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The Marketing of Farm Products Under Some of the Federal Regulatory Statutes

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THE MARKETING OF FARM PRODUCTS UNDER SOME OF THE FEDERAL REGULATORY STATUTES*

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The regulation of the marketing of agricultural products has been marked by variability and diversity throughout the history of our country. In the early period, numerous regulative measures relative to the marketing of farm products were made effective by the municipalities[1] and the States.[2] Under present-day conditions of industrialization numerous statutes have been enacted by Congress, under the commerce clause of the Constitution, in order to promote the orderly marketing of farm products, to contribute to the economic stability and prosperity of the Nation, and in some instances to safeguard against unsound, unhealthful, unwholesome, and unfit food, and also to prevent the introduction and spread of insect pests, plant diseases, and infectious or communicable diseases among livestock and poultry.[3]

The ties or relationships among markets in the recent decades of great expansion in mass production and distribution reflect the wide variety of markets, the complex system of distribution, and the com-

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**The author is Associate Solicitor in the United States Department of Agriculture. The views expressed herein are not intended to be inconsistent with official opinion in the United States Department of Agriculture, but nothing herein is to be construed as expressing any official views of the Department.

1. See, *e. g.*, State ex rel. Wilkinson v. City of Charleston, 2 Speers 523 [old volume, 622], 525-526 [old volume, 625-626] (S. C. 1843); Mayor and Aldermen of Mobile v. Yuille, 3 Ala. 137, 139-143 (1841); City of Cartersville v. McGinnis, 142 Ga. 71, 72-78, 82 S.E. 487, 488-491 (1914); City of Chicago v. Bowman Dairy, 234 Ill. 294, 297-301, 84 N.E. 913, 914-916 (1908); Deems v. Baltimore, 80 Md. 164, 170-175, 30 Atl. 648, 649-651 (1894); Commonwealth v. Waite, 93 Mass. (11 Allen) 264, 265-266 (1865); People v. Vandecarr, 175 N. Y. 440, 444-445, 67 N.E. 913, 913-914 (1903), *affirmed sub nom.* Lieberman v. Van De Carr, 199 U.S. 552, 557-563 (1905); Wartman v. City of Philadelphia, 33 Pa. St. 202, 209-210 (1854).

2. See, *e. g.*, Davis v. State, 68 Ala. 58, 60-65, 44 Am. Rep. 128, 129-134 (1880); Munn v. Illinois, 94 U.S. 113, 123-132 (1876); Turner v. Maryland, 107 U.S. 38, 39-58 (1882); Broadnax v. Missouri, 219 U.S. 285, 289-296 (1911); Merchant's Exchange v. Missouri, 248 U.S. 365, 366-368 (1919); Pacific States Co. v. White, 296 U.S. 176, 181 (1935).

3. See, *e. g.*, 33 STAT. 1269 (1905), 7 U.S.C. 1952 ed. § 141 *et seq.*; 37 STAT. 315 (1912), 7 U.S.C. 1952 ed. § 151 *et seq.*; 39 STAT. 486 (1916), 7 U.S.C. 1952 ed. § 241 *et seq.*; 42 STAT. 159 (1921), 7 U.S.C. 1952 ed. § 181 *et seq.*; 44 STAT. 1355 (1927), 7 U.S.C. 1952 ed. § 491; 46 STAT. 531 (1930), as amended, 7 U.S.C. 1952 ed. § 499a *et seq.*; 48 STAT. 31 (1933), as amended, 7 U.S.C. 1952 ed. § 601 *et seq.*; 49 STAT. 781 (1935), 7 U.S.C. 1952 ed. § 851 *et seq.*; 52 STAT. 31 (1938), as amended, 7 U.S.C. 1952 ed. § 1281 *et seq.*; 61 STAT. 922 (1947), 7 U.S.C. 1952 ed. § 1100 *et seq.*

mercialization of our economy.[4] The major agricultural commodities are generally distributed on a Nation-wide market,[5] and our position as a world power in international trade affords an even broader basis of public interest in the marts of trade and commerce.[6]

The statutes which have been designated for discussion in this article are the Agricultural Adjustment Act of 1938,[7] the Agricultural Marketing Agreement Act of 1937,[8] the Packers and Stockyards Act of 1921,[9] and the Perishable Agricultural Commodities Act of 1930.[10]

I.

The Agricultural Adjustment Act of 1938 was enacted by Congress to promote, foster, and maintain the orderly marketing of cotton, tobacco, wheat, corn, rice, and peanuts in interstate and foreign commerce, and *inter alia* to provide an adequate and balanced flow of these commodities in commerce.[11] Marketing quotas, within prescribed limits and by prescribed standards, may be established for these commodities so as to achieve the economic goal of the statute. The Congress made numerous legislative findings relative to the marketing, in interstate and foreign commerce, of each of these agricultural commodities,[12] *e. g.*, the statute contains the legislative finding that:

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4. It has been said: "Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation. What is critical or urgent changes with the times." Helvering v. Davis, 301 U.S. 619, 641 (1937).

5. See, *e. g.*, Stafford v. Wallace, 258 U.S. 495, 515-516 (1922); Currin v. Wallace, 306 U.S. 1, 9-10 (1939); Mulford v. Smith, 307 U.S. 38, 47 (1939); United States v. Rock Royal Co-op., 307 U. S. 533, 549-550 (1939); Wickard v. Filburn, 317 U.S. 111, 125-126 (1942); Edwards v. United States, 91 F. 2d 767, 777 (9th Cir. 1937); Troppy v. La Sara Farmers Gin Co., 113 F. 2d 350, 352 (5th Cir. 1940).

6. Approximately 27 million tons of agricultural products were exported by ocean carriers in 1951 (computed from Commercial Statistics, Water-Borne Commerce of the United States for the Calendar Year 1951, Annual Report of the Chief of Engineers, 1952 (Dept. Army), Part 2, Table 2, pp. xx-xxv). Annual exports of wheat are affected by foreign production and import restrictions (Wickard v. Filburn, 317 U.S. 111, 125-126 (1942)), and the volume of sugar moving to the continental United States market is controlled, by the familiar device of a quota system, in order to secure a harmonious relation between supply and demand (Secretary of Agriculture v. Central Roig Co., 338 U.S. 604, 605-606 (1950)).

7. 52 STAT. 31 (1938), as amended, 7 U.S.C. 1952 ed. § 1281 *et seq.*

8. 48 STAT. 31 (1933), as amended, and as re-enacted and amended, 50 STAT. 246 (1937), 7 U.S.C. 1952 ed. § 601 *et seq.*

9. 42 STAT. 159 (1921), as amended, 7 U.S.C. 1952 ed. § 181 *et seq.*

10. 46 STAT. 531 (1930), as amended, 7 U.S.C. 1952 ed. § 499a *et seq.*

11. 52 STAT. 31 (1938), as amended, 7 U.S.C. 1952 ed. §§ 1282 and 1357.

12. 7 U.S.C. 1952 ed. §§ 1311, 1321, 1331, 1341, 1351, 1357.

American cotton is a basic source of clothing and industrial products used by every person in the United States and by substantial numbers of people in foreign countries. American cotton is sold on a world-wide market and moves from the places of production almost entirely in interstate and foreign commerce to processing establishments located throughout the world at places outside the State where the cotton is produced.

Fluctuations in supplies of cotton and the marketing of excessive supplies of cotton in interstate and foreign commerce disrupt the orderly marketing of cotton in such commerce with consequent injury to and destruction of such commerce. Excessive supplies of cotton directly and materially affect the volume of cotton moving in interstate and foreign commerce and cause disparity in prices of cotton and industrial products moving in interstate and foreign commerce with consequent diminution of the volume of such commerce in industrial products.

The conditions affecting the production and marketing of cotton are such that, without Federal assistance, farmers, individually or in cooperation, cannot effectively prevent the recurrence of excessive supplies of cotton and fluctuations in supplies, cannot prevent indiscriminate dumping of excessive supplies on the Nation-wide and foreign markets, cannot maintain normal carry-overs of cotton, and cannot provide for the orderly marketing of cotton in interstate and foreign commerce.

It is in the interest of the general welfare that interstate and foreign commerce in cotton be protected from the burdens caused by the marketing of excessive supplies of cotton in such commerce, that a supply of cotton be maintained which is adequate to meet domestic consumption and export requirements in years of drought, flood, and other adverse conditions as well as in years of plenty, and that the soil resources of the Nation be not wasted in the production of excessive supplies of cotton.

The provisions of this part affording a cooperative plan to cotton producers are necessary and appropriate to prevent the burdens on interstate and foreign commerce caused by the marketing in such commerce of excessive supplies, and to promote, foster, and maintain an orderly flow of an adequate supply of cotton in such commerce.[13]

13. 7 U.S.C. 1952 ed. § 1341.

The Act is a valid exercise of the power of Congress to regulate commerce among the several states and with foreign nations.[14] "[C]ommerce among the States is not a technical legal conception, but a practical one, drawn from the course of business."[15] The term "market", as defined in the statute, includes the conventional meaning of the term and also certain local activities and uses,[16] and the statute provides for the regulation of the marketing of the basic agricultural commodities. But local activity, whatever its nature, may be subject to regulation, under the commerce clause of the Constitution, if the local activity exerts a substantial economic effect on interstate commerce.[17] The Congress has plenary authority, under the commerce clause in the Constitution, to regulate those activities intrastate which so affect interstate commerce as to make regulation of the intrastate activities appropriate in the effective regulation of interstate commerce.[18]

The statutory plan for marketing quotas authorizes the establishment of quotas for the basic agricultural commodities, enumerated in the Act, only when the Secretary has found that supplies are excessive as defined in the Act.[19] The quotas will not be made effective, however, if more than one-third of the farmers voting in a referendum oppose quotas.[20] If the farmers producing a particular crop approve the national quota, the Act provides for allotting to each farm its fair share of the quota.

