

**AGRICULTURAL MARKETING AGREEMENT ACT OF 1937,<sup>1</sup>**  
**REENACTING, AMENDING, AND SUPPLEMENTING THE AGRICULTURAL**  
**ADJUSTMENT ACT, AS AMENDED**

**(7 U.S.C. 601, 602, 608a–608e, 610, 612, 614, 624, 627, 671–674)**

AN ACT To reenact and amend provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following provisions of the Agricultural Adjustment Act, as amended, not having been intended for the control of the production of agricultural commodities, and having been intended to be effective irrespective of the validity of any other provision of that Act are expressly affirmed and validated, and are reenacted without change except as provided in section 2:

**(a) Section 1** (relating to the declaration of emergency);

DECLARATION

[It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce. (7 U.S.C. 601.)]<sup>2</sup>

**(b) Section 2** (relating to declaration of policy);

DECLARATION OF POLICY

[SEC. 2. It is hereby declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish, as the prices to farmers, parity prices as defined by section 301 (a)(1) of the Agricultural Adjustment Act of 1938.<sup>3</sup>

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems

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<sup>1</sup> Approved June 3, 1937, 50 Stat. 246. Section 1 of this Act reenacted the following sections of Title 1 of the Agricultural Adjustment Act of 1933, as amended: 1; 2; 8a(5), (6), (7), (8), (9); 8b; 8c; 8e; 10(a), (b)(2), (C), (f), (g), (h), (I); 12(a), (C); 14; 22. The language of the provisions which were reenacted (with all amendments up to date of printing) are set forth in brackets after the appropriate subsections.

<sup>2</sup> The Agricultural Act of 1970, Pub. L. 91-524, 84 Stat. 1361, (7 U.S.C. 601 note), as reenacted and amended by the Agriculture and Consumer Protection Act of 1973, Pub. L. 93-86, 87 Stat. 224, Pub. L. 95-113, 91 Stat. 919, Sept. 29, 1977; Pub. L. 97-98, 95 Stat. 1219, Dec. 22, 1981; Pub. L. 99-198, 99 Stat. 1373, Dec. 23, 1985; and Pub. L. 101-624, 104 Stat. 3381, Nov. 28, 1990

specifies “The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 shall be the same after the amendments made by this title take effect as it was before the effective date of the amendments.”

<sup>3</sup> Amended by section 302 of the Agricultural Act of 1948 (July 3, 1948, 62 Stat. 1247) to refer to parity prices as defined in the Agricultural Adjustment Act of 1938.

to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section.

(3) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such production research, marketing research, and development projects provided in section 8c(6)(I),<sup>4</sup> such container and pack requirements provided in section 8(c)(6)(H)<sup>5</sup> such minimum standards of quality and maturity and such grading and inspection requirements for agricultural commodities enumerated in section 8c(2), other than milk and its products, in interstate commerce as will effectuate such orderly marketing of such agricultural commodities as will be in the public interest.<sup>6</sup>

(4) Through the exercise of the power conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for any agricultural commodity enumerated in section 8c(2) as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices.<sup>7</sup>

(5) Through the exercise of the power conferred upon the Secretary of Agriculture under this title, to continue for the remainder of any marketing season or marketing year, such regulation pursuant to any order as will tend to avoid a disruption of the orderly marketing of any commodity and be in the public interest, if the regulation of such commodity under such order has been initiated during such marketing season or marketing year on the basis of its need to effectuate the policy of this title.<sup>8</sup> (7 U.S.C. 602.)]

(c) **Section 8a (5), (6), (7), (8), and (9)** relating to violations and enforcement);

#### VIOLATIONS AND ENFORCEMENT

[SEC. 8a. (5) Any person exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture and any other person knowingly participating or aiding in the exceeding of such quota or allotment shall forfeit to the United States a sum equal to the value of such excess at the current market price for such commodity at the time of violation, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.<sup>9</sup>

(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.

(7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several United States attorneys, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating the provisions of any order or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to determine

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<sup>4</sup> Authority for production research under marketing agreements and orders was added by Pub. L. 91-292, 84 Stat. 333, June 25, 1970.

<sup>5</sup> The words "such container and pack requirements provided in section 8(c)(6)(H)" were added by Pub. L. 89-330, 79 Stat. 1270, Nov. 8, 1965.

<sup>6</sup> Subsection (3) added by Act of Aug. 1, 1947, 61 Stat. 707.

<sup>7</sup> Subsection (4) added by section 401 of the Agricultural Act of 1954, 68 Stat. 906.

<sup>8</sup> Subsection (5) added by section 141 of the Agricultural Act of 1961 (Aug. 8, 1961, 75 Stat. 303).

<sup>9</sup> Amended by section 141 of the Agricultural Act of 1961 (Aug. 8, 1961, 75 Stat. 304).

the facts for the purpose of referring the matter to the Attorney General for appropriate action.

(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or in equity.

(9) The term “person” as used in this title includes an individual, partnership, corporation, association, and any other business unit.  
(7 U.S.C. 608a.)]

**(d) Section 8b** (relating to marketing agreements);

#### MARKETING AGREEMENTS

[SEC. 8b.<sup>10</sup> (a) In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided*, That no such agreement shall remain in force after the termination of this Act.

(b)(1) If an agreement with the Secretary is in effect with respect to peanuts pursuant to this section—

(A) all peanuts handled by persons who have not entered into such an agreement with the Secretary shall be subject to inspection to the same extent and manner as is required by such agreement;

(B) no such peanuts shall be sold or otherwise disposed of for human consumption if such peanuts fail to meet the quality requirements of such agreement; and

(C)<sup>11</sup> any assessment (except with respect to any assessment for the indemnification of losses on rejected peanuts) imposed under the agreement shall—

(i) apply to peanut handlers (as defined by the Secretary) who have not entered into such an agreement with the Secretary in addition to those handlers who have entered into the agreement; and

(ii) be paid to the Secretary.

(2)<sup>12</sup> Violation of this subsection by a person who has not entered into such an agreement shall result in the assessment by the Secretary of a penalty equal to 140 percent of the support price for quota peanuts multiplied by the quantity of peanuts sold or disposed of in violation of subsection (b)(1)(B), as determined under section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c-3), for the marketing year for the crop with respect to which such violation occurs. (7 U.S.C. 608b)]

**(e) Section 8c** (relating to orders)

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<sup>10</sup> Pub. L. 101-220, 103 Stat. 1878, Dec. 12, 1989, designated existing provisions as subsection (a) and added subsection (b), to require peanut handlers who have not signed the marketing agreement to meet the same quality requirements as specified in the peanut marketing agreement. Sec. 4(c) of Pub. L. 101-220, 103 Stat. 1878, Dec. 12, 1989, provided that: “The amendment made by this section shall be effective with respect to 1990 and subsequent crops of peanuts.”

<sup>11</sup> Sec. 1109(b) of Pub. L. 103-66, 107 Stat. 326, Aug. 10, 1993, added subparagraph (C), requiring non-signers of the peanut agreement to pay the same assessments as the signers.

<sup>12</sup> Sec. 115(1) of Pub. L. 102-237, 105 Stat. 1840, Dec. 13, 1991, struck “7 U.S.C. 1445c-2” and inserted “1445c-3”.

## ORDERS

[SEC.1 8c. (1)<sup>13</sup> The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time, amend orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as “handlers.” Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. In carrying out this section, the Secretary shall complete all informal rulemaking actions necessary to respond to recommendations submitted by administrative committees for such orders as expeditiously as possible, but not more than 45 days (to the extent practicable) after submission of the committee recommendations. The Secretary is authorized to implement a producer allotment program and a handler withholding program under the cranberry marketing order in the same crop year through informal rulemaking based on a recommendation and supporting economic analysis submitted by the Cranberry Marketing Committee. Such recommendation and analysis shall be submitted by the Committee no later than March 1 of each year.<sup>14</sup> The Secretary shall establish time frames for each office and agency within the Department of Agriculture to consider the committee recommendations.

### COMMODITIES TO WHICH APPLICABLE

(2) Orders issued pursuant to this section shall be applicable only to (A) the following agricultural commodities and the products thereof (except canned or frozen pears, grapefruit, cherries, apples, or cranberries,<sup>15</sup> the products of naval stores, and the products of honeybees), or to any regional, or market classification of any such commodity or product: Milk, fruits (including filberts, almonds,<sup>16</sup> pecans and walnuts but not including apples, other than apples produced in the States of Washington, Oregon, Idaho, New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, Connecticut, Colorado, Utah, New Mexico, Illinois, and Ohio<sup>17</sup> and not including fruits for canning or freezing other than pears, olives, grapefruit, cherries, caneberries (including raspberries, blackberries, and loganberries), cranberries, and apples produced in the States named above except Washington, Oregon, and Idaho),<sup>18</sup> tobacco, vegetables (not including vegetables, other than asparagus, for canning or freezing and not including potatoes for canning, freezing, or other processing<sup>19</sup>), hops, honeybees, and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin): *Provided*, That no order issued pursuant to this section

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<sup>13</sup> Pub. L. 102-553, 106 Stat. 4141, Oct. 28, 1992, added the requirement for USDA to expedite rulemaking for Federal marketing orders.

