Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Grain Inspection Program (Agriculture, Trade and Consumer Protection)

[LFB 2005-07 Budget Summary: Page 59, #3]

CURRENT LAW

Under an agreement with the United States Department of Agriculture's (USDA) Federal Grain Inspection Service, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) administers the state's grain inspection program. Inspection services are funded from program revenues derived from fees charged for inspection services.

GOVERNOR

Delete $2,200,300 and 38.57 positions annually that are used to administer the state's grain inspection program.

Further, require DATCP to transfer the unencumbered balances from its food safety and consumer protection, animal health, marketing, agricultural resource management and central administrative services GPR general program operations appropriations to the Department's grain inspection and certification appropriation account on June 30, of each fiscal year, if the Department's grain certification and inspection program expenditures have exceeded grain certification and inspection revenues as of that date. At the completion of a fiscal year (June 30), unencumbered expenditure authority in these GPR appropriations currently lapses to the general fund.

In addition, transfer $82,300 and 1.75 positions from DATCP's grain inspection appropriation to other PR appropriations as follows: (a) $54,400 and 1.15 positions (1.0 weights and measures inspector and 0.15 Trade and Consumer Protection Division unclassified administrator) to the weights and measures inspection program; (b) $18,900 and 0.5 financial specialist position to dairy trade regulation; and (c) $9,000 and 0.1 Trade Bureau director position to public warehouse regulation. Although under the bill, no staff or funding would remain for grain inspection beginning July 1, 2005, the Department of Administration could approve expenditures from the continuing appropriation and the positions could be maintained until June 30, 2006.

DISCUSSION POINTS

Federal Law

1. Under federal law, the following grain export and weighing services are mandatory: (a) official weighing of most grain exported from the United States and of intercompany barge grain received at export port locations; (b) official inspection of most grain exported from the United States; and (c) testing of all corn exported from the United States for aflatoxin (a harmful fungus) prior to shipment, unless the contract stipulates that testing is not required. However, mandatory inspection requirements do not apply in certain situations, such as instance where grain is not sold or described by grade, and for grain exporters that ship less than 15,000 metric tons of grain abroad annually. Federal Grain Inspection Service (FGIS) field offices provide mandatory inspection and weighing services or states that have been delegated authority at key export port locations in the U.S. As a result, official inspection and weighing of U.S. grain in domestic commerce is not mandatory and is performed upon request by authorized states and private agencies. These official agencies employ personnel licensed by the FGIS to provide services.

2. DATCP holds the authority to perform all grain inspections in the State of Wisconsin. This authority extends to inspections performed at the state's four export ports (Milwaukee, Superior, La Crosse and Prairie du Chien), and all non-export locations in the state's interior. The Milwaukee and Superior program staff, and, in some instances, limited-term employees (LTEs), inspect, and certify grain and processed commodities shipped to or from ports at Milwaukee, Superior and other locations in the state. DATCP charges federally-approved hourly rates for grain inspection, weighing and commodity inspection, or fees per truck, rail car, or sample for various services.

3. Federal law permits inspections performed at non-export locations to be done by the federal government, a state government, or a private agent. Authority for performing inspections at Wisconsin's non-export locations has been designated to the state by the federal government. Here, DATCP performs a wide range of voluntary inspection activities and related functions for rice, dry beans, peas, split peas, lentils, hops, and processed grain products. Further, the federal Grain Inspection, Packers and Stockyards Administration (GIPSA) has designated DATCP to perform voluntary inspection and weighing services at ports in the state for standardized grains and oilseeds. Federally trained and licensed state employees who are under the direct supervision of state program managers perform these functions. A federal GIPSA manager oversees the state program. DATCP collects fees for these services and pays a fee to GIPSA for each service performed.

4. A voluntary inspection allows suppliers of agricultural products and services the

opportunity to assure customers of the consistent quality of their products and services. Suppliers are then able to market themselves as "USDA Process Verified." However, this process does not relieve the supplier of meeting regulatory requirements issued by the USDA or other federal departments.

5. The current designation agreement with the federal government for performing inspections at these sites allows the state to give the federal government 90 days notice that the state will no longer be performing these inspections. However, federal officials indicate that if the state were to decide to give up its grain inspection authority, they would appreciate as much warning as possible, perhaps six months, to allow for the development of a contingency plan.