The statutory provisions for the establishment of acreage allotments and marketing quotas are different for the various crops, but the general principles of the basic plans are similar. The provisions applicable to tobacco may, for the purpose of this abbreviature, serve as an example. The Act provides for the establishment by the Secretary of Agriculture of a national marketing quota for tobacco,[21] for the apportionment of the national marketing quota

14. Wickard v. Filburn, 317 U.S. 111, 118-129 (1942); Mulford v. Smith, 307 U.S. 38, 47-51 (1939); Troppy v. La Sara Farmers Gin Co., 113 F. 2d 350, 351-352 (5th Cir. 1940).

15. Swift & Co. v. United States, 196 U.S. 375, 398 (1905).

16. 7 U.S.C. 1952 ed. § 1301(6)(A), Wickard v. Filburn, 317 U.S. 111, 118-119 (1942).

17. Wickard v. Filburn, 317 U.S. 111, 125 (1942).

18. Gibbons v. Ogden, 9 Wheat. 1, 194-197 (U.S. 1824); Swift & Co. v. United States, 196 U.S. 375, 396-398 (1905); Shreveport Rate Cases, 234 U.S. 342, 351 (1914); United States v. Wrightwood Dairy Co., 315 U.S. 110, 119 (1942); Wickard v. Filburn, 317 U.S. 111, 118-129 (1942); Connecticut Co. v. Power Comm'n, 324 U.S. 515, 535-536 (1945); Mabee v. White Plains Pub. Co., 327 U.S. 178, 181-184 (1946).

19. 7 U.S.C. 1952 ed. §§ 1312(a), 1322(a), 1335, 1340, 1342, 1352, 1358(a).

20. 7 U.S.C. 1952 ed. §§ 1312(b), 1322(d), 1336, 1343, 1354(b), 1358(b).

21. 7 U.S.C. 1952 ed. § 1312(a). The Secretary is required, *inter alia,* to proclaim "a national marketing quota for each marketing year for each kind of

among States "on the basis of the total production of tobacco in each State during the five calendar years immediately preceding the calendar year in which the quota is proclaimed" with certain adjustments for specific conditions,[22] for the conversion of the State marketing quota into a State acreage allotment on the basis of the average yield per acre of tobacco for the State during the five years preceding the proclamation of the national marketing quota, adjusted for abnormal conditions of production,[23] and for the allotment of the State acreage allotment among the farms on which tobacco is produced.[24] The allotments to the farms are determined by the Secretary of Agriculture through local committees of farmers and on the basis of factors specified in the Act[25] and the regulations issued by the Secretary.[26]

The statute provides for the allotment of the quota for any State among the farms, on which tobacco is produced, on the basis of the following factors: "Past marketing of tobacco, making due allowance for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco * * * ."[27] The Act does not specify the percentage or quantitative share that each factor must have in the fixing of quotas. Here, as in *Secretary of Agriculture v. Central Roig Co.*,[28] "Congress did not predetermine the periods of time to which the [statutory] standards should be related or the respective weights to be accorded them,"[29] and there is a wide area for administrative discretion. The regulations provide for a preliminary farm-acreage allotment for old farms, and for the preliminary allotment to be increased or decreased in view of various circumstances, and a method is provided for establishing acreage allotments for new farms.[30]

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tobacco for which a national marketing quota was proclaimed for the immediately preceding marketing year," and also the Secretary "shall proclaim a national marketing quota for Virginia sun-cured tobacco for each marketing year for which a quota is proclaimed for fire-cured tobacco." *Ibid.*

22. 7 U.S.C. 1952 ed. § 1313(a).
23. 7 U.S.C. 1952 ed. § 1313(g).
24. 7 U.S.C. 1952 ed. § 1313(b) and (g).
25. 7 U.S.C. 1952 ed. §§ 1313(b), (c), and (g), and 1388.
26. 7 U.S.C. 1952 ed. § 1375.
27. 7 U.S.C. 1952 ed. § 1313(b).
28. 338 U.S. 604, 613 (1950).
29. *Ibid.*
30. See, *e. g.*, 16 Fed. Reg. 7921 (1951), 7 Code Fed. Regs. §§ 726.316-726.319 (Cum. Supp. 1952); 16 Fed. Reg. 9347 (1951), 7 Code Fed. Regs. §§ 725.316-725.319 (Cum. Supp. 1952). Marketing quota regulations are issued for each marketing year.

The actual production of the acreage allotment established for a farm is the marketing quota for that farm.[31] The allotment "is made to the farm and not to the person who owns or operates the farm and therefore runs with the land",[32] and it is necessary for the County Committee to apportion an allotment whenever a farm is divided into two or more farms; and the regulations do not permit a division of the allotment to be based on an agreement, oral or written, between the parties.[33] The regulations for each marketing year contain definitions of "farm," "cropland," and other significant terms; and "farm" has been defined as "all adjacent or nearby farm land under the same ownership which is operated by one person," including also any "other adjacent or nearby farm land which the county committee . . . determines is operated by the same person as part of the same unit with respect to the rotation of crops and with workstock, farm machinery, and labor substantially separate from that for any other lands . . . ." and any "field-rented tract . . . which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops."[34] The Act provides for a penalty for each pound of tobacco marketed in excess of the marketing quota for the farm.[35]

Farm acreage allotments are established by a County Committee in each county elected by the farmers in the county,[36] and notice of the "farm marketing quota of his farm shall be mailed to the farmer."[37] Any farmer who is dissatisfied with the acreage allotment for his farm may have it reviewed by the local Review Committee composed of three farmers designated by the Secretary of Agriculture, and such review is obtained by the filing of an application for review within 15 days after the date of the mailing of the notice of allotment for the farm.[38] Otherwise the original determination of the County Committee is final.[39] If a farmer is dissatisfied with the determination of the Review Committee he may have the determination reviewed by the courts.[40] The Act authorizes such judicial review in the United States District Court, for the district in which the farm is located, or by a proceeding ". . . in any court of record of the State having general jurisdiction, sitting in the county or the district in

31. 7 U.S.C. 1952 ed. § 1313(g).
32. Lee v. Berry, 219 S.C. 346, 351, 65 S.E. 2d 257, 259 (1951).
33. See, *e. g.*, 7 Code Fed. Regs. § 725.321 (Cum. Supp. 1952).
34. 7 Code Fed. Regs. § 725.312(b) (Cum. Supp. 1952).
35. 7 U.S.C. 1952 ed. § 1314(a).
36. 7 U.S.C. 1952 ed. §§ 1313(b), (c), and (g), and 1388.
37. 7 U.S.C. 1952 ed. § 1362.
38. 7 U.S.C. 1952 ed. § 1363.
39. 7 U.S.C. 1952 ed. § 1363.
40. 7 U.S.C. 1952 ed. § 1365.

which his [the plaintiff's] farm is located . . . ."[41] The scope of judicial review is limited to "questions of law," and "the findings of fact by the Review Committee, if supported by evidence, shall be conclusive."[42] These terms in the Act "provide the usual provisions for Court review of administrative orders."[43] This is the familiar substantial evidence rule which governs judicial review under numerous Federal statutes having provisions comparable to the relevant section of this Act.[44] Judicial review under this statute is not a "commonplace one" in which the Court is clothed with its ordinary jurisdiction, legal or equitable, but it is a special statutory proceeding in which jurisdiction extends "only to review the action of the review committee" on the basis of the evidence in the record as a whole before that Committee.[45]

The guiding principle for judicial review under the statute was set forth by the Supreme Court of South Carolina in *Lee v. Berry*[46] and *Lee v. DeBerry*.[47] "The Court is directed to affirm the determination of the Review Committee if its findings of fact are supported by substantial evidence," and substantial evidence means "only such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[48] The rule in the *Berry* and *DeBerry* cases has been followed by the Court of Appeals of Kentucky in *Rymer v. Garnett*.[49] Moreover, "it is not the Court's function to substitute its judgment for that of the Review Committee where the Committee has applied the broad phrases" in the regulations "to a specific state of facts . . . ."[50]

The requirement in the Marketing Quota Review Regulations[51] that the determination of the Review Committee should be based upon "reliable, probative, and substantial evidence adduced at the

41. *Ibid.*
42. 7 U.S.C. 1952 ed. § 1366.
43. H. Conf. Rep. No. 1767, 75th Cong., 3rd Sess., p. 92 (1938).
44. See, *e. g.*, the Federal Trade Commission Act, 15 U.S.C. 1952 ed. § 45(c), which provides that the "findings of the Commission as to the facts, if supported by evidence, shall be conclusive." Comparable language in another statute was applied in Edison Co. v. Labor Board, 305 U.S. 197, 229 (1938). It was said in Labor Board v. Waterman S. S. Co., 309 U.S. 206, 208-209 (1940), that: "Not by accident, but in line with a general policy, Congress has deemed it wise to entrust the finding of facts to these specialized agencies. It is essential that courts regard this division of responsibility which Congress as a matter of policy has embodied in the very statute from which the Court of Appeals derived its jurisdiction to act."
45. Smith Land Co. v. Christensen, 148 F. 2d 184, 185 (10th Cir. 1945).
46. 219 S.C. 346, 352, 65 S.E. 2d 257, 259 (1951).
47. 219 S.C. 382, 387-388, 65 S.E. 2d 775, 777 (1951).
48. Lee v. DeBerry, 219 S.C. 382, 387, 65 S.E. 2d 775, 777 (1951).
49. 244 S.W. 2d 439, 440 (Ky. 1951).
50. Lee v. DeBerry, 219 S.C. 382, 393, 65 S.E. 2d 775, 780 (1951).
51. 7 Code Fed. Regs. § 711.30(b) (1949 ed.).

