STANDARDS AND GRADES OF QUALITY FOR FOODS AND DRUGS

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I

That the consumer* has no practical way of knowing or discovering at present the quality of any food or drug he buys, much less whether any particular brand of a product he purchases is good, bad or indifferent as compared to any other particular brand of which he might have chosen, is well recognized. Thus he may be selecting, at a single price, from among a number of brands which may range in quality from the most excellent to those which are distinctly inferior.2 At the same time, two brands of substantially the same quality may be offered to him at prices which vary 100 per cent or more from the lower to the higher.3 It has been indisputably established that the price at which a particular article may sell is not a satisfactory, if any, index to the quality of the product.4 Nor does the use of brand or trade names supply an adequate guide.5 With the number of brands of a particular product running

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2 The term “consumer” is used in this article to refer to the ultimate consumer, that is, a person who buys for his own or family use or consumption. It does not refer to one who purchases for resale or for processing and resale. For a statutory definition of the term “consumer” in the sense used herein, see N.Y. Cahill’s Consol. Laws (1930), tit. 1, § 160 (a).


3 Supra note 2.

4 Supra note 2; Brady, Standards and the Consumer, Consumers’ Advisory Board, National Recovery Administration (Mar. 7, 1934) (mimeographed); Coles, Standardization of Consumers’ Goods (1932), 23–28; Hearings before Subcommittee of Committee on Commerce on S. 1944, 73d Cong., 2d Sess. (1933), 346; Riley, To Grade or Not to Grade, 23 Advertising and Selling (Oct. 11, 1934); Chase and Schlink, Your Money’s Worth (1927), 76.

into the hundreds, and in some instances into the thousands, the consumer, obviously, is at a loss if he attempts to make a selection on this basis. Moreover, the consumer has no assurance that the particular unit which he purchases at one time will be identical with, or equal in quality to, the unit which he buys at another time. This is especially true where the seller is not a manufacturer but is a wholesaler or jobber who distributes under his own distinctive trade name the products of several producers.

The fight for adequate protection of the consumer in this respect is of long standing. Recently public interest in questions of food and drugs has been given impetus by the proposals for a new food and drugs act and by some of the emergency legislation. Earlier efforts to protect the consumer were largely concerned with public health and the need of protection against harmful, poisonous and deleterious foods and drugs. The National Industrial Recovery Act and the Agricultural Adjustment Act, both of which were expected, among other things, to effectuate a rise in the general price level, have, however, served to emphasize the co-existing and coordinate need of insuring to the consumer a return in value

6 O'Brien, Standards for Consumers' Goods, 8, Bureau of Home Economics, U.S. Dept. of Agriculture (Sept. 25, 1934) (mimeographed); Standards of Quality, 3, Bull. No. 3, Consumers' Div., National Emergency Council (June 1934); Riley, To Grade or Not to Grade, 23 Advertising and Selling (Oct. 11, 1934).

7 Some consumers' organizations have been formed for the purpose of spreading consumer education with respect to quality and value in the purchase of consumers' goods. Consumers' Research, Inc., the Association of Home Economics, and the National Consumers' League are some of them. See Corbett, The Activities of Consumers' Organizations, 1 Law and Contemporary Problems 61 (1933). The American Medical Association has a Foods Committee which tests and recommends certain foods, and also a Bureau of Investigation concerned with the investigation of drugs. For a description of the Association's work, see Fishbein, The American Medical Association's Work for Consumer Protection, 1 Law and Contemporary Problems 50 (1933).

As to food and drugs legislation generally, see Regier, The Struggle for Federal Food and Drugs Legislation, 1 Law and Contemporary Problems 3 (1933).

It has been said of the Food and Drugs Act that it was designed to secure to the consumer this protection. U.S. v. Antikamnia Chemical Co., 231 U.S. 654 (1913); Hall-Baker Grain Co. v. U.S., 198 Fed. 614, 616 (C. C. A. 8th 1912).

8 The proposals for a new food and drugs act which are referred to are the three Copeland bills, S. 1944, 73d Cong., 1st Sess.; S. 2800, 73d Cong., 2d Sess.; and S. 5, 74th Cong., 1st Sess. In addition to these bills a number of others have been introduced including the Boland bill, H. R. 8316, 73d Cong., 2d Sess.; the Jenckes bill, H. R. 7964, 73d Cong., 2d Sess.; the McCarran bill, S. 2858, 73d Cong., 2d Sess.; the Stephens bill S.2355, 73d Cong., 2d Sess.; the Black bill, H. R. 6376, 73d Cong., 2d Sess.; the Mead bill, H. R. 3972, 74th Cong., 1st Sess.; the McCarran bill, S. 580, 74th Cong., 1st Sess.

commensurate with price paid. Accordingly, those acts contain specific provisions directed at protecting the ultimate consumer from too rapid an acceleration of the rise in the price level. However, it is clear that the protection thus afforded makes no provision for securing to a consumer intrinsic value comparable to price.

To afford the consumer adequate protection of this character, it has been suggested that there be established by federal legislation a system of standards and grades of quality and that products be graded according to those standards. One of the respects in which the proposals for a new food and drug act differ from the existing act is in the provision they make for such a scheme of standardization of quality. Pending the consideration of the proposed act, attempts have been made to utilize the National Industrial Recovery Act and the Agricultural Adjustment Act to secure to consumers this type of protection. Thus some of the codes of fair competition put into force by the National Recovery Administration have incorporated standards and grades of quality. In like manner, some of


As to the need for standards and grades of quality, see Brady, Standards and the Consumer, Consumers' Advisory Board, National Recovery Administration (Mar. 7, 1934) (mimeographed); Coles, Standardization of Consumers' Goods (1932), 257-259; Standards of Quality, Bull. No. 3, Consumers' Div., National Emergency Council (June 1934); O'Brien, Standards for Consumers' Goods, Bureau of Home Economics, U.S. Dept. of Agriculture (Sept. 25, 1934) (mimeographed); Kallet and Schlink, 100,000,000 Guinea Pigs (1933), 288-290; Lynd, Why the Consumer Wants Quality Standards, 26 Advertising and Selling (Jan. 4, 1934); Edwards, Hearings before Subcommittee of Committee on Commerce on S. 2800, 73d Cong., 2d Sess. (1934), 90-93; Kallet, id. 308-311.

Thus the Copeland bills provide: "The Secretary is hereby authorized to fix, establish and promulgate definitions of identity and standards of quality and fill of container for any food." S. 1944, § 11, 73d Cong., 1st Sess. (1933).