6. Were the state to return its designated (non-export location) grain inspection authority to the federal government, the federal government would use the six-month window to announce the inspection authority opening at the state's non-export locations and seek applications from private agents to perform inspections at these locations.

7. Federal law requires the federal or a state government to perform all grain inspections at export locations. Authority to perform inspections at Wisconsin's four export locations has been delegated to the state by the federal government. Under this authority, DATCP provides mandatory export inspection and weighing services for standardized grains and oilseeds. Federally trained and licensed state employees perform these functions under the direct supervision of a state program manager. A GIPSA manager then provides general oversight and monitoring of the program. DATCP collects fees for the services it provides and reimburses GIPSA a portion of the fee for supervision based on the service provided. For example, in Superior, DATCP fees range from $23.95 for each railcar inspected (of which GIPSA receives 95¢), to $11.30 for each truck inspected (30¢ to GIPSA). In Milwaukee, DATCP charges $30.95 for each railcar inspected (95¢ to GIPSA) and $9.30 for each truck inspected (30¢ to GIPSA).

8. DATCP officials indicate that federal law is somewhat unclear on the process involved were the state to return delegated authority for grain inspections to the federal government. DATCP officials say that if delegated authority were to be returned to the federal government, the state would work with the federal government to ensure the continuity of inspection services at the export sites in the state. DATCP officials indicate that the state would continue to perform inspections until the federal government was prepared to begin inspections.

State Grain Inspection Program

9. In 2004-05, DATCP is authorized $2,265,300 and 41.32 positions for its grain inspection responsibilities. Of these, 38.57 positions would be eliminated under the bill. The remaining 2.75 positions would be transferred to other appropriations as follows: (a) $54,400 and 1.15 positions (1.0 inspector, and 0.15 unclassified Division Administrator) to the weights and measures inspection program; (b) $18,900 and 0.5 financial specialist position to dairy trade regulation; (c) $9,000 and 0.1 Trade Bureau director position to public warehouse regulation; and (d) 1.0 program and planning analyst to the telephone solicitation (no-call) appropriation.

10. All revenues received by DATCP under its grain inspection program are deposited to, and expended from, its grain inspection PR appropriation. This appropriation only receives user fee revenues from DATCP's grain inspection operations, and does not receive any general tax revenues.

11. Most program revenue appropriations do not collect interest if they run a surplus, or pay interest if they run a deficit, as these amounts instead accrue to the state's general fund. However, in 1994, the Federal Grain Inspection Service (FGIS) sent DATCP a letter informing it that: (a) the U.S. Grain Standards Act was amended in 1993 to eliminate the authority for delegated states to use grain inspection revenues for the maintenance of other agricultural programs; (b) all revenues collected for performing official grain inspection and weighing services must be used to maintain those programs exclusively; and (c) requesting DATCP to make the necessary arrangements to implement this funding change starting in state fiscal year 1994-95. Since then, DATCP's grain inspection appropriation has collected or paid interest to the general fund when the account has a surplus or deficit.

12. Prior to 1995 Act 27, the state maintained separate appropriations for the Milwaukee and Superior inspection programs. However, in 1995, the state consolidated these programs into one grain inspection appropriation, but DATCP continues to track revenues and expenditures from the two programs separately.

13. The Milwaukee inspection program is authorized 6.85 positions (with 0.925 currently vacant). There are currently four inspectors and one supervisor at this port, and this level of staff is maintained year-round. Products inspected at this port consist mostly of corn, soybeans and wheat. This port has been in deficit since 1985, and had a July 1, 2004, deficit of $374,300. Milwaukee officials suggest that fees need to be increased in order to improve the port's financial outlook. In 2003-04, revenues were $485,000 with expenditures of approximately $520,000.

14. The Superior inspection program is authorized 32.72 positions that are located in Superior. Currently 25.72 of these positions are filled, which includes 20.92 inspectors, 2.8 supervisors, 1.0 financial specialist and 1.0 secretary. There are currently 7.0 vacancies. The majority of inspections performed in Superior are done for spring wheat and durum wheat. The balance at this port has steadily declined from $781,000 on July 1, 1997, to a deficit of $632,000 on July 1, 2004. In 2003-04, revenues totaled $1.6 million with expenditures of $1.9 million. However, Superior officials indicate they expect to break-even or perhaps generate a small profit in the current fiscal year.

