and tobacco industry
opposition to user charges

Cotton and tobacco producer associations and industry representatives opposed our 1977 recommendation to charge fees for classing and grading services. They said that most producers are small and would be adversely affected if charged. As discussed in our 1977 report, however, charges for these services would have increased 1976 production costs for both commodities only slightly--by about 0.3 percent.

Based on fiscal year 1980 estimated cotton production costs (between \$362 and \$440 per bale) and estimated classing costs (about 89 cents per bale 1/), the costs of producing a bale of cotton in 1980 would have increased only about 0.2 percent to 0.25 percent if USDA had charged users for the service. 2/

AMS' Tobacco Division estimates it would have had to charge users an average of 33 cents per hundred pounds to recover its costs of inspecting the 1979 tobacco crop. It estimates that this average cost will increase to 45 cents per hundred pounds by fiscal year 1982. Because production costs vary between tobacco types (between \$80 and \$127 per hundred pounds in 1979), charging for inspection services would have increased 1979 production costs only about 0.26 percent to 0.41 percent. 2/

USDA position

Following our 1977 report, USDA twice forwarded to OMB and then withdrew proposed legislation that would have provided for user fees for these programs. The first proposal was cleared by OMB in February 1978, and the second was submitted to OMB later that year as part of the legislative package accompanying the fiscal year 1980 budget. 3/ USDA did not document its reasons for the withdrawals. The AMS Administrator told us, however, that USDA considered new viewpoints and decided that the user fee proposals were no longer wise. The Administrator declined to elaborate further.

1/Classing costs per bale can vary from year to year due to varying production levels. The 1980 cost (89 cents per bale) is somewhat lower than in 1979 (98 cents per bale) in part because AMS classed about 14.5 million bales in 1980 vs. 10.6 million bales in 1979.

2/These estimates do not include the costs of administering collection systems. If included, these percentages would be slightly higher.

3/See app. I for details on these legislative proposals and four other proposals submitted to the Congress in 1965, 1967, 1970, and 1981.

services provided under USGSA and AMA are basically the same. ^{1/} Therefore, we believe that the rationales used by the Congress to justify appropriations for the USGSA and two AMA commodity programs are no more valid for those programs than they would be for the other AMA commodity programs--or, for that matter, most other USDA special benefit services.

Agency personnel have had problems in determining whether certain USGSA program costs are properly chargeable to appropriation or user-funded accounts. Funding all supervision and overhead costs from user charges would greatly simplify the system used to budget and account for USGSA program costs.

Differences in funding provisions--USGSA, as amended in 1977 (Public Law 95-113, 91 Stat. 1025), authorizes "reasonable fees to cover the estimated cost of official inspections" performed by USDA, but it specifically excludes recovery of Federal "administrative and supervisory costs." AMA, on the other hand, authorizes USDA to assess and collect "reasonable fees" which as nearly as possible "cover the cost of the service rendered." Obviously, these legislative provisions have basic differences, but they leave USDA agencies some flexibility in determining what specific costs should be financed by fees.

A brief recap of USGSA's legislative history is necessary to understand the rationale underlying its funding provisions. The U.S. Grain Standards Act of 1976 (Public Law 94-582, 90 Stat. 2867) was enacted to reform the national grain inspection system following widespread disclosures of misgrading and shortweighing. The act established FGIS and made its Administrator responsible for the national grain inspection and weighing systems. It represented a tremendous expansion of USDA's inspection and supervision responsibilities and associated costs.

As passed in 1976, USGSA authorized user fees and specified that they include administrative and supervisory costs related to official inspections, except for those incurred by FGIS' Washington office. However, in a fiscal year 1977 supplemental appropriations act (Public Law 95-26, 91 Stat. 61), the Congress provided FGIS additional appropriations to finance supervision costs for that year and, in committee reports accompanying the act, directed that FGIS not charge fees for supervision. In September 1977 the Congress amended USGSA (Public Law 95-113, 91 Stat. 1025) to provide the current fee policy--that is, to specifically exclude recovery of Federal "administrative and supervisory costs." This

^{1/}In commenting on the draft report, FGIS said that this sentence could be misinterpreted and that it would be cumbersome to develop equitable user fees for administrative and supervision costs associated with the USGSA programs. (See app. II for FGIS' comment and our response.)

the livestock grading and seed inspection programs--are financed entirely by fees, but their fiscal year 1980 expenses were only about \$240,000 and \$25,000, respectively.

Based on fiscal year 1980 data, appropriations for USGSA and certain AMA inspection and grading programs could be reduced by \$24 million by uniformly applying the funding policies currently followed in most AMA programs.

Services provided

USGSA authorizes USDA to provide or supervise grain inspection and weighing services to facilitate orderly and timely grain marketing and trading. Weighing services are performed along with the inspection services. Therefore, throughout this report, all references to grain inspection services apply to weighing services as well, and the costs and user charge amounts include both functions. Grains covered by the act include corn, wheat, barley, oats, rye, soybeans, grain sorghum, mixed grains, triticale, and flaxseed.

AMA grants USDA broad authority to inspect, certify, and identify the class, quality, quantity, and condition of agricultural products shipped or received in interstate commerce. These services are to be provided on a voluntary basis to facilitate marketing and trading and to ensure that consumers obtain products of the quality they desire. AMA applies to any commodity not covered by separate, more specific legislation. Commodities graded under the act include dairy products; fresh and processed fruits and vegetables; meats and poultry; livestock; seed; and certain grains and grain products not covered by USGSA, such as rice, edible beans, lentils, hay, straw, flour, soybean meal, and commodities processed from grain.

The Federal Grain Inspection Service carries out grain inspection and weighing programs under USGSA. It also inspects and grades rice and grain-related products under AMA. Most other AMA grading and inspection programs--the poultry, dairy, meat, and fresh and processed fruit and vegetable programs--are administered by the Food Safety and Quality Service. AMS administers two small AMA programs: (1) the grading of livestock delivered against futures contracts and (2) the inspection and certification of the quality of seed imported, exported, or purchased by Federal agencies.

Funding of supervision and overhead costs

Major inconsistencies exist in funding the supervision and overhead costs of the USGSA and AMA programs which have user fees. These inconsistencies are caused principally by two factors: basic differences in the acts' funding provisions and congressional decisions to provide appropriations to defray a portion of these costs for two AMA commodity programs. The

the costs of its Washington office and field supervision from appropriations. Problems still exist, however, in deciding whether certain costs should be charged to appropriations-funded or to fee-funded cost accounts.

The director of FGIS' administrative staff told us that the choice of how to finance (appropriations vs. user fees) specific USGSA activities often is not clear cut. He said opinions differ within FGIS as to where to draw the line between providing services (fee funded) and supervising services (appropriations funded). As a result, the method of financing costs is frequently questioned within FGIS and is occasionally changed. For example, the cost of preparing and issuing inspection and weighing certificates had been financed by appropriated funds because the responsible organizational unit was considered to be administrative or supervisory in nature. However, the costs were switched to fee financing when FGIS concluded that the work was an integral part of the original inspection and official weighing functions.

According to the director, the administrative staff monitors the manner in which the field charges specific costs, often finding that they were charged to the wrong account. Because of past errors and confusion, FGIS has, on occasion, revised its guidelines and instructions to the field regarding the charging of USGSA and AMA costs (FGIS Notice 3, Dec. 9, 1976; FGIS Notice 8, Feb. 27, 1977; FGIS Notice 45, Oct. 1, 1977; and FGIS Notice 202, Nov. 9, 1979) in an attempt to fine tune the system and clarify the guidelines. Even with the added guidance, however, the FGIS administrative staff continues to receive calls from FGIS offices asking which accounts should be charged for specific or unusual costs.

The administrative staff's director said it would be less costly and much simpler to finance all USGSA costs with users' fees.

On March 10, 1981, after USDA commented on our draft report, the President submitted his revised fiscal year 1982 budget to the Congress. It included proposed legislation to allow recovery of supervision and headquarters costs associated with the grain inspection and weighing program. Under the proposal, costs of standardization (see pp. 24 and 25) and compliance (ensuring that authorized Federal, State, and private agencies adhere to the USGSA and implementing regulations) would continue to be funded by appropriations.

Use of special appropriations--We also question the rationale for providing special appropriations to defray part of the supervisory and overhead costs of the AMA fresh fruit and vegetable and poultry programs. In fiscal year 1980 these appropriations totaled almost \$1.2 million--\$856,000 for fruits and vegetables and \$327,000 for poultry.

version of the amendment was passed by the Senate and adopted by the conference committee.

The House version of the 1977 amendment had provided for financing half of FGIS' supervision costs with fees and half with appropriated funds. The rationale given for this cost-sharing arrangement was that it provided necessary checks and balances. By financing supervision costs partly with appropriations, the Congress would have an annual oversight opportunity to limit any possible excessive costs. Having users pay a part of the costs would be likely to make them more conscious of the services they received and provoke a quicker response if services were inadequate.

The House also was concerned that the added cost of supervision fees (estimated as roughly a 25-percent overall increase) would ultimately be passed back to the farmer through lower grain prices paid by grain elevator operators and merchandisers. Although the conference committee did not give its reasons for adopting the Senate version, a legal opinion by USDA's Office of General Counsel concluded that the current fee provision was occasioned by this concern.

We noted that oversight of USGSA's supervisory and administrative costs through the appropriations process has done little to hold down costs. In fact, field supervision costs alone more than doubled between fiscal years 1977 and 1980, increasing from about \$4.9 million to \$11.4 million. Supervision and overhead costs financed by appropriations in fiscal year 1980 totaled \$22.8 million.

In addition, we question the argument that supervisory costs would be passed back to farmers in the form of lower prices for their grain. We believe it is just as logical to assume they would be ultimately passed on to consumers in the form of higher prices, as with most other costs of doing business. At any rate, we see no reason why these costs should be paid by the general taxpayers in the case of grain, when they are borne by the user in the case of most commodities graded under AMA.

Although the Grain Standards Act, as amended, specifically prohibits recovery of Federal "administrative and supervisory costs," it does not define what these costs are. In a May 1980 legal opinion, USDA's OGC determined that "supervision" includes supervision of State and private agencies as well as supervision of FGIS employees. 1/ Accordingly, FGIS' policy is to finance the costs of field services, except supervision, from fees and

1/State and private agencies, which also provide grain inspection and weighing services under the act, are permitted to recover their supervision and overhead costs associated with providing such services when setting their fees.

"administrative and supervisory costs," which USGSA excludes from user fees. Although not addressed specifically by AMA, standardization costs for AMA programs are financed from appropriations because they are considered to provide "public benefits."

