

106TH CONGRESS
2^D SESSION

H. R. 5160

To provide compensation to wheat producers and elevator operators who sold wheat between May 2, 1993, and January 24, 1994, when the Federal Grain Inspection Service maintained erroneous standards for official inspections of wheat protein content.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2000

Mr. POMEROY introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To provide compensation to wheat producers and elevator operators who sold wheat between May 2, 1993, and January 24, 1994, when the Federal Grain Inspection Service maintained erroneous standards for official inspections of wheat protein content.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wheat Protein
5 Mismeasurement Compensation Act”.

1 **SEC. 2. COMPENSATION FOR UNDERESTIMATION OF**
2 **WHEAT PROTEIN CONTENT.**

3 (a) AUTHORIZATION FOR COMPENSATION.—

4 (1) IN GENERAL.—The United States shall pay
5 such amount as is necessary to compensate wheat
6 producers and elevator operators for lost revenue on
7 the sale of wheat, and lost earnings thereon, result-
8 ing from the adoption by the Federal Grain Inspec-
9 tion Service in May 1993, of erroneous protein
10 measurement standards based on miscalibrated Near
11 Infrared Transmittance (hereinafter in this Act re-
12 ferred to as “NIRT”) instruments.

13 (2) SETTLEMENT AGREEMENT.—After notifying
14 each known eligible person of the provisions of this
15 Act at the person’s last known address via first class
16 mail, the Secretary of Agriculture shall negotiate a
17 settlement agreement with the class representatives
18 and their attorneys of record on behalf of the class
19 of claimants in the case of *Gollehon Farming v.*
20 *United States*, 117 F. Supp. 2d 1145 (D. Mont.
21 1998), *aff’d*, 207 F.3d 1373 (Fed. Cir. 2000), in ac-
22 cordance with the provisions of this Act. Pursuant to
23 the settlement agreement, the United States will pay
24 a lump-sum amount into a settlement trust, and the
25 principal and income of the trust shall be distributed
26 in accordance with the settlement agreement and the

1 orders of the court. The amount of the lump-sum
2 shall be not greater than \$152,400,000, plus the
3 amounts of interest, reimbursements, and reserves
4 determined in accordance with subsections (d) and
5 (e). The settlement shall be subject to court ap-
6 proval.

7 (b) PERSONS ELIGIBLE FOR RELIEF.—Persons eligi-
8 ble for compensation pursuant to subsection (a) shall con-
9 sist of the following:

10 (1) WHEAT PRODUCERS.—All wheat producers
11 in the United States who sold wheat between May
12 2, 1993, and January 24, 1994, inclusive, for a
13 price determined wholly or in part with reference to
14 measured or estimated protein content.

15 (2) ELEVATOR OPERATORS.—All independent
16 country grain elevator operators in the United
17 States (and any persons who purchased wheat from
18 such operators) who resold wheat at a loss resulting
19 from the change to NIRT.

20 (c) REQUIRED SHOWING.—A claimant shall be enti-
21 tled to compensation pursuant to subsection (a) upon a
22 showing of—

23 (1) membership in the class of persons eligible
24 for compensation as described in subsection (b); and

1 (2) the number of bushels of wheat sold during
2 the period May 2, 1993, through January 24, 1994,
3 inclusive, and any other information required by the
4 settlement agreement.

5 (d) AMOUNT OF INDIVIDUAL COMPENSATION.—

6 (1) GROSS AMOUNT.—The gross amount of
7 compensation payable to an individual claimant shall
8 be determined in accordance with a formula which
9 may be negotiated as part of the settlement agree-
10 ment, or determined by the settlement trustee in ac-
11 cordance with applicable orders of the court, or both.
12 The formula for determining the gross amounts of
13 individual claims shall be based primarily upon the
14 number of bushels of wheat sold by the claimant
15 during the period from May 2, 1993, through Janu-
16 ary 24, 1994, and may also take into account any
17 other relevant factors, including the type and grade
18 of wheat sold, location of crop land, estimated pro-
19 tein content, date of harvest, and date of sale. In
20 any event, the average gross amount shall be equal
21 to \$0.30 per bushel, plus interest as determined in
22 accordance with paragraph (2) and reimbursement
23 of costs and attorneys' fees as provided in subsection
24 (e), subject to the provisions of subsection (e)(2).

1 (2) INTEREST.—The interest component of
2 each claimant’s individual gross amount shall be
3 computed at the rates in effect under section
4 6621(a)(1) of the Internal Revenue Code of 1986.
5 Such interest shall be limited to the period from
6 January 1, 1994, until the date on which the lump-
7 sum amount is paid into the settlement trust.