"For the effectuation of the purposes of this Act the Secretary is hereby authorized to promulgate regulations, as provided by Section 22, fixing and establishing for any food (1) a definition and standard of identity, and (2) one objectively determinable minimum standard of quality and fill of container." S. 2800, § 11, 73d Cong., 2d Sess. (1934).

"For the effectuation of the purposes of this Act the Secretary is hereby authorized to promulgate regulations, as provided by sections 701 and 703, fixing and establishing for any food a definition and standard of identity, and a reasonable standard of quality and/or fill of container: Provided, That no standard of quality shall be established for any fresh natural food." S. 5, § 303, 74th Cong., 1st Sess. (1935).


"Macaroni Industry Code, art. VII, § 3, approved Jan. 29, 1934, approved Code no. 234; Supplementary Code for the Blue Crab Industry, art. VI, § 1 (j), approved May 5, 1934, ap-
the marketing agreements and licenses issued by the Agricultural Adjust-
ment Administration have also included among their provisions terms
providing for the establishment of standards and grades of quality. But
adequate protection is not being secured by codes of fair competition and
marketing agreements, not all of which have such provisions. Nor is this
surprising, since it was not intended that such protection be afforded by
the emergency agencies. Indeed, it is questionable whether such provision
for the protection of the consumer is properly a subject for treatment in
codes and agreements. It seems clear that until legislation expressly pro-
viding for a complete and thorough system of standards and grades of
quality is enacted the desired results cannot be realized.

Before proceeding to consider proposed legislation designed to afford
the consumer this protection, it may be desirable to see whether any such
protection is afforded him at present. The present Food and Drugs Act offers some protection which is, however, extremely limited in nature and
effectiveness. The Act seeks merely to prevent the sale of adulterated
articles and to prohibit misbranding. By forbidding the sale of adulterated
articles it is intended to protect the consumer at least against the purchase
of an article he clearly would not be willing to buy. Provisions with re-
spect to misbranding will, among other things, prevent the consumer
from buying a product under the mistaken idea that he is buying another
product and will also prevent misstatements as to quality and ingredients.
It is obvious, however, that the adulteration provision does not afford the
consumer any assurance that he will receive a product of any particular
grade or quality. Nor will like protection be made possible by the provi-
sions against misbranding. There are only a few instances in which legis-
lation has provided for the establishment of a standard or standards of
quality. The Tea Importation Act provides that the Secretary of Agri-
proved Code no. 308; Dog Food Industry Code, art. VII, § 1, approved May 31, 1934, ap-
proved Code no. 450. See generally, Standards of Quality, 11, Bull. no. 3, Consumers' Div.,
National Emergency Council (June 1934).

Marketing Agreement for Shippers of Oranges and Grapefruit Grown in the State of
Texas, art. III, Agreement no. 33, approved Dec. 22, 1933; Marketing Agreement for Shippers
of Fresh Lettuce, Peas and Cauliflower Grown in Western Washington, art. VII, Agreement
no. 49, approved July 17, 1934; Marketing Agreement for Shippers of Florida Strawberries, art.
V, Agreement no. 50, approved Aug. 1, 1934; Marketing Agreement for the Watermelon Indus-
try in the Southeastern States, art. V, Agreement no. 52, approved Aug. 6, 1934.

See Brady, Standards and the Consumer, Consumers' Advisory Board, National Recov-
ery Administration (Mar. 7, 1934) (mimeographed).

Supra note 12.


culture shall establish standards of purity, quality and fitness for consumption of tea which is to be imported into the United States and prohibits the importation of any tea which fails to come up to the standards set. The Butter Act of March 4, 1923, provides that "'butter' shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, and containing not less than 80 per centum by weight of milk fat, all tolerances having been allowed for." The McNary-Mapes Amendment to the Food and Drugs Act provides that the Secretary of Agriculture may set a standard of quality, condition and/or fill of container for canned food products other than meat and milk and requires that any canned product which fails to come up to "a reasonable standard of quality, condition, and/or fill of container for each class of canned food as will, in his judgment, promote honesty and fair dealing in the interest of the consumer" shall bear upon its package or label a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that such canned food falls below such standard. There are other statutes providing for the establishment of standards and grades of quality. These, however, are not designed for the protection of the ultimate consumer. To aid in the administration and enforcement of the present act some machinery for the establishment of standards has been devised. A Food Standards Committee in the Food and Drugs Administration has been in existence since 1914. Standards for a number of foods have in fact been fixed. However, these standards which are contained in various official publications of the Food and Drugs Administration are purely advisory. They are not set pursuant to any statutory authority and therefore have no binding effect on anyone. They are for-
mulated merely to serve as guides in the enforcement of the adulteration and misbranding provisions and as some indication that conformity thereto will be accepted as compliance with the provisions of the Food and Drugs Act. That they are, therefore, wholly inadequate for the purpose in hand is apparent and well recognized.

In addition to the reasons already advanced for the need of establishing standards of quality, there is the further consideration that standards are essential for the proper enforcement of any food and drug legislation. The Food and Drugs Act, which merely prohibits the sale of adulterated products, presents insuperable obstacles to proper enforcement because it contains no indication of the standard, a deviation from which constitutes adulteration. Furthermore, the prohibition of misbranding means little unless there is provided, at the same time, a definition of the properly branded article. In consequence, no standards are provided by which a court may judge whether a product is in fact adulterated or misbranded. The result is that each case must stand upon its own facts and the government is obliged to use numerous experts and scientific data to indicate the proper standard and to prove that there was a departure therefrom. That this is both expensive and extremely burdensome is plain. That the lack of standards is a serious handicap to enforcement has been repeatedly emphasized. Recently the character of that handicap was again pointed

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25 Crawford, Technical Problems in Food and Drugs Law Enforcement, 1 Law and Contemporary Problems 36 (1933); Hayes and Ruff, Administration of Federal Food and Drugs Act, 1 Law and Contemporary Problems 16 (1933).

26 See, for example, F. B. Washburn & Co. v. U.S., 224 Fed. 395 (C.C.A. 1st 1915); 32 Col. L. Rev. 723 (1932).

27 See U.S. v. One Car Load of Corn H. & M. Feed, 188 Fed. 453, 456 (N.D. Ala. 1911); 32 Col. L. Rev. 723 (1932). It is likely that definitions of identity will prevent practices such as that disclosed in U.S. v. American Druggists' Syndicate, 186 Fed. 387 (E. D. N.Y. 1911).