<sup>14</sup> Provision added by Pub. L. 107-76, Sec. 765, 115 Stat. 743, Nov. 28, 2001, that authorizes a producer allotment program and a handler withholding program under the Cranberry Marketing Order in the same crop year.

<sup>15</sup> “Pears,” added by Pub. L. 92-466, 86 Stat. 780, Oct. 6, 1972. The words “cherries, apples, or cranberries,” were added by section 141 of the Agricultural Act of 1961, 75 Stat. 304, August 8, 1961.

<sup>16</sup> The words “filberts, almonds,” were added by the Act of June 29, 1949, 63 Stat. 282.

<sup>17</sup> Authority to provide for marketing orders for apples produced in Colorado, Utah, New Mexico, Illinois, and Ohio was added by Pub. L. 91-341, July 18, 1970, 84 Stat. 438.

<sup>18</sup> Pub. L. 107-171, Sec. 10601(a), 116 Stat. 511, May 13, 2002, added “caneberries (including raspberries, blackberries, and loganberries)”. The language referring to the States, other than Idaho, was added by section 141 of the Agricultural Act of 1961. “Pears,” added by Pub. L. 92-466, Oct. 6, 1972, 86 Stat. 780.

<sup>19</sup> The words “and not including potatoes for canning, freezing, or other processing” were added by Pub. L. 91-196, 84 Stat. 14.

shall be effective as to any grapefruit for canning or freezing unless the Secretary of Agriculture determines, in addition to other findings and determinations required by this Act, that the issuance of such order is approved or favored by the processors who, during a representative period determined by the Secretary, have been engaged in canning or freezing such commodity for market and have canned or frozen for market more than 50 per centum of the total volume of such commodity canned or frozen for market during such representative period; and (B) any agricultural commodity (except honey, cotton, rice, wheat, corn, grain sorghums, oats, barley, rye, sugarcane, sugarbeets, wool, mohair, livestock, soybeans, cottonseed, flaxseed, poultry (but not excepting turkeys and not excepting poultry which produce commercial eggs), fruits and vegetables for canning or freezing, including potatoes for canning, freezing, or other processing,<sup>20</sup> and apples), or any regional or market classification thereof, not subject to orders under (A) of this paragraph, but not the products (including canned or frozen commodities or products) thereof. No order issued pursuant to this section shall be effective as to cherries, apples, or cranberries for canning or freezing unless the Secretary of Agriculture determines, in addition to other required findings and determinations, that the issuance of such order is approved or favored by processors who, during a representative period determined by the Secretary, have engaged in canning or freezing such commodity for market and have frozen or canned more than 50 per centum of the total volume of the commodity to be regulated which was canned or frozen within the production area, or marketed within the marketing area, defined in such order, during such representative period. No order issued pursuant to this section shall be applicable to peanuts produced in more than one of the following production areas: the Virginia-Carolina production area, the Southeast production area, and the Southwest production area. If the Secretary determines that the declared policy of the title will be better achieved thereby (i) the commodities of the same general class used wholly or in part for the same purposes may be combined and treated as a single commodity and (ii) the portion of an agricultural commodity devoted to or marketed for a particular use or combination of uses, may be treated as a separate agricultural commodity. All agricultural commodities and products covered hereby shall be deemed specified herein for the purposes of section 8c (6) and (7) of this title.

#### NOTICE AND HEARING

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

#### FINDING AND ISSUANCE OF ORDER

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by the section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

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<sup>20</sup> Pub. L. 98-180, 97 Stat. 1151, Nov. 29, 1983, authorized eggs and poultry which produce commercial eggs for marketing orders. The words "including potatoes for canning, freezing, or other processing," were added by Pub. L. 91-196, 84 Stat. 14. Pub. L. 91-196 is effective only from date of enactment (Feb. 20, 1970) to two years afterward (Feb. 20, 1972). Pub. L. 92-233, Feb. 15, 1972, 86 Stat. 39, made permanent the amendment to the Act.

## TERMS—MILK AND ITS PRODUCTS

(5)<sup>21</sup> In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A)<sup>22</sup> Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use

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<sup>21</sup> Sec. 107 of Pub. L. 97-98, 95 Stat. 1220 states: “Not later than Dec. 31, 1982, the Secretary of Agriculture shall submit to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry a report describing the strengths and weaknesses of existing Federal programs, and the consequences of possible new programs, for controlling or minimizing surpluses of fluid milk and the products thereof. The report shall include, but need not be limited to, an assessment, on a region by region basis, of the effect of existing and proposed pricing mechanisms on supply and demand conditions, including the impact on farm income and consumer costs. The report shall also describe the social costs and benefits associated with such programs.”

Sections 103 and 104 of Pub. L. 101-624, 104 Stat. 3379, Nov. 28, 1990 state:

**“Sec. 103. Minnesota-Wisconsin Price Series Reform.**

“(a) IN GENERAL.—Within 60 days of the date of enactment of this Act, the Secretary of Agriculture shall commence to accept alternative pricing formula recommendations, as they may relate to the Minnesota-Wisconsin price series used to determine the minimum prices paid under milk marketing orders, in order to amend such milk marketing orders authorized under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937. Among the alternative pricing formulas to be considered by the Secretary shall be a price series based on prices paid by milk processors for Grade A milk and manufacturing grade milk that is used in the manufacture of dairy products.

“(b) AVAILABILITY OF DATA.—The Secretary shall compile and make available to the public the historical and current data used to compare the alternative pricing formulas submitted and recommended as provided in subsection (a) with the existing Minnesota-Wisconsin price series.

“(c) IMPLEMENTATION IN FEDERAL MARKETING ORDERS.—

“(1) ANNOUNCEMENT OF HEARING.—Not later than Oct. 1, 1991, the Secretary shall—

“(A) announce a national hearing to consider the proposed replacement of the Minnesota-Wisconsin price series in Federal milk marketing orders; and

“(B) invite industry and consumer proposals on the specific provisions to be considered for each order.

“(2) REPORT TO CONGRESS.—On issuance of the final decision on the hearing proposals, the Secretary shall report the decision to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

“(3) OPPORTUNITY FOR PUBLIC COMMENT.—The opportunity for public comment on the recommended decision shall not be less than 30 legislative days. For purposes of this paragraph, the term ‘legislative day’ means a day on which either House of Congress is in session.

**“Sec. 104. Hearings on Federal Milk Marketing Orders.**

“The Secretary of Agriculture shall—

“(1) conclude the national hearings announced by the Secretary on Mar. 29, 1990, regarding possible changes in the pricing provisions of Federal milk marketing orders; and

“(2) to the maximum extent practicable consistent with applicable laws, effect any resulting system-wide changes in the Federal orders setting minimum prices that milk processors must pay for Grade A milk received from producers by Jan. 1, 1992.” (7 U.S.C. 608c note.)

<sup>22</sup> Pub. L. 99-198, 99 Stat. 1372, Dec. 23, 1985, amended subparagraph (A) to require adjustment to the Class I prices for fluid milk under marketing orders as specified for a two-year period, and subsequently unless modified by amendments, and are to be effective the first day of the first month that occurs more than 120 days after enactment (May 1, 1986).

classification thereof, is made to such handlers. Throughout the 2-year period beginning on the effective date of this sentence (and subsequent to such 2-year period unless modified by amendment to the order involved), the minimum aggregate amount of the adjustments, under clauses (1) and (2) of the preceding sentence, to prices for milk of the highest use classification under orders that are in effect under this section on the date of the enactment of the Food Security Act of 1985 shall be as follows:

Marketing Area Subject to Order	Minimum Aggregate Dollar Amount of Such Adjustments Per Hundredweight of Milk Having 3.5 Percent Milkfat
New England . . . . .	\$3.24
New York-New Jersey . . . . .	3.14
Middle Atlantic . . . . .	3.03
Georgia . . . . .	3.08
Alabama-West Florida . . . . .	3.08
Upper Florida . . . . .	3.58
Tampa Bay . . . . .	3.88
Southeastern Florida . . . . .	4.18
Michigan Upper Peninsula . . . . .	1.35
Southern Michigan . . . . .	1.75
Eastern Ohio-Western Pennsylvania . . . . .	1.95
Ohio Valley . . . . .	2.04
Indiana . . . . .	2.00
Chicago Regional . . . . .	1.40
Central Illinois . . . . .	1.61
Southern Illinois . . . . .	1.92
Louisville-Lexington-Evansville . . . . .	2.11
Upper Midwest . . . . .	1.20
Eastern South Dakota . . . . .	1.50
Black Hills, South Dakota . . . . .	2.05
Iowa . . . . .	1.55
Nebraska-Western Iowa . . . . .	1.75
Greater Kansas City . . . . .	1.92
Tennessee Valley . . . . .	2.77
Nashville, Tennessee . . . . .	2.52
Paducah, Kentucky . . . . .	2.39
Memphis, Tennessee . . . . .	2.77
Central Arkansas . . . . .	2.77