15. DATCP currently uses LTEs for grain inspections that take place in La Crosse and Prairie du Chien. However, grain inspection staff indicate that while total LTE expenditures on the grain inspection program will be approximately $200,000 in 2004-05, they estimate LTE expenditures related to La Crosse and Prairie du Chien will be less than $20,000 (with revenues of around $40,000).

16. As of July 1, 2004, DATCP's grain inspection appropriation account carried a

combined deficit of approximately $1 million. Were the state to administer the grain inspection program for the entire biennium, DATCP officials project annual revenues of $2.2 million, and projected expenditures of $2.3 million in 2005-06 and $2.4 million in 2006-07 under current law. While revenue levels for the next two years are uncertain, the $2.2 million estimate would be consistent with average revenues over the last three fiscal years.

TABLE 1

Projected Grain Inspection Appropriation Account Condition

	2002-03	2003-04	2004-05	2005-06	2006-07
Opening Balance	-$418,600	-$580,300	-$1,006,300	-$1,043,200	-$1,147,100
Revenue	2,448,900	2,045,700	2,200,000	2,200,000	2,200,000
Expenditures	2,610,600	2,471,700	2,213,100	2,213,100	2,213,100
Reserves/Other			23,800	90,800	164,000
Total Expenditures	2,610,600	2,471,700	2,236,900	2,303,900	2,377,100
Closing Balance	-$580,300	-$1,006,300	-$1,043,200	-$1,147,100	-$1,324,200

17. As part of 2003 Act 33, $656,100 PR annually and 11.23 PR positions were deleted from DATCP's grain inspection program. This reduction was requested by DATCP in an attempt to bring authorized expenditures in-line with the anticipated revenues of the program.

Analysis

18. As part of its 2005-07 biennial budget 10% reduction plan, DATCP proposed eliminating its grain inspection program. The program has faced a deficit for a number of years, and Department officials indicate this has been largely due to the decrease in the shipping of grain through state ports, along with DATCP's inability to reduce labor costs quickly enough to match this drop in workload. For example, in Superior the shipping volume of grain has decreased from approximately 256 million bushels in 1999 to approximately 142 million bushels in 2003 (a decrease of nearly 45%). In calendar year 2004, grain volume increased slightly to approximately 146 million bushels.

19. Superior officials state that grain volume levels reached their lowest level in 27 years in 2003. They believe that the combination of increased prices, reduced employees, and increasing grain volume may yield a modest surplus in 2004-05, and expect financial conditions to continue to improve with increased grain volumes. However, DATCP and DOA officials project the state's combined grain inspection program to continue to be in deficit through the 2005-07 biennium.

20. Superior officials argue that one of the reasons for the decrease in grain volume at the port over the last few years was tariffs that were placed on foreign steel, which made foreign

steel more expensive in comparison to domestic steel. Superior officials state that when foreign steel is shipped to the U.S., it is typically back-loaded with grain to Europe. However, with the increase in the price of foreign steel relative to domestic steel, fewer shiploads of steel have been delivered to the U.S., which has also decreased the amount of grain that is back-loaded to Europe. With the end of these tariffs in December, 2003, Superior officials expect the grain volume to increase.

21. DATCP staff indicate that one reason for the decreasing grain volume moving through Milwaukee has been the increased demand for corn in the state related to the expanding ethanol production industry. They say that ethanol production facilities are willing to pay higher prices than state corn producers can get from shipping their corn elsewhere, and instead sell their corn to state ethanol plants, thereby reducing the amount of corn that is shipped through Milwaukee.

22. DATCP officials state that state operation of the program may offer many advantages over federal or private responsibility of grain inspection, including potentially lower inspection fees and shorter turn-around time for inspections. However, they state that the Department has been unable to improve the financial outlook of the program through reducing costs, or increasing fees (the last increase became effective in June, 2004, and applied to fees in Superior). They state that the Department wants to focus on agricultural development issues, and while important, even if the Department ceased grain inspections, the responsibility would be assumed by the federal government or a private agent.