28 See Fisher, The Proposed Food and Drugs Act: A Legal Critique, 1 Law and Contemporary Problems 74, 102 (1933); Campbell, Hearings before Subcommittee of Committee on Commerce on S. 1944, 73d Cong., 2d Sess. (1933), 35–36.

29 In his annual report for the year 1913, the Secretary of Agriculture stated:

"The establishment of legal standards for judging foods would render the food and drugs act more effective, less expensive in its administration, and supply needed legal criteria. Under present conditions it is necessary in the individual prosecution to establish by evidence a standard for each individual article. This procedure is very expensive, and sometimes its cost is out of proportion to its value. Moreover, it may result in lack of uniformity in different jurisdictions. With legal standards established, the control of foods would be more uniform and measurably less expensive. The lack of such standards is to-day one of the greatest difficulties in the administration of the food and drugs act." (Italics supplied.) Rep. Sec. Agriculture (1913), 18; id. (1916), 36.

See also Hearings before Committee on Agriculture on H. R. 8954, proposing amendments to the Food and Drugs Act, 66th Cong., 1st Sess. (1919), 51–52; Campbell, Hearings before
out by the chief of the Food and Drug Administration in his annual report:

"The present law gives the Department of Agriculture no authority to establish legal standards for food products, except in the limited field of canned goods. The food standards announced by the Department are wholly advisory in character and compliance is a voluntary matter on the part of the manufacturer. Such advisory standards are based upon the consensus of consumer understanding and upon good manufacturing practice. To prove that a product sold within the jurisdiction of the Food and Drugs Act and that fails to comply with the advisory standard is adulterated or misbranded, it is necessary for the Department to present to the court and jury convincing evidence that the advisory standard does represent the actual composition of the product expected by the consumer and recognized by the majority of the trade. Proof that the food on trial does not meet the advisory standard is of no avail unless the validity of the standard is first established. This imposes a double burden of proof upon the government as well as the expense of bringing into court trade and consumer witnesses who are prepared to testify that the advisory standard accurately represents the material in question. It has long been recognized that this necessity imposes a handicap of undue proportions upon the government and that the lack of legal standards is a distinct disadvantage to ethical manufacturers who are forced to compete with products which differ from the advisory standards. The establishment of food standards having the force and effect of law will vastly simplify the problem of enforcement and will unquesstionably be of great advantage to the consuming public and to the manufacturer of legal products."

Despite the clear advantages which have been shown will derive from a system of standards and grades of quality, there has long been tremendous opposition to its establishment. As far back as 1906 when the present act was passed an attempt was made to incorporate therein authority to set up standards. The movement was successfully opposed and the provisions with respect thereto were deleted. The character of the objections interposed is well indicated by the following statement made on the floor of the Senate:

"We absolutely refused in enacting the Pure Food Law to consider favorably the proposition of establishing standards by legislation. It is the spirit of the Pure Food Bill that the courts should determine these questions (of adulteration and misbrand-
ing) and that no other definition than that of the courts should constitute a rule or action under the law; . . . . It was the essence of that principle in the Pure Food Law that as much as anything else held it back in Congress by about a quarter of a century. People would not submit to the principle that we should establish standards by legislation. The people who intelligently considered that measure demanded that each case should stand upon its own facts."

It is not intended to suggest that the many contentions which have been advanced in opposition to a system of standards are devoid of merit. The difficulty of formulating a complete set of standards and grades and the magnitude of the enforcement problem are not denied. Nor can one overlook the presence of the traditional fear of business of government regulation. But it is not proposed to analyze and consider the validity of these and of other objections which have been raised. On the contrary, it is proposed to do no more than examine some of the more important legal problems which are presented by legislation designed to realize the many advantages to be derived from a system of standards and grades.

II

The initial question, obviously, is to what extent shall the legislation provide for the setting up of such a system. Shall it merely provide for definitions of identity? Shall it provide for one minimum standard of

32 The large number of standards which have in fact been set and the wide variety of food products to which they apply are disclosed by the Food and Drug Administration's Service and Regulatory Announcements, no. 2, rev. 4, issued in August, 1933, and no. 4, rev. 2, issued in August, 1932, and by the Bureau of Agricultural Economics’ Check List of Standards for Farm Products Formulated by the Bureau of Agricultural Economics.

33 It has often been contended that the establishment of grades will lead manufacturers to produce down to the limit of the grade or standard. Testimony of Dr. Alsberg, Hearings before Committee on Agriculture on H. R. 8934, proposing amendments to the Food and Drugs Act, 66th Cong., 1st Sess. (1919), 49-50. Not only is experience to the contrary but also it will still be possible for manufacturers to compete on the basis of quality above the minimum level for each grade. Brady, Industrial Standardization, 206, 207, National Industrial Conference Board (1929); Coles, Standardization of Consumers’ Goods (1932), 184-185. Furthermore, it should be noted that compliance with standards will not relieve from the need of complying with the adulteration provisions of the act and that, therefore, grading down by means of adulteration will not be tolerated. Henningsen Produce Co. v. Whaley, 238 Fed. 650 (D.C. Mont. 1917); U.S. v. Six Barrels of Ground Pepper, 253 Fed. 199 (S.D. N.Y. 1917); U.S. v. 154 Sacks of Oats, 283 Fed. 985 (W.D. Va. 1922); St. Louis v. Krueempeler, 235 Mo. 710, 139 S.W. 466 (1911).

For a host of other objections advanced against the adoption of standards of quality see Hearings before a Subcommittee of the Committee on Commerce on S. 2800, 73d Cong., 2d Sess. (1934), 92, 176-77, 180, 220, 624-625; Hearings before a Subcommittee of the Committee on Commerce on S. 5, 74th Cong., 1st Sess. (1935), 48-49, 201-205, 205-206. Most of the ob-
quality? Shall it go so far as to provide for the setting up of a complete system of grades? Definitions of identity will eliminate the problem of first determining what the particular product involved is. No longer will a court, in a prosecution for adulteration or misbranding, be compelled in the first instance to determine whether a particular article is or is not a macaroon.\textsuperscript{34} It is patent that definitions of identity, by setting the test by which products are identified, are the foundation upon which any system of standards or grades of quality must be constructed. But they give the consumer no means for ascertaining the quality of any particular unit of that product. Therefore, they do not indicate whether the product is even of sufficiently high quality to be satisfactory for its customary use. This is the function of minimum standards of quality, though it may well be that such a standard will coincide with the definition of identity. Whether the sale of products which fail to meet the minimum requirements is to be prohibited or to be circumscribed by the requirement that its substandard character be made known need not here be considered.\textsuperscript{35} But minimum standards also do not afford adequate protection of pocketbook because the consumer does not know what the quality of a product is, other than that it measures up to that minimum standard. From the point of view of quality, the major part of the field is left unrestricted. This compels the conclusion that the marking off of this field by a series of grades is essential if adequate protection is to be provided. It conclusively