Marketing Area Subject to Order	Minimum Aggregate Dollar Amount of Such Adjustments Per Hundredweight of Milk Having 3.5 Percent Milkfat
Fort Smith, Arkansas . . . . .	2.77
Southwest Plains . . . . .	2.77
Texas Panhandle . . . . .	2.49
Lubbock-Plainview, Texas . . . . .	2.49
Texas . . . . .	3.28
Greater Louisiana . . . . .	3.28
New Orleans-Mississippi . . . . .	3.85
Eastern Colorado . . . . .	\$2.73

Western Colorado . . . . .	2.00
Southwestern Idaho-Eastern Oregon . . . . .	1.50
Great Basin . . . . .	1.90
Lake Mead . . . . .	1.60
Central Arizona . . . . .	2.52
Rio Grande Valley . . . . .	2.35
Puget Sound-Inland . . . . .	1.85
Oregon-Washington . . . . .	1.95

Effective at the beginning of such two-year period, the minimum prices for milk of the highest use classification shall be adjusted for the locations at which delivery of such milk is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: *Provided*, That, except in the case of orders covering milk products only, such provisions is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, (d)<sup>23</sup>

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<sup>23</sup> The Food and Agriculture Act of 1965, Pub. L. 89-321, 79 Stat. 1187, Nov. 3, 1965, amended clause (d) and added the remainder of subparagraph B, but was not effective after Dec. 31, 1960. This date was changed to Dec. 31, 1970, by Pub. L. 90-559, 82 Stat. 996, Oct. 11, 1968. The Agricultural Act of 1970, Pub. L. 91-524, 84 Stat. 1359, Nov. 30, 1970, subsequently amended subparagraph (B) of subsection 8(c)(5) by deleting everything following the comma at the end of clause (c) and inserting new clauses (d), (e), and (f). Sec. 101(a)(1) of Pub. L. 97-98, 95 Stat. 1219, Dec. 22, 1981 deleted clause (f), which provided authority for Class I Base Plans. Sec. 101(b) of Pub. L. 97-98, 95 Stat. 1219, Dec. 22, 1981, provided that "The provisions of subsection (a) [of Pub. L. 97-98] shall become effective Jan. 1, 1982 and shall terminate Dec. 31, 1985." See footnote 47. Sec. 132 of Pub. L. 99-198, 99 Stat. 1373, Dec. 23, 1985, extended the date to Dec. 31, 1990. Sec. 108 of Pub. L. 101-624, 104 Stat. 3380, Nov. 28, 1990, extended the date to Dec. 31, 1995. Sec. 1105(b) of Pub. L. 103-66, 107 Stat. 317, Aug. 10, 1993, extended the date to Dec. 31, 1996. Sec. 116 of Pub. L. 101-624, 104 Stat. 3381, Nov. 28, 1990, states:

**"Sec. 116. Multiple Component Pricing Study.**

"(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Agriculture shall initiate a study to determine whether, and to what extent, milkfat is being produced in the United States in excess of commercial market needs as a result of any provision of law, regulation, or order that affects the manner in which producers receive payment for milk on the basis of the milk components contained in their marketings of milk under any Federal or State milk pricing program.

"(b) STUDY.—In conducting the study, the Secretary shall assess the potential impact on achieving balance in the production, marketing, and domestic commercial use of milkfat through adoption of multiple component pricing programs under Federal and State milk pricing programs.

"(c) REPORT.—Not Later than 180 days after the date of enactment of this Act, the Secretary shall—

"(1) report the results of the study conducted under subsection (a), together with associated (continued...)



a further adjustment to encourage seasonal adjustments in the production of milk through equitable apportionment of the total value of the milk purchased by any handler, or by all handlers, among producers on the basis of their marketings of milk during a representative period of time, which need not be limited to one year, (e)<sup>24</sup> a provision providing for the accumulation and disbursement of a fund to encourage seasonal adjustments in the production of milk may be included in an order, and (f)<sup>25</sup> a further adjustment, equitably to apportion the total value of milk purchased by any handler or by all handlers among producers on the basis of the milk components contained in their marketings of milk.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of the two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (I) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph

(F) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: *Provided*, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of

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(...continued)

recommendations, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate; and

“(2) publish the results of the study.

“(d) IMPLEMENTATION IN FEDERAL MARKETING ORDERS.—On completion and publication of the study described in this section, the Secretary shall—

“(1) announce a national hearing to consider the adoption of multiple component pricing provisions in individual Federal milk marketing orders issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937; and

“(2) invite industry and consumer proposals on the specific provisions to be considered for each order.” (7 U.S.C. 608c note.)

<sup>24</sup> Clause (e) as amended by Sec. 115(2) of Pub. L. 102-237, 105 Stat. 1840, Dec. 13, 1991.

<sup>25</sup> Clause (f) added by Sec. 112 of Pub. L. 101-624, 104 Stat. 3380, Nov. 28, 1990.

milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

(H)<sup>26</sup> Marketing orders applicable to milk and its products may be limited in application to milk used for manufacturing.

(I)<sup>27</sup> Establishing or providing for the establishment of research and development projects, and advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products, to be financed by producers in a manner and at a rate specified in the order, on all producer milk under the order. Producer contributions under this subparagraph may be deducted from funds due producers in computing total pool value or otherwise computing total funds due producers and such deductions shall be in addition to the adjustments authorized by subparagraph (B) of subsection 8c(5). Provision may be made in the order to exempt, or allow suitable adjustments or credits in connection with, milk on which a mandatory checkoff for advertising or marketing research is required under the authority of any State law. Such funds shall be paid to an agency organized by milk producers and producers' cooperative associations in such form and with such methods of operation as shall be specified in the order. Such agency may expend such funds for any of the purposes authorized by this subparagraph and may designate, employ, and allocate funds to persons and organizations engaged in such programs which meet the standards and qualifications specified in the order. All funds collected under this subparagraph shall be separately accounted for and shall be used only for the purposes for which they were collected. Programs authorized by this subparagraph may be either local or national in scope, or both, as provided in this order, but shall not be international. Order provisions under this subparagraph shall not become effective in any marketing order unless such provisions are approved by producers separately from other order provisions, in the same manner provided for the approval of marketing orders, and may be terminated separately whenever the Secretary makes a determination with respect to such provisions as is provided for the termination of an order in subsection 8c(16)(B). Disapproval or termination of such order provisions shall not be considered disapproval of the order or of other terms of the order. Notwithstanding any other provision of this Act, as amended, any producer against whose marketings any assessment is withheld or collected under the authority of this subparagraph, and who is not in favor of supporting the research and promotion programs, as provided for herein, shall have the right to demand and receive a refund of such assessment pursuant to the terms and conditions specified in the order.

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<sup>26</sup> New subsection (H) added by Food and Agriculture Act of 1965, Pub. L. 89-321, 79 Stat. 1187, Nov. 3, 1965, with a provision that it would not be effective after Dec. 31, 1969. This date was changed to Dec. 31, 1970, by Pub. L. 90-559, 82 Stat. 996, and then subsequently amended to extend the date to Dec. 31, 1973, by Pub. L. 91-524, 84 Stat. 1361, Nov. 30, 1970. The Food and Agriculture Act of 1965, Pub. L. 89-321, 79 Stat. 1187, as amended by Pub. L. 95-113, 91 Stat. 919, Sept. 29, 1977; Pub. L. 97-98, 95 Stat. 1219, Dec. 22, 1981, Pub. L. 99-198, 99 Stat. 1373, Dec. 23, 1985, and Pub. L. 101-624, 104 Stat. 3381, Nov. 28, 1990 provided: "The legal status of producer handlers of milk under the Agricultural Adjustment Act (7 U.S.C. 601 et. seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, shall be the same after the amendments made by this title take effect as it was before the effective date of such amendments."

<sup>27</sup> New subsection (I) added by Pub. L. 91-670, 84 Stat. 2040, Jan. 11, 1971.

(J)<sup>28</sup> Providing for the payment, from the total sums payable by all handlers for milk (irrespective of the use classification of such milk) and before computing uniform prices under paragraph (A) and making adjustments in payments under paragraph (C), to handlers that are cooperative marketing associations described in paragraph (F) and to handlers with respect to which adjustments in payments are made under paragraph (C), for services of marketwide benefit, including but not limited to—

(i) providing facilities to furnish additional supplies of milk needed by handlers and to handle and dispose of milk supplies in excess of quantities needed by handlers;

(ii) handling on specific days quantities of milk that exceed the quantities needed by handlers; and

(iii) transporting milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification or for providing a market outlet for milk of any use classification.

(K)(I) Notwithstanding any other provision of law, milk produced by dairies—

(I) owned or controlled by foreign persons; and

(II) financed by or with the use of bonds the interest on which is exempt from Federal income tax under section 103 of the Internal Revenue Code of 1986;

shall be treated as other-source milk, and shall be allocated as milk received from producer-handlers for the purposes of classifying producer milk, under the milk marketing program established under this Act. For the purposes of this subparagraph, the term “foreign person” has the meaning given such term under section 9(3) of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3508(3)).

(ii) The Secretary of Agriculture shall prescribe regulations to carry out this subparagraph.

(iii) This subparagraph shall not apply with respect to any dairy that began operation before May 6, 1986.