23. One argument made by supporters of the state maintaining the authority to perform grain inspections is that state inspection fees are less than those that would be charged by the federal government. However, it is uncertain whether this would be the case because while the state generally charges an hourly fee for inspections it performs, the federal government charges a flat fee for each service it performs. Therefore, it is difficult to compare the prices charged by the two entities, without making a number of assumptions on the amount of time each service would take. Further, it should also be noted that some officials indicate private agent fees tend to be less than the fees charged by the state for inspections.

24. DATCP officials say that current financial difficulties faced by the program are largely related to employee costs. They indicate about 90% of expenditures under the program are directly related to employee salary and fringe benefit costs. A number of inspectors have been employed by the state for a long period of time and are approaching retirement, with their salaries near the top of the pay scale for their positions.

25. In addition to high costs related to current workers, the Department is also unable to reduce employee numbers to more accurately reflect the demand for inspections. For example, while DATCP is able to pass inspection overtime costs on to customers, because of contract stipulations, the Department is unable to efficiently schedule workers to account for slow times that occur during regular day-time working hours. DATCP has also been unable to effectively reduce staffing costs related to the decrease in volume that the Superior port has experienced over the last five years (a decrease in volume of over 40%). DATCP officials indicate the port's busiest part of

the year lasts from August through December, and, in order to save costs, the Department would like to be able to reduce the number of inspectors to the amount that would be required for January through July, and hire limited-term employees (LTEs) to assist during the busy times of the year. However, current union contracts require DATCP to rehire any permanently laid-off inspectors before any LTEs can be hired. As a result, the Department has been unable to realize significant cost savings from reduced employee salary or fringe benefit costs associated with LTEs as long as employees are laid-off.

26. If DATCP were to continue its grain inspection functions, it would need to lower costs to be less than available revenues. One way to do this would be to reduce the number of positions authorized to the grain inspection program, and use limited-term employees (LTEs) when necessary. Using LTEs for limited periods during peak times could substantially reduce costs. In addition, former grain inspection employees who retire may be available as LTEs when needed during the busy portion of the grain inspection season. This may allow for an existing group of trained and experienced LTEs to be available.

27. Of the 38.57 grain inspection positions that are eliminated in the bill, 7.925 positions are currently vacant. These positions have been held vacant in order to reduce costs at the ports. As a result, if the Committee did not eliminate the grain inspection program, it could eliminate these 7.925 positions and associated funding of $275,600 annually in order to lower the costs associated with operating the grain inspection program (alternative #3). This would be expected to yield program costs of under $2.1 million. Under this scenario, the grain inspection appropriation account balance would be projected to improve by over $350,000 over the biennium. However, a deficit of over $680,000 would still be expected as shown in Table 2.

TABLE 2

Grain Inspection Account Balance under Alternative #3

	2005-06	2006-07
Opening Balance	-$1,043,200	-$836,000
Revenue	2,200,000	2,200,000
Expenditures	1,924,700	1,924,700
Reserves/Other	68,100	123,000
Total Expenditures	1,992,800	2,047,700
Closing Balance	-$836,000	-$683,700

28. In an attempt to reduce costs, during the winter months in Superior, permanent grain inspection employees are typically laid-off to reflect the reduced volume of grain that is inspected at the port. This process usually involves inspectors taking turns being temporarily laid-off for up to

three weeks at a time.

29. In addition, Superior officials state that 22 of their current employees have 25 years of experience or more. They argue that attrition due to employee retirements over the next few years will lower costs associated with the program such that expenditures will no longer exceed revenues. Specifically, Superior officials expect at least 2.8 FTE employees to retire by the end of calendar year 2005, and state that a total of 8.8 FTE Superior employees will be eligible for retirement before July 1, 2006 (although it is uncertain whether all nine of these eligible employees will retire in 2006).

30. Therefore, another option the Committee could consider to decrease program costs would be to reduce permanent staff and use LTEs when necessary. As a result, in addition to eliminating the 7.925 currently vacant positions, an additional 5.8 of the 8.8 positions whose incumbents are expected to retire, or become eligible for retirement, by mid-2006, could be deleted (2.8 positions in 2005-06 and an additional 3.0 positions in 2006-07). Further, increased LTE funds could be provided to meet seasonal demands. This would restore 24.845 permanent positions (27.845 in 2005-06). Were the Committee to adopt this alternative (alternative #4), expenditures could be estimated at less than $2 million annually. Increased LTE salaries of $74,200 would be provided in 2006-07. Table 3 depicts a projection of the grain inspection account balance under this alternative. While a deficit of over $0.4 million would still be expected on June 30, 2007, this amount may be further reduced by the GPR operations appropriation transfer provision under the bill. Further if this alternative did not produce a significant decrease in the program deficit, closing the state program could still be considered in future biennia.