\textsuperscript{35} It has been argued that whether or not the sale of substandard products is to be prohibited should be entirely a matter of health protection. If such goods are not in fact injurious to health and every attempt is made to inform the purchaser of their substandard character, it may be to the economic benefit of a large class of consumers to permit their sale. Nolan v. Morgan, 69 F. (2d) 471 (C.C.A. 7th 1934). Where these conditions are met the McNary-Mapes Amendment, 21 U.S.C.A. § 10 (5) (1934) permits the sale of substandard canned foods. The failure of the Tea Act to allow the importation and sale of tea of inferior quality, though not injurious to health, Buttfield v. Stranahan, 192 U.S. 470 (1904); Buttfield v. Bidwell, 96 Fed. 328 (C.C.A. 2d 1899), has been adversely criticized. Alsberg, Economic Consequences of Commodity Control, 1 Law and Contemporary Problems 44 (1933). See also Weber, The Food, Drug and Insecticide Administration (1928), 50.

The difficulty of informing consumers by labels or other means is a factor which must be taken into account, Houston v. St. Louis Packing Co., 249 U.S. 479 (1919).

It should be noted that where the minimum standard of quality is identical with the definition of identity, the problem of substandard products does not arise. See Copeland, Hearings before the Committee on Commerce on S. 2800, 73d Cong., 2d Sess. (1934), 89–90; and Campbell, \textit{id.}, 598–599.
appears, therefore, that a comprehensive scheme of consumer protection must embrace definitions of identity, minimum standards of quality, and grades.\textsuperscript{35} Affording the consumer this protection by legislation apparently is justified in the light of the numerous statements made by courts that a purchaser is entitled to know what he is getting.\textsuperscript{37}

Assuming that it has been determined to do so, there would seem to be no legal obstacle to providing the statutory machinery necessary for the formulation and establishment of standards and grades, Congress having ample power by virtue of the interstate commerce clause.\textsuperscript{38} Legislation providing for that statutory machinery may take one of two forms. The act may set the standard or may provide for its setting. Acts which set standards may do so in either of two ways. The act itself may contain precise definitions of identity and/or standards of quality as does the Butter Act of March 4, 1923.\textsuperscript{39} Or it may provide that specified definitions of identity and standards of quality already established shall be the standards to which products must conform.\textsuperscript{40} The Food and Drugs Act

\textsuperscript{36} Observe however, the change which has been made in the standards provision of the Cope land Bill. Under S. 1944 standards were to include: "Definitions of identity and standards of quality, and fill of container for any food." The provision in S. 5 provides: "for any food a definition and standard of identity, and a reasonable standard of quality and/or fill of container: \textit{Provided}, that no standard of quality shall be established for any fresh natural food.\textsuperscript{2}

\textsuperscript{37} U.S. v. Antikamnia Chemical Co., 239 U.S. 654 (1914); U.S. v. 40 Barrels and 20 Kegs of Coca-Cola, 215 Fed. 535 (C.C.A. 6th 1914); U.S. v. 100 Cases of Tepee Apples, 179 Fed. 985 (W. D. Mo. 1908); People v. Van Kampen, 210 N.Y. 381, 104 N.E. 942 (1914).


Some statutes provide that the standards set by the local administrative body shall conform to those set by the United States Department of Agriculture. Iowa Code (1931), § 3059; Ohio Ann. Code (Throckmorton, Baldwin's Rev. 1934), §§ 1177–12. Ky. Stat. (Carroll, Bald-
which adopts the United States Pharmacopoeia as the standard for drugs is an example of this kind of statute.\textsuperscript{42} The second form which merely provides that standards shall be established is illustrated by the Tea Act.\textsuperscript{42}

For numerous reasons the latter form is to be preferred. First, the formulation and establishment of standards and grades is for the most part a problem for the scientist and technician. The mere enumeration of some of the technical problems which must first be solved suffices to demonstrate this conclusion.\textsuperscript{43} First, on the basis of what factors, attributes, properties or characteristics is a particular product to be graded? With reference to what are grades to be determined—usefulness for a specific purpose or relative superiority expressed in terms of a score or rating based upon numerical values assigned to each of the characteristics of the product selected? The answer may depend on the nature of each particular product. One or the other type of grading may be necessary in the case of some products. Either may be used in the case of others. If grades


\textsuperscript{44} For discussion of the technical problems and difficulties encountered in the establishment of standards, including problems of revision, tolerances, and tests, see Brady, Industrial Standardization, 17, 159-161, National Industrial Conference Board (1929) (agricultural products); Standards of Quality, 7, Bull. No. 3, Consumers’ Div., National Emergency Council (June, 1934); Harriman, Standards and Standardization (1928), 92-93, 130-131; Olsen, Development of Federal Standards for the Certification of Farm Products in the United States, Bureau of Agricultural Economics, U.S. Dept. of Agriculture (Aug. 1930) (mimeographed); Coles, Standardization of Consumers’ Goods (1932), 77-114, 128-139, 201-203; Holden, Agricultural Standardization on the Pacific Coast, 137 Annals of Amer. Acad. of Pol., and Soc. Sci. 107 (1938); Tenny, Standardization of Farm Products, 137 Annals of Amer. Acad. of Pol. and Soc. Sci. 205 (1928); Present Guides for Household Buying, Misc. Pub. no. 193, U.S. Dept. of Agriculture (April 1934); Tenny, National Standards for Farm Products, Circ. No. 8, U.S. Dept. of Agriculture (May 1930); Kitchen, Standardization and Inspection of Farm Products, Bureau of Agricultural Economics, U.S. Dept. of Agriculture (Dec. 1932) (mimeographed); Brooks, Critical Studies in the Legal Chemistry of Foods (1928).
are to be determined on the basis of ratings and if, for example, the moisture content of the product be accorded a weight of twenty per cent in that rating, how is the moisture content of any particular unit of that product to be measured? Can it be measured, and, if so, what test is to be used in its measurement? Secondly, while it is true that such standards as have already been scientifically determined may be incorporated in the act, to the extent that scientific standards have not as yet been formulated or that particular products may not be susceptible of precise grading, the statute either cannot specify the standards or, if it attempts to do so, runs the risk that the standards so set for the first time may subsequently prove to be faulty. Thirdly, there is the need of providing for deviations and tolerances, many of which may be unknown at the time the particular standard is set. Fourthly, since a standard can be set only with reference to those characteristics of a product which it is desirable or feasible to take into account at a particular time, there is constant need for revision. New materials are produced; new processes of manufacture or production are devised; new uses are discovered. The rigidity which results from enactment into law might require the use of an obsolete standard. That statutes may be revised is no answer. It is well known that statutes are seldom submitted to constant revision. Furthermore, even were conscientious efforts made to keep the statute abreast of scientific and technical progress, changes must wait upon legislative sessions whereas a particular standard may become obsolete over night. It therefore appears that the legislators' function is limited to providing that mechanism which will best serve the purpose of the scientist or technician. Any attempt to set out standards in the act itself might seriously limit the effectiveness of a system of standards and grades. Moreover, while there are statutes which set out standards for particular products, the legislative task involved in the enactment of a statute which would contain precise definitions of identity and standards of quality for all food and drug products would be enormous.