(L) Providing that adjustments in payments by handlers under paragraph (A) need not be the same as adjustments to producers under paragraph (B) with regard to adjustments authorized by subparagraphs (2) and (3) of paragraph (A) and clauses (b), (c), and (d) of paragraph (B)(ii).<sup>29</sup>

#### TERMS—OTHER COMMODITIES

(6) In the case of the agricultural commodities and the products thereof, other than milk and its products, specified in subsection (2) orders issued pursuant to this section shall

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<sup>28</sup> New subsection (J) added by Pub. L. 99-198, 99 Stat. 1373, Dec. 23, 1985. Section 9 of Pub. L. 99-260, 100 Stat. 51, Mar. 20, 1986, provided:

“(a) HEARING.—Not later than 90 days after receipt of a proposal to amend a milk marketing order in accordance with section 8c(5)(J) of the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(5)(J)) (as added by section 133 of the Food Security Act of 1985), the Secretary of Agriculture shall conduct a hearing on the proposal.

“(b) IMPLEMENTATION.—Not later than 120 days after a hearing is conducted under subsection (a), the Secretary shall implement, in accordance with the Agricultural Adjustment Act, a marketwide service payment program under section 8c(5)(J) of such Act that meets the requirements of such Act.” (7 U.S.C. 608c note.)

<sup>29</sup> New subsection (K) added by Pub. L. 100-418, 102 Stat. 1407, Aug. 23, 1988. New subsection (L) added by Pub. L. 101-624, 104 Stat. 3381, Nov. 28, 1990.

contain one or more of the following terms and conditions, and (except as provided in subsection (7) no others.<sup>30</sup>

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof during any specified period or periods, under a uniform rule based upon the amounts sold by such producers in such prior period as the Secretary determines to be representative, or upon the current quantities available for sale by such producers, or both, to the end that the total quantity thereof to be purchased, or handled during any specified period or periods shall be apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers and handlers thereof.

(E) Establishing or providing for the establishment of reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

(F) Requiring or providing for the requirement of inspection of any such commodity or product produced during specified periods and marketed by handlers.

(G) In the case of hops and their products, in addition to, or in lieu of, the foregoing terms and conditions, orders may contain one or more of the following:

(i) Limiting, or providing methods for the limitations of, the total quantity thereof, or of any grade, type, or variety thereof, produced during any specified period or periods, which all handlers may handle in the current of or so as directly to burden, obstruct, or affect interstate or foreign commerce in hops or any product thereof.

(ii) Apportioning, or providing methods for apportioning, the total quantity of hops of the production of the then current calendar year permitted to be handled equitably among all producers in the production area to which the order applies upon the basis of one or more or a

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<sup>30</sup> The provisions of this paragraph were substituted for the previous provisions by section 401 of the Agricultural Act of 1954, Aug. 28, 1954

combination of the following: The total quantity of hops available or estimated will become available for market by each producer from his production during such periods; the normal production of the acreage of hops operated by each producer during such period upon the basis of the number of acres of hops in production, and the average yield of the acreage during such period as the Secretary determines to be representative, with adjustments determined by the Secretary to be proper for age of plantings or abnormal conditions affecting yield; such normal production or historical record of any such acreage for which data as to yield of hops are not available or which had no yield during such period shall be determined by the Secretary on the basis of the yields of other acreage of hops of similar characteristics as to productivity, subject to adjustment as just provided for.

(iii) Allotting, or providing methods for allotting, the quantity of hops which any handler may handle so that the allotment fixed for that handler shall be limited to the quantity of hops apportioned under preceding section (ii) to each respective producer of hops; such allotment shall constitute an allotment fixed for that handler within the meaning of subsection (5) of section 8a of this title (U.S.C., 1940 edition, title 7, sec. 608a).

(H)<sup>31</sup> Providing a method for fixing the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging, transportation, sale, shipment, or handling of any fresh or dried fruits, vegetables, or tree nuts.

(I)<sup>32</sup> Establishing or providing for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of any such commodity or product, the expense of such projects to be paid from funds collected pursuant to the marketing order: *Provided*, That with respect to orders applicable to almonds, filberts (otherwise known as hazelnuts), California-grown peaches, cherries,<sup>33</sup> papayas,<sup>34</sup> carrots, citrus fruits, onions, Tokay grapes, pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, eggs, avocados,<sup>35</sup> apples, raisins, walnuts; tomatoes, caneberries (including raspberries, blackberries, and loganberries), Florida grown strawberries, or cranberries<sup>36</sup> such projects may provide for any form of marketing promotion including paid advertising and with

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<sup>31</sup> Subsection added by section 401 of Act of Aug. 28, 1954, 68 Stat. 907.

<sup>32</sup> *Ibid.* The words "production research" and "or efficient production" were added by Pub. L. 91-292, 84 Stat. 333, June 25, 1970.

<sup>33</sup> Pub. L. 87-703, 76 Stat. 632, Sept. 27, 1962, added proviso and cherry marketing order provisions for advertising. The words "filberts (otherwise known as hazelnuts)" were added by Pub. L. 98-171, 97 Stat. 1117, Nov. 29, 1983.

<sup>34</sup> The word "papayas" was added by Pub. L. 91-384, 84 Stat. 827, Aug. 18, 1970. The word "almonds" was added by Pub. L. 91-522, 84 Stat. 1357, Nov. 25, 1970. The words "California-grown peaches" were added by Pub. L. 92-120, 85 Stat. 340, Aug. 13, 1971.

<sup>35</sup> Pub. L. 89-330, 79 Stat. 1270, Nov. 8, 1965, inserted "carrots, citrus fruits, onions, Tokay grapes, pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, avocados" in the proviso. The word "fresh" preceding "pears" was deleted by Pub. L. 92-466, 86 Stat. 780, Oct. 6, 1972. The word "eggs" was added by Pub. L. 98-180, 97 Stat. 1152, Nov. 29, 1983.

<sup>36</sup> The word "apples" was added by Pub. L. 91-363, 84 Stat. 687, July 31, 1970. The word "raisins" was added by Pub. L. 95-279, 92 Stat. 242, May 15, 1978. The word "walnuts" was added by Pub. L. 96-494, 94 Stat. 2570, Dec. 3, 1980. The word "tomatoes" was added by Pub. L. 91-670, 84 Stat. 2041, Jan. 11, 1971. The words "caneberries (including raspberries, blackberries, and loganberries)" were added by Pub. L. 107-171, Sec. 10601(a)(2), 116 Stat. 511, May 13, 2002. The words "Florida-grown strawberries" were added by Pub. L. 100-418, 102 Stat. 1407, Aug. 23, 1988. The word "cranberries" was added by Pub. L. 106-78, Sec. 757(1), 113 Stat. 1171, Oct. 22, 1999.

respect to almonds, filberts (otherwise known as hazelnuts), raisins, walnuts, olives, Florida Indian River grapefruit, and cranberries may provide for crediting the pro rata expense assessment obligations of a handler with all or any portion of his direct expenditures for such marketing promotion including paid advertising as may be authorized by the order<sup>37</sup> and when the handling of any commodity for canning or freezing is regulated, then any such projects may also deal with the commodity or its products in canned or frozen form<sup>38</sup>: *Provided further*, That the inclusion in a Federal marketing order of provisions for research and market development, including paid advertising, shall not be deemed to preclude, preempt or supersede any such provisions in any State program covering the same commodity.<sup>39</sup>

(J)<sup>40</sup> In the case of pears for canning or freezing, any order for a production area encompassing territory within two or more States or portions thereof shall provide that the grade, size, quality, maturity, and inspection regulation under the order applicable to pears grown within any such State or portion thereof may be recommended to the Secretary by the agency established to administer the order only if a majority of the representatives from that State on such agency concur in the recommendation each year.

#### TERMS COMMON TO ALL ORDERS

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of any agency or agencies and defining their powers and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

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<sup>37</sup> The words “and with respect to almonds . . . including paid advertising as may be authorized by the order” were added by Pub. L. 91-522, 84 Stat. 1357, Nov. 25, 1970. The words “walnuts, olives” were added by Pub. L. 96-494, 94 Stat. 2570, Dec. 3, 1980. The word “raisins” was added by Pub. L. 95-279, 92 Stat. 242, May 15, 1978, “Florida Indian River Grapefruit” added by Pub. L. 93-230, 87 Stat. 945, Dec. 29, 1973. The words “filberts (otherwise known as hazelnuts)” were added by Pub. L. 98-171, 97 Stat. 1117. The word “cranberries” was added by Pub. L. 106-78, Sec. 757(2), 113 Stat. 1171, Oct. 22, 1999.

<sup>38</sup> The words “and when the handling of any commodity for canning . . . or its products in canned or frozen form” were added by Pub. L. 92-466, 86 Stat. 780, Oct. 6, 1972. Section 401(b) of Pub. L. 95-279, 92 Stat. 243, provides for the following report:

“(b) Within a period of sixty days following the second anniversary of the implementation of this section, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that shall describe in detail how this section has been implemented including, but not limited to, information as to the issuance or amendment of any affected order, the annual amount of assessments collected, in the aggregate and by size and class of handler, the manner in which such assessments were collected, the amount of direct expenditures credited against the pro rata expense assessment obligations of each handler, and the purpose to which such assessments and such direct expenditures of each such handler were devoted.”

<sup>39</sup> Second proviso added by Pub. L. 91-292, 84 Stat. 333, and was amended by Pub. L. 91-522, 84 Stat. 1357.