hearing" merely incorporates the language of § 7(c) of the Administrative Procedure Act.[52] That provision in the regulations does not, however, change the scope of judicial review because § 10(e) of the Administrative Procedure Act specifically provides that an administrative finding is not to be set aside if it is supported by "substantial evidence."[53] The courts are required to sustain an administrative finding that is supported by substantial evidence on the record as a whole,[54] and evidence may be reliable, probative, and substantial even though it would not be admissible under the rules of evidence followed in court proceedings.[55] The differences in origin and function between administrative agencies and courts "preclude wholesale transplantation of the rules of procedure, trial, and review which have evolved from the history and experience of courts."[56] Also it has been observed that even in judicial trials "the whole tendency is to leave rulings as to the illuminating relevance of testimony largely to the discretion of the trial court that hears the evidence," and appellate courts "are less and less inclined to base error on such rulings,"[57] and administrative tribunals "are given even freer scope in the application of the conventional rules of evidence."[58] One of the purposes for establishing an administrative agency is to permit "a more elastic and informal procedure than is possible before our more formal courts."[59]

A proceeding before a Review Committee, relative to the acreage allotment or marketing quota for a farm, has in this respect unusual

52. 60 STAT. 241 (1946), 5 U.S.C. 1952 ed. § 1006(c).
53. 5 U.S.C. 1952 ed. § 1009(e).
54. Universal Camera Corp. v. Labor Board, 340 U.S. 474, 476-491 (1951); O'Leary v. Brown-Pacific-Maxon, 340 U.S. 504, 508 (1951); Swift & Co. v. United States, 343 U.S. 373, 382 (1952).
55. Interstate Commerce Commission v. Baird, 194 U.S. 25, 44 (1904); Tagg Bros. v. United States, 280 U.S. 420, 440-442 (1930); Opp Cotton Mills v. Administrator, 312 U.S. 126, 155 (1941); Trade Comm'n v. Cement Institute, 333 U.S. 683, 705-706 (1948); Willapoint Oysters v. Ewing, 174 F. 2d 676, 690-691 (9th Cir. 1949), *certiorari denied*, 338 U.S. 860; Concrete Materials Corp. v. Federal Trade Commission, 189 F. 2d 359, 362 (7th Cir. 1951); Phelps Dodge Refining Corp. v. Federal Trade Comm'n, 139 F. 2d 393, 397 (2nd Cir. 1943); National Labor Relations Board v. Remington Rand, Inc., 94 F. 2d 862, 873 (2nd Cir. 1938); Davis, ADMINISTRATIVE LAW §§ 144 and 145 (1951 ed.).
56. Federal Comm'n v. Broadcasting Co., 309 U.S. 134, 143 (1940).
57. Labor Board v. Donnelly Co., 330 U.S. 219, 236 (1947). It has been declared that "[w]hile courts, in the administration of the law of evidence, should be careful not to open the door to falsehood, they should be equally careful not to shut out truth." Cliquot's Champagne, 3 Wall. (U.S.) 114, 141 (1865). A Price-Current pamphlet, a type of market news publication as to prices, available and used in the ordinary course of business is not liable to the objection that it is hearsay, and the publication is admissible in evidence in a jury trial in court. *Id.* at 140-141.
58. Labor Board v. Donnelly Co., 330 U.S. 219, 236 (1947).
59. Lambros v. Young, 145 F. 2d 341, 343 (D.C. Cir. 1944).

features. The tribunal is a committee of farmers in lieu of a Hearing Examiner under § 11 of the Administrative Procedure Act.[60] In § 7(a) of the Administrative Procedure Act it is provided that "nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or in part by or before boards or other officers specially provided for by or designated pursuant to statute."[61] Although a Review Committee of farmers is a tribunal that is "expert" in the subject matter within its jurisdiction, it has been said that a requirement for adherence to formal or technical rules of procedure would manifestly present greater difficulties for a Review Committee than ordinarily would be experienced in other types of proceedings before administrative agencies.[62] It would seem that the effectiveness of this statutory plan, for hearings before a Review Committee, is dependent on elastic and informal procedure, and that the prefatory findings of the Committee, in support of their ultimate finding, need not be set forth in elaborate detail.

The Marketing Quota Review Regulations[63] state the method to be followed in obtaining a hearing before a Review Committee, and the general procedure to be followed at such hearing. The regulations were published in the Federal Register,[64] and also appear in the Code of Federal Regulations.[65] Inasmuch as the regulations were issued in pursuance of constitutional statutory authority,[66] the regulations have the same force and effect as if prescribed in terms

60. 5 U.S.C. 1952 ed. § 1010.

61. 5 U.S.C. 1952 ed. § 1006(a). The legislative history of this statutory provision emphasizes that it relates to, and thereby excludes, quota allotment proceedings under the Agricultural Adjustment Act of 1938. Sen. Doc. No. 248, 79th Cong., 2d Sess., pp. 227 and 307 (1946).

62. Federal Administrative Procedure Act and the Administrative Agencies (Proceedings of an Institute Conducted by the New York University School of Law on February 1-8, 1947) pp. 372-373.

63. 7 Code Fed. Regs. § 711.1 *et seq.* (1949 ed.) and 7 Code Fed. Regs. § 711.29 (Cum. Supp. 1952).

64. Documents of general applicability and legal effect, issued by governmental agencies, are published in the Federal Register. 49 STAT. 500, 501 (1935), 44 U.S.C. 1946 ed. § 305. See, also, 1 Code Fed. Regs. §§ 1.31-1.35 (1949 ed.). Judicial notice is taken of the contents of the Federal Register. 44 U.S.C. 1946 ed. § 307. The publication of a document in the Federal Register creates a rebuttable presumption that it was duly issued, prescribed, and promulgated, and that the copy of the document in the Federal Register is a true copy of the original. *Ibid.*

65. 7 Code Fed. Regs. § 711.1 *et seq.* (1949 ed.) and 7 Code Fed. Regs. § 711.29 (Cum. Supp. 1953). The documents in the Code of Federal Regulations are "prima facie evidence of the text of such documents and of the fact that they are in full force and effect on and after the date of publication thereof." 44 U.S.C. 1946 ed. § 311(c).

66. The provisions of the Act are constitutional. Wickard v. Filburn, 317 U.S. 111, 118-133 (1942); Mulford v. Smith, 307 U.S. 38, 47-51 (1939); Troppy v. La Sara Farmers Gin Co., 113 F. 2d 350, 351-352 (5th Cir. 1940).

by the statute, *i. e.*, the regulations have the force and effect of law.[67]

The regulations require the County Committee to notify each farmer in the County as to the establishment of the allotment for his farm.[68] An application for review before the Review Committee may be filed in writing, with the secretary of the County Committee, "within fifteen days after the date of mailing of the notice" of the allotment by the County Committee.[69] The application for review should contain, *inter alia,* a brief statement of each ground on which the application is based, and a statement of the allotment or quota for which claim is made.[70] The place of the hearing shall be in the office of the County Committee through which the allotment or quota sought to be reviewed was originally established, unless the Review Committee, on due notice, designates some other "place" in the County.[71] Due notice shall be given as to the time and place of the hearing.[72] The Review Committee may continue the hearing from day to day or adjourn the hearing to a different place in the County or to a later date.[73]

"The hearing shall be open to the public and shall be conducted in a fair and impartial manner" and so as to afford all interested persons "reasonable opportunity" to give and produce evidence relevant to the determination of the allotment or quota for the applicant.[74] The County Committee is required to submit an answer, and if it is not submitted in time to afford the applicant for review, *i. e.*, the appellant, adequate opportunity to prepare and present his case, the Review Committee shall continue the hearing for such period of time as will afford the applicant reasonable opportunity to prepare for the hearing.[75]

67. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-385 (1947); Lilly v. Grand Trunk R. Co., 317 U.S. 481, 488 (1943); Atchison, Topeka & Santa Fe Ry. v. Scarlett, 300 U.S. 471, 474 (1937).

68. 7 Code Fed. Regs. § 711.5 (1949 ed.). The statute contains the same requirement. 7 U.S.C. 1952 ed. § 1362.

69. 7 Code Fed. Regs. § 711.7 (1949 ed.). Also, see, 7 U.S.C. 1952 ed. § 1363.

70. 7 Code Fed. Regs. § 711.8 (1949 ed.).

71. 7 Code Fed. Regs. §§ 711.22, 711.23, and 711.24 (1949 ed.). The term "quota," as defined in the regulations, means a marketing quota, under the terms of the Act, and also, for the purposes of review, includes the acreage allotment, normal yield, or actual yield established or determined for the farm. 7 Code Fed. Regs. § 711.1(g) (1949 ed.).

72. 7 Code Fed. Regs. §§ 711.23 and 711.24 (1949 ed.).

73. 7 Code Fed. Regs. § 711.24. The statute requires a hearing, but does not specify the place. This method of designating the "place" of the hearing permits the convenience of the parties to be considered, and is consonant with a long established principle. See, *e. g.*, 42 STAT. 998, 1002 (1922), as amended, 7 U.S.C. 1952 ed. § 9; 5 U.S.C. 1952 ed. § 1004(a); 28 U.S.C. Supp. V § 48; and § 3 of the Act of September 24, 1789, 1 STAT. 73.

74. 7 Code Fed. Regs. § 711.25(a) (1949 ed.).

75. 7 Code Fed. Regs. § 711.25(d) (1949 ed.).