It must be admitted, however, that there is at least one positive advantage in a statute which sets standards. That advantage is the certainty which is lent by the fact that the requirements are absolutely fixed. Nor is this assurance of small concern to business men. Industry cannot afford to be exposed to the risk, slight though it may be, of sudden and

44 See supra note 39.
45 See St. Louis v. Liessing, 190 Mo. 464, 89 S.W. 611 (1905).
46 See Burton, What the Food Manufacturer Thinks of S. 1944, 1 Law and Contemporary Problems 120 (1933).
frequent changes in the standards to which products must conform. The expense, inconvenience and, on occasion, the inability of adjusting productive processes to meet new requirements, as well as the possibility of loss resulting from contracts for the purchase or sale of products produced pursuant to existing requirements, constitute a burden which cannot frequently be imposed. It is questionable, however, whether this consideration is sufficiently persuasive to compel the adoption of a statute which contains standards, particularly in view of the fact that it is possible to accomplish the same end even though a statute merely provides for the setting of standards. Thus it is a simple matter to insert a provision limiting the frequency with which revisions might be made and requiring that adequate notice of any change be given before it becomes effective.

The desirability of the legislation merely providing that standards shall be fixed is not offset by the possible contention that standards set in the act have greater validity because of that fact. On the contrary, the Supreme Court has, consistently with its well-established doctrine that it will not interfere with the exercise of discretion of officers charged with the administration of an act, refused to review administrative standards fixed pursuant to statutory authority. Thus, for example, in *Houston v. St. Louis Packing Co.*, it refused to investigate the validity of a standard fixed by the Secretary of Agriculture under the Meat Inspection Act, where the record showed substantial evidence supporting the conclusion of the Secretary. This conclusion obtains despite such decisions as are illustrated by the recent case of *Nolan v. Morgan* in which the Circuit Court of Appeals set aside as arbitrary and unreasonable a minimum standard of quality for canned peas, promulgated by the Secretary of Agriculture pursuant to the authority granted by the McNary-Mapes amendment. Whether or not the decision is in conflict with the views ex-


In an attempt to insure that standards set by administrative officers will be accepted as prima facie evidence of the proper standards, the following provisions have been inserted in statutes. N.Y. Cahill's Consol. Laws (1930), tit. 1, § 160 (b) provides that "All rules, regulations and standards of quality and size or weight established under the authority of this statute shall have the force of law." N.C. Ann. Code (1931), § 4764 provides that the Board of Agriculture shall fix and publish standards "and these standards, when so published, shall be the standards before all courts." The same provision appears in Va. Code (Supp. 1926), § 1185.


49 69 F. (2d) 471 (C. C. A. 7th 1934). The court's ground for holding invalid the standard set by the Secretary was that it bore no relationship to the protection of either health or pocketbook.
pressed by the Supreme Court, is for the present, beside the point. It does not indicate that legislative standards have any greater force than those set by administrative officers. It may be that administrative standards will be subjected to more careful scrutiny. There are, however, numerous examples of legislative standards which received the same fate at the hands of a court as was accorded the standard of the Secretary of Agriculture in the Nolan case. The mere enactment into law of a standard or test will not make it immune from attack on the ground of its unreasonableness.

Another alleged claim of superiority for legislative standards as compared to those set by administrative officers is that the former are not open to the objection that they are in excess of the authority granted by the Act. Administrative standards have, in fact, been set aside on this ground. While it is true that this is inherent in the case of any legislative delegation of authority, the increasing tendency to resort to administrative rather than legislative regulation clearly indicates that this is an ob-

59 The recent case of Panama Refining Co. v. Ryan, 2 U.S. Law Week 409 (1935), does not conflict with the position advanced herein, although it may be necessary for Congress to indicate with greater precision the guides and considerations to be taken into account in the formulation of the administrative standards.


51 That either legislative or administrative standards or grades must meet the judicial concept of reasonableness is plain. The reasonableness of legislative and administrative standards has been considered in the following cases: W. B. Wood Mfg. Co. v. U.S., 292 Fed. 133 (C.C.A. 8th 1923); Ex parte Mefford, 110 Cal. App. 1, 292 Pac. 988 (1930) (statute providing that standards for citrus fruits might vary with respect to the locality in which the fruits were grown and the time they were picked); Ex parte Hayes, 134 Cal. App. 312, 25 P. (2d) 250 (1933); Marshall v. Dept. of Agriculture of Idaho, 44 Idaho 440, 258 Pac. 171 (1927) (number and range of grades); St. Louis v. Liessing, 190 Mo. 464, 89 S.W. 611 (1905); People v. Excelsior Bottling Works, 184 App. Div. 45, 171 N.Y.S. 733 (1918) (statute prohibiting the use of saccharine in the manufacture of carbonated waters); People v. Jacobowitz, 224 App. Div. 111, 229 N.Y.S. 369 (1928) (statute indirectly preventing the use of saccharine in the manufacture of carbonated waters). See also Fisher, The Proposed Food and Drugs Act: A Legal Critique, 1 Law and Contemporary Problems 74, 108 (1933).