The general purpose of developing and maintaining grade standards for judging the quality of various commodities is to aid marketing by providing a common language for wholesale trading and a means of measuring value or establishing prices. In voluntary grading programs, such standards benefit not only those who pay the fees (that is, those using the grading services) but also those who do not use the service or pay fees. Accordingly, we believe appropriations funding of standardization activities is appropriate as long as the standards primarily benefit commodity marketing industries as a whole and not just those requesting grading services.

Separate legislation for naval stores commodities is no longer necessary

The Agricultural Marketing Service administers a grading and regulatory program for turpentine and rosin as authorized by the Naval Stores Act (7 U.S.C. 91-99). Fiscal year 1980 costs for this program totaled about \$23,000--of which only about \$1,000 (4.3 percent) was recovered by user fees. USDA believes the act is no longer necessary and has repeatedly proposed its repeal, noting that necessary services can be provided under AMA's general authority. If this were done, USDA would make the program entirely fee supported.

The act provides for establishment of standards, authorizes a voluntary grading program, requires the use of official standards 1/ in commerce, and prohibits false or misleading practices in the sale of naval stores. When enacted in 1923, the law was needed to prevent misrepresentation, adulteration, and misgrading and to provide uniformity in the products and practices related to their marketing. Since then, however, significant changes have occurred in handling and marketing naval stores. According to USDA, standards established under the act have, for the most part, corrected the misgrading problem, and the narrowing price differential between turpentine and its most common adulterants (kerosene and mineral spirits) has reduced adulterative practices.

Because of the rapidly decreasing significance of turpentine in small containers for retail sale and the discovery of few violations in recent years, regulatory activities under the act have been reduced to a minimum--only 28 turpentine samples were analyzed and tested in fiscal year 1980. Likewise, there is little grading

1/The grading of naval stores is done basically by color. "Standards" are small cubes of naval stores products which inspectors use as visual references in grading.

These appropriations were originally requested by the poultry and vegetable industries. In fiscal year 1955 USDA proposed eliminating the appropriations, which at that time totaled \$320,000, to make all voluntary grading programs fully fee supported. Apparently spurred by heavy industry opposition, the Congress rejected USDA's proposal.

According to the House Committee on Appropriations, the fresh fruit and vegetable program appropriation was reinstated because one purpose of the grading service was to stimulate good shipping and marketing practices, and the committee did not feel that the appropriation cut and resulting increase in inspection fees were warranted. The conference committee reinstated the poultry program appropriation on the basis that its indirect overhead costs should be handled like those of the fresh fruit and vegetable program.

According to an FSQS paper prepared in June 1979, other factors influenced the 1955 congressional decision. One was the argument that these services provided a degree of "public benefit" by offering protection throughout the food distribution system, thus benefiting consumers. Others were that:

- Fee increases could decrease use of the voluntary services.
- Fee increases could result in decreased producer income in a time of falling farm income.
- A decline in the volume of products inspected could result in poorer quality products reaching consumers.

Neither the FSQS paper nor the committee reports on USDA's fiscal year 1955 appropriations act explain, however, why this same rationale was not applied to all voluntary commodity grading programs. This would have been particularly useful because providing uniformity among the programs was USDA's original purpose in proposing to eliminate the special appropriations. Oddly enough, the House Committee on Appropriations' report noted the inconsistencies and strongly urged that the House Committee on Agriculture consider new legislation designed to provide a more uniform policy for assessing fees for such services.

Policies for funding standardization costs

For both USGSA and AMA programs, standardization costs--the costs of developing and maintaining U.S. grade standards--are financed entirely with appropriated funds. During fiscal year 1980 these costs totaled about \$4 million--\$2.6 million for the FGIS grain program, \$145,000 for AMA programs administered by FGIS, and \$1.3 million for AMA programs administered by FSQS.

Grain program standardization costs are financed with appropriated funds because they are considered to fall under

Phytosanitary inspections and certifications

The Department of Agriculture Organic Act of 1944, as amended (7 U.S.C. 147 a(e) and (f)), states that the Secretary of Agriculture is authorized to promulgate such rules and regulations and use such means as he may deem necessary to provide for the inspection of domestic plants and plant products offered for export and to certify to shippers and interested parties as to the freedom of such products from injurious insect pests and plant diseases according to the sanitary requirements of the foreign countries to which such products may be exported. It also authorizes appropriations, in such sums as the Congress may from time to time determine necessary, to enable the Secretary to carry out these provisions.

Approximately 120,000 certificates were issued in fiscal year 1980 compared with 85,700 in fiscal year 1978 and 115,700 in fiscal year 1979. This demand for certification is expected to continue to increase as U.S. agricultural exports expand and the world community becomes more aware of the value of plant protection. Vigorous activities by regional plant protection organizations, groups working to improve quarantine procedures, and the European Economic Community also have resulted in the implementation of new and stricter plant health requirements.

APHIS officials have determined that the Department of Agriculture Organic Act of 1944 does not specifically authorize a fee for this service. But they have also expressed concern about the adequacy of appropriated funds to support a credible phytosanitary certification program for the steadily increasing volume of exports. If user fees were established for this service, this expanding program could be adequately funded at no cost to the general taxpayer.

AMA inspections of exports

Persons importing or exporting agricultural commodities from the United States may desire or need a USDA certificate to settle contract disputes or to expedite entry of the commodity into another country. If a commodity is not covered by specific legislation, such as the Organic Act of 1944 or USGSA, the inspection is made pursuant to the AMA. For example, AMA inspections of rice and grain products are performed by FGIS, fruits and vegetables by FSQS, and seeds by AMS.

The AMA inspection most similar to the phytosanitary inspection is the inspection made to certify that weed seed restrictions contained in export grain and seed contracts are complied with. All AMA work, including weed seed inspection and certification, is done on a reimbursable basis.

activity. During fiscal year 1980 AMS provided continuous inspection services at only six naval stores plants, and it graded only 11 million pounds of rosin and 1.2 million pounds of turpentine. According to the Director of AMS' Tobacco Division, which administers the program, naval stores activities are not likely to increase in the future because chemical substitutes are replacing the natural products.

USDA has proposed legislation to repeal the Naval Stores Act six times since 1965. ^{1/} Four of these proposals were introduced in the Congress (in 1965, 1967, 1969, and 1972) but not enacted. A proposal transmitted in April 1980 was not introduced. The latest proposal, which was transmitted to the Congress in January 1981 and resubmitted with the President's revised fiscal year 1982 budget on March 10, 1981, had not been introduced at the time this report was finalized.

In its April 1980 proposal, USDA noted that AMA provides authority similar to the Naval Stores Act for (1) establishing standards, (2) providing inspection and grading services, and (3) prohibiting fraudulent actions related to inspections, such as false labeling as to official grading or inspection. It pointed out, however, that recovery of program costs through user fees would probably result in naval stores processors discontinuing the program.

We agree that the Naval Stores Act has outlived its usefulness and should be repealed. Necessary elements of the program could be continued under AMA authority and financed entirely by user fees. As discussed earlier in this chapter, we believe all commodity inspection and grading programs should be financed uniformly and equitably--preferably in the manner now employed for most programs under AMA. Repealing the Naval Stores Act would be one important step toward this objective. Should this action result in decreased or discontinued use of voluntary grading services by the naval stores industry, there would be little effect on the marketing of naval stores commodities given the current low level of participation.

EXPORT INSPECTIONS

The Animal and Plant Health Inspection Service's phytosanitary inspection program is funded with appropriations whereas AMS, FGIS, and FSQS charge fees for export inspections made pursuant to the AMA of 1946. APHIS has determined that the legislation authorizing its phytosanitary inspections does not specifically authorize it to charge for such inspections. In fiscal year 1980 APHIS used about 50 staff years and spent about \$1.4 million on its phytosanitary inspection and certification program.

^{1/}For details on these legislative proposals, see app. I.

newspaper columns, radio, television, wire service, and automatic telephone answering devices.

In recent years AMS' annual market news service budget has been around \$14 million. AMS estimated that about 90 percent of the budget involves costs of collecting and analyzing data which is used for (1) market news reports disseminated by the various media and (2) other USDA program activities such as crop reporting and commodity procurements. For 1980 \$660,000 was spent on costs which can be readily identified with the user--that is, the postage, printing, and handling costs of mailed market news reports.

Reasons given for not charging users

Although USDA has considered the feasibility of charging for market news reports several times during the past 5 years and on two occasions sent legislative proposals to OMB, AMS officials have been and continue to be opposed to user charges for several reasons. The most significant and frequently cited reasons involve (1) the inequity of charging some users and not others and (2) the high cost and administrative problems that would be associated with implementing and maintaining a user fee system.

Although market news is disseminated through various media, print is the only medium where identifiable costs (for example, postage, printing, and handling) can be readily identified with individual users. These are the only costs that Commerce recovers and that USDA proposed recovering in its 1977 and 1978 user fee proposals to OMB.

AMS officials contend, however, that it would be inappropriate to single out recipients of printed reports and make them pay while permitting users of other media to receive market news data free. Although a degree of inequity is involved, such a user fee appears to be consistent with the intent of the User Charge Statute--that is, that identifiable "special benefit" costs be passed on to identifiable recipients.

AMS officials also contend that costs and problems of implementing and maintaining a user fee system would make user charges infeasible. USDA's market news service involves more commodity groups, types of reports, and agency offices than Commerce's news service; therefore, USDA's costs and administrative problems would be greater. But enough data is not available to determine if these costs and problems are sufficient to make a user fee infeasible.

Commerce's market news service covers only one commodity group (fishery products) and two subscription services--(1) the full service which includes reports issued each Monday, Wednesday, and Friday and (2) a limited service which consists of the weekly summary (Friday) report only. USDA's market news service is much more complex. USDA provides market news services for eight

MARKET NEWS REPORTS

The Department of Commerce's National Marine Fisheries Service charges most subscribers for its fishery market news reports. AMS does not charge subscribers for its market news reports. In 1977 and 1978 USDA sent OMB two legislative proposals which would have provided for user charges to cover postage, printing, and handling costs of mailed market news reports. USDA withdrew both proposals, however, before they could be sent to the Congress. (See app. I.) AMS officials currently are opposed to charging for market news reports. We believe that USDA and Commerce should be consistent and follow the same funding policy, but we do not believe that enough data is currently available on the costs and administrative problems involved in implementing and maintaining a user fee system for AMS market news reports to determine whether it would be appropriate to charge for them.

Commerce's market news reports are partially user funded

In 1975 Commerce began charging subscribers to its fishery market news reports for the postage, printing, and handling costs of those reports. It does not charge subscribers who contribute data used in compiling the reports, and no charge is made for market news disseminated through other media, such as telephone recording devices and wire services.