8 (e) PROCEDURES REGARDING SETTLEMENT.—

9 (1) NEGOTIATED SETTLEMENT.—The Secretary
10 shall negotiate a settlement with the Gollehon Farm-
11 ing class representatives and their attorneys of
12 record, on behalf of the entire class of persons eligi-
13 ble for compensation as described in subsection (b),
14 which settlement shall determine and set forth the
15 following:

16 (A) AGGREGATE AMOUNT.—The aggregate
17 amount that is reasonably estimated to be nec-
18 essary to fully compensate all members of the
19 class as provided in subsection (d), including in-
20 terest and reimbursement of attorney’s fees and
21 expenses, which amount shall be paid into a set-
22 tlement trust to be administered in accordance
23 with the terms and conditions of the settlement
24 agreement and the orders of the court.

1 (B) RESERVE.—An additional amount
2 equal to 25 percent of the amount determined
3 in accordance with subparagraph (A) to be paid
4 into the settlement trust and used as a reserve
5 in case the aggregate amount determined in ac-
6 cordance with subparagraph (A) proves to be
7 insufficient to fully compensate all class mem-
8 bers, and provisions governing the disposition of
9 any amounts that remain in the trust upon its
10 termination, after payment of all fees and ex-
11 penses.

12 (C) PROCEDURES AND SCHEDULE.—The
13 procedures and schedule for identifying mem-
14 bers of the class of persons eligible for com-
15 pensation and paying their claims, including the
16 use of information available to the Secretary for
17 identifying potential claimants and quantifying
18 individual claims.

19 (D) PAYMENT OF FEES AND EXPENSES.—
20 Provisions regarding the investment of trust
21 funds and the use of trust earnings to pay all
22 or part of the fees and expenses associated with
23 settlement implementation, trust administra-
24 tion, and legal representation.

1 (E) OTHER PROVISIONS.—Any other provi-
2 sions that are reasonable and appropriate for
3 achieving the purposes of this Act.

4 (2) PROPORTIONAL REDUCTIONS.—In the event
5 that the aggregate gross amount of individual claims
6 as determined in accordance with subsection (d) ex-
7 ceeds the estimated and reserve amounts determined
8 pursuant to subparagraphs (A) and (B) of para-
9 graph (1), the amounts computed for individual
10 claimants shall be proportionally reduced so that the
11 aggregate amount of individual net payments equals
12 such estimated and reserve amounts.

13 (3) STIPULATION.—A stipulation setting forth
14 the terms of the settlement shall be filed in the
15 Gollehon Farming case, or in a new case filed for
16 such purpose by the Gollehon Farming plaintiffs and
17 their attorneys in a United States district court or
18 the United States Court of Federal Claims, and
19 shall become final upon the approval of the court.

20 (4) ATTORNEY'S FEES.—Attorney's fees pay-
21 able from the trust in connection with claims com-
22 pensated pursuant to this Act shall be determined in
23 accordance with the maximum rate provided by sec-
24 tion 2678 of title 28, United States Code. To the ex-
25 tent that such fees are not payable through deduc-

1 tions from individual claims, they shall be payable
2 from trust earnings, trust principal in excess of the
3 aggregate amount of individual claims, and trust
4 principal held for class members who cannot be lo-
5 cated and paid.

6 (5) USE OF AMOUNTS REMAINING IN TRUST
7 AFTER PAYMENTS.—The settlement agreement may
8 provide that any amounts remaining in the trust
9 after the time period for paying individual claims
10 has expired, and after payment of all fees and ex-
11 penses, are to be used for one or both of the fol-
12 lowing purposes:

13 (A) STUDY.—A study and report to Con-
14 gress, by an appropriate commission of lawyers
15 and other experts, on statutory changes that
16 are recommended for purposes of securing full
17 and fair compensation to persons who suffer
18 losses as a result of negligent or unlawful ac-
19 tions by agents and employees of the United
20 States.

21 (B) PROGRAMS.—Programs of benefit to
22 farmers who produce wheat that is sold for a
23 price determined wholly or in part with ref-
24 erence to measured or estimated protein con-
25 tent.

1 (f) WAIVER OF CONDITIONS AND LIMITATIONS.—Eli-
2 gible persons as defined in subsection (b) shall be entitled
3 to receive compensation as provided herein notwith-
4 standing their noncompliance with section 2675 of title
5 28, United States Code, and notwithstanding any previous
6 denial of their claims or any previous judgment of any
7 court to the contrary, including the judgment in Gollehon
8 Farming, and their claims shall not be subject to any limi-
9 tion periods for asserting such claims, including the limi-
10 tations in section 2401 of title 28, United States Code.

11 (g) SOURCE OF PAYMENT.—Notwithstanding any
12 other provision of law, the amount of the lump-sum settle-
13 ment negotiated by the Secretary pursuant to subsection
14 (e) shall be paid from the appropriation made by section
15 1304 of title 31, United States Code.

16 (h) FULL SETTLEMENT.—The payment authorized
17 by this Act shall be in full satisfaction of all claims in
18 connection with lost revenue on the sale of wheat, and lost
19 earnings thereon, resulting from the adoption by the Fed-
20 eral Grain Inspection Service in May 1993, of erroneous
21 protein measurement standards based on miscalibrated
22 NIRT instruments.

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