<sup>40</sup> Subsection (J) was added by Pub. L. 92-466, 84 Stat. 780, approved Oct. 6, 1972.

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of section 10(g) of this title, unless such person receives compensation for his personal services from funds of the United States. There shall be included in the membership of any agency selected to administer a marketing order applicable to grapefruit or pears for canning or freezing one or more representatives of processors of the commodity specified in such order: Provided, That in a marketing order applicable to pears for canning or freezing the representation of processors and producers on such agency shall be equal.<sup>41</sup>

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6) and (7) and necessary to effectuate the other provisions of such order.

#### ORDERS WITH MARKETING AGREEMENT

(8) Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection (8) shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: *Provided*, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

#### ORDERS WITH OR WITHOUT MARKETING AGREEMENT

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<sup>41</sup> "Pears" added by Pub. L. 92-466, dated Oct. 6, 1972, 86 Stat. 780. Proviso added by same statute.

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 percent of the volume of the commodity or product thereof (except that as to citrus fruits produced in any areas producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President,<sup>42</sup> determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary have been engaged within the production area specified in such marketing agreement or order in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such market agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

#### MANNER OF REGULATION AND APPLICABILITY

(10) No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be issued under this title prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor

shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement.

#### REGIONAL APPLICATION

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<sup>42</sup> 1947 Reorganization Plan No. 1 abolished this function of the President.



(11)(A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, or any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional production areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited to their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas. The price of milk paid by a handler at a plant operating in Clark County, Nevada shall not be subject to any order issued under this section.<sup>43</sup>

#### COOPERATIVE ASSOCIATION REPRESENTATION

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

#### RETAILER AND PRODUCER EXEMPTION

(13)(A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

#### VIOLATION OF ORDER

(14)<sup>44</sup> (A) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order shall on conviction, be fined not less than \$50 or more than \$5,000, for each such violation, and each day during which such violation continues shall be deemed a separate violation. If the court finds that petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling

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<sup>43</sup> Pub. L. 106-78, Sec. 760, 113 Stat. 1173, Oct. 22, 1999 added last sentence at end of paragraph (11) which became effective Oct. 1, 1999.

<sup>44</sup> Pub. L. 99-198, 99 Stat. 1630, Dec. 23, 1985, increased the maximum penalty from \$500 to \$5,000 for marketing order violations. Pub. L. 100-203, 101 Stat. 1330-27, Dec. 22, 1987, designated former provision as paragraph (A) and added a new paragraph (B), giving the Secretary authority to assess civil penalties for marketing order violations. Pub. L. 101-624, 104 Stat. 3561, Nov. 28, 1990, authorized civil fines and penalties for marketing order assessment violations.

thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15).

(B) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order may be assessed a civil penalty by the Secretary not exceeding \$1,000 for each such violation. Each day during which such violation continues shall be deemed a separate violation, except that if the Secretary finds that a petition pursuant to paragraph (15) was filed and prosecuted by the handler in good faith and not for delay, no civil penalty may be assessed under this paragraph for such violations as occurred between the date on which the handler's petition was filed with the Secretary, and the date on which notice of the Secretary's ruling thereon was given to the handler in accordance with regulations prescribed pursuant to paragraph (15). The Secretary may issue an order assessing a civil penalty under this paragraph only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable in the district courts of the United States in any district in which the handler subject to the order is an inhabitant, or has the handler's principal place of business. The validity of such order may not be reviewed in an action to collect such civil penalty.

#### PETITION BY HANDLER AND REVIEW

(15)(A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States<sup>45</sup> in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such rulings as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a(6) of this title. Any proceedings brought pursuant to section 8a(6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

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<sup>45</sup> The reference to the district court of the United States for the District of Columbia has been deleted as superfluous. See 28 U.S.C. 88, 132a.

## TERMINATION OF ORDERS AND MARKETING AGREEMENTS

(16)<sup>46</sup> (A)(i) Except as provided in clause (ii), the Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(ii) The Secretary may not terminate any order issued under this section for a commodity for which there is no Federal program established to support the price of such commodity unless the Secretary gives notice of, and a statement of the reasons relied upon by the Secretary for, the proposed termination of such order to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives not later than 60 days before the date such order will be terminated.

(B) The Secretary shall terminate any marketing agreement entered into under section 8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order. *Provided*, That such majority have, during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) Except as otherwise provided in this subsection with respect to the termination of an order issued under this section, the termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

## PROVISIONS APPLICABLE TO AMENDMENTS

(17) The provisions of this section and section 8d, applicable to orders shall be applicable to amendments to orders: *Provided*, That notice of a hearing upon a proposed amendment to any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof: *Provided further*, That if one-third or more of the producers as defined in a milk order apply in writing for a hearing on a proposed amendment of such order, the Secretary shall call such a hearing if the proposed amendment is one that may legally be made to such order. Subsection (12) of this section shall not be construed to permit any cooperative to act for its members in an application for a hearing under the foregoing proviso and nothing in such proviso shall be construed to preclude the Secretary from calling an amendment hearing as provided in subsection (3) of this section. The Secretary shall not be required to call a hearing on any proposed amendment to an order in response to an application for a hearing on such proposed

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<sup>46</sup> Sec. 1662(a) of Pub. L. 99-198, 99 Stat. 1631, Dec. 23, 1985, added subparagraph(A)(ii). Sec. 1662(b) of Pub. L. 99-198, 99 Stat. 1631, states: "The Secretary of Agriculture may not terminate any marketing order under section 8c(16) of the Agricultural Adjustment Act (7 U.S.C. 608c(16)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, if such termination becomes effective before January 16, 1986."

amendment if the application requesting the hearing is received by the Secretary within ninety days after the date on which the Secretary has announced the decision on a previously proposed amendment to such order and the two proposed amendments are essentially the same.<sup>47</sup>

#### MILK PRICES

(18) The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain the parity prices of such commodities. The prices which it is declared to be the policy of Congress to establish in section 2 of this title shall, for the purposes of such agreement, order, or amendment, be adjusted to reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 8b or 8c, as the case may be, that the parity prices of such commodities are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing make adjustments in such prices.<sup>48</sup>

#### PRODUCER REFERENDUM

(19) For the purpose of ascertaining whether the issuance of an order is approved or favored by producers or processors, as required under the applicable provisions of this title, the Secretary may conduct a referendum among producers or processors and in the case of an order other than an amendatory order shall do so. The requirements of approval or favor under any such provision shall be held to be complied with if, of the total number of producers or processors, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. The terms and conditions of the proposed order shall be described by the Secretary in the ballot used in the conduct of the referendum. The nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto. Nothing in this subsection shall be construed as limiting representation by cooperative associations as provided in subsection (12) of this section.<sup>49</sup> For the purpose of ascertaining whether the issuance of an order applicable to pears

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<sup>47</sup> Second proviso added by Pub. L. 93-86, 87 Stat. 222, Aug. 10, 1973. Identical proviso added by Pub. L. 97-98, 95 Stat. 1219, Dec. 22, 1981, to terminate Dec. 31, 1985. Termination date changed to Dec. 31, 1990, by Pub. L. 99-198, 99 Stat. 1373, Dec. 23, 1985. Termination date changed to Dec. 31, 1995, by Pub. L. 101-624, 104 Stat. 3380, Nov. 28, 1990. Sec. 1105(b) of Pub. L. 103-66, 107 Stat. 317, Aug. 10, 1993, changed the termination date of Dec. 31, 1996.

<sup>48</sup> The provisions by this section were substituted for the previous provisions by section 302 of the Agricultural Act of 1948 (July 3, 1948, 62 Stat. 1247).

<sup>49</sup> The provisions of this section were substituted for the previous provisions by section 141 of the Agricultural Act of 1961 (August 8, 1961, 75 Stat. 345). The Agricultural Act of 1970, Pub. L. 91-524, 84 Stat. 1361, (7 U.S.C. 608c note) as amended by Pub. L. 93-86, 87 Stat. 222 and as further amended by Pub. L. 95-113, 91 Stat. 919, September 29, 1977, states:

“(c) Nothing in subsection (a) of this section 201 shall be construed as invalidating any class I base  
(continued...)

for canning or freezing is approved or favored by producers as required under the applicable provisions of this title, the Secretary shall conduct a referendum among producers in each in which pears for canning or freezing are proposed to be included within the provisions of such marketing order and the requirements of approval or favor under any such provisions applicable to pears for canning or freezing shall be held to be complied with if, of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of 66 2/3 per centum except that in the event that pear producers in any State fail to approve or favor the issuance of any such marketing order, it shall not be made effective in such State.<sup>49</sup> (7 U.S.C. 608c.)]

**(f) Section 8d** (relating to books and records);

#### BOOKS AND RECORDS

[SEC. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the antitrust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

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(...continued)

plan provisions of any marketing order previously issued by the Secretary of Agriculture pursuant to authority contained in the Food and Agriculture Act of 1965 (79 Stat. 1187), but such provisions are expressly ratified, legalized, and confirmed and may be extended through and including December 31, 1971.

“(d) It is not intended that existing law be in any way altered, rescinded, or amended with respect to section 8c(5)(G) of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, and such section 8c(5)(G) is fully reaffirmed.