The burden of proof at the hearing is on the applicant, *i. e.*, the appellant, as to all issues of fact raised by him.[76] Each witness shall testify under oath, and oral and documentary evidence may be submitted, and witnesses may be cross-examined for a full and true disclosure of the facts.[77] A transcript of the hearing shall be made, and under the conditions set forth in the rules the testimony shall be reported verbatim.[78] Written arguments and proposed findings of fact may be submitted for consideration by the Review Committee.[79] The hearing may, under the circumstances set forth in the regulations, be reopened for the purpose of taking additional evidence.[80]

As soon as practicable after the hearing has been completed, the Review Committee shall file in writing its findings and determination as to the proper allotment or quota.[81] A certified copy of the findings and determination by the Review Committee shall be served upon the applicant by depositing the document in the United States mails, registered and addressed to the applicant at his last known address, and also copies shall be forwarded to the County Committee and to the State Committee.[82]

In the event judicial review is sought, the Review Committee shall certify and file in Court a transcript of the record upon which the determination of the Committee was made, together with the findings of fact and conclusion by the Committee.[83] The suit for judicial review must be instituted within fifteen days after the notice of the Review Committee's determination is mailed to the applicant.[84] Bond shall be given in an amount and with surety satisfactory to the Court to secure the United States for the costs of the proceeding.[85] The complaint in the proceeding on judicial review shall be served on the Review Committee.[86]

If judicial review is sought in a "court of record of the State having general jurisdiction, sitting in the county or the district in which his [the plaintiff's] farm is located"[87] — instead of the United

76. 7 Code Fed. Regs. § 711.25(e) (1949 ed.); Lee v. DeBerry, 219 S.C. 382, 393, 65 S.E. 2d 775, 780 (1951); Rymer v. Garnett, 244 S.W. 2d 439, 440 (Ky. 1951).
77. 7 Code Fed. Regs. § 711.25(e) (1949 ed.).
78. 7 Code Fed. Regs. § 711.25(f) (1949 ed.).
79. 7 Code Fed. Regs. § 711.25(g) (1949 ed.).
80. 7 Code Fed. Regs. § 711.29 (1949 ed.).
81. 7 Code Fed. Regs. § 711.30(b) (1949 ed.).
82. 7 Code Fed. Regs. § 711.31 (1949 ed.).
83. 7 Code Fed. Regs. § 711.33(a) (1949 ed.). The statute contains the same requirement. 7 U.S.C. 1952 ed. § 1365.
84. 7 U.S.C. 1952 ed. §1365 and 7 Code Fed. Regs. § 711.33 (1949 ed.).
85. 7 U.S.C. 1952 ed. § 1365.
86. *Ibid.*
87. *Ibid.*

States District Court in which judicial review may be obtained in the alternative — nonetheless "[t]he Federal law governs in the interpretation of Federal statutes, even though the case is in a state court."[88] An Act of Congress should operate uniformly throughout the country so that the general program will remain unimpaired.[89]

On judicial review of administrative action, only prejudicial error is reversible error.[90] Also, orderly procedure and good administration require that objections to the proceedings at an administrative hearing should be made while the agency has an opportunity for correction, and the general rule is that a failure to make an objection before the agency precludes judicial review of the issue.[91] "A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented and deprives the Commission of an opportunity to consider the matter, make its ruling, and state the reasons for its action."[92]

It is provided in the Act that on judicial review application may be made to the Court for leave to adduce additional evidence, "and if it is shown to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence before the review committee, the Court may direct such additional evidence to be taken before the review committee in such manner and upon such terms and conditions as to the Court may seem proper," and the committee may modify its findings or determination by reason of the additional evidence so taken and then file with the Court the modified findings or determination.[93] In *Southport Co. v. Labor Board*,[94] it was held, under statutory language similar to the provisions in the Agricultural Adjustment Act of 1938, that "the application for leave to adduce additional evidence . . . was addressed to the sound judicial discretion of the court" and before granting relief the Court "must be satisfied of the materiality of the additional evidence, and that there were reasonable

88. Lee v. DeBerry, 219 S.C. 382, 388, 65 S.E. 2d 775, 778 (1951).
89. Reconstruction Finance Corp. v. Beaver County, 328 U.S. 204, 209 (1946); Illinois Steel Co. v. Baltimore & Ohio R. Co., 320 U.S. 508, 510-511 (1944); Garrett v. Moore-McCormack Co., 317 U.S. 239, 245 (1942).
90. 5 U.S.C. 1952 ed. § 1009(e); Union Starch and Refining Co. v. National Labor Rel. Bd., 186 F. 2d 1008, 1013 (7th Cir. 1951), *certiorari denied*, 342 U.S. 815 (1951).
91. United States v. Tucker Truck Lines, 344 U.S. 33, 37 (1952); Unemployment Comm'n v. Aragon, 329 U.S. 143, 155 (1946); United States v. Northern Pacific Ry., 288 U.S. 490, 494 (1933); Vajtauer v. Comm'r of Immigration, 273 U.S. 103, 113 (1927); Spiller v. Atchison, T. & S. F. Ry. Co., 253 U.S. 117, 130-131 (1920).
92. Unemployment Comm'n v. Aragon, 329 U.S. 143, 155 (1946).
93. 7 U.S.C. 1952 ed. § 1366.
94. 315 U.S. 100, 104 (1942).

grounds for failure to adduce it at the hearing" before the administrative agency.[95] That decision is consonant with the general principle that one who seeks a new hearing on the grounds of newly discovered evidence should show not only that the evidence on which he relies, as the basis of his claim for a new or reopened hearing, was in fact newly discovered or unknown to him until after the hearing was completed, but also that he could not, with reasonable diligence, have discovered and produced the evidence at the hearing, *i. e.*, that his failure to produce the newly discovered evidence was not due to any neglect or want of diligence on his part.[96] Newly discovered evidence which would not materially change the result is not ground for a new hearing.[97] The application for a new or reopened hearing should not only aver the exercise of due diligence or employ an equivalent expression in support of the application, but the exercise of due diligence should be manifest from the facts or details related or set forth in support of the application.[98]

The statutory method for reviewing the validity of an allotment or quota is "exclusive."[99] It is the purpose of the Act to forbid any method of judicial review of the administrative findings other than by a direct proceeding against the Review Committee, thereby precluding an indirect method of securing such review by means of an injunction action against enforcement officers such as was resorted to under another statute in *Shields v. Utah Idaho R. Co.*,[100] or through the method of an action against the Government under the so-called Tucker Act,[101] or by a declaratory judgment proceeding.[102]

The due process clause of the Fifth Amendment to the Constitution is applicable with respect to the establishment of marketing quotas, and the statutory plan in the Agricultural Adjustment Act of 1938 does not impinge on the requirements of due process.[103] But on judicial review of a quota for a farm any issue as to due pro-

95. *Ibid.*
96. United States v. Bransen, 142 F. 2d 232, 235 (9th Cir. 1944).
97. *Ibid.*
98. Aladdin Mfg. Co. v. Mantle Lamp Co., 116 F. 2d 708, 712 (7th Cir. 1941); National Labor Rel. Board v. West Kentucky Coal Co., 152 F. 2d 198, 201 (6th Cir. 1945), *certiorari denied*, 328 U.S. 866 (1946); National Labor Rel. Bd. v. May Department Stores, 154 F. 2d 533, 540 (8th Cir. 1946), *certiorari denied*, 329 U.S. 725 (1946).
99. Lee v. Roseberry, 94 F. Supp. 324, 327-328 (3-judge Court, E.D. Ky. 1950); Larkin v. Roseberry, 54 F. Supp. 373, 375 (E.D. Ky. 1944); Lee v. Roseberry, 200 F. 2d 155, 155-156 (6th Cir. 1952).
100. 305 U.S. 177 (1938).
101. 28 U.S.C. Supp. V § 1346.
102. Lee v. Roseberry, 94 F. Supp. 324, 327-328 (3-judge Court, E.D. Ky. 1950); Larkin v. Roseberry, 54 F. Supp. 373, 375 (E.D. Ky. 1944); Lee v. Roseberry, 200 F. 2d 155, 155-156 (6th Cir. 1952).
103. Wickard v. Filburn, 317 U.S. 111, 129-133 (1942).

cess, in connection with the determination of the quota, may as a general rule be presented. The fact, however, that a particular quota "may demonstrably be disadvantageous" to a certain area or person is not enough to constitute a violation of the due process clause.[104] The quota system "may impose hardships here and there" and "the incidence of hardship may shift in location and intensity," but such cannot be regarded as sufficient to constitute "discrimination of such an injurious character as to bring into operation the due process clause."[105] It has been "pointed out many times that the exercise of the federal commerce power is not dependent on its maintenance of the economic *status quo;* the Fifth Amendment is no protection against a congressional scheme of business regulation otherwise valid, merely because it disturbs the profitability or methods" of those business concerns or persons affected.[106]

A person who fails to show that he has suffered or is immediately in danger of suffering any legal injury, under the quota provisions of the statute, lacks adequate standing to present an issue as to constitutionality.[107] "For adjudication of constitutional issues, 'concrete legal issues, presented in actual cases, not abstractions' are requisite."[108] It is not sufficient for the appellant merely to show that he "suffers in some indefinite way in common with people generally."[109]

Penalties are prescribed by the Act relative to marketings in excess of the marketing quota for the farm.[110] A primary purpose of

104. Secretary of Agriculture v. Central Roig Co., 338 U.S. 604, 618 (1950), involving marketing quotas under the Sugar Act of 1948, 61 STAT. 922 (1947), 7 U.S.C. 1952 ed. § 1100 *et seq.*

105. *Id.* at 619.

106. American Trucking Ass'ns v. United States, 344 U.S. 298, 322, n. 20 (1953). The Fourteenth Amendment to the Constitution is inapplicable to Federal legislation or regulation thereunder (Virginia v. Rives, 100 U.S. 313, 318 (1879)); Nebbia v. New York, 291 U.S. 502, 525 (1934); Morehead v. New York *ex rel.* Tipaldo, 298 U.S. 587, 610 (1936)), and also under the Fourteenth Amendment it has been held that there is a "wide range" for classification, in connection with regulation, and: "To be able to find fault with a law is not to demonstrate its invalidity. It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations — illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void under the Fourteenth Amendment . . . ." Metropolis Theatre Co. v. Chicago, 228 U.S. 61, 69-70 (1913). See also, Chicago, B. & Q. R. R. Co. v. Cram, 228 U.S. 70, 81-85 (1913).