In September 1980 a Commerce official told us that there were about 4,000 subscribers and that the annual cost of printing, handling, and mailing the reports to paying subscribers was about \$100,000. Of this, 65 percent to 70 percent is for postage, 25 percent for printing and handling, and 5 percent for overhead. Subscribers pay \$35 annually for the thrice-weekly full service reports, including weekly summaries, and \$15 annually for the weekly summaries only. The cost of complimentary copies--about \$18,000 annually--is charged to appropriated funds.

USDA's market news reports are not user funded

AMS' market news service provides those engaged in producing and marketing farm products with local, regional, and international marketing information on prices, supplies, movement of supplies, demand, and quality levels being traded. Federal and State market news reporters in more than 200 field locations gather and document market information by personally observing transactions, talking to buyers and sellers, and checking sales records. This information is then analyzed, summarized, and disseminated to the agricultural community through mailed reports,

to support these estimates, and in commenting on the legislative proposal, Commerce questioned them. Commerce said that its experience indicated that substantial costs are associated with developing, maintaining, and managing a subscription service.

Commerce also said that while it was important that the administration adopt a uniform approach (to the use of user fees) for all market news services, USDA should defer submitting a user fee legislative proposal until a comprehensive evaluation could be made of the costs and benefits of the market news services for both fishery and agricultural products.

CONCLUSIONS

USDA's use of user charges to finance marketing services is neither consistent nor equitable. For certain commodities and services, users now bear almost all costs through fees, while for other commodities and services, costs are financed totally or mostly with appropriated funds.

Applying the general policy USDA uses to compute user charges for AMA commodity services uniformly to all commodity inspection, grading, and classing services not only would eliminate the preferential treatment currently afforded certain sectors of the agricultural marketing industry, but also would significantly reduce USDA's annual appropriations (and the burden on the taxpayer) by making greater use of user fees.

The current diversity of funding methods is the legacy of varying congressional and agency decisions over many years as to what specific costs should be financed by user fees. In most cases, the reasons used to justify appropriations funding of certain costs are unconvincing or no longer applicable.

In our opinion, there is nothing unique about supervision and overhead in the grain, poultry, and fresh fruit and vegetable programs. Accordingly, we see no justification for using appropriations to fund these costs in these programs when supervision and overhead are financed by fees in other, similar programs. Supervision and overhead are inseparable components of any special benefit service and their costs should be borne by the recipients. Furthermore, excluding these costs from user fees necessitates unwieldy and error-prone cost-accounting procedures in the grain programs which otherwise would be unnecessary.

The cotton, tobacco, and naval stores acts were passed before the Agricultural Marketing Act or the User Charge Statute. Although reasons given for funding these services with appropriations may have been valid at the time, they no longer apply.

Providing consistent methods of financing these similar inspection, grading, and classing services will require amendment or repeal of existing legislation. USDA and its agencies have

commodity groups, 1/ which are handled by seven different agency offices (tobacco and naval stores are handled by the same office). Each commodity group provides subscription services which cover a variety of products, different geographical areas, and differing reporting frequencies. For example, the three commodity groups in AMS' Livestock, Poultry, Grain and Seed Division report on 238 commodities in 714 markets and issue 1 daily, 37 weekly, and 1 monthly printed reports.

Another complicating factor is the involvement of the States. Unlike Commerce's program, which is operated and funded entirely by the Federal Government, USDA's program entails considerable State involvement. In 1979, 44 States were parties to cooperative agreements with AMS. These agreements provide for Federal-State sharing of market news reporting functions and costs, with each State's share based mainly on the relationship between the national and local significance of the service provided--which varies considerably from commodity to commodity and even from State to State for individual commodities. The introduction of a user fee would require amending each agreement.

Existing legislation would also have to be amended to permit fees for certain commodities. The Tobacco Inspection Act requires that market news information be provided to recipients without charge. Moreover, USDA has consistently interpreted the Cotton Statistics and Estimates Act as likewise requiring free market information. Therefore, for USDA to initiate a uniform and consistent user charge for all market news reports, these legislative provisions should be amended.

In preparing the 1977 and 1978 user fee legislative proposals, AMS acquired certain data on the costs and problems of instituting a user fee for market news reports. It surveyed market news subscribers and obtained comments from others both within and outside USDA. AMS also prepared impact statements on the legislative proposals. Our review of this data indicated that little support existed for the cost estimates in the impact statements and that there was insufficient information on problems associated with (1) establishing individual fees for the various reports and (2) implementing and maintaining the cost accounting and fee collection systems that would be required.

According to the legislative proposals and impact statements, imposing a user fee would have saved the Government \$750,000 annually--that is, the estimated postage, printing, and handling costs of mailed market news reports, assuming a 25-percent reduction in subscribers--whereas it would have cost only about \$100,000 to maintain a fee collection system. AMS had little factual data

1/Cotton and cottonseed, dairy products, fruits and vegetables, grain/hay/feed, livestock/meat/wool, poultry and eggs, tobacco, and naval stores.

- amend the U.S. Grain Standards Act, the Cotton Statistics and Estimates Act of 1927, and the Tobacco Inspection Act of 1935 to delete provisions that require appropriations funding and/or limit the use of user charges;
- repeal the Naval Stores Act; and
- discontinue providing special appropriations to defray a portion of the supervision costs incurred in the poultry and fresh fruit and vegetable grading programs.

RECOMMENDATIONS TO THE
SECRETARY OF AGRICULTURE

The Secretary should:

- Direct the Administrator of APHIS to charge user fees which cover the costs of phytosanitary inspections. The Administrator should do so either under the authority contained in the User Charge Statute or by seeking specific legislative authority.
- Direct that a study be made to determine the cost effectiveness of a user fee system for USDA's printed market news reports. The study should be independent--that is, made by individuals who are not under the Assistant Secretary for Marketing and Transportation Services. If the study shows that the administrative problems can be resolved and that administrative costs would not be excessive, the Secretary should implement a fee system. If not, the Secretary should forward the study to OMB for resolution of differences between USDA and Commerce funding methods.

made numerous proposals in this regard over the years, but they either were rejected within USDA or never enacted by the Congress. Accordingly, making the necessary legislative changes will require close coordination and cooperation between the agencies, the Department, OMB, and cognizant congressional legislative and appropriations committees.

Any legislation to change the tobacco inspection program funding should be accompanied by appropriate "grower designation" legislation. Such legislation is needed to give USDA sufficient authority to control tobacco marketing and prevent the disorder which USDA claims could occur if the legislative fee proposals were enacted.

USDA's market news service provides special benefits, but only a small portion of its costs--postage, printing, and handling costs of mailed reports--can be readily associated with identifiable users. Charging for these services would be appropriate but may not be practical because the costs of instituting and administering a fee collection system could be prohibitive, when compared with anticipated revenues. On the other hand, the Department of Commerce charges subscribers for its fishery market news reports. We believe both Departments should follow the same user fee funding policy, but insufficient data exists to determine if administrative costs and problems would make it impractical for USDA to charge for its reports.

USDA phytosanitary inspections should be financed by user fees. These inspections are made at the request of U.S. exporters or foreign importers to ensure that products exported from the United States meet the sanitary requirements of importing countries. Accordingly, the service primarily benefits the requesting parties, not the American public. Furthermore, USDA charges fees for similar export inspections made under authority of the Agricultural Marketing Act.

APHIS has determined that legislation authorizing phytosanitary inspections does not specifically authorize the charging of fees. To charge fees, therefore, it would have to use either the authority contained in the User Charge Statute or seek specific legislative authority. Either alternative would ensure that the costs of these inspections are borne by the beneficiaries rather than the American taxpayer.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress require that all costs of USDA's commodity inspection, grading, and classing programs, except any quantifiable public benefit costs, be financed with user fees. To do this, the Congress should

facilitate trading in interstate commerce of agricultural commodities, and (3) set and maintain a standard for sound warehouse operations.

The act is carried out primarily through a warehouse-licensing system and a program of periodic unannounced examinations. AMS licenses and bonds the public warehousemen and reviews their operations to assure compliance with the act. Before issuing a new or amended license, AMS examines the applicant's storage facilities and operations to determine that they qualify for licensing under terms of the act and regulations. After the license is issued, AMS periodically examines the licensee's financial condition, the adequacy of warehouse records, and the condition and contents of the warehouse.

Inadequacy of existing program

AMS maintains that the periodic warehouse examination program has been inadequate for several years--a contention supported by a marked increase in the number of warehouse (grain elevator) bankruptcies recently. According to USDA, the number of elevator bankruptcies has tripled in the past 2 years. In 1980 at least 14 elevators--7 in Arkansas, 6 in Missouri, and 1 in Iowa--filed for bankruptcy. Twelve of these were owned by three brothers. Although most of the elevators filing for bankruptcy were not licensed under the United States Warehouse Act, some were subject to Federal examinations because of storage contracts with USDA's Commodity Credit Corporation. The amount of potential losses to the depositors has not been computed, but more than \$6 million is reported to be at stake in the Iowa elevator.

According to AMS, bankruptcies have increased because warehousemen now get much more involved in buying and selling commodities. It is usually this buying and selling activity which creates the financial difficulties that result in bankruptcies.

In a February 1977 response to a USDA Office of Audit report, AMS said that limited staff and funds had prevented it from fully carrying out warehouse examination procedures which adequately protect depositors. AMS noted that it had not been achieving its goal of examining each warehouse an average of twice annually. The average frequency had declined from 1.65 in fiscal year 1976 to about 1.5 in 1977.

AMS went on to state that at the same time the frequency of examinations was decreasing, many depositors' positions were being imperiled by warehousemen's increasing use of price-later and deferred payment contracts and other merchandising activities. AMS concluded that because of these activities, many bankruptcies had occurred throughout the country in which producers had suffered severe losses. It said that its examination procedures should be expanded to include more attention to warehouse records and dollar obligations of warehousemen.

CHAPTER 4

INCONSISTENT USE OF FEES TO

FINANCE REGULATORY SERVICES

USDA agencies provide a number of regulatory services benefiting the recipients of these services that are funded either partially or totally with appropriations. Several times in the past 15 years, USDA has proposed or considered user charges for three of these services--periodic examinations of federally licensed warehouses, inspections and related services for imported animals, and Federal Seed Act inspections of imported seeds--and has proposed the discontinuance of a fourth--certifications of tobacco seed and plant exports. However, legislation will be needed to implement these changes.

A fee is charged for another regulatory service--plant variety certification--but it has been set arbitrarily and does not cover all costs. More information is needed before deciding whether this fee should cover all program costs and, if not, what the fee criteria should be.

WAREHOUSE EXAMINATIONS

AMS has recognized that its program of periodic unannounced warehouse examinations has been inadequate for several years but has been unable to secure the additional resources requested. USDA has prepared user fee legislative proposals five times in the past 15 years. (See app. I.) The latest proposal was sent to the Congress in January 1981 and was resubmitted with the President's revised fiscal year 1982 budget on March 10, 1981. The two immediately preceding proposals, in 1977 and 1978, were withdrawn by USDA after they were sent to OMB. As part of the process leading to the latest proposal, AMS considered a number of funding alternatives, including an insurance-type program.