“(e) The provisions of this section shall not be effective after December 31, 1981 except with respect to orders providing for Class I base plans issued prior to such date, but in no event shall any order so issued extend or be effective beyond December 31, 1984.”

<sup>49</sup> Amendment added by Pub. L. 92-466, Oct. 6, 1972, 86 Stat. 780.

(2)<sup>50</sup> Notwithstanding the provisions of section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section, as well as information for marketing order programs that is categorized as trade secrets and commercial or financial information exempt under section 552(b)(4) of title 5 of the United States Code from disclosure under section 552 of such title, shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Notwithstanding the preceding sentence, any such information relating to a marketing agreement or order applicable to milk may be released upon the authorization of any regulated milk handler to whom such information pertains. The Secretary shall notify the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives not later than 10 legislative days before the contemplated release under law, of the names and addresses of producers participating in such marketing agreements and orders, and shall include in such notice a statement of reasons relied upon by the Secretary in making the determination to release such names and addresses. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

(3)<sup>51</sup> Collection of cranberry inventory data.—

(A) In general.—If an order is in effect with respect to cranberries, the Secretary of Agriculture may require persons engaged in the handling or importation of cranberries or cranberry products (including producer-handlers, second handlers, processors, brokers, and importers) to provide such information as the Secretary considers necessary to effectuate the declared policy of this title, including information on acquisitions, inventories, and dispositions of cranberries and cranberry products.

(B) Delegation to committee.—The Secretary may delegate the authority to carry out subparagraph (A) to any committee that is responsible for administering an order covering cranberries.

(C) Confidentiality.—

(2) shall apply to information provided under this paragraph.

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<sup>50</sup> As amended by Pub. L. 99-198, Sec. 1663, 99 Stat. 1631, Dec. 23, 1985. Pub. L. 103-111, title VII, sec. 715, 107 Stat. 1079, Oct. 21, 1993, provided that: Hereafter, none of the funds available to the Department of Agriculture may be expended to release information acquired from any handler under the Agricultural Marketing Agreement Act of 1937, as amended: *Provided*, That this provision shall not prohibit the release of information to other Federal agencies for enforcement purposes: *Provided further*, That this provision shall not prohibit the release of aggregate statistical data used in formulating regulations pursuant to the Agricultural Marketing Agreement Act of 1937, as amended: *Provided further*, That this provision shall not prohibit the release of information submitted by milk handlers. (7 U.S.C. 608d note.) Similar provisions were contained in prior appropriation acts: Pub. L. 102-341, title VII, Sec. 721, 106 Stat. 908, Aug. 14, 1992; Pub. L. 102-42, title VII, Sec. 728, 105 Stat. 914, Oct. 28, 1991; Pub. L. 101-506, title VI, Sec. 630, 104 Stat. 1349, Nov. 5, 1990; Pub. L. 101-161, title VI, Sec. 630, 103 Stat. 985, Nov. 21, 1989; Pub. L. 100-460, title VI, Sec. 630, 102 Stat. 2262, Oct. 1, 1988; and Pub. L. 99-591, title VI, Sec. 631, 100 Stat. 3341-30, Oct. 30, 1986.

<sup>51</sup> Pub. L. 106-78, Sec. 757(b), 113 Stat. 1171, Oct. 22, 1999, added new paragraph (3).

(D) Violations.--Any person who violates this paragraph shall be subject to the penalties provided under section 8c(14). (7 U.S.C. 608d.)]  
(g) Section 8e; (relating to determination of base period)<sup>52</sup>

#### RESTRICTIONS ON IMPORTED COMMODITIES

[SEC. 8e.<sup>53</sup> (a) Subject to the provisions of subsections (c) and (d) and notwithstanding any other provision of law, whenever a marketing order issued by the Secretary of Agriculture pursuant to section 8c of this Act contains any terms or conditions regulating the grade, size, quality, or maturity of tomatoes, raisins, olives (other than Spanish-style green olives), prunes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates, filberts, table grapes, eggplants, kiwifruit, nectarines, plums, pistachios, apples, or caneberries (including raspberries, blackberries, and loganberries) produced in the United States the importation into the United States of any such commodity, other than dates for processing, during the period of time such order is in effect shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order or comparable restrictions promulgated hereunder: *Provided*, That this prohibition shall not apply to such commodities when shipped into continental United States from the Commonwealth of Puerto Rico or any Territory or possession of the United States where this Act has force and effect: *Provided further*, That whenever two or more such marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation into the United States of any such commodity, other than dates for processing, shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition. Such prohibition shall not become effective until after the giving of such notice as the Secretary of Agriculture determines reasonable, which shall not be less than three days. In determining the amount of notice that is reasonable in the case of tomatoes the Secretary of Agriculture shall give due consideration to the time required for their transportation and entry into the United States after picking. Whenever the Secretary of Agriculture finds that the application of the restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the domestic and imported commodity he shall establish with respect to the imported commodity, other than dates for processing, such grade, size, quality, and maturity restrictions by varieties, types, or other classifications as he finds will be equivalent or comparable to those imposed upon the domestic commodity under such order. The Secretary of Agriculture may promulgate such rules and regulations as he deems necessary, to carry out the provisions of this section. Any person who violates any provision of this section or of any rule, regulation, or order promulgated hereunder shall be subject to a forfeiture in the amount prescribed in section 8a(5) or, upon conviction, a penalty in the amount prescribed in section 8c(14) of the Act, or to both such forfeiture and penalty.

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<sup>52</sup> The original provisions of this section were repealed by section 302 of the Agricultural Act of 1948 (July 3, 1948, 62 Stat. 1258). The language shown below in brackets was substituted for the previous provisions by section 141 of the Agriculture Act of 1961 (August 8, 1961, 75 Stat. 345).

<sup>53</sup> See footnote 52. The words "raisins., olives (other than Spanish-style green olives), prunes" were added by Pub. L. 91-670, 84 Stat. 2047, January 11, 1971. The word "filberts" was added by Pub. L. 95-113, 91 Stat. 951, September 29, 1977. The words "table grapes" were added by Pub. L. 97-312, 96 Stat. 1461, Oct. 14, 1982. Pub. L. 100-418, 102 Stat. 1407, Aug. 23, 1988, designated former section as subsection (a) and added subsection (b). Pub. L. 101-624, 104 Stat. 3561, Nov. 28, 1990, added kiwifruit, nectarines, plums, pistachios, or apples; and added subsections (c) and (d), requiring advice and concurrence by the USTR prior to any import regulation being made effective. Pub. L. 107-171, Sec. 10601(b), 116 Stat. 511, May 13, 2002, added the words "caneberries (including raspberries, blackberries, and loganberries."

(b)(1) The Secretary may provide for a period of time (not to exceed 35 days) in addition to the period of time covered by a marketing order during which the marketing order requirements would be in effect for a particular commodity during any year if the Secretary determines that such additional period of time is necessary—

(A) to effectuate the purposes of this Act; and

(B) to prevent the circumvention of the grade, size, quality, or maturity standards of a seasonal marketing order applicable to a commodity produced in the United States by imports of such commodity.

(2) In making the determination required by paragraph (1), the Secretary, through notice and comment procedures, shall consider—

(A) to what extent, during the previous year, imports of a commodity that did not meet the requirements of a marketing order applicable to such commodity were marketed in the United States during the period that such marketing order requirements were in effect for available domestic commodities (or would have been marketed during such time if not for any additional period established by the Secretary);

(B) if the importation into the United States of such commodity did, or was likely to, circumvent the grade, size, quality or maturity standards of a seasonal marketing order applicable to such commodity produced in the United States; and

(C) the availability and price of commodities of the variety covered by the marketing order during any additional period the marketing order requirements are to be in effect.

(3) An additional period established by the Secretary in accordance with this subsection shall be—

(A) announced not later than 30 days before the date such additional period is to be in effect; and

(B) reviewed by the Secretary on request, through notice and comment procedures, at least every 3 years in order to determine if the additional period is still needed to prevent circumvention of the seasonal marketing order by imported commodities.

(4) For the purposes of carrying out this subsection, the Secretary is authorized to make such reasonable inspections as may be necessary.

(c) Prior to any import prohibition or regulation under this section being made effective with respect to any commodity—

(1) the Secretary of Agriculture shall notify the United States Trade Representative of such import prohibition or regulation; and

(2) the United States Trade Representative shall advise the Secretary of Agriculture, within 60 days of the notification under paragraph (1), to ensure that the application of the grade, size, quality, and maturity provisions of the relevant marketing order, or comparable restrictions, to imports is not inconsistent with United States international obligations under any trade agreement, including the General Agreement on Tariffs and Trade.

(d) The Secretary may proceed with the proposed prohibition or regulation if the Secretary receives the advice and concurrence of the United States Trade Representative within 60 days of the notification under subsection (c)(1). (7 U.S.C. 608e-1.)]