TABLE 3

Grain Inspection Account Balance under Alternative #4

	2005-06	2006-07
Opening Balance	-$1,043,200	-$770,800
Revenue	2,200,000	2,200,000
Expenditures	1,866,800	1,766,900
Reserves/Other	60,800	98,400
Total Expenditures	1,927,600	1,865,300
Closing Balance	-$770,800	-$436,100

31. In November, 2004, a joint Minnesota-Wisconsin Grain Analysis Advisory Committee (which consists of a grain industry representative, a department representative, a port director, an employee representative, and a union representative from each state) recommended that the grain inspection programs in Minnesota and Wisconsin (both of which are operated under authority granted by the USDA) be discontinued as currently administered by the two separate

states. This recommendation was made due to the reductions in grain shipments made through the states' ports, and the financial difficulties faced by both programs.

32. Minnesota and Wisconsin have currently jointly commissioned a study to examine the grain shipping programs and industry for the purpose of making recommendations related to business models for grain inspection services. Draft recommendations of the study were delivered to DATCP in April, 2005. Based on the conclusion that future volumes through the Superior and Duluth ports will not be able to sustain two separate inspection services, the draft recommended that the current services provided at the Superior and Duluth ports be administered under one authority. The draft did not recommend a specific organization structure, and suggested that one state administer both programs, or, preferably, the two states form a new entity that would be jointly owned to administer the grain inspection programs at the ports. However, it is uncertain, and no recommendations were made regarding, how this entity would be formed, or what percentage stake each state would have in the operation.

33. The Minnesota-Wisconsin Grain Analysis Advisory Committee is currently reviewing the recommendations made by the joint study, and is expected to issue their own recommendations in May, 2005. The Committee could approve the Governor's recommendation to delete the grain inspection program in 2005-06. However, if a viable alternative is found to continue Wisconsin or joint services, DATCP and DOA could advance a plan for consideration of the Committee under the 14-day passive review process (s. 16.505/515) to restore necessary staff and funding.

34. Many businesses and grain exporters argue against Wisconsin giving up its grain inspection authority. They argue that the state does a good job with its inspection services and that they are generally satisfied with services. They do not have specific concerns related to an alternative inspection service provider, but rather argue there are not significant problems with the state's inspection services, so they should not be tampered with. Further, in light of the current deficit faced by the grain inspection program, some exporters indicate they would be willing to consider a modest fee increase if DATCP maintained grain inspection authority for the state. Federal officials say they would be open to authorizing a fee increase for grain inspections performed under the state program provided the state can justify these fee increases. They emphasize that being able to justify any increase is crucial since the state is the sole provider of grain inspection services in the state under current law. As a result, one option to improve the financial outlook of the state's grain inspection program would be for DATCP to pursue a fee increase for grain inspection services (particularly in Milwaukee).

35. Federal officials indicate that the State of Mississippi has transferred authority for grain inspections back to the federal government, and the State of California is currently undertaking this process. Federal officials indicate that if the state gave up authority for mandatory inspections (delegated authority), the federal government would assume this responsibility, while if the state gave up the authority for voluntary inspections (designated authority), the federal government would pursue an interested private agent to administer this authority.

36. Federal officials say that if the state were to give up its inspection authority, the crucial aspect for them would be having sufficient notice so they have time to develop a contingency plan. For mandatory inspections, the federal government would assume the responsibility for all inspections. The amount of time that would be needed for this transfer is uncertain, as the federal government would need to acquire equipment, office space and staff for these operations. One option that federal officials indicate they would examine in order to accelerate the transition process, were grain inspection authority to revert to the federal government, would be for the federal government to purchase the state's grain inspection equipment. In addition, it is possible that the federal government would hire some of the former state grain inspectors should authority be transferred. However, were this authority to be transferred back to the federal government, federal officials indicate they would likely use a smaller core group of full-time employees to administer the program, along with a number of part-time staff during the busier portions of the season.