Since passage of the United States Warehouse Act (7 U.S.C. 241) in 1916, the examination and licensing of warehouses has been a voluntary program funded mostly with appropriations. USDA charges one-time fees for examinations related to applications for new or amended licenses but has never charged for periodic examinations of warehouses already licensed. Fees collected have amounted to less than 10 percent of costs and, in accordance with the act, have been deposited in the Treasury as miscellaneous receipts. In fiscal year 1980 the program, which covered about 2,110 licensed warehouses, cost almost \$3 million; about \$138,000 (5 percent) was recovered through fees.

The program's primary objectives are to (1) protect producers and others who store their agricultural products in public warehouses, (2) assure the integrity of warehouse receipts as documents of title to be used as collateral for loans and to

that enactment of the proposal would result in \$5.6 million in fee collections in fiscal year 1982. This proposal was resubmitted on March 10, 1981, along with the President's revised fiscal year 1982 budget.

According to top AMS officials, the industry is quite naturally against user fees, and while some warehousemen would probably drop their Federal licenses if they were charged an annual fee, others would pass the licensing cost back to the depositors. As a result, the depositors reportedly would either lose the protection afforded by the warehouse examinations or pay their costs.

We agree that the agency officials' concerns are valid. However, this is a voluntary service that primarily benefits the warehousemen and depositors. Therefore, we believe that they should pay for the service.

PLANT VARIETY PROTECTION CERTIFICATIONS

USDA's plant variety certification service is a voluntary program providing special benefits to the users and funded partially by a user fee. The fee for this service--\$750 per application--was set arbitrarily in 1972, has never been adjusted, and has never covered application processing costs as was envisioned when the authorizing legislation was passed in 1970. In fiscal year 1980 fees amounted to about 26 percent of costs--about \$116,000 of \$440,000.

The Plant Variety Protection Act (7 U.S.C. 2321 et seq.) passed December 24, 1970, authorized this service. It is intended to (1) encourage development of novel varieties of plants which reproduce by seed (sexually reproductive plants), (2) ensure that these novel varieties are available to other growers, if necessary, to ensure an adequate supply of fiber, food, and feed in this country at reasonable prices, and (3) provide protection equivalent to a patent to those who breed, develop, or discover novel varieties.

AMS' Plant Variety Protection Office administers the act. It issues certificates of plant variety protection to developers of novel varieties which provide them with exclusive rights to sell, reproduce, import, or export such varieties, or use them in producing hybrids or different varieties for a period of 17 years. In fiscal year 1980 the office received 166 certificate applications and issued 125 certificates.

Basis for current fee

All other fees discussed in this report are based on the costs of providing a service. They are designed to recover either all or certain specified cost elements. The fee for plant variety certifications, however, was originally set based on a subjective determination as to what small companies could afford to pay. As

The same two problems were reiterated in an AMS Warehouse Task Force report issued in May 1978, and AMS officials told us that the same problems persist. In fiscal year 1980 the average number of examinations per grain warehouse (federally licensed) was 1.58. AMS estimated that this would decline to an average of 1.42 in fiscal year 1981. Because of resource limitations, AMS' examination procedures still have not been expanded to provide what it considers adequate coverage of the warehousemen's merchandising activities and financial condition.

Financing alternatives considered

At the time of our review, AMS was considering a number of alternatives for providing the resources it considers necessary for an adequate program. Two of these alternatives involved user funding.

One alternative involved a user fee system similar to that contained in legislative proposals forwarded to OMB in 1977 and 1978. (See app. I.) These proposals provided for annual licensing fees, based on warehouse capacity, which would recover all program costs except those of Washington, D.C., and national headquarters activities located outside Washington (offices in Prairie Village, Kansas, and a portion of the costs of offices in Memphis, Tennessee, and Atlanta, Georgia). The 1978 proposal estimated that, based on the 1980 anticipated licensing level, the annual fee would be about 2.2 cents per bale of licensed cotton storage capacity and 0.052 cents per bushel of licensed grain capacity. It estimated these fees would recover two-thirds of the program's total costs (that is, \$2 million of \$3 million).

For its latest proposal, AMS has decided to charge flat fees based on ranges in warehouse capacity. For example, warehouses with capacities between X and Y would be charged one annual fee, and warehouses with capacities between Y and Z would be charged another fee.

The second user funding alternative involved an insurance-type program. For example, in 1973 some consideration was given to a proposed Federal Grain Insurance Corporation Act, which, in addition to protecting a depositor's stored commodities and guaranteeing their availability, would have attempted to ensure the warehouse's solvency and its ability to pay the original grain sellers promptly as the grain moved into the market. In the event of insolvency, Federal insurance would have covered producer losses up to a specified limit, consistent with the approach included in legislation establishing the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation.

Near the close of our review, USDA decided to pursue the user fee option. On January 19, 1981, it forwarded to the Congress a legislative proposal that would permit it to recover all costs associated with warehouse examinations, inspections, and licensing--including administrative and supervisory costs. USDA estimated

More information needed to set an appropriate fee

AMS data indicates that about 61 percent of the 1,220 applications received from the program's inception through July 1, 1980, have been from small seed companies and 4 percent from individuals. In categorizing the applicants, AMS used the Small Business Administration's definition of a small business; that is, those firms that have 500 or fewer employees or gross annual sales of \$9.5 million or less. We believe this definition could include many companies capable of paying a much higher fee. As a result, a fee which recovers all program costs could have considerably less impact on participation than indicated by AMS' data. Furthermore, AMS has no data on the total costs applicants incur in developing new varieties. Consequently, it does not know whether a full fee would constitute a large or very small portion of the applicants' total costs.

We believe further study is needed to substantiate the contention that full-fee financing would preclude participation by small companies and individuals. If definitive data supports this assumption, the need still exists to develop objective criteria for setting and adjusting the fee.

Unfortunately, AMS' current accounting system does not provide the cost data needed to establish such criteria. As noted previously, the certification process consists of three separate phases--filing the application, researching varietal data, and issuing the certificate. Currently, AMS does not maintain data on how much each phase costs. Neither does it maintain data which would be needed to segregate costs attributable to processing individual applications from those associated with indirect costs, such as maintaining a data base for all crop varieties. This information could be useful in developing objective criteria for setting the fee if USDA determines full-fee financing would be inappropriate.

Possible merger of USDA and Commerce programs

Before the Plant Variety Protection Act, the only plant variety protection was that provided to asexual varieties under patent laws administered by Commerce. According to USDA personnel, Commerce's certification procedures are similar to AMS' but require the applicant to provide more evidence of the variety's novelty (thereby increasing the applicant's costs). Like USDA, Commerce charges a certification fee (about \$190 per application), but it covers only a fraction of program costs (10 to 13 percent).

Transfer to USDA of Commerce's plant variety certification functions is currently pending. If made, it would be an opportune time to develop consistent certification procedures and fees based on objective criteria.

a result, objective criteria have never existed for determining when and by what amount the fee should be adjusted.

The \$750-per-application fee actually consists of three \$250 fees for (1) filing the application, (2) researching to determine whether the seed constitutes a new variety, and (3) issuing the certificate. The application and research fees are required when the application is filed. The applicant is notified when the additional fee for issuing the certificate is required.

When the fee was first established in 1972, agency officials determined that a \$1,000-per-application charge would pay for all program costs. Some agency personnel, however, believed that this amount would prohibit small companies and individuals from applying; they proposed that the fee be set at \$500. A compromise was made setting the fee at \$750.

This same reasoning has been used as justification for not raising the fee since then. In 1978 AMS established a team to review the Plant Variety Protection Office and recommend improvements in policy or legislation. One question the team considered was, "Should the fee charged for processing applications be increased?" The team reported that,

"In the past the \$750 fee covered about one third of the actual cost of processing an application. Reflected in the cost of processing an application was the expense of computerizing varietal characteristics of existing varieties of the crop involved. To date, varietal characteristics of 65 of the most important crops have been computerized. Therefore, in the future the \$750 fee should reflect a greater proportion of the actual cost for processing an application.

"The industry representatives contacted have indicated that the \$750 fee is too high and definitely should not be increased. There was a further implication that an increase in the fee for processing applications could lead to a decrease in the number of applications sought, especially for varieties of crops of lesser economic importance.

"For these reasons, the task force recommends against increasing the fee charged for processing PVP applications."

AMS officials are opposed to increasing the fee. They told us that a small increase (for example, \$100 to \$200 per application) would produce only a small amount of additional revenues and that an increase large enough to recover all program costs would preclude companies and individuals with limited resources from participating.

APHIS initiated a user fee for commercial bird quarantine services effective October 1, 1978. A similar user fee for pet birds was implemented in January 1980. USDA's authority to charge commercial bird importers was challenged in an injunctive action filed in a Federal district court in California, but the court found that USDA had acted within the bounds of its administrative discretion. The decision was based on the legislative history of USDA's fiscal year 1979 appropriations act and on the Congress' refusal to appropriate any funds for these services that year. In reviewing this decision, however, USDA's Office of General Counsel concluded that in the absence of specific statutory authority, this situation could change in subsequent years.

APHIS does not charge users for inspection and testing services related to imported animals--except for special cases which are processed through the Harry S Truman Animal Import Center. ^{1/} In developing the fiscal year 1980 budget, however, OMB suggested that USDA pass the costs of animal import inspections (estimated to be \$334,000 in fiscal year 1980) on to the importers by charging appropriate user fees. This would have made funding of the animal and bird import inspection programs consistent. After consulting with USDA's OGC, however, APHIS decided to continue funding the animal program with appropriations. According to OGC,

--21 U.S.C. 102 authorizes USDA to charge owners for the care, feed, and handling of quarantined animals, but not for any inspection and testing services provided. This opinion was based on findings that (1) the statute and its legislative history do not clarify congressional intent as to which services, other than care/feed/handling, are to be provided at the owners' expense and (2) the owners apparently were not being charged for inspection and testing services when the act was passed.

--If owners of imported animals in quarantine are to be charged for inspection and testing services, fees must be established pursuant to 31 U.S.C. 483a (the User Charge Statute).

As discussed previously (see pp. 9 and 10), OGC concluded that it was not feasible to establish fees pursuant to the User Charge Statute authority. It interpreted court decisions

^{1/}The Harry S Truman Animal Import Center, established pursuant to Public Law 91-239, approved May 6, 1970, is an isolated import station for breeding animals coming from countries affected with foot-and-mouth disease or other potentially disastrous foreign livestock diseases. USDA requires that importers pay all costs of salaries, travel, utilities, laboratory tests, feed, bedding, and miscellaneous supplies.