107. Lee v. Roseberry, 200 F. 2d 155, 156 (6th Cir. 1952). The principle followed in Lee v. Roseberry, *supra,* is supported by the holding in Barrows v. Jackson, 346 U.S. 249, 255 (1953).

108. United Public Workers v. Mitchell, 330 U.S. 75, 89 (1947).

109. Massachusetts v. Mellon, 262 U.S. 447, 488 (1923).

110. 7 U.S.C. 1952 ed. §§ 1340, 1346, 1348, 1356, 1359, 1372.

the Act is to limit national and individual farm marketings to the quotas allotted. "The purpose of Congress in requiring payment of penalties into the Federal Treasury for marketing above the allotted amount was not to raise revenue for the Government's financial advantage but to deter farmers from planting and marketing more than their quotas."[111] "Although Congress neither wholly prohibited nor made it a crime for a farmer to market cotton in excess of his quota, still it imposed sanctions upon non-cooperators analogous to those of the criminal law."[112] The penalties bear interest from the date of judgment, but not for the period between the date the penalties become due and the date of judgment.[113]

It is only necessary that the Government prove its case by the preponderance of the evidence in a proceeding to recover penalties under the Act, and a regulatory provision that the buyer should deduct the penalty from the price and remit the amount of the penalty to the Government does not relieve the producer from liability for the penalty when it is not collected and remitted by the buyer.[114] The Secretary of Agriculture is authorized by the statute to issue rules or regulations with respect to the collection of penalties, and a regulation creating a presumption, under certain circumstances, that a commodity has been marketed in excess of the quota is valid.[115]

Statutory provisions require reports and records by processors, warehousemen, and various other persons relative to the marketing of commodities under marketing quotas,[116] and the Secretary or his representatives may examine or inspect all such books, papers, and other records.[117] The Secretary is also authorized to provide for measuring farms "for ascertaining whether the acreage planted for any year . . . is in excess of the farm acreage allotment . . . for the farm . . . ."[118]

This outline, in brief compass, of the statutory plan for acreage allotments or marketing quotas does not, of course, mention numerous provisions in the Act and the regulations, particularly those provisions that are peculiar to a particular commodity subject to regulation.

111. Rodgers v. United States, 332 U.S. 371, 374 (1947).
112. *Ibid.*
113. *Id.* at 373-376.
114. Usher v. United States, 146 F. 2d 369, 371-372 (4th Cir. 1944).
115. *Id.* at 370-371.
116. 7 U.S.C. 1952 ed. § 1373.
117. Rodgers v. United States, 138 F. 2d 992, 994-996 (6th Cir. 1943).
118. 7 U.S.C. 1952 ed. § 1374.

II.

The Agricultural Marketing Agreement Act of 1937[119] reenacted with amendments many of the provisions of the Agricultural Adjustment Act of 1933,[120] as amended, including the amendments in the Act of August 24, 1935.[121] The purpose of the statute[122] is "to establish and maintain such orderly marketing conditions for agricultural commodities . . . as will establish, as the prices to farmers, parity prices" as defined in the Act, and also protect the interest of the consumers by a gradual correction of the current price level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets.[123] With respect to milk, the Secretary is authorized, whenever he finds that the parity price is not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supplies and demand for milk and its products in the marketing area under consideration, to fix such minimum prices, which dealers or handlers shall pay to producers for their milk, as he finds will reflect such

119. 50 STAT. 246 (1937), 7 U.S.C. 1952 ed. § 601 *et seq.*

120. 48 STAT. 31 (1933). Certain sections of this statute with respect to processing taxes were held invalid in United States v. Butler, 297 U.S. 1, 53-78 (1936). The remaining provisions of the Act, as amended by the Act of August 24, 1935, 49 STAT. 750, relative to marketing agreements and marketing orders were separate and distinct from the sections that were invalidated in the *Butler* case, and the statutory provisions for marketing agreements and marketing orders continued in effect. United States v. David Buttrick Co., 91 F. 2d 66, 67-69 (1st Cir. 1937); Edwards v. United States, 91 F. 2d 767, 789 (9th Cir. 1937); Whittenburg v. United States, 100 F. 2d 520, 521 (5th Cir. 1939). The legislative history of the Agricultural Marketing Agreement Act of 1937 discloses that "these provisions [for marketing orders and marketing agreements] are and were intended to be effective independently of the production adjustment provisions" invalidated in the *Butler* case. H. R. Rep. No. 468, 75th Cong., 1st Sess., p. 2. These provisions for the regulation of marketing were believed to be within the ambit of the power of Congress to regulate interstate and foreign commerce, and by reenacting and further amending these statutory provisions any question as to their separability, under the decision in the *Butler* case, was obviated. *Ibid.* and Sen. Rep. No. 565, 75th Cong., 1st Sess. (1937), pp. 2-3.

121. 49 STAT. 750 (1935).

122. The economic objective of the Agricultural Marketing Agreement Act has been modified in some respects by the Act of August 1, 1947, 61 STAT. 707, and by the Act of July 3, 1948, 62 STAT. 1257.

123. 7 U.S.C. 1952 ed. § 602. The statute also contains, in the declaration of policy, some qualifications relative to maintaining prices to farmers above the parity level, and declares the purpose to establish and maintain such minimum standards of quality and maturity and such grading and inspection requirements for certain agricultural commodities enumerated in the Act, other than milk and its products, as will effectuate such orderly marketing of the agricultural commodities as will be in the public interest.

factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.[124]

The Secretary of Agriculture is authorized to enter into a marketing agreement after due notice and opportunity for hearing with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof if the Secretary finds that the marketing agreement will effectuate the declared policy of the Act, and the statute provides that the agreement, if entered into, is exempted from the Anti-Trust laws of the United States.[125] The Secretary is also authorized to issue marketing orders relative to the marketing or handling of the commodities or products specified in the Act, and such marketing orders are applicable to all processors, associations of producers, and others engaged in the handling of the agricultural commodity or product subject to the provisions of the order.[126] Orders may be applicable "only to the following agricultural commodities and the products thereof (except 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, pecans and walnuts but not including apples, other than apples produced in the States of Washington, Oregon, and Idaho, and not including fruits, other than olives, for canning or freezing), tobacco, vegetables (not including vegetables, other than asparagus, for canning or freezing), soybeans, hops, honeybees and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin)."[127]

A marketing order may regulate such handling of the particular commodity or product as "is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate

124. 7 U.S.C. 1952 ed. § 608c(18). The price provided for in this section of the Act "cannot be determined by mathematical formula but the standards give ample indications of the various factors to be considered by the Secretary". United States v. Rock Royal Co-op., 307 U.S. 533, 577 (1939).

125. 7 U.S.C. 1952 ed. § 608b. In the absence of a marketing agreement or marketing order there is no exemption, under this statute, from the Anti-Trust laws (United States v. Borden Co., 308 U.S. 188, 197-198 (1939)), and the exemption applies only to actions in conformity to the marketing agreement or marketing order (American Cooperative Serum Ass'n v. Anchor Serum Co., 153 F. 2d 907, 912 (7th Cir. 1946); United States v. Maryland & Virginia Milk Pro. Ass'n, 90 F. Supp. 681, 688 (D.C. 1950), *reversed on other grounds*, 193 F. 2d 907 (D.C. Cir. 1951)). The Act is not invalid because it is in conflict with the Anti-Trust laws, but prevails over the earlier Anti-Trust laws. United States v. Wrightwood Dairy Co., 127 F. 2d 907, 912 (7th Cir. 1942). All of the programs in effect under this Act have been made effective by marketing orders, although in some instances a marketing agreement has been executed in conjunction with a marketing order.

126. 7 U.S.C. 1952 ed. § 608c(1).

127. 7 U.S.C. 1952 ed. § 608c(2).

or foreign commerce in such commodity or product thereof."[128] The statute is a valid exercise of the power of Congress to regulate commerce,[129] and confers on the Secretary of Agriculture "the full reach of the commerce power."[130] The commerce power is not confined in its exercise to the regulation of commerce among the states, but extends "to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce."[131] The power to regulate commerce, under this statute, includes (1) the power to fix quotas and otherwise limit the shipments of fresh fruits, vegetables, and the specialty crops enumerated in the statute,[132] and (2) the power to fix the minimum prices which dealers or handlers shall pay to producers for their milk.[133] The power of a State to fix prices was upheld in *Nebbia v. New York*,[134] and the authority of the Federal Government over interstate commerce does not differ in extent or character from that of the states relative to intrastate commerce.[135] A sale by a producer to a dealer or handler is a part of the flow of commerce,[136] and the use of an equalization pool or producer-settlement fund, as provided for in milk orders, is reasonably adapted to allow regulation of the marketing of milk and is not violative of due process.[137] Adequate standards are set forth in the Act to guide the Secretary

128. 7 U.S.C. 1952 ed. § 608c(1). Also see the definition of "interstate or foreign commerce" in 7 U.S.C. 1952 ed. § 610(j).

129. United States v. Rock Royal Co-op., 307 U.S. 533, 568-578 (1939); Whittenburg v. United States, 100 F. 2d 520, 521-523 (5th Cir. 1939); Wallace v. Hudson-Duncan & Co., 98 F. 2d 985, 989-994 (9th Cir. 1938); Edwards v. United States, 91 F. 2d 767, 778-789 (9th Cir. 1937).

130. United States v. Wrightwood Dairy Co., 315 U.S. 110, 123 (1942).

131. *Id.* at 119.