**(h) Section 10(a), (b)(1) (b)(2), (c), (f), (g), (h), (i) and (j) miscellaneous provisions);**

#### MISCELLANEOUS

[SEC. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923,<sup>54</sup> as amended and Acts

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<sup>54</sup> Classification Act of 1923, as amended, now cited as 5 U.S.C. chapter 51 and subchapter III of (continued...)



amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; (and the Secretary may make such appointments without regard to the civil service laws or regulations: *Provided*, That no salary in excess of \$10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title): <sup>55</sup> *And provided further*, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundments under appropriations contained in this Act.

(b)(1) The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this title, State and local committees, or associations of producers, and to permit cooperative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of payments authorized to be made under section 8. The Secretary, in the administration of this title shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress, and as will tend to promote efficient methods of marketing and distribution.

(2)(i) Each order relating to milk and its products issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of milk or products thereof received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of milk or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers.

(ii) Each order relating to any other commodity or product issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find are reasonable and are likely to be incurred by such authority or agency, during any period specified by him, for such purposes as the Secretary may, pursuant to such order, determine to be appropriate, and for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. The payment of assessments for the maintenance and functioning of such authority or agency, as provided for herein, may be required under a marketing agreement or marketing order throughout the period the marketing agreement or

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(...continued)  
chapter 53.

<sup>55</sup> Parentheses supplied. The material therein is obsolete but was not repealed. See note after 7 U.S.C. 610.

order is in effect and irrespective of whether particular provisions thereof are suspended or become inoperative.

(iii) Any authority or agency established under an order may maintain in its own name, or in the name of its member, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several district courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as maybe necessary to carry out the powers vested in him by this title. Any violation of any regulations shall be subject to such penalty, not in excess of \$100, as may be provided therein.

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(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; except that, in the case of sugarbeets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam.

(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than \$10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, the duties of the Secretary in administering the provisions of this title and to any person subject to the provisions of this title whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: *Provided*, That information furnished to the Secretary of Agriculture pursuant to section 8d(1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d(2) hereof.

(j) The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia,

but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this Act (but in no wise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State of the products so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. As used herein the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nations.<sup>56</sup> (7 U.S.C. 610.)]

**(I) Section 12(a) and (c)** relating to appropriation and expense);

#### APPROPRIATION

[SEC. 12 (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for payments authorized to be made under section 8. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the markets for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$200,000,000; *Provided*, That not more than 60 per centum of such amount shall be used for either of such industries.

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(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title. (7 U.S.C. 612.)]

**(j) Section 14** (relating to separability);

#### SEPARABILITY OF PROVISIONS

[SEC. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby. (7 U.S.C. 614.)]

**(k) Section 22** (relating to imports);

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<sup>56</sup> Paragraph (j) added by section 2(i) of the Agricultural Act of 1937 (June 3, 1937, 50 Stat. 248).

**Agricultural Adjustment Act of 1933**—SEC. 22<sup>57</sup> (a) Whenever the Secretary of Agriculture has reason to believe that any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under this title or the Soil Conservation and Domestic Allotment Act, as amended, or section 32, Public Law Numbered 320, Seventy-fourth Congress, approved August 24, 1935, as amended, or any loan, purchase, or other program or operation undertaken by the Department of Agriculture, or any agency operating under its direction, with respect to any agricultural commodity or product thereof, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to which any such program or operation is being undertaken, he shall so advise the President, and, if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made by the United States International Trade Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties, and shall be conducted subject to such regulations as the President shall specify. (7 U.S.C. 624(a).)

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such fees not in excess of 50 per centum ad valorem or such quantitative limitations on any article or articles which may be entered, or withdrawn from warehouse, for consumption as he finds and declares shown by such investigation to be necessary in order that the entry of such article or articles will not render or tend to render ineffective, or materially interfere with, any program or operation referred to in subsection (a) of this section, or reduce substantially the amount of any product processed in the United States from any such agricultural commodity or product thereof with respect to which any such program or operation is being undertaken: *Provided*, That no proclamation under this section shall impose any limitation on the total quantity of any article or articles which may be entered, or withdrawn from warehouse, for consumption which reduces such permissible total quantity to proportionately less than 50 per centum of the total quantity of such article or articles which was entered, or withdrawn from warehouse, for consumption during a representative period as determined by the President: *And provided further*, That in designating any article or articles, the President may describe them by physical qualities, value, use, or upon such other bases as he shall determine.

In any case where the Secretary of Agriculture determines and reports to the President with regard to any article or articles that a condition exists requiring emergency treatment, the President may take immediate action under this section without awaiting the recommendations of the Tariff Commission, such action to continue in effect pending the report and recommendations of the Tariff Commission and action thereon by the President.<sup>58</sup> (7 U.S.C. 624(b).)

(c) The fees and limitations imposed by the President by proclamation under this section and any revocation, suspension, or modification thereof, shall become effective on such date as shall be therein specified, and such fees shall be treated for administrative purposes and for the purposes of section 32 of Public Law Numbered 320, Seventy-fourth Congress,

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<sup>57</sup> See also section 202(a) of the Agricultural Act of 1956, 70 Stat. 199. Section 22 was added by the Act of August 24, 1935 (49 Stat. 773). As originally enacted, action under this section could be taken only with respect to articles the importation of which was found to be adversely affecting programs or operations under the Agricultural Adjustment Act of 1933. Section 22 has been amended several times and was revised in its entirety by section 3 of the Agricultural Act of 1948 (62 Stat. 1247) and again by section 3 of the Act of June 28, 1950 (64 Stat. 261). Regulations governing investigations under this section are set forth in Executive Order 7233, dated November 23, 1935, and in 19 CFR 201, 204. Pub. L. 93-618, 88 Stat. 2009, Jan. 3, 1975, substituted "United States International Trade Commission" for "United States Tariff Commission".

<sup>58</sup> Paragraph added by section 104 of the Trade Agreement Extension Act of 1953, 67 Stat. 472.

approved August 24, 1935, as amended, as duties imposed by the Tariff Act of 1930, but such fees shall not be considered as duties for the purpose of granting any preferential concession under any international obligation of the United States. (7 U.S.C. 624(c).)

(d) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended or terminated by the President whenever he finds and proclaims that the circumstances requiring the proclamation or provision thereof no longer exist or may be modified by the President whenever he finds and proclaims that changed circumstances require such modification to carry out the purposes of this section. (7 U.S.C. 624(d).)

(e) Any decision of the President as to facts under this section shall be final. (7 U.S.C. 624(e).)

(f)<sup>59</sup> No quantitative limitation or fee shall be imposed under this section with respect to any article that is the product of a WTO member (as defined in section 2(10) of the Uruguay Round Agreements Act). (7 U.S.C. 624(f).)

#### DAIRY FORWARD PRICING PROGRAM <sup>60</sup>

##### SEC. 23. DAIRY FORWARD PRICING PILOT PROGRAM

(a) **PILOT PROGRAM REQUIRED.** —Not later than 90 days after November 29, 1999, the Secretary of Agriculture shall establish a temporary pilot program under which milk producers and cooperatives are authorized to voluntarily enter into forward price contracts with milk handlers.

(b) **MINIMUM MILK PRICE REQUIREMENTS.** —Payments made by milk handlers to milk producers and cooperatives, and prices received by milk producers and cooperatives, under the forward contracts shall be deemed to satisfy—

(1) all regulated minimum milk price requirements of paragraphs (B) and (F) of subsection (5) of section 608c of this title; and

(2) the requirement of paragraph (C) of such subsection regarding total payments by each handler.

(c) **MILK COVERED BY PILOT PROGRAM.** —

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<sup>59</sup> The provisions of subsection (f) were substituted for earlier provisions by section 8(b) of the Trade Agreements Extension Act of 1951, June 16, 1951, 65 Stat. 72, 75. Pub. L. 100-449, 102 Stat. 1868, Sept. 28, 1988, added the exemption for products of Canada. Sec. 301(a) of Pub. L. 100-449, 102 Stat. 1865, would allow temporary duty on any Canadian fresh fruit and vegetable entering the U.S. if the Secretary of Agriculture determines (1) for each of five consecutive workdays the import price of the Canadian fresh fruit or vegetable is below 90 percent of corresponding five-year average monthly import price for such fruit or vegetable, and (2) the U.S. planted acreage for the like fresh fruit or vegetable is no higher than the average planted acreage over the preceding five years, excluding years with highest and lowest acreage. (Any acreage increase attributed directly to a reduction in the acreage that was planted to wine grapes as of Oct. 4, 1987, is excluded.)

Section was generally amended by Sec. 401(a)(1) of Pub. L. 103-456, 108 Stat. 4957, Dec. 8, 1994. Prior to that Subsection (f) read as follows: “No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section, except that the President may, pursuant to articles 705.5 and 707 of the United States-Canada Free-Trade Agreement, exempt products of Canada from any import restriction imposed under this section.”

Sec. 401(a)(2) of Pub. L. 103-465, 108 Stat. 4957, Dec. 8, 1994, provided that: “The amendment made by paragraph (1) shall take effect on the date of entry into force of the WTO Agreement with respect to the United States, except that with respect to wheat, the amendment shall take effect on the later of such date or September 12, 1995.”

<sup>60</sup> Pub. L. 106-113, div. B, Sec. 1000(a)(8) (Sec. 3), Nov. 29, 1999, 113 Stat. 1536, 1501A-519, added new Sec. 23.