The Secretary of Commerce first proposed the transfer following enactment of the Plant Variety Protection Act. He believed a single agency would be able to administer the two laws more efficiently in view of their similar examination and enforcement provisions. USDA concurred, but neither Department forwarded the necessary legislation to the Congress. The issue was raised again in 1977, and again both Departments agreed the transfer would be advisable.

In late 1977, however, Commerce reopened the transfer question because of decisions rendered by the U.S. Court of Customs and Patent Appeals in two cases concerning the patentability of living matter. Because the cases were appealed and their final outcome could affect the plant variety protection programs, the Departments tabled the transfer issue pending a final court decision.

In its report on USDA's fiscal year 1980 appropriations bill, the Senate Committee on Appropriations said that potential savings and efficiencies appeared to be possible through single-department administration of both laws. Accordingly, the committee directed the Departments to submit a joint report on the feasibility, advisability, and cost savings of transferring Commerce's program to USDA within 120 days of a final court decision. The court decision was made on June 16, 1980, but USDA and Commerce have been unable to resolve differences and as of March 20, 1981, the report had not been transmitted to the committee. (See app. II.)

IMPORTED ANIMAL AND BIRD INSPECTIONS

APHIS currently uses different methods of funding similar mandatory services covering imported animals and birds while in quarantine. Until recently, APHIS charged animal and bird importers only for costs associated with (1) care, feeding, and handling and (2) personnel overtime work. Drawing authority from USDA's fiscal year 1979 appropriations act, however, APHIS began charging bird importers for inspections, testing, and other services required during the mandatory quarantine period. In 1979 APHIS also considered charging for similar services provided for animals in quarantine but decided against it because it lacked specific legal authority and considered use of the User Charge Statute to be impractical.

By law, all animals and birds offered for import must be inspected for proper health certification, proper identification, and evidence of disease. In fiscal year 1980 APHIS inspected about 907,000 animals and 295,000 birds (292,600 commercial birds and 2,700 pet birds). The animal inspections cost about \$4,070,000, of which \$841,800 was recovered by fees. The bird programs cost about \$1,272,000, all recovered by fees except for \$184,000 used to set up new isolation trailers and cages for quarantining pet birds at ports of entry.

Although eliminating this activity would result in only minimal savings, we believe any Government program not serving a useful purpose should be terminated.

FEDERAL SEED ACT INSPECTIONS

USDA does not charge for Federal Seed Act services--inspecting imported seed and interstate enforcement activities. It should charge for imported seed inspections if benefits to importers outweigh benefits to the American consumer--a determination that USDA needs to make. Charging for interstate enforcement activities is now impractical, given the current lack of direct Federal involvement in interstate inspections. Charges should be considered, however, should USDA assume a more direct role in the future.

The Federal Seed Act (7 U.S.C. 1551-1611) requires truthful labeling, prohibits false advertising, restricts the distribution of noxious-weed seeds, and establishes germination standards for agricultural and vegetable seeds moving in interstate and foreign commerce. Enforcement of this act promotes truthful labeling of seeds to the benefit of consumers and also results in fair competition to the benefit of the seed industry.

AMS' Seed Regulatory Branch enforces the act. It makes original inspections of imported seed, but it has cooperative agreements with each of the 50 States for assistance in enforcing the act's interstate provisions. The States make the original inspections and then (1) take whatever action is appropriate to prevent intrastate commerce of seed in violation of State law and (2) forward to the Branch any evidence of violations of the act's interstate provisions.

The Branch does not account for the two activities separately, but it estimates that about \$465,000 (or almost one-third of the Branch's budget) is spent on imported seed inspections. Most of the remainder goes for interstate enforcement. During fiscal year 1980, 61 million pounds of agricultural and vegetable seeds, valued at \$40 million, were imported--about 1 percent of the seed used in the United States. Of 7,610 lots offered for importation, 257 were refused admission based on preliminary tests; 195 of these were subsequently admitted after being brought into compliance with the act.

Both USDA and the seed industry are concerned about the way the import and interstate enforcement programs are being carried out. USDA believes current resources are insufficient either to provide adequate and timely import inspection services or ensure adequate interstate enforcement. Due to this concern, two major studies of Branch activities were underway at the time of our review. One was a year-long study by an outside expert. The other was a USDA Economics and Statistics Service (ESS) study.

involving the User Charge Statute as requiring that an agency must make clear, by showing the reasonable itemization of costs, the basis for the fee it assesses under the statute so that a reviewing court can determine whether the fee exceeds the value of the special benefit to the recipient. OGC concluded that it would be difficult to develop a fee schedule, particularly for inspection and testing services, that would reflect the value of special benefits received by the recipients and exclude any expenses incurred in serving an independent public purpose. However, if an agency determines that the service it renders primarily benefits the recipient rather than the public, it may charge the full cost of providing the service. As indicated on pages 11 and 12, we believe that agencies need not allocate costs between special beneficiaries and any incidental public benefit.

OGC also pointed out that even if such a fee schedule could be written, APHIS would not be able to use the fees collected to fund the program because the User Charge Statute requires that any money collected must be deposited in the Treasury as miscellaneous receipts. For these reasons, OGC recommended that APHIS seek specific statutory authority to collect and use fees for inspection services provided during the importation of animals. As of March 1981, APHIS had not prepared such a legislative proposal.

In our opinion, the User Charge Statute provides APHIS with authority to charge importers for the costs of inspections of imported animals and birds. However, because of the long history of USDA providing the service without charge, the likely opposition of the industry, and the OGC views on the applicability of the User Charge Statute, we believe APHIS should have specific statutory authority to charge for these inspections.

TOBACCO SEED AND PLANT EXPORT PERMITS

The Tobacco Seed and Plant Exportation Act of 1940 (7 U.S.C. 516-517) is no longer needed and should be repealed. It was enacted to prevent the development and expansion of flue-cured tobacco to areas outside the United States. Under the act and USDA regulations, AMS issues export permits for tobacco seed and plants only if the consignee is a representative of a Government institution or agency engaged in agricultural experiments or scientific research. Since 1940, however, tobacco production outside the United States has expanded considerably, and research in tobacco seed and plant breeding and production is now well established in most tobacco-producing countries. In fiscal year 1980, 51 certificates were issued for the export of tobacco seed to be used for experimental purposes.

Since 1965 USDA has sent a number of legislative proposals to the Congress to repeal the act. (See app. I.) The most recent proposal, in April 1980, said that restricting exports no longer serves a constructive purpose and that the act therefore is no longer justified. USDA estimated that repealing the act would reduce annual appropriations by \$2,000.

it is not based on program costs. First, however, USDA needs to decide how high the fee could be set without unduly limiting participation by individuals and companies with limited finances. These same criteria also should be used to set fees for asexual plant certifications if that program is transferred from Commerce to USDA, as is now being considered.

USDA should have consistent policies for financing its imported bird and animal inspections. Because of differing statutory authorities, it currently charges bird importers for inspection, testing, and other services, but it does not charge importers of most other animals for these services. These policies give preferential treatment to importers of certain animals. We see no reason why taxpayers should pay for these importers' inspection services when importers of birds and special animals must pay for their own. Although the authority of the User Charge Statute is available, as indicated on page 42, USDA should have specific legislative authority to charge for inspecting all imported animals and birds.

USDA's policy for funding imported seed inspections should be consistent with its policies for regulatory inspections of other imported agricultural commodities. If USDA determines that these inspections primarily benefit importers, it should seek legislation to establish a user charge which recovers its costs.

The Tobacco Seed and Plant Exportation Act of 1940 no longer serves a useful purpose and should be repealed. Since the act was passed, tobacco production has expanded and research programs have become well established in other tobacco-producing countries. Therefore, restricting exports of American tobacco seed and plants (particularly at taxpayers' expense) is no longer justified.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress:

- Amend the United States Warehouse Act to provide for user funding of periodic USDA examinations. The amendment should require recovery of all program costs.
- Amend existing legislation to authorize USDA to charge importers fees which cover all costs of inspecting and testing imported birds (both commercial and pet) and other animals.
- Repeal the Tobacco Seed and Plant Exportation Act of 1940.

RECOMMENDATIONS TO THE SECRETARY OF AGRICULTURE

We recommend that the Secretary:

- Direct that an independent study be made to develop objective criteria for setting and adjusting fees charged for

One issue being considered in the ESS study is, "Shall costs of inspecting imported seed be recovered by fee?" Both the AMS Administrator and the ESS reviewer told us that they could see no reason for not charging seed importers for the service. They believed that it would be impractical to charge for interstate enforcement activity, however, because AMS gets involved only when potential violations of the act are referred to it by the States.

The act authorized USDA to charge the owners or consignees of seed offered for import for certain costs incurred when the seeds are rejected--costs such as supervision of reconditioning activities and storage, transportation, and labor. The act does not authorize charges for other services, including original inspections of seed offered for import.

We believe that AMS should be authorized to charge seed importers for inspections if USDA determines that the importers are the primary beneficiaries of this service. We agree with AMS, however, that it probably is not feasible to charge for interstate enforcement program activities because of the way the program is currently structured. If, after receiving and evaluating the ESS and other study, AMS decides to get more involved in directly supervising the States' original inspections, however, it should consider revising its cooperative agreements with the States so that the States would remit a portion of their user fees to AMS to cover costs associated with (1) supervising State activities and (2) handling possible Federal violations referred by the States. This would be similar to the arrangement FSQS has with States making Federal-State inspections of fresh fruits and vegetables.

CONCLUSIONS

USDA's periodic examinations of federally licensed commodity warehouses provide special benefits to identifiable parties--the warehousemen and those who store their commodities. Costs of this voluntary service should be borne by these parties, but they have been financed with appropriated funds since 1916.

AMS acknowledges that the current program is inadequate but says that funding in recent years has not permitted the degree of coverage it believes is necessary. The legislative proposal which USDA has forwarded to the Congress would permit recovery of all costs associated with warehouse examinations, inspections, and licensing, including administrative and supervisory costs. Enactment of this proposal would bring the warehouse examination program into line with the Government's general user fee policies and should provide the funds necessary to support an effective program.

USDA needs to develop and apply objective criteria for plant variety certification fees. The current fee does not recover program costs, and unlike all other fees discussed in this report,

CHAPTER 5

INSPECTIONS OF MEAT AND POULTRY PROCESSING PLANTS

COULD BE MORE EFFICIENT

The Food Safety and Quality Service inspects plants involved in the further processing (after slaughter) of meat and poultry to ensure that consumers receive wholesome, unadulterated, and properly labeled and packaged products. Because this mandatory service clearly provides a broad public benefit, financing its costs (except for overtime and holiday work) with appropriated funds, as currently provided by law, is appropriate. Substantial cost savings could be realized, however, if USDA could move to a system of periodic unannounced inspections and if processors were required to implement quality control systems, as we recommended in 1977. USDA has opted to experiment with such systems on a voluntary basis before deciding whether to make them mandatory.