jection not worthy of serious consideration. Moreover, by drafting the legislation in a form which, within the limits of a proper delegation of legislative authority, gives the administrative officer the widest amount of latitude in the formulation of standards, the likelihood of difficulty on this score may be minimized. That an administrative officer in promulgating a standard might fail to confine it within the limits of the statute is hardly a justifiable criticism of the mechanism selected but rather indicates the need for greater precision in the formulation of the standard.\footnote{An example of the need for greater precision in the formulation of standards is illustrated by Macy v. Browne, 224 Fed. 359 (C. C. A. 2d 1915); affd. in Waite v. Macy, 246 U.S. 605 (1918). A regulation of the Commissioner of Internal Revenue which set up standards of quality, purity, fitness for consumption and maximum coloring matter content was held not to be authorized by the Tea Importation Act which provided that standards should be set with reference to quality, purity and fitness for consumption. It would seem, since the statute did not provide for a standard with respect to the amount of coloring matter, that under the circumstances either the standard of purity or the standard of quality might have been so defined as to include coloring matter as one of the factors on the basis of which purity or quality was to be determined.}

In this connection, it should be noted that there is no doubt as to the validity of a provision authorizing administrative officers to fix and establish standards of quality.\footnote{55 Some statutes, however, have gone quite far in designating the factors to be taken into account. Thus the Cotton Futures Act, 39 Stat. 479, 481, § 9 (1916), 26 U.S.C.A. § 740 (1928), provides that the Secretary of Agriculture is authorized "to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form." Ore. Laws (1931), c. 116 goes even further. Sec. 2 provides: "All creamery butter manufactured or sold in the State of Oregon shall be graded upon a possible 100 points as follows: 1. Flavor, 45 points. 2. Body and Texture, 25 points. 3. Color, 15 points. 4. Salt, 10 points. 5. Package, 5 points."}

A third consideration which might be urged in favor of the adoption of legislative standards is that when a legislature adopts a standard it can do so with reference to such scientific data as it may choose to examine and upon the basis of whatever scientific principle it may deem fit, whereas it has no assurance that the administrative officer or agency to which the power to fix standards has been delegated will do so upon the basis of any scientific principle or even with reference to any scientific data at all.\footnote{A third consideration which might be urged in favor of the adoption of legislative standards is that when a legislature adopts a standard it can do so with reference to such scientific data as it may choose to examine and upon the basis of whatever scientific principle it may deem fit, whereas it has no assurance that the administrative officer or agency to which the power to fix standards has been delegated will do so upon the basis of any scientific principle or even with reference to any scientific data at all. Although it is extremely unlikely that an administrative officer would deign to set standards without full consideration of such scientific and scientific principle or even with reference to any scientific data at all. Although it is extremely unlikely that an administrative officer would deign to set standards without full consideration of such scientific and scientific data at all. Although it is extremely unlikely that an administrative officer would deign to set standards without full consideration of such scientific and}

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technical knowledge as is available,\textsuperscript{57} it may be conceded that a statute which failed to so provide could well be considered defective in this respect. While no federal statute provides that standards shall be scientifically determined, the latest proposal for a new food and drug act does provide that standards may be promulgated by the Secretary of Agriculture only after recommendation by a Food Standards Committee, public hearing, and approval of a majority of the committee.\textsuperscript{58} The procedure required provides a check against arbitrary action by the official to whom the authority is given but it offers little assurance that scientific principles will be employed in the setting of the standard. No one of the members of the committee "which shall consist of seven members, three of whom shall be selected from the public, two from the food-producing, -processing, -manufacturing, and -distributing industry, and two from the Administration" is required to be a scientist.\textsuperscript{59} Assuming that such adequate safeguards are included in the statute, the problem of determining the agency to which the authority to establish standards shall be delegated becomes largely academic.\textsuperscript{60} Whether it be an existing government agency or, as has been suggested, a "Department of the Consumer\textsuperscript{61}" or a "Consumers' Standards Bureau\textsuperscript{62}" is of no great concern.

III

Attention should now be directed to some provisions which are necessary to make effective the standards set in the manner described. The

\textsuperscript{57} See Campbell, Hearings before Subcommittee of Committee on Commerce on S. 1944, 73d Cong., 2d Sess. (1933), 36-37.

\textsuperscript{58} S. 5, § 703(c), 74th Cong., 1st Sess. (1935).

The vesting of broad discretionary powers for the setting of standards in the Secretary of Agriculture without any restrictions on its exercise or requirement that he exercise that power is severely criticised, Kallet, A Consumer Looks at the Food and Drugs Bill, i Law and Contemporary Problems 126, 128 (1933). See also Kallet and Schlink, 100,000,000 Guinea Pigs (1933), 197-199.

\textsuperscript{59} S. 5, § 703(b), 74th Cong., 1st Sess. (1935).

At least one other proposal is more thoroughgoing in this respect. "The Department of Consumer Act," suggested by Consumers' Research (see infra note 61), an unpublished draft of which the authors have examined, provides that standards shall be set by a committee, the members of which shall be required to be scientists. See Woodward, Hearings before Subcommittee of Committee on Commerce on S. 1944, 73d Cong., 2d Sess. (1933), 462.

\textsuperscript{60} But see Kallet, A Consumer Looks at the Food and Drugs Bill, i Law and Contemporary Problems 126, 128-132 (1933); Kallet and Schlink, 100,000,000 Guinea Pigs (1933), 197-199.


\textsuperscript{62} Proposal to Develop Standards for Consumers' Goods, Committee on Consumer Standards, Consumers' Advisory Board, National Recovery Administration (Dec. 1, 1933). Brady, Standards and the Consumer, Consumers' Advisory Board, National Recovery Administration (Mar. 7, 1934) (mimeographed).
importance of the need of providing for the proper nomenclature to be employed in identifying the various grades cannot be overemphasized. Grades devised primarily for consumer use and protection fail of their function unless consumers are informed of the relative merits of one grade as compared to another. This can be accomplished only by a proper system of nomenclature. An examination of some of the systems of nomenclature now in use clearly indicates their inadequacy. The use of superlatives and adjectives, implying varying degrees of excellence, such as "choice," "extra choice," "fancy," "extra fancy," "prime" and "standard"—a system which, with variations, is frequently incorporated in legislation—is of little assistance in indicating relative quality. That such terms may suggest one grade to one person and an entirely different one to another is illustrated by the fact that the word "fancy" may mean first grade in some instances, for example apples in Illinois, or, as in the case of asparagus in California, the sixth grade. Indeed, this may be true with respect to a single product. Thus "fancy" apples are first grade in some states and second grade in others. Another example of a system of nomenclature completely useless as a guide to grades is illustrated by the employment of arbitrarily selected terms, such as "goose," "owl," "lark," and "falcon," terms which in no way are suggestive of the quality of the article to which they are applied. Another common practice which is misleading and deceiving to consumers at present is the employment of "hidden" top grades. Thus in the case of one product the poorest