132. Whittenburg v. United States, 100 F. 2d 520, 521-523 (5th Cir. 1939); Wallace v. Hudson-Duncan & Co., 98 F. 2d 985, 989-994 (9th Cir. 1938); Edwards v. United States, 91 F. 2d 767, 778-789 (9th Cir. 1937). "The Constitution does not forbid State or nation to legislate for the public good on economic lines. If the economic end is to be reached by an interstate regulation of commerce, the Congress may and must devise the regulation." Whittenburg v. United States, 100 F. 2d 520, 522 (5th Cir. 1939). The use of marketing quotas, apportioned to different geographic areas and administratively allocated to individual shippers, is a device used under various regulatory statutes. See, *e. g.*, Secretary of Agriculture v. Central Roig Co., 338 U.S. 604, 617 (1950), relative to marketing quotas for sugar; Wickard v. Filburn, 317 U.S. 111, 118-133 (1942), relative to marketing quotas for wheat; and Mulford v. Smith, 307 U.S. 38, 41-49 (1939), relative to marketing quotas for tobacco.

133. United States v. Rock Royal Co-op., 307 U.S. 533, 568-573 (1939).

134. 291 U.S. 502, 521-539 (1934).

135. United States v. Rock Royal Co-op., 307 U.S. 533, 568-573 (1939).

136. *Id.* at 568-569.

137. *Id.* at 572-573.

of Agriculture in the regulative process, and there is no illegal delegation of authority.[138]

Although the statute vests in the Secretary the full reach of the commerce clause and the Secretary may exert his authority to the ultimate,[139] nonetheless the Secretary of Agriculture may regulate not at all or he may provide for limited regulation. Also the statute provides that the Secretary is directed to confer with and hold joint hearings with the duly constituted authorities of any State, and the Secretary is authorized to cooperate with such authorities and to issue orders "complementary to orders or other regulations issued by such authorities . . . ."[140] The Act "contemplates the existence of state programs at least until such time as the Secretary shall establish a federal marketing program, unless the state program in some way conflicts with the policy of the federal Act".[141] The adoption of an adequate program by the State may be deemed by the Secretary a sufficient ground for believing that the policy of the Act of Congress may be effectuated without the promulgation of a program by the Secretary.[142] In the event of regulation by a State and, also, regulation under the Act of Congress, an effort should be made to maintain uniformity in the formulation, administration, and enforcement of the Federal and State programs.[143] Some of the regulatory programs under this Act are in conjunction with State programs.[144] In the Federal Register of October 10, 1953, there appears the decision

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138. *Id.* at 574-578, and Whittenburg v. United States, 100 F. 2d 520, 521-523 (5th Cir. 1939); Wallace v. Hudson-Duncan & Co., 98 F. 2d 985, 994 (9th Cir. 1938); Edwards v. United States, 91 F. 2d 767, 785-789 (9th Cir. 1937).

139. See, *e. g.,* Titusville Dairy Products Co. v. Brannan, 176 F. 2d 332, 334-336 (3rd Cir. 1949), *certiorari denied,* 338 U. S. 905 (1949); Beatrice Creamery Co. v. Anderson, 75 F. Supp. 363, 365-367 (D.C. Kan. 1947); Balazs v. Brannan, 87 F. Supp. 119, 120-121 (N.D. Ohio 1949).

140. 7 U.S.C. 1952 ed. § 610(i), Parker v. Brown, 317 U.S. 341, 352-359 (1943).

141. Parker v. Brown, 317 U.S. 341, 354 (1943).

142. *Ibid.*

143. It has been said that Congress was not enlarging the jurisdiction of the States "by authorizing them to regulate subjects which would have otherwise fallen within the exclusive Federal domain," but that Congress had in mind State programs which would parallel Federal orders. Brief for the United States as *amicus curiae,* p. 46, in Parker v. Brown, No. 46, in the Supreme Court of the United States, October Term, 1942 (317 U.S. 341).

144. Several states provide for regulatory programs similar, in various respects, to those authorized by Congress for use in the marketing orders effective under the Agricultural Marketing Agreement Act of 1937. See, *e. g.,* ALA. CODE tit. 22, § 205-231 (1940); CALIF. AGR. CODE ANN. § 736 *et seq.* (Deering's 1951); 1935 COLO. STAT. ANN. ch. 106, § 46 *et seq.* (1949); CONN. GEN. STAT. § 3112 *et seq.* (1949); FLA. STAT. ANN. § 501. 13 *et seq.* (1943); GA. CODE ANN. § 42.551 *et seq.* (1951); N. Y. AGR. AND MARKETS LAW § 252 *et seq.* (McKinney's 1938, 1953 Supp.); PENN. STAT. ANN. tit. 31, § 700j-102 *et seq.* (Purdon's 1953); UTAH CODE ANN. tit. 5, ch. 3, § 1 *et seq.* (1953); VA. CODE ANN. tit. 3, § 359 (1950).

of the Secretary of Agriculture whereby approval is given, under the Act, to certain amendments to the milk marketing order for the New York metropolitan area, and the Secretary's decision states, *inter alia:*

> The regulatory program for the New York metropolitan marketing area is a joint Federal-State program. The Federal order and the State order are complementary, and both orders contain, in all material respects, identical provisions. In the case of the original promulgation of the orders [in 1938], and each amendment to the orders, joint hearings have been held and the amendments to both orders have been identical in all material respects. This program has been administered in accordance with the principles of procedure set forth in the agreement or memorandum of understanding executed on August 26, 1938, by the Secretary of Agriculture of the United States and the Commissioner of Agriculture and Markets of the State of New York.[145]

There are 24 marketing orders in effect relative to fruits, vegetables, and specialty crops.[146] These programs relate, *e. g.,* to pecans grown in South Carolina, Georgia, Alabama, Florida, and Mississippi; oranges, grapefruit, and tangerines grown in Florida; fresh Bartlett pears, plums, and Elberta peaches grown in California; lemons grown in California and Arizona; type 62 shade-grown cigar-leaf tobacco grown in a specified area in Florida and Georgia; and walnuts grown in California, Oregon, and Washington. The marketing orders for fruits, vegetables, and specialty crops may, under the terms of the statute, provide *inter alia* for the regulation of shipments by grade, size, or volume, and for the allotment of quotas among handlers or producers, and for establishing a reserve or surplus pool.[147] The establishment of a reserve or surplus pool, portions of which may from time to time be released for marketing, and the equitable distribution of the proceeds of the pool among the persons beneficially interested in the pool, are regulatory provisions within the authority conferred on the Secretary by the terms of the statute.[148] Marketing quotas,

145. 18 Fed. Reg. 6458 (1953).
146. 7 Code Fed. Regs. Part 900 (Rev. 1952).
147. 7 U.S.C. 1952 ed. § 608c(6). Also the orders may prohibit unfair methods of competition and unfair trade practices in the marketing or handling of the commodities or products subject to regulation, and may contain other provisions auxiliary to those specifically authorized by the Act. 7 U.S.C. 1952 ed. § 608c(7).
148. 7 U.S.C. 1952 ed. § 608c(6), and Wallace v. Hudson-Duncan & Co., 98 F. 2d 985, 987-994 (9th Cir. 1938).

under a uniform rule based upon the amounts which each handler has available for current shipment, are valid under the Act.[149] These regulatory programs contemplate, in some instances, the issuance of volume, grade, or size regulations by the Secretary at weekly or biweekly intervals during the marketing season, and for the regulations to become effective promptly after issuance thereof in order to effectuate the economic goal set forth in the Act.

The marketing orders which provide for regulation by grade, size, maturity, or quality provide that each shipment of the commodity or product subject to regulation must be inspected prior to shipment by the Federal-State Inspection Service, and the certificate of inspection must be submitted to the administrative agency.[150] An inspection certificate is admissible in evidence, as a record made in the regular course of business, and in a proceeding in court a certificate of inspection is *prima facie* evidence of the truth of the statements therein contained.[151]

There are 50 marketing orders with respect to milk.[152] These programs relate to the marketing of milk in the metropolitan marketing areas of New York, Chicago, Philadelphia, Boston, Cleveland, St. Louis, New Orleans, Seattle, Memphis, Knoxville, and numerous other cities throughout the country. Marketing orders with respect to milk provide for the classification of milk in accordance with its use, and the orders fix or provide a method for fixing the minimum prices which handlers shall pay for milk purchased from producers or associations of producers, and such minimum prices shall be uniform subject only to variations or adjustments authorized by the statute.[153] The marketing orders for milk provide for market-wide pools or individual handler pools.[154] Under a market-wide pool,

149. 7 U.S.C. 1952 ed. § 608c(6)(C), and American Fruit Growers v. United States, 105 F. 2d 722, 725-726 (9th Cir. 1939). Also see Edwards v. United States, 91 F. 2d 767, 775-776 (9th Cir. 1937). The statute sets forth numerous details and alternative provisions which may be made the basis for different types of regulation. 7 U.S.C. 1952 ed. § 608c(6)(A), (B), (C), (D), (E), (F), and (G).

150. See, *e. g.*, the requirements in the marketing order regulating the handling of pecans grown in Georgia, Alabama, Florida, Mississippi, and South Carolina, 7 Code Fed. Regs. § 994.4(d) (Rev. 1952). "The purpose of the order was to insure by prior inspection and certification that only pecans which would meet certain grade requirements would reach the public consumers of unshelled pecans outside the production area of Georgia, Alabama, Florida, Mississippi, and South Carolina." Hutches v. Renfroe, 200 F. 2d 337, 338 (5th Cir. 1952).

151. Rennicke v. United States, 207 F. 2d 429, 432 (8th Cir. 1953).

152. 7 Code Fed. Regs. Part 900 (Rev. 1952).

153. 7 U.S.C. 1952 ed. § 608c(5).