USDA estimates that the voluntary program, which started in September 1980, could reduce program costs (\$71.4 million in fiscal year 1980) by a total of between \$4 million and \$8 million over the next 5 years, assuming 8.6 percent, or 590, of the 6,849 plants inspected participate. Although no reliable estimates exist of savings possible through an industry-wide, mandatory program, such savings undoubtedly would be much greater. These added savings are needed to help offset rapidly rising costs of these and other meat and poultry inspection services.

The Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq.), and the Poultry Products Inspection Act, as amended (21 U.S.C. 451 et seq.), require USDA to inspect the slaughter of livestock and poultry and the processing of meat and poultry products shipped interstate or to foreign markets. The acts' primary objective is to ensure that meat and poultry products distributed to consumers are wholesome, unadulterated, and properly marked, labeled, and packaged.

Inspection falls into four general categories: ante mortem (examination for health and fitness before slaughter); post mortem (inspection of carcasses after slaughter but before processing to establish their wholesomeness for human consumption); sanitation (supervision of sanitary conditions at both slaughter and processing plants); and product processing (boning and cutting, curing and smoking, canning, slicing, and making products such as sausage, frozen dinners, and soup). The acts do not specify the method or frequency of processing plant inspections, but USDA believes that control of carcasses and materials entering processing plants, supervision of manufacturing procedures, and sampling of finished products constitute compliance with the acts. It has determined that compliance also requires that most processing plants be inspected at least daily, although some plants are inspected less frequently, depending on their size and type of processing activities.

plant variety certifications. The study should determine how much of total program costs could be passed on to applicants without severely limiting participation by applicants with limited financial resources. The Secretary should then direct the Administrator, APHIS, to set and periodically adjust the certification fee on the basis of these criteria.

- --Determine whether inspections of imported seed required under the Federal Seed Act primarily benefit the seed importers. If so, the Secretary should propose to the Congress amendments to the act which would authorize user fees for the inspections. Upon enactment of the amendments, the Secretary should direct the Administrator, AMS, to develop and implement a user charge.

regulations. Under quality control systems, on-line checks are made at key points in the production process to detect unwarranted variances that will be likely to result in the finished product's failure to conform to requirements. As a result, tremendous potential exists for USDA to use the information generated by these systems to carry out its inspection responsibilities more efficiently and with no loss in effectiveness. Rather than independently determining compliance by actually inspecting each stage of processing, inspectors could accomplish the same objective by reviewing data from quality control systems and by periodically testing samples and observing the systems in operation to ensure that the data generated is accurate and the systems are operating properly.

In assessing the possible impacts of its voluntary program before its implementation, USDA identified several advantages which, from our viewpoint, are good reasons for making the program mandatory. For one thing, total quality control systems would increase the efficiency of processed products inspections. USDA estimated a 30-percent to 60-percent gain in efficiency under total quality control systems as compared with traditional procedures. Assuming that, overall, 8.6 percent ^{1/} of federally inspected plants would choose to participate (590 of 6,849 plants), USDA estimated that 30-percent to 60-percent efficiency gains would translate into savings over a 5-year period of about \$4 million to \$8 million, and 221 to 441 staff years. It estimated Federal implementation costs for this same period at \$1.7 million, most of which would be required to train 500 USDA inspectors in quality control inspection skills.

USDA did not estimate potential savings that could result from mandatory total quality control systems. Such projections could be made by applying USDA's estimated efficiency gains to current program costs and staffing levels (\$71.4 million and more than 2,500 full-time positions in fiscal year 1980). However, such projections would be extremely tenuous--and possibly misleading--because USDA's estimates were subjective judgments and were not based on actual studies.

USDA expects to have more reliable efficiency improvement data after a year's experience with the voluntary program. We believe quantified estimates of savings possible under a mandatory program would be best deferred until such data is available, but undoubtedly a mandatory program, with all plants participating, would result in substantially greater savings (conceivably 10 times greater) than those USDA projects for its voluntary program.

^{1/}Assumed participation rates actually varied by plant size and were 15 percent for very large plants, 7 percent for large plants, 2 percent for medium plants, and 10 percent for small and very small plants.

In a 1977 report to the Congress, 1/ we concluded that inspection resources could be used more efficiently and effectively if USDA tailored inspection frequency to the needs of individual plants based on such factors as the (1) reliability of a plant's quality control system and (2) plant management's attitude toward and history of compliance with inspection requirements. We said that plants where management has accepted its responsibility for producing wholesome, unadulterated, and properly branded products under sanitary plant conditions would have a high potential for periodic unannounced inspection. We also said that an effective in-plant quality control system was one requirement in any system of periodic unannounced inspections. We recommended that the Congress authorize USDA to make periodic unannounced inspections of meat and poultry processing plants and to require the plants to develop and implement reliable quality control systems. To date, such legislation has not been enacted, but USDA has begun a voluntary quality control program.

On August 15, 1980, USDA published amendments to its meat and poultry inspection regulations (9 C.F.R. 318 and 381, effective Sept. 15, 1980) which authorize voluntary quality control systems for meat and poultry processing plants. 2/ In this publication, USDA said it had considered our 1977 recommendation for mandatory quality control systems and had decided to hold in abeyance any immediate effort to seek the necessary legislative authority. According to the Director of FSQS' Processed Products Inspection Division, Meat and Poultry Inspection Program, USDA based this decision on the belief that neither it nor the industry as a whole had sufficient technical data and knowledge to implement an industry-wide, mandatory program.

The Director also said that USDA planned to try the voluntary program and "see what happens." He said that this did not mean that USDA would necessarily seek a mandatory program if the voluntary program succeeds, or if it fails. According to the Director, USDA does not know how long it will take to reach a final decision. As of March 3, 1981, 28 total quality control systems had been submitted for USDA approval; 12 of these had been approved and 8 had been implemented.

ADVANTAGES OF QUALITY CONTROL SYSTEMS

Quality control systems are designed to control production processes so as to produce consistent and uniform finished products at predictable costs. A complementary benefit is that they also offer a way to assure compliance with USDA's inspection

1/"A Better Way for the Department of Agriculture To Inspect Meat and Poultry Processing Plants" (CED-78-11, Dec. 9, 1977).

2/Federal Register, Vol. 45, No. 160, Aug. 15, 1980, pp. 54310-54325.

NEED FOR MORE EFFICIENT
PROCESSED PRODUCTS INSPECTIONS

More efficient methods of inspecting processing plants are urgently needed to help curb rapidly escalating costs, to meet vastly expanded workloads, and to fill inspector vacancies in the slaughter operations portion of the meat and poultry inspection program. Federal costs for the total program have doubled over the past decade--increasing from about \$135 million in fiscal year 1970 to about \$278 million in fiscal year 1980. Costs of processed products inspections have almost tripled during this period--increasing from about \$25 million in fiscal year 1970 to more than \$71 million in fiscal year 1980. During this same period, the number of federally inspected processing plants increased 70 percent (to about 6,850) and the volume of federally inspected processed products increased 25 percent (to about 75 billion pounds annually), but the number of processing inspectors increased only about 32 percent (from about 1,900 to about 2,500).

Increased inspection costs are explained in part by inflation and the increased workload at plants that have traditionally received Federal inspection, but another factor has been the trend of State governments turning over their inspection programs to the Federal Government. Both the meat and poultry inspection acts authorize State programs which are at least "equal to" the Federal program but provide for Federal takeover if a State fails to develop and effectively administer an equal-to program. Federal grants finance up to 50 percent of equal-to programs, but USDA must bear all costs when it takes over a State's program.

Between 1970 and 1980 USDA took over 21 State meat and 29 State poultry inspection programs. USDA did not have complete data on how much these takeovers added to its inspection costs, but data on selected takeovers was available. It indicated annual Federal cost increases ranging from \$8,000 (for New Hampshire's meat and poultry programs) to about \$1 million (for New York's meat inspection program only).

USDA expects current cost trends to continue. It estimates that the total cost of meat and poultry inspections could reach \$380 million by 1985, unless more efficient inspection methods are found. The potential for further takeovers of State programs also remains, and they are expected to continue because of demands on States' resources.

The cost savings possible with a mandatory quality control program at processing plants could help alleviate a shortage of slaughter inspectors. According to an October 1980 report by

Other arguments favoring quality control systems that USDA cited were as follows.

- The plants' implementation costs would be negligible. Many plants, especially very large ones, already have total quality control systems and would incur no additional costs. USDA estimated additional costs for other plants at \$1,000 for the first year (for equipment and other startup costs) and \$150 a year thereafter (for laboratory analysis and paperwork).
- Recordkeeping requirements would be minimal. According to USDA, recordkeeping would not significantly burden management, even at very small plants, where requirements would be simple and require only about 30 minutes daily.
- Profits could be increased by reducing the plant's risk of production delays, the need to reprocess or relabel large volumes of product, and the likelihood of product recall and condemnation.
- Inspection effectiveness and consumer confidence could be increased because inspections would be based on more objective data and because increased efficiency could permit greater inspection attention to problem processing plants and other critical inspection problems, such as chemical residue detection.

Potential disadvantages to quality control systems, which USDA culled from more than 1,500 comments obtained on the proposed voluntary program, include

- possible reduction in consumer protection;
- concern that recordkeeping requirements would be burdensome, excessive, and costly; and
- concern that firms' operating procedures and cost data could be subject to public release under the Freedom of Information Act.

As discussed above, USDA is convinced that consumer protection will not be reduced and that recordkeeping requirements will be minimal. Although USDA would handle freedom of information requests individually, as required by the act, it has taken the position that most material required to be submitted to it under the voluntary quality control system approval procedures would include trade secrets or confidential commercial or financial information which is privileged or confidential and, therefore, exempt from mandatory disclosure under the act's exemption provisions (5 U.S.C. 552(b)(4)).

CHRONOLOGY OF USER FEE LEGISLATIVE
PROPOSALS FOR SELECTED USDA SERVICES

89th Congress (1965-66)

In March 1965 USDA sent the House of Representatives a legislative proposal to repeal several acts, including the Tobacco Seed and Plant Exportation Act of 1940 and the Naval Stores Act of 1923. It was introduced April 13, 1965, as H.R. 7381 and S. 1767.

USDA said that the tobacco act was of limited usefulness and the costs of administering it were no longer justified. It added that the need to restrict exports, the act's purpose, had practically ceased to exist because tobacco production outside the United States had expanded considerably and research in tobacco seed breeding and production was well established, with most countries successfully producing flue-cured tobacco (the type the act was primarily intended to protect).