(1) COVERED MILK.—The pilot program shall apply only with respect to the marketing of federally regulated milk that —

(A) is not classified as Class I milk or otherwise intended for fluid use; and

(B) is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce in federally regulated milk.

(2) RELATION TO CLASS I MILK.— To assist milk handlers in complying with the limitation in paragraph (1)(A) without having to segregate or otherwise individually track the source and disposition of milk, a milk handler may allocate milk receipts from producers, cooperatives, and other sources that are not subject to a forward contract to satisfy the handler's obligations with regard to Class I milk usage.

(d) DURATION.—The authority of the Secretary of Agriculture to carry out the pilot program shall terminate on December 31, 2004. No forward price contract entered into under the program may extend beyond that date.

(e) STUDY AND REPORT ON EFFECT OF PILOT PROGRAM.—

(1) STUDY.—The Secretary of Agriculture shall conduct a study on forward contracting between milk producers and cooperatives and milk handlers to determine the impact on milk prices paid to producers in the United States. To obtain information for the study, the Secretary may use the authorities available to the Secretary under section 608d of this title, subject to the confidentiality requirements of subsection (2) of such section.

(2) REPORT.— Not later than April 30, 2002, the Secretary shall submit to the Committee on Agriculture, Nutrition and Forestry of the Senate and the Committee on Agriculture of the House of Representatives a report containing the results of the study. (7 U.S.C. 627).

## AMENDMENTS TO AGRICULTURAL ADJUSTMENT ACT

SEC. 2. The following provisions, reenacted in section 1 of this Act, are amended as follows:

[Subsecs. (a) to (j) inclusive, of sec. 2 of the Agricultural Marketing Agreement Act of 1937 are incorporated in the preceding text.]

### ARBITRATION OF DISPUTES CONCERNING MILK

SEC. 3. (a) The Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, upon written application of any cooperative association, incorporated or otherwise, which is in good faith owned or controlled by producers or organizations thereof, of milk or its products, and which is bona fide engaged in collective processing or preparing for market or handling or marketing (in the current of interstate or foreign commerce, as defined by paragraph (I) of section 2 of this Act), milk or its products, may mediate and, with the consent of all parties, shall arbitrate if the Secretary has reason to believe that the declared policy of the Agricultural Adjustment Act, as amended, would be effectuated thereby, bona fide disputes, between such associations and the purchasers or handlers or processors or distributors of milk or its products, as to terms and conditions of the sale of milk or its products. The power to arbitrate under this section shall apply only to such subjects of the term or condition in dispute as could be regulated under the provisions of the Agricultural Adjustment Act, as amended, relating to orders for milk and its products.

(b) Meetings held pursuant to this section shall be conducted subject to such rules and regulations as the Secretary may prescribe.

(c) No award or agreement resulting from any such arbitration or mediation shall be effective unless and until approved by the Secretary of Agriculture, or such officer or

employee of the Department of Agriculture as may be designated by him, and shall not be approved if it permits any unlawful trade practice or any unfair method of competition.

(d) No meeting so held and no award or agreement so approved shall be deemed to be in violation of any of the antitrust laws of the United States. (7 U.S.C. 671).

#### AGREEMENTS ETC., UNAFFECTED

SEC. 4.<sup>61</sup> (a) Nothing in this act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to, or any provision of, or any act of the Secretary of Agriculture in connection with, any such agreement, license, or order which has been executed, issued, approved, or done under the Agricultural Adjustment Act, or any amendment thereof, but such marketing agreements, licenses, orders, regulations, provisions, and acts are hereby expressly ratified, legalized, and confirmed.

(b) Any program in effect under the Agricultural Adjustment Act, as reenacted and amended by this Act, on the effective date of section 302 of the Agricultural Act of 1948 shall continue in effect without the necessity for any amendatory action relative to such program, but any such program shall be continued in operation by the Secretary of Agriculture only to establish and maintain such orderly marketing conditions as will tend to effectuate the declared purpose set out in section 2 or 8c (18) of the Agricultural Adjustment Act, as reenacted and amended by this Act. (7. U.S.C. 672).

#### TAXES UNDER AGRICULTURAL ADJUSTMENT ACT; PROVISIONS UNAFFECTED

SEC. 5. No processing taxes or compensating taxes shall be levied or collected under the Agricultural Adjustment Act, as amended. Except as provided in the preceding sentence, nothing in this Act shall be construed as affecting provisions of the Agricultural Adjustment Act, as amended, other than those enumerated in section 1. The provisions so enumerated shall apply in accordance with their terms (as amended by this Act) to the provisions of the Agricultural Adjustment Act, this Act, and other provisions of law to which they have been heretofore made applicable. (7 U.S.C. 673.)

#### SHORT TITLE

SEC. 6. This act may be cited as the "Agricultural Marketing Agreement Act of 1937." (7 U.S.C. 674.)

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<sup>61</sup> Section 302 of the Agricultural Act of 1948 (62 Stat. 1247) inserted the subsection designation (a) and added subsection (b).

## PEANUTS <sup>1</sup>

(7 U.S.C. 7958)

(a) MANDATORY INSPECTION.—All peanuts marketed in the United States shall be officially inspected and graded by Federal or Federal-State inspectors.

(b) TERMINATION OF PEANUT ADMINISTRATIVE COMMITTEE.—The Peanut Administrative Committee established under Marketing Agreement No. 146 issued pursuant to the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is terminated.

(c) PEANUT STANDARDS BOARD.—

(1) ESTABLISHMENT AND PURPOSE.—The Secretary shall establish a Peanut Standards Board for the purpose of advising the Secretary regarding the establishment of quality and handling standards for domestically produced and imported peanuts.

(2) MEMBERSHIP AND APPOINTMENT.—

(A) TOTAL MEMBERS.—The Board shall consist of 18 members, with representation equally divided between peanut producers and peanut industry representatives.

(B) APPOINTMENT PROCESS FOR PRODUCERS.—The Secretary shall appoint—

(i) 3 producers from the Southeast (Alabama, Georgia, and Florida) peanut producing region;

(ii) 3 producers from the Southwest (Texas, Oklahoma, and New Mexico) peanut producing region; and

(iii) 3 producers from the Virginia/Carolina (Virginia and North Carolina) peanut producing region.

(C) APPOINTMENT PROCESS FOR INDUSTRY REPRESENTATIVES.—The Secretary shall appoint 3 peanut industry representatives from each of the 3 peanut producing regions in the United States.

(3) TERMS.—

(A) IN GENERAL.—A member of the Board shall serve a 3-year term.

(B) INITIAL APPOINTMENT.—In making the initial appointments to the Board, the Secretary shall stagger the terms of the members so that—

(i) 1 producer member and peanut industry member from each peanut producing region serves a 1-year term;

(ii) 1 producer member and peanut industry member from each peanut producing region serves a 2-year term; and

(iii) 1 producer member and peanut industry member from each peanut producing region serves a 3-year term.

(4) CONSULTATION REQUIRED.—The Secretary shall consult with the Board in advance whenever the Secretary establishes or changes, or considers the establishment of or a change to, quality and handling standards for peanuts.

(5) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Board.

(d) PRIORITY.—The Secretary shall make identifying and combating the presence of all quality concerns related to peanuts a priority in the development of quality and handling standards for peanuts and in the inspection of domestically produced and imported peanuts. The Secretary shall consult with appropriate Federal and State agencies to provide adequate safeguards against all quality concerns related to peanuts.

(e) CONSISTENT STANDARDS.—Imported peanuts shall be subject to the same quality and handling standards as apply to domestically produced peanuts.

(f) AUTHORIZATION OF APPROPRIATIONS.—

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<sup>1</sup> Pub. L. 107-171, Sec. 1308, 116 Stat. 178, May 13, 2002.



(1) IN GENERAL.—In addition to other funds that are available to carry out this section, there is authorized to be appropriated such sums as are necessary to carry out this section.

(2) TREATMENT OF BOARD EXPENSES.—The expenses of the Peanut Standards Board shall not be counted toward any general limitation on the expenses of advisory committees, panels, commissions, and task forces of the Department of Agriculture, whether enacted before, on, or after the date of enactment of this Act, unless the limitation specifically refers to this paragraph and specifically includes the Peanut Standards Board within the general limitation.

(g) TRANSITION RULE.—

(1) TEMPORARY DESIGNATION OF PEANUT ADMINISTRATIVE COMMITTEE MEMBERS.—Notwithstanding the appointment process specified in subsection (c) for the Peanut Standards Board, during the transition period, the Secretary may designate persons serving as members of the Peanut Administrative Committee on the day before the date of enactment of this Act to serve as members of the Peanut Standards Board for the purpose of carrying out the duties of the Board described in this section.

(2) FUNDS.—The Secretary may transfer any funds available to carry out the activities of the Peanut Administrative Committee to the Peanut Standards Board to carry out the duties of the Board described in this section.

(3) TRANSITION PERIOD.—In paragraph (1), the term “transition period” means the period beginning on the date of enactment of this Act and ending on the earlier of—

(A) the date the Secretary appoints the members of the Peanut Standards Board pursuant to subsection (C); or

(B) 180 days after the date of enactment of this Act.

(h) EFFECTIVE DATE.—This section shall take effect with the 2002 crop of peanuts.