154. 7 U.S.C. § 608c(5)(B).

the producers and associations of producers throughout the milkshed receive a uniform price for all milk delivered to handlers, subject only to the variations authorized in the statute, and under an individual handler pool the producers and associations of producers delivering milk to the same handler receive a uniform price, for all milk thus delivered by them, subject only to the variations provided for by the Act.[155]

"The fluid milk industry is affected by factors of instability peculiar to itself which call for special methods of control,"[156] and the economy of the industry is "so eccentric that economic controls have been found at once necessary and difficult".[157] The supply of milk, available from producers, is subject to seasonal fluctuations which, even under normal conditions, are substantial.[158] The production of milk in the spring and summer months is much greater than it is in the fall and winter months, and this surplus in the spring and summer "must necessarily occur during those periods if there are to be enough cows to furnish the requisite supply at periods [of the year] when the milk yield is less".[159] The surplus milk cannot be satisfactorily stored for long periods of time,[160] and the surplus milk — produced for the fluid milk market and, therefore, produced under the elaborate and expensive safeguards, as to health requirements, for the fluid milk market — may find an outlet for use in milk products, but in that market the surplus milk is in competition with milk produced originally for manufacturing which, under health standards, is not required to meet the high requirements of the fluid milk market.[161] Milk produced for manufacturing has a lower market price than milk disposed of on the fluid milk market. "A satisfactory stabilization of prices for fluid milk requires that the burden of surplus milk be shared equally by all producers and all distributors in the milkshed. So long as the surplus burden is unequally distributed the pressure to market surplus milk in fluid form will be a serious disturbing factor."[162]

155. *Ibid.*
156. Nebbia v. New York, 291 U.S. 502, 517 (1934).
157. Hood & Sons v. Du Mond, 336 U.S. 525, 529 (1949).
158. Nebbia v. New York, 291 U.S. 502, 517-518 (1934); United States v. Rock Royal Co-op., 307 U.S. 533, 548-550 (1939); Brannan v. Stark, 185 F. 2d 871, 876 (D.C. Cir. 1950), *affirmed*, 342 U.S. 451 (1952).
159. Grandview Dairy v. Jones, 157 F. 2d 5, 7 (2d Cir. 1946), *certiorari denied*, 329 U.S. 787 (1946).
160. Nebbia v. New York, 291 U.S. 502, 517 (1934); United States v. Rock Royal Co-op., 307 U.S. 533, 549-550 (1939).
161. *Ibid.*
162. Nebbia v. New York, 291 U.S. 502, 517-518 (1934). "It is generally recognized that the chief cause of fluctuating prices and supplies is the existence of a normal surplus which is necessary to furnish an adequate amount for peak periods of consumption. This results in an excess of production

The immediate object of the Act is to fix minimum prices for the milk sold by producers to dealers or handlers.[163] The statute does not prescribe a rigid or inflexible method of fixing or computing prices. Marketing orders may contain "one or more" of the methods set forth in the statute for classifying and pricing milk.[164] Milk may be classified in accordance with the form in which or the purpose for which it is used, and a marketing order may fix or provide a method for fixing minimum prices for each use classification.[165] A milk order may also provide for the payment to producers of a uniform blended price, either under a market-wide pool or an individual handler pool.[166] The uniform blended price in a market-wide pool is ascertained by dividing the total value of the milk of all handlers in the marketing area, during a delivery period, by the total quantity of such milk, and payment of the uniform blended price is effected through what is called the producer-settlement or equalization fund.[167] Each handler whose total value of milk at the

during the troughs of demand . . . . Since all milk produced cannot find a ready market as fluid milk in flush periods, the surplus must move into cream, butter, cheese, milk powder, and other more or less nonperishable products. Since these manufactures are in competition with all similar dairy products, the prices for the milk absorbed into manufacturing processes must necessarily meet the competition of low-cost production areas far removed from the metropolitan centers. The market for fluid milk for use as a fluid beverage is the most profitable to the producer. Consequently, all producers strive for the fluid milk market . . . . The approval of dairies by the Department of Health of New York City, as a condition for the sale of their fluid milk in the metropolitan area, isolates from this general competition a well recognized segment of the entire industry. Since these producers are numerous enough to keep up a volume of fluid milk for New York distribution beyond ordinary requirements, cut-throat competition even among them would threaten the quality and in the end the quantity of fluid milk deemed suitable for New York consumption. Students of the problem generally have apparently recognized a fair division among producers of the fluid milk market and utilization of the rest of the available supply in other dairy staples as an appropriate method of attack for its solution." United States v. Rock Royal Co-op., 307 U.S. 533, 549-550 (1939). This economic imbalance in the fluid milk industry is also discernible in metropolitan marketing areas in England and Canada. See, *e. g.*, Ferrier v. Scottish Milk Marketing Board [1937] A.C. 126, 131; and the Report of the Ontario Royal Commission on Milk (by Honorable Dalton C. Wells, a Justice of the Supreme Court of Ontario) p. 60.

163. The statute does not prohibit sales at prices above the minimum. Stark v. Wickard, 321 U.S. 288, 291 (1944).

164. 7 U.S.C. 1952 ed. § 608c(5). The statutory provisions for classifying, pricing, and pooling milk "follow the methods employed by cooperative associations of producers prior to the enactment" of the legislation. Sen. Rep. No. 1011, 74th Cong., 1st Sess. (1935) p. 9. The "classification use plan" for milk marketing, as set forth in the statute, has been "used in the industry since 1916". Maryland & Virginia Milk Pro. Ass'n v. United States, 193 F. 2d 907, 915-916 (D.C. Cir. 1951).

165. The statute prohibits three types of provisions in milk orders. 7 U.S.C. 1952 ed. §§ 608c(5)(G), 608c(10), and 608c(13)(B).

166. 7 U.S.C. 1952 ed. § 608c(5)(B).

167. United States v. Rock Royal Co-op., 307 U.S. 533, 571 (1939); Grandview Dairy v. Jones, 157 F. 2d 5, 6-7 (2d Cir. 1946), *certiorari denied*, 329 U.S. 787 (1946).

class prices, for a particular delivery period, is greater than his total payments to producers at the uniform blended price is required to pay the difference to the producer-settlement fund, and each handler whose total value of milk is less than his total payments to producers at the uniform blended price is entitled to withdraw the amount of such difference from the producer-settlement fund. "In order to equalize the prices received by producers," under an order for a market-wide pool, "handlers are required to clear their purchases through the producer-settlement fund. Payments into and withdrawals from this fund depend upon the 'value' of the milk received which is fixed by the order at different prices governed by the use made by the handler of the purchased milk and upon whether his obligations to producers are greater or less than the uniform price due the producers under the scheme. The result of the use of the device of an equalization pool is that each producer, dealing with a proprietary handler, gets a uniform or weighted average price for his milk, with differentials for quality, location, or other usual market variations, irrespective of the manner of its use."[168]

In view of the different situations in the various milk marketing areas, there has been a wide variation in the methods used in milk orders in fixing the class or use prices. Generally, the orders have provided "methods for fixing" the class prices. A simple method has been used whereby a differential is added to the prices paid for milk used to produce manufactured milk products, such as butter, cheese, powder, or evaporated milk. Some orders set forth formulaic provisions, based upon various economic factors, and these formulae govern the preciation or determination of price for a use classification.[169]

The field of milk marketing has been characterized as "exquisitely complicated"[170] and the milk marketing orders for large metropolitan areas regulate the marketing of large volumes of milk produced by many thousands of producers. The milk supply "for the New York metropolitan marketing area . . . is produced by approximately 50,000 dairy producers located throughout a production area which includes portions of six states, and this milkshed extends more than

168. United States v. Rock Royal Co-op., 307 U.S. 533, 571 (1939).

169. See, *e. g.*, 7 Code Fed. Regs. § 927.40 *et seq.* (Rev. 1952), 7 Code Fed. Regs. § 904.40 *et seq.* (Rev. 1952).

170. Queensboro Farms Products v. Wickard, 137 F. 2d 969, 974 (2d Cir. 1943.). "The milk problem is so vast that fully to comprehend it would require an almost universal knowledge ranging from geology, biology, chemistry and medicine to the niceties of the legislative, judicial, and administrative processes of government." *Id.* at 975.

400 miles from the marketing area".[171] The total value of the milk pooled and priced under the New York order in 1951 was $310,292,-982.[172]

The regulatory terms of the statute and also the provisions in the milk marketing orders have been the subject of considerable litigation with respect to the meaning of the various requirements.[173] It is presumed that Congress used words in a statute in their usual and ordinary meaning, unless there is evidence to the contrary,[174] and the recognized practices of an industry give meaning to the words of a statute dealing with it.[175] But few words have the precision of mathematical symbols, and "the practical necessities of discharging the business of government inevitably limit the specificity" with which legislators can spell out details in a statute.[176] The purpose of Congress is a dominant factor in determining the meaning of statutory terms,[177] and that meaning is ascertained not only by a consideration of the words of the Act but by considering also the context, the purposes of the statute, and the circumstances under

171. 18 Fed. Reg. 6459 (1953). The dairy industry "is immense in scope" and is a major branch of agriculture in this country. Queensboro Farms Products v. Wickard, 137 F. 2d 969, 975 (2d Cir. 1943).

172. 18 Fed. Reg. 6463 (1953).

173. See, *e. g.*, Brannan v. Stark, 342 U.S. 451 (1952); Crowley's Milk Co. v. Brannan, 198 F. 2d 861 (2d Cir. 1952); Kass v. Brannan, 196 F. 2d 791 (2d Cir. 1952), *certiorari denied*, 344 U.S. 891 (1952); Titusville Dairy Products Co. v. Brannan, 176 F. 2d 332 (3rd Cir. 1949), *certiorari denied*, 338 U.S. 905 (1949); Dairymen's League Cooperative Ass'n v. Brannan, 173 F. 2d 57 (2d Cir. 1949), *certiorari denied*, 338 U.S. 825 (1949); Bailey Farm Dairy Co. v. Anderson, 157 F. 2d 87 (8th Cir. 1946), *certiorari denied*, 329 U.S. 788 (1946).

174. Jones v. Liberty Glass Co., 332 U.S. 524, 531 (1947); United States v. Stewart, 311 U.S. 60, 63 (1940); Old Colony R. Co. v. Commissioner, 284 U.S. 552, 560 (1932); Miller v. Robertson, 266 U.S. 243, 250 (1924). "[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover." Lynch v. Alworth-Stephens Co., 294 F. 190, 194 (8th Cir. 1923), *affirmed*, 267 U.S. 364 (1925), and the foregoing was quoted with approval in the opinion of the Supreme Court, 267 U.S. at 370.

175. United States v. Maher, 307 U.S. 148, 155 (1939). See also Great Northern Ry. v. United States, 315 U.S. 262, 273 (1942).

176. Boyce Motor Lines v. United States, 342 U.S. 337, 340 (1952); Phelps Dodge Corp. v. Labor Board, 313 U.S. 177, 185-186 (1941); Tobin v. Edward S. Wagner Co., 187 F. 2d 977, 979 (2d Cir. 1951). See, also Towne v. Eisner, 245 U.S. 418, 425 (1918). "Lord Westbury declared long ago that 'there is not a more fruitful source of error in law than the inaccuracy of language'." Williamson v. Hotel Melrose, 110 S.C. 1, 29, 96 S.E. 407, 414 (1918).

177. United States v. C.I.O., 335 U.S. 106, 112-113 (1948). It has been held that "[t]here is no surer guide in the interpretation of a statute than its purpose when that is sufficiently disclosed; nor any surer mark of over solicitude for the letter than to wince at carrying out that purpose because the words used do not formally quite match with it." Federal Deposit Ins. Corp. v. Tremaine, 133 F. 2d 827, 830 (2d Cir. 1943).

which the words were used.[178] A contemporaneous and settled administrative interpretation, as to the meaning of a statutory term, is of great weight and should not be overturned unless the interpretation is clearly wrong or unless a different construction is plainly required.[179] Also, the administrative interpretation of a regulatory order, issued by the administrative agency, is entitled to great weight, and is controlling unless it is plainly erroneous or inconsistent with the regulation.[180]

The pricing of milk is affected by circumstances of great variety and constant change.[181] Price fixing under a milk order, for a large metropolitan marketing area, is not static but requires constant attention and frequent hearings on proposed amendments.[182]

178. Puerto Rico v. Shell Co., 302 U.S. 253, 258 (1937); Labor Board v. Hearst Publications, 322 U.S. 111, 124 (1944); Detroit Edison Co. v. Securities & Exchange Commission, 119 F. 2d 730, 738 (6th Cir. 1941), *certiorari denied*, 314 U. S. 618 (1941).

179. United States v. Jackson, 280 U.S. 183, 193 (1930); United States v. American Trucking Ass'ns., 310 U.S. 534, 549 (1940); Boutell v. Walling, 327 U.S. 463, 470-471 (1946); Fleming v. Mohawk Co., 331 U.S. 111, 116 (1947).

180. Bowles v. Seminole Rock Co., 325 U.S. 410, 413-414 (1945); Federal Comm'n v. Broadcasting Co., 309 U.S. 134, 143 n. 6 (1940); United Truck Lines v. Interstate Commerce Commission, 189 F. 2d 816, 817 (9th Cir. 1951); Armstrong Co. v. Walling, 161 F. 2d 515, 517 (1st Cir. 1947); Superior Packing Co. v. Porter, 156 F. 2d 193, 195 (8th Cir. 1946), *certiorari denied*, 329 U.S. 788 (1946); Bowles v. Mannie & Co., 155 F. 2d 129, 133 (7th Cir. 1946), *certiorari denied*, 329 U.S. 736 (1946); Bowles v. Cudahy Packing Company, 154 F. 2d 891, 892 (3rd Cir. 1946). An administrative interpretation is controlling, on judicial review, even though it is not the only possible or reasonable interpretation. L. Gillarde Co. v. Joseph Martinelli, 169 F. 2d 60, 61 (1st Cir. 1948), *certiorari denied*, 335 U.S. 885 (1948). Administrative interpretations that lack uniformity and consistency are generally of little weight. Isbrandtsen Co. v. United States, 96 F. Supp. 883, 889-891 (3-judge Court, S.D. N. Y. 1951), *affirmed sub nom.*, Federal Maritime Board v. United States, 342 U.S. 950 (1952). Also see, Davies Warehouse Co. v. Bowles, 321 U.S. 144, 156 (1944); Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944); Interstate Commerce Commission v. Service Trucking Company, Inc., 186 F. 2d 400, 402 (3rd Cir. 1951). A tentative or preliminary interpretation is not binding on a governmental agency. Dairymen's League Cooperative Ass'n v. Brannan, 173 F. 2d 57, 65 (2d Cir. 1949), *certiorari denied*, 338 U.S. 825 (1949). An unauthorized interpretation by a subordinate is not binding on a governmental agency. Queensboro Farms Products v. Wickard, 137 F. 2d 969, 982 (2d Cir. 1943). The United States is not bound or estopped by the unauthorized acts of its officers or agents, and those dealing with an officer or agent of the United States must be held to have had notice of the limitations upon his authority. Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380, 382-386 (1947); United States v. Stewart, 311 U.S. 60, 70 (1940); Wilber National Bank v. United States, 294 U.S. 120, 123-124 (1935); Nichols & Company v. Secretary of Agriculture, 131 F. 2d 651, 659 (1st Cir. 1942); United States v. Globe Indemnity Company, 94 F. 2d 576, 578 (2d Cir. 1938); Smith v. Federal Crop Ins. Corp., 214 Miss. 55, 61-63, 58 So. 2d 95, 97-98 (1952).

181. It has been said that the regulation of milk marketing is "an undertaking of monstrous difficulty". Dairymen's League Cooperative Ass'n v. Brannan, 173 F. 2d 57, 66 (2d Cir. 1949), *certiorari denied*, 338 U.S. 825 (1949).

182. More than 200 changes were made in the regulatory provisions of the New York milk marketing order during the period from September 1938 through December 1949, and the changes were on 53 different occasions. 18 Fed. Reg. 6459 (1953).

The statutory provisions for hearings on milk orders or amendments to milk orders are the same as for the regulatory programs applicable to fruits, vegetables, and specialty crops. The Secretary of Agriculture shall hold a public hearing whenever he has "reason to believe" that the issuance of a marketing order, with respect to a particular commodity or product, will tend to effectuate the declared policy of the Act.[183] The provisions in the statute for a hearing on a marketing order and for the subsequent issuance of an order, if the requisite findings are made, apply likewise to a hearing on an amendment to an order and the subsequent issuance of the amendment.[184]

The public hearings, under this statute, relative to marketing orders or amendments thereto are governed by the terms of the statute, the regulations thereunder,[185] and the provisions of the Administrative Procedure Act.[186] A marketing program or amendment thereto may be proposed by the Secretary of Agriculture or by any other person, and the proposed program or amendment should be filed, in writing, with the Department, in accordance with the regulations.[187] If it is concluded that there is reason to believe that the proposed regulation will tend to effectuate the declared policy of the Act, the notice of hearing shall be issued, by the Department, and published in the Federal Register.[188] The regulations provide that the notice of hearing with respect to a proposed order or amendment shall, *inter alia,* define the scope of the hearing as specifically as may be practicable; shall contain either the terms or the substance of the proposed regulation or a description of the subjects and issues involved; shall state the industry, area, and class of persons to be regulated; and shall state the time and place of the hearing, and the place where copies of the proposed regulation may be obtained or

183. 7 U.S.C. 1952 ed. § 608c(3).
184. 7 U.S.C. 1952 ed. § 608c(17). The Act states that notice of a hearing on a proposed amendment to a marketing order given at least three days prior to the hearing shall be deemed "due notice thereof". *Ibid.*
185. 7 Code Fed. Regs. § 900.1 *et seq.* (1949 ed.).
186. 5 U.S.C. 1952 ed. § 1001 *et seq.*
187. 7 Code Fed. Regs. § 900.3 (Rev. 1952).
188. 7 Code Fed. Regs. §§ 900.3 and 900.4 (Rev. 1952). "Whenever notice of hearing or of opportunity to be heard is required or authorized to be given by or under an Act of Congress, or may otherwise properly be given, the notice shall be deemed to have been duly given to all persons . . . if said notice shall be published in the Federal Register . . . ." 44 U.S.C. 1946 ed. § 308. Actual notice is adequate, even though formal notice is not given, inasmuch as a person is not prejudiced, in that situation, by a failure to give formal notice. W. J. Dillner Transfer Co. v. United States, 101 F. Supp. 506, 509 (W.D. Penn. 1951). See also, Pinkett v. United States, 105 F. Supp. 67, 71-72 (3-judge Court, D. Md. 1952).

examined.[189] The notice of hearing is adequate if it discloses "the general considerations" and issues.[190] A hearing of this type relates to "rule making" under the Administrative Procedure Act,[191] and is oftentimes referred to as a promulgation hearing.[192] An apt description of a hearing relative to the issuance of a marketing order or an amendment thereto is as follows in *United States v. Wrightwood Dairy Company,*[193] a case under the Chicago milk marketing order:

> The object of such a hearing is not only to afford the individuals the opportunity of airing their objections to the proposed scheme of things, but is also to give the administrators the chance of obtaining information which might have been overlooked or otherwise not available to them.
>
> The realities of the situation are clear. In the case of many proposed . . . [programs or amendments], hundreds of people may be present at a hearing and every individual would be equally desirous of