USDA said that the Naval Stores Act was once needed to attain uniformity in turpentine and rosin products and related marketing practices but that significant changes in their handling and marketing had occurred since. Further, USDA pointed out that the Agricultural Marketing Act of 1946 authorized the same type of services as the Naval Stores Act. It thus recommended repealing the Naval Stores Act and continuing standardization, inspection, and grading services on a fee basis under the AMA.

In October 1965 USDA sent the Senate a legislative package proposing user financing for cotton classing, tobacco inspection, grain inspection, and warehouse examination services. USDA made this proposal to further the general policy of charging beneficiaries for special services and to make financing of these services consistent with that of other, similar voluntary services. It also noted that free cotton, tobacco, and grain services had already achieved their goals of facilitating marketing.

The proposal was introduced in the Senate January 26, 1966, as S. 2821. It proposed user fees covering the portion of these services which the Secretary determined were of special benefit to users. (The grain program proposal was limited to appeal inspections and supervision of licensed inspectors.) Under the proposal, all fees and receipts from sale of samples would have been deposited in a fund, without fiscal year limitation, for use in providing the services. USDA estimated that the proposal would have reduced annual appropriations about \$9 million and reduced net Federal costs about \$5 million annually.

USDA's Office of Inspector General, 1/ there is a greater need for inspectors in the slaughter operations, where a vacancy rate of 10 percent (about 600 inspectors) exists. To help fill this void, USDA has been temporarily detailing 140 processing inspectors, at a time, to slaughter operations--a practice we believe might be unnecessary if USDA required all processing plants to have total quality control programs and then reprogramed the saved resources.

CONCLUSIONS

USDA's inspections of meat and poultry processing plant operations clearly provide broad public benefits; therefore, appropriations funding is appropriate. Significant program savings could be achieved, however, if USDA could move to a system of periodic unannounced inspections and processors were required to have total, in-plant quality control systems, as we recommended in 1977. These savings are urgently needed to offset rapidly rising costs and to shore up slaughter operation inspections.

The current meat and poultry inspection acts must be amended before such systems can be required. However, the Congress has yet to consider such amendments, and USDA has chosen to experiment with a voluntary program before deciding whether to support such action. USDA's justification of the voluntary program amply demonstrates the financial and other advantages of total quality control systems to the Government, the processors, and the consumer. These advantages would be likely to be multiplied several times over if such systems were mandatory rather than voluntary.

RECOMMENDATION TO THE CONGRESS

The Congress should amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to authorize the Secretary of Agriculture to require all federally inspected meat and poultry processing plants to develop and implement quality control systems.

1/"Food Safety and Quality Service, Meat and Poultry Inspection Program, Washington, D.C., as of September 17, 1980" (Audit Report No. 38605-3-Hq., Oct. 27, 1980).

93d Congress (1973-74)

No USDA user fee legislation was proposed.

94th Congress (1975-1976)

On September 16, 1974, the Agricultural Marketing Service submitted a legislative proposal to USDA recommending that special benefit costs of the cotton classing and tobacco inspection programs be financed by user fees. It withdrew the proposal 11 days later, however, citing potential legal and other problems as the reason.

The potential legal problems involved the tobacco program and centered around switching this service from a mandatory, appropriations-supported program to a voluntary, fee-supported one. USDA's Office of General Counsel advised that this could be viewed as a change for revenue purposes and, if so, fees would be considered as a tax, which executive agencies cannot legally impose. AMS also noted that, were the program made voluntary, it would no longer have authority to control tobacco marketing by establishing a schedule for various warehouses. It said that maintaining the necessary control authority, while changing to a voluntary, user fee system, would require rather extensive amendments to the Tobacco Inspection Act.

AMS also cited drawbacks to placing cotton classing on a user fee basis. It estimated that the volume of cotton classed (then 95 percent) would decrease by 10 percent to 30 percent. It also said that fees would (1) increase the middlemen's marketing costs, (2) discourage use of classing services, thereby allowing ginners and buyers to take advantage of small farmers' lack of knowledge about grades, and (3) halt or slow the increasing use of USDA's classing standards throughout the marketing system.

95th Congress (1977-78)

In 1977 USDA submitted proposed legislation to OMB with its fiscal year 1979 budget which would have authorized user fees to recover certain costs of cotton classings, tobacco inspections, warehouse examinations, and market news services. OMB cleared the proposal on February 9, 1978, but for unstated reasons, it was then withdrawn by USDA and never sent to the Congress. USDA estimated that the proposal would have recovered \$16.8 million annually by fiscal year 1983--\$8.2 million for cotton, \$5.8 million for tobacco, \$2 million for warehouses, and \$0.8 million for market news.

The proposal provided for charging cotton producers for special benefit classing services and depositing fees collected into the miscellaneous receipts of the Treasury, along with net proceeds

90th Congress (1967-68)

In March 1967 USDA sent the Senate a legislative package proposing user financing for cotton classing, tobacco inspection, grain inspection, and warehouse examination services. The package was virtually identical to the one USDA submitted in October 1965. This time, however, USDA estimated that the proposal would have reduced annual appropriations about \$11 million and net Federal costs about \$7 million annually. The proposal was subsequently introduced as S. 1480.

In June 1967 USDA sent the House a legislative proposal, virtually identical to the one sent in March 1965, which proposed repeal of several acts, including the Tobacco Seed and Plant Exportation Act and the Naval Stores Act. The bill was introduced July 10, 1967.

91st Congress (1969-70)

In January 1969 USDA again sent the House a proposal to repeal the Tobacco Seed and Plant Exportation Act and the Naval Stores Act. This time the proposal excluded two other unrelated acts, covered in the previous proposals, which the Congress repealed in October 1968. USDA's 1969 proposal was introduced in the Senate on January 23, 1969 (S. 568), and in the House on February 24, 1969 (H.R. 7444).

Several bills also were introduced in the 91st Congress to provide user fees for cotton classing, tobacco and grain inspection, and other USDA services: H.R. 16264, H.R. 16652 (the President's proposed Omnibus Savings Act of 1970), and S. 3593. Section 402 of the proposed omnibus act would have put the special benefit portion of cotton classing services on a self-supporting basis, along with tobacco inspection services and supervision of grain inspection services. USDA recommended enactment of this section in a March 3, 1970, letter to the Director, Bureau of the Budget (now Office of Management and Budget), and estimated it would reduce annual appropriations by \$10.4 million after fiscal year 1971. Title IV of S. 3593 proposed that the cotton, tobacco, and grain services be paid for by users. USDA recommended enactment of this title in letters dated July 18, 1970, to the Chairmen of the Senate Committees on Commerce and Finance.

92d Congress (1971-72)

In January 1972 USDA sent the Senate another proposal calling for repeal of the Tobacco Seed and Plant Exportation Act and the Naval Stores Act. It was virtually identical to the proposals USDA sent the House in January 1969, June 1967, and March 1965. USDA's proposal was introduced in the Senate February 7, 1972, as S. 3134.

In April 1980 USDA also revived attempts to repeal the Tobacco Seed and Plant Exportation Act of 1940 and the Naval Stores Act of 1923. It submitted a proposal to the Senate, virtually identical to those it submitted to the 89th through 92d Congresses, but it was not introduced. USDA estimated that repeal of the acts would reduce appropriations by about \$66,000 annually--\$2,000 for the tobacco act and \$64,000 for the Naval Stores Act.

97th Congress (1981-82)

In January 1981 USDA submitted a legislative proposal to the Congress, with its fiscal year 1982 budget, which would authorize user fees for cotton classing and standards; tobacco inspection and standards; and warehouse examinations, inspections, and licensing.

Unlike previous proposals, this proposal would provide for recovery of administrative and supervisory costs for all three programs and the costs associated with cotton and tobacco standards. USDA estimates that the proposal would recover \$29.1 million in fiscal year 1982--\$14.8 million for cotton classing and standards; \$8.7 million for tobacco inspection and standards; and \$5.6 million for warehouse examinations, inspections, and licensing.

The proposal also calls for repealing the Naval Stores Act and providing inspection, grading, and standardization of naval stores commodities on a cost recovery basis pursuant to the AMA. USDA estimates that this would generate revenues approximating \$0.1 million annually.

On March 10, 1981, the President submitted his revised fiscal year 1982 budget to the Congress. It included the same user fee legislative proposals for the cotton, tobacco, warehouse, and naval stores programs as were submitted to the Congress in January 1981. The revised budget, however, also included a legislative proposal that would authorize additional user fees for USDA's grain inspection and weighing program. The proposal would amend the USGSA to permit recovery of supervisory and certain headquarters (overhead) costs in addition to costs now recovered. (See pp. 20 to 23.) Certain costs related to the program, however, would still be financed with appropriated funds: costs of standardization activities (establishing uniform grade standards, see p. 24) and compliance activities (ensuring that authorized Federal, State, and private agencies adhere to the USGSA and USDA's implementation regulations). According to the proposal, the change would save the Federal Government \$25.2 million in fiscal year 1982, and it would cost grain handlers an average of only about one-third of a cent per bushel.

from the sale of cotton samples submitted for classing. The market value of samples disposed of by other means (for example, donation to the Federal prison system) also would have been considered in setting the fees. Under this proposal, fees would have been phased in over a 5-year period, so that the program would have been on a full cost recovery basis in fiscal year 1983, except for national supervisory costs (about \$2.7 million), which would have continued to be financed by annual appropriations.

The proposal called for a similar fee system for tobacco grading. Fees would have been phased in over a 5-year period and would have covered all costs by fiscal year 1983, except for Washington/national headquarters costs (about \$560,000 annually)--that is, costs of offices in Washington, D.C., and San Juan, Puerto Rico. Receipts would have been deposited into the miscellaneous receipts of the Treasury. The proposal also would have prohibited auction sales except at designated markets to enable USDA to control tobacco marketing.

The proposal called for an annual warehouse license fee to be assessed on the bond renewal date for each license. The fee would have covered the costs of inspections, semiannual compliance examinations, and annual license issuances. It would have excluded Washington/national headquarters costs (about \$536,000 annually)--that is, costs of offices in Washington, D.C.; Prairie Village, Kansas; and a portion of offices in Memphis, Tennessee. As with the other programs, fees collected would have gone into the miscellaneous receipts of the Treasury.

Finally, the proposal provided for charging annual subscription fees to recipients of various mailed market news reports. The rates would have been based on frequency of mailings and number of pages and would have recovered postage, printing, and handling costs. Fees collected would have been paid into the Treasury as miscellaneous receipts.

96th Congress (1979-80)

In 1978 USDA again submitted a legislative proposal to OMB, with its fiscal year 1980 budget, which would have authorized user fees for cotton classings, tobacco inspections, warehouse examinations, and mailed market news reports. USDA, however, withdrew the proposal for unstated reasons.