37. Further complicating matters is the volume of the inspections that would be transferred back to the federal government, which federal officials say is much larger than any other transfer they have overseen. For voluntary inspections, the federal government would pursue private agents to administer grain inspection authority in the state. If they were unable to find a willing private agent, the federal government would also assume this responsibility. While federal officials are uncertain how much time would be needed to allow for the transition between state and federal authority, they indicate that the transition could probably be accomplished in six months. In addition, were the state to give up its grain inspection authority, federal officials would strongly recommend making this transition in the off-season winter months at Superior, preferably sometime between January and March. As a result, one option the Committee could consider would be transferring the state's grain inspection authority back to the federal government in February, 2006. This would require the state to provide seven months of funding for grain inspection in 2005-06, or restoring $1,122,700 (alternative #2). However (as previously mentioned), it should be noted that under this scenario no additional position authority would need to be provided to DATCP, as DATCP could continue to fund positions deleted in 2005-06 until June 30, 2006.

GPR General Operations Appropriations Lapse Provision

38. DATCP currently has five GPR general operations appropriations: (a) food safety and consumer protection; (b) animal health; (c) marketing; (d) agricultural resource management; and (e) central administrative services. Under the Governor's recommendations, remaining unencumbered balances in these appropriations at the end of a fiscal year (June 30), would be transferred to DATCP's grain inspection PR appropriation account, provided there was a deficit in the account. Currently, at the completion of a fiscal year, all remaining expenditure authority lapses to the state's general fund. In 2002-03 and 2003-04, approximately $200,000 lapsed from these appropriations each year that was unrelated to lapses required by budget reduction legislation. The Governor made this recommendation with the goal of helping to eliminate the deficit that currently exists in DATCP's grain inspection appropriation account ($1 million as of July 1, 2004). While this provision may significantly reduce the PR appropriation deficit over the next several years, the provision also reduces general fund lapses that would otherwise occur. The Committee could

consider sunsetting this provision on July 1, 2009.

ALTERNATIVES

1. Approve the Governor's recommendations to delete $2,200,300 and 38.57 positions annually that are used to administer the state's grain inspection program and transfer remaining staff from DATCP's grain inspection appropriation to other PR appropriations. Further, require DATCP to transfer all the unencumbered balances from its five GPR general program operations appropriations to the Department's grain inspection and certification appropriation account on June 30, of each fiscal year, if the Department's grain certification and inspection program expenditures have exceeded grain certification and inspection revenues as of that date.

2. Modify the Governor's recommendation to restore funding of $1,122,700 in 2005-06 to support 30.645 positions for seven months of grain inspection program operations, to correspond with an anticipated February, 2006, transfer of grain inspection authority to the federal government. However, allow DATCP and DOA to seek approval under a 14-day passive review procedure to continue some level of operations beyond June, 2006, if an agreement is reached with Minnesota or the federal government.

Alternative 2	PR
2005-07 FUNDING (Change to Bill)	$1,122,700

3. Modify the Governor's recommendation to restore $1,924,700 PR annually and 30.645 PR positions (7.925 vacant grain inspection positions and associated funding of $275,600 annually would be deleted).

Alternative 3	PR
2005-07 FUNDING (Change to Bill)	$3,849,400
2006-07 POSITIONS (Change to Bill)	30.645

4. Modify the Governor's recommendation to restore $1,866,800 PR and 27.845 PR positions in 2005-06 and $1,766,900 PR and 24.845 PR positions in 2006-07 (reductions of $333,500 PR and 10.725 PR positions in 2005-06 and $433,400 PR and 13.725 PR positions in 2006-07 to reflect the current 7.925 vacancies and another 5.8 retirements anticipated by June, 2007).

Alternative 4	PR
2005-07 FUNDING (Change to Bill)	$3,633,700
2006-07 POSITIONS (Change to Bill)	24.845

5. Sunset the DATCP general operations GPR balance transfer provision on July 1, 2009.

6. Maintain current law.

Alternative 6		**PR**
2005-07 FUNDING	(Change to Bill)	$4,400,600
2006-07 POSITIONS	(Change to Bill)	38.57

Prepared by: Christopher Pollek