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63 A Survey of the Terms Used in Designating Qualities of Goods, Consumers' Advisory Board, National Recovery Administration (Sept. 1934); Coles, Standardization of Consumers' Goods (1932), 82, 102; Brady, Industrial Standardization, 247, 248, National Industrial Conference Board (1929); Kitchen, Standardization and Inspection of Farm Products, 4, Bureau of Agricultural Economics, U.S. Dept. of Agriculture (Dec. 1932) (mimeographed); Harriman, Standards and Standardization (1928), 108-110; Baldwin, Hearings before Subcommittee of Committee on Commerce on S. 5, 74th Cong., 1st Sess. (1935), 36, 37.

64 Ill. Stat. (1923), c. 5, § 33.

65 A Survey of the Terms Used in Designating Qualities of Goods, 42, Consumers' Advisory Board, National Recovery Administration (Sept. 1934).


68 A Survey of the Terms Used in Designating Qualities of Goods, 44, Consumers' Advisory Board, National Recovery Administration (Sept. 1934). The names "Sunkist" and "Red Ball" are used to indicate "Extra Choice" grade and "Choice" grade, respectively, of citrus fruits. Agnew and McNair, Certification and Labeling Activities in 60 Commodity Fields, 3 American Standards Association Bulletin 7 (1932).
grade is known as "best extra." In the case of another the fifth grade is called "Grade A-1," the other four grades being indicated as "Grade AAAA," "Grade AAA," "Grade AA" and "Grade A." In order to protect the consumer from such deceptions as these it would seem that the use of either an alphabetical or a numerical system of grade designation, such as A, B, C, D, etc. or 1, 2, 3, 4, etc., with A or 1, as the case may be, denoting the top grade, should be made obligatory. The experience gained in the administration of the Cotton Standards Act indicates that unless the adoption of the system is made mandatory the use of present systems is likely to be continued. Such alphabetical and numerical nomenclature systems have the virtue of being simple, flexible and easily remembered. The statute should, however, provide for the possibility of the use of a different system where the nature of the product or the factors upon which grades are based do not lend themselves either to numerical or to alphabetical designation.

The problem of revision of standards has already been touched upon. The need for constant revision to keep up with scientific and technical progress was one of the reasons urged against the incorporation of specific standards in the statute itself. Where the statute does not contain the

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69 A Survey of the Terms Used in Designating Qualities of Goods, 47, Consumers' Advisory Board, National Recovery Administration (Sept. 1934).

70 Id. 9. See also Coles, Standardization of Consumers' Goods (1932), 154.

71 If it were possible to so grade products, a system of indicating quality by means of numerical scores or ratings on the basis of 100 per cent would be equally, and perhaps even more useful. The Cotton Standards Act, 42 Stat. 1517 (1923), 7 U.S.C.A. § 52 (1927), prohibits, except where sales are made by sample, the use of any system of names, description or designation not used in the cotton standards set under the Act. A numerical system of grading is provided for in the standards set though each grade has an alternative descriptive name as well. Service and Regulatory Announcement, no. 92, Bureau of Agricultural Economics, U.S. Dept. of Agriculture (Aug. 1925).

The need for requiring that "A" or "1" indicate the top grade and that letters or numbers be used in order is illustrated by the provision therefor in the Naval Stores Act, 42 Stat. 1435, § 3 (1923), 7 U.S.C.A. § 93 (1927), which reads:

"The various grades of rosin, from highest to lowest, shall be designated, unless and until changed, as hereinbefore provided, by the following letters, respectively: X, WW, WG, N, M, K, I, H, G, F, E, D and B, together with the designation 'gum rosin' or 'wood rosin,' as the case may be.

"The standards herein made and authorized to be made shall be known as the 'Official Naval Stores Standards of the United States,' and shall be the standards by which all naval stores in commerce shall be graded and described."

72 A Survey of the Terms Used in Designating Qualities of Goods, 7, Consumers' Advisory Board, National Recovery Administration (Sept. 1934).
standards but provides for their promulgation by a designated administrative officer there would seem to be no need for a specific provision requiring periodic revision. On the contrary, it might be necessary to guard against the possibility of sudden and excessive revision by the use of a device similar to that contained in the Cotton Futures Act to the effect that no revision can be made until after an existing standard has been in force for some stated period of time or similar to that in the latest proposal for a new food and drug act requiring notice and a hearing prior to the adoption of any revised standard. If, however, the statute incorporates standards or adopts those set or to be set by an independent agency, as for example the Food and Drug Act which provides that the United States Pharmacopoeia shall be the standard for drugs, then it may be necessary to provide for periodic revision. The Pharmacopoeia is completely revised only every ten years, though interim revisions are authorized, and it is more than likely that technical advances will have the effect of making some of the standards obsolete before the time a particular revision is made.

The matter of tolerances and deviations must also be considered. The difficulty of precisely measuring the quality of particular products, the susceptibility of others to chemical changes due to the lapse of time or change in climatic conditions, the divergent uses to which particular products may be put, and the fact that despite honest efforts and the exercise of ordinary precaution a certain amount of error constantly occurs indicates the need for permitting such limited departures from absolute conformity to rigid standards as may be necessary. In consequence, it seems desirable that the statute make provision for the fixing of tolerances.


24 S. 5, § 703(c) 74th Cong., 1st Sess. (1935). That section further provides that a regulation promulgated after notice and hearing "shall become effective on a date fixed by the Secretary, which date shall not be prior to ninety days after its promulgation." The Cotton Standards Act, 42 Stat. 1518, § 6 (1923), 7 U.S.C.A. § 56 (1927), provides that the date on which a standard or change or replacement shall become effective shall not be less than one year after the date of the order establishing the standard, change or replacement. Ninety days notice is required by the Grain Standards Act, 39 Stat. 482, § 2 (1916), U.S.C.A. § 74 (1927). The Cotton Futures Act, 39 Stat. 479 § 9 (1916), 26 U.S.C.A. § 740 (1928), provides that no change or replacement of any standard shall become effective until after one year's public notice.

25 For this reason and also because of the situation which would be presented if the authority to make ad interim revisions were revoked, Mr. Walter G. Campbell, Chief of the Food and Drug Administration, Dept. of Agriculture, sought to justify § 4(b) of S. 1944, which was designed to make it possible for the Secretary of Agriculture to provide methods for determination of the standards of quality, strength and purity of drug products to supplement those already found in the United States Pharmacopoeia and National Formulary. Hearings before Subcommittee of Committee on Commerce on S. 1944, 73d Cong., 2d Sess. (1933), 29.
and deviations from standards or provide that in the establishment of standards necessary tolerances and deviations be allowed. Not only does it seem desirable to so provide, but doing so would remove any likelihood that standards, failing to provide for tolerances and deviations, could be attacked as unreasonable because of the impossibility of exact compliance.

IV

The enforcement problems incident to the establishment of a comprehensive mandatory system of standards and grades of quality are in character no different from those presented by the present Food and Drugs Act. The proper enforcement of any food and drug legislation necessitates provisions setting up adequate inspection machinery. This is especially true where the success of such an elaborate scheme is dependent upon securing complete adherence. The recognition of this need is attested to by the inclusion in the recent proposals of provisions for factory inspection. The pending bill goes so far as to provide for what appears to be compulsory inspection. Adequate inspection should not, however, be carried to the point where it unreasonably hampers and interferes with the ordinary business routine. It should be noted, in addition, that the extent to which inspection may be required would clearly seem to be limited by the prohibition against unreasonable searches and seizures.

Another question which is tied up with the problem of enforcing standards of quality is what provision, if any, should be made with respect to the tests, if any be necessary, to be employed in determining whether any violation in fact has occurred. The statute may provide that particular tests or those set by some independent body, such as the Association of

78 It is assumed that the system will be mandatory. It goes without saying that there is no assurance that a permissive system will produce any beneficial results.
80 By § 707(b) the district courts are authorized to restrain the interstate shipment of food, drugs and cosmetics if the owner, operator or custodian has denied permission after reasonable request. It may be therefore that inspection can be compelled only upon a showing of reasonable cause to suspect that a violation has occurred.
Official Agricultural Chemists, be employed or may provide that the administrative officer adopt such tests as he may deem reasonable. It has been suggested that statutes which specify the tests to be applied offer an opportunity to a person required to conform to the standards to determine for himself whether or not, in fact, he does conform. If the statute fails to do so, a person honestly attempting to conform may find himself in the predicament, because of the fact that different tests may lead to different results, of finding it necessary to justify the particular test which he employed. In like manner, the government in any prosecution might also be compelled to justify the test by which it had determined that a defendant had been guilty of a violation. Where this is true the same problem arises as is at present encountered, because of the lack of standards, in the enforcement of the adulteration and misbranding provisions of the Food and Drugs Act. But it is not necessary that the statute specify the test to avoid this difficulty. It would seem that the same end could be accomplished by the statute’s specifically requiring the administrative officer to specify, at the same time he promulgates the standards, the tests which are to be employed. Such provision will not only make for certainty but at the same time will permit the administrative officer both to adopt such tests as appear to him to be reasonable and to keep abreast of scientific and technical developments. Procedure similar to that governing the revision of standards may be adopted to prevent too sudden or too frequent change of tests. A system of standards and grades presents no peculiar problems with respect to what is an adequate sample of a product to be tested.

There remain to be considered but a few considerations arising out of the problem of enforcement, such as the magnitude, cost and burdens thereof. It is clear that the attempt to secure conformity to an elaborate standard and grade system carries with it a tremendous enforcement problem. Nor is it possible to minimize the enormity of the task. But this

81 Deems v. City of Baltimore, 80 Md. 164, 30 Atl. 648 (1894); St. Louis v. Grafema Dairy Co., 190 Mo. 507, 89 S.W. 627 (1905); Knapp v. Callaway, 52 F. (2d) 476 (D.C. N.Y. 1931).
82 St. Louis v. Grafema Dairy Co., supra note 81.
84 In U.S. v. 100 Barrels of Vinegar, 188 Fed. 471 (D.C. Minn. 1911), it was held that the fact that the regulations specified certain tests did not limit the government to the use of those tests.

The substitution of a new test, having sound scientific justification for its use, for a test long used and still employed by the trade is not unreasonable, Knapp v. Callaway, 52 F. (2d) 476 (D.C.S.D. N.Y. 1931).
problem reduces itself largely to a matter of providing adequate appropriation and securing competent personnel. As has been shown, the mechanics of inspecting, testing and sampling presents no unusual difficulties. The cost of enforcing the act, which may, in the aggregate, reach a sizeable amount—a factor often advanced as an insuperable objection to the adoption of any system of standards—has been rather convincingly shown to be practically insignificant on a per unit cost basis. In at least one case in which detailed inspection of the production of canned goods of the sort contemplated was made under the supervision of the Bureau of Agricultural Economics of the United States Department of Agriculture, the cost of inspection was found to be as little as $0.0002083 per can or about one-half cent per case. In no event does the cost compare to the potential savings, resulting from purchasing on a quality basis, which may be realized by consumers who would, in all likelihood, be more than willing to assume the burden of the slight increase in price which might be necessitated. It cannot be doubted that the setting up of a complicated and detailed system of standards and grades will tremendously increase the burden borne at present by persons dealing in foods and drugs of ascertaining whether or not the particular products conform to the requirements of the statute. While the burden may be so greatly increased as to prevent its being a complete answer, it has never been felt that the obligation imposed upon food and drug dealers of ascertaining this fact at their own peril is unreasonable. It appears, therefore, that no one of these considerations presents a serious obstacle. In any event, they are not of sufficient importance to condemn so salutary an improvement as would be realized by a system of standards and grades of quality.

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86 What This Quality Grading Business Is All About, Advertising and Selling, 26, 36 (Sept. 27, 1934). "In the case of the inspection of meat for wholesomeness, the cost is considerably under one-fiftieth of a cent per pound." Coles, Standardization of Consumers' Goods (1932), 152, citing The Inspection Stamp as a Guide to Wholesome Meat, 10–11, Misc. Circ. no. 63 U.S. Dept. of Agriculture (May, 1926).
87 The objection that a statute setting grades and standards would occasion great cost to a seller to ascertain whether or not products are up to the standard or grade is not a valid legal objection. City of New Orleans v. Vinci, 153 La. 528, 96 So. 110 (1923).
88 While this article has been limited to legislation with respect to foods and drugs, the same considerations would seem to be applicable, and with equal validity, were the legislation to encompass other consumers' goods.