The proposal was virtually the same as that submitted with the fiscal year 1979 budget, except that full fees for cotton classings and tobacco inspections would have been implemented in fiscal year 1980 rather than being phased in over 5 years. USDA estimated that the proposal would have recovered \$16.3 million annually--\$7.8 million for cotton, \$5.7 million for tobacco, \$2 million for warehouses, and about \$0.8 million for market news.

Based on this understanding, our factual corrections and the General Counsel's comments are attached.

[GAO COMMENT: The attachment contained factual corrections, primarily updated statistics, that have been incorporated in the final report. Those corrections did not affect the conclusions or recommendations in this report.]

You should also be aware that the budget presented to the Congress on January 15, 1981, contained a legislative proposal to provide user fees to fully support the cotton, tobacco and naval stores, grading, and standardization programs, and the warehouse examination program.

[GAO COMMENT: The legislative proposals referred to have been inserted on pages 19, 26, and 36 of this report.]

Attachments



UNITED STATES DEPARTMENT OF AGRICULTURE
 AGRICULTURAL MARKETING SERVICE

WASHINGTON, D.C. 20250

February 13, 1981

To: Henry Eschwege, Director
 Community & Economic Development Division
 General Accounting Office

From: William T. Manley, Deputy Administrator
 Marketing Program Operations *William T. Manley*

Subject: GAO Draft Report CED-81-49, Entitled "The Department of Agriculture Should be Provided Authority to make Greater Use of User Charges to Fund Special Benefit Services"

The Agricultural Marketing Service was designated as the lead agency to coordinate the USDA response to the subject report. In this role, AMS requested a 30-day delay in the time for responding so that the new Administration's officials could present their position on user fees. While discussing the request with Lee Cowing of your staff, we were informed that comments on policy issues are not expected until after the formal report is issued, and at this time, GAO only wanted our factual corrections to the report.

[GAO COMMENT: An agreement was reached with USDA's Office of Inspector General that (1) a 30-day extension would have made it impossible to issue the final report in time for the Congress to use it in upcoming agency hearings and (2) the new administration could present its position on user fees when submitting the statement of actions taken on our report recommendations that is required by section 236 of the Legislative Reorganization Act of 1970. Subsequent to this agreement, the President submitted a revised budget to the Congress which included several user fee legislative proposals. (See pp. 19, 23, 26, 34, and 37.)]

to a recipient, although the service may result in some incidental public benefits." GAO concludes on page 55, however, that it "believe[s] that agencies need not allocate costs between special beneficiaries and the public benefit." This conclusion appears to be contrary to the law and inconsistent with GAO's earlier discussion of the law. We suggest that a clarification or deletion of this conclusion would be appropriate.

[GAO COMMENT: The purpose of the discussion on page 12 of the draft was to relate the reasons USDA's OGC had given for recommending that APHIS request specific statutory authority to collect user fees. Our reasons for disagreeing with USDA OGC's reasons for not recommending that APHIS use the User Charge Statute authority were set forth on page 14 of the draft report. (See pp. 11 and 12 of this report.)]

In connection with its discussion of the plant variety protection program, GAO notes, on page 53, that USDA and the Department of Commerce tabled discussion of the question of transferring the Department of Commerce's plant variety certification functions to USDA pending a final decision by the courts in then pending cases. Since the time that the report was prepared, further developments regarding this issue have occurred and should be brought to the attention of the GAO. Specifically, on June 16, 1980, the Supreme Court issued its decision in Diamond v. Chakrabarty, No. 79-136 (June 16, 1980). It held that Section 101 of the Patent Act (35 U.S.C. 101) administered by the Department of Commerce, authorized patenting of certain living matter. As a result of that decision, the Department of Commerce has taken the position that the U.S. Patent Office's jurisdiction covers sexually reproduced plants and it has issued a notice to the industry indicating it will accept applications for such patents. USDA disagrees with the Commerce interpretation of Chakrabarty. We believe that, in passing the Plant Variety Protection Act, Congress determined that protection of sexually reproduced plants shall be governed by the Plant Variety Protection Act, administered by USDA. This conflict of jurisdiction between the Departments of Commerce and Agriculture has not been resolved at this time.

[GAO COMMENT: The data provided here has been used in the final report. (See p. 40.)]

Finally, in chapter 5 of the report, concerning inspection of meat and poultry plants, GAO discusses the manner in which the Department will handle Freedom of Information Act requests regarding the voluntary quality control program. The report notes that the Department "has taken the view that information obtained under the quality control program would be withheld from disclosure under the [Freedom of Information Act's] exemptions provisions" (page 66). As noted in the "Supplementary Information" published in connection with the Department's regulation concerning voluntary quality control systems for meat and poultry establishments (45 F.R. 54310-54325 (August 15, 1980)), the Department will consider each request for information under the Freedom of Information Act individually. The Department indicated its belief that most material required to be submitted to it under the voluntary quality control system approval procedures would include trade secrets or confidential commercial or financial information which is privileged or confidential and, therefore, exempt from mandatory



United States
Department of
Agriculture

Office of
General
Counsel

Washington,
D.C.
20250

13 FEB 1981

SUBJECT: GAO Draft Report CED-81-49, Entitled "The Department of Agriculture Should be Provided Authority to Make Greater Use of User Charges to Fund Special Benefit Services"

TO: John Reeves, Director
Financial Management Division, AMS

We have reviewed the GAO Draft Report and have found some inaccurate inconsistent statements. In addition, we have noted one aspect in which the information reported by GAO appears to be incomplete.

Specifically, we are concerned about the discussion of the Department's authorities and advice that the Office of the General Counsel has given concerning user fees for imported animals. On page 2 of the Draft Report, in the section entitled "Legislative authorities", GAO notes that "USDA seriously considered using the User Charge Statute as the authority for charging users for at least one service, the inspection and testing of imported animals, but its Office of General Council [sic] recommended against using it."

The recommendation reported in this statement is incorrect. In an opinion from Ronald D. Cipolla, then Director of the Regulatory Division of OGC, to F.J. Mulhern, then Administrator of the Animal and Plant Health Inspection Service, dated April 18, 1979, OGC noted the difficulty of developing a fee schedule that would accord with the standards of the user fee statute, 31 U.S.C. 483a, and the fact that monies collected pursuant to that statute must be deposited in the Treasury and would not be available for use by APHIS. We recommended, therefore, that consideration be given to new legislation to give the Department specific statutory authority to collect fees for such services and use such fees for program costs.

[GAO COMMENT: The USDA OGC's conclusions and recommendation were fully explained on pages 55 and 55a of the draft report. (See pp. 41 and 42 of this report.) The USDA OGC recommendation referred to on page 2 of the draft report has been deleted from the final report.]

In connection with its discussion of the user fee statute, on page 12, GAO summarizes the recent court decisions involving the statute. It notes that the United States Court of Appeals for the District of Columbia Circuit has refined the standards that agencies must apply in assessing fees and that "fees may include only those direct and indirect costs incurred in conferring a special benefit. Fees may not include the cost incurred in serving an independent public purpose. On the other hand, the fee may include the full cost of providing a service



UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

WASHINGTON, D.C. 20250

February 18, 1981

To : Henry Eschwege, Director
Community & Economic Development Division
General Accounting Office

From : William T. Manley, Deputy Administrator
Marketing Program Operations

William T. Manley

Subject: Addendum to GAO Draft Report CED-81-49, Entitled
"The Department of Agriculture Should be Provided
Authority to Make Greater Use of User Charges to
Fund Special Benefit Services"


The attached additional comments on the subject report have been received from the Federal Grain Inspection Service.

Please attach these comments to our original reponse of February 13.

Attachments

disclosure under the Freedom of Information Act and that release of such information would inhibit establishments from voluntarily participating in a quality control program.

[GAO COMMENT: The information provided here has been used to provide a fuller explanation of the procedure USDA uses in handling Freedom of Information Act requests. (See p. 50.)]


J. MICHAEL KELLY
Acting General Counsel

We also would point out that standardization programs of FGIS encompass more than "developing and maintaining U.S. grade standards" (p. 30). Although quality control monitoring activities (commonly called supervision or checktesting) by the Board of Appeals and Review and the Inspection Methods and Research Branch provide benefits primarily to the users of the services, since the primary purpose is to achieve the highest possible level of uniformity and accuracy, the total costs of this Division may not be appropriately chargeable against the public interest, as is concluded in the report. It is difficult to make such a determination without adequate working criteria for defining public interest.

[GAO COMMENT: Page 30 of the draft report (pp. 24 and 25 of this report) discussed standardization activities which do not primarily benefit identifiable users, not Standardization Division activities. We did not intend to convey the impression that users should not be charged for Division activities which primarily benefit them.]

For the purpose of clarity, the Director of the Administrative Staff has rewritten the material which quoted him (pp. 27-28). We have included this as an Attachment to our memo.

[GAO COMMENT: The attachment has been incorporated in the final report. (See p. 23.) The revised material did not affect the conclusions or recommendations in this report.]

Attachment

cc: L. E. Malone

(022610)



**UNITED STATES
DEPARTMENT OF
AGRICULTURE**

**FEDERAL GRAIN
INSPECTION
SERVICE**

**WASHINGTON,
D.C.
20250**

February 12, 1981

TO : Bennie T. Cockfield, Deputy Director
Financial Management Division, AMS

THRU : D. R. Galliard *D. R. Galliard*
Acting Administrator

FROM : J. T. Abshier, Director *J. T. Abshier*
Compliance Division

SUBJECT: GAO Draft Report (CED-81-49)

We have reviewed the draft report, particularly those parts of the report which are specifically directed toward activities for which the Federal Grain Inspection Service is responsible. This response is directed not at the philosophical questions which the report raises, but at the accuracy of the material presented in the report.

On page 24 of the report, triticale should be added to the list of grains covered by the Act. Also, in paragraph No. 2, the last sentence should be changed to read ". . . grain products not covered by the USGSA, such as rice, edible beans, lentils, hay, straw, flour, soybean meal, and commodities processed from grain."

[GAO COMMENT: Sentences revised accordingly.]

The statement on page 25 of the report that "The services provided by USDA under the USGSA and AMA are basically the same." could be misinterpreted. The FGIS AMA program is primarily performed by USDA employees or individuals under USDA contract. This allows for establishing users' fees covering the entire cost of the program, from the actual inspection service to the administration of the program. Conversely, the USGSA program involves Federal, State, and private programs. These different programs make it very cumbersome to develop equitable users' fees covering FGIS administrative and supervision costs.

[GAO COMMENT: Deleted "by USDA" from sentence. As to FGIS' statement that the different programs make it very cumbersome to develop equitable user fees, it should be noted that before the USGSA was amended in September 1977 (see pp. 21 and 22), FGIS had developed a system for charging official agencies for USDA supervision costs. Furthermore, users are currently charged for agency administrative and supervision costs associated with other commodity inspection/grading program services. (See pp. 20 to 24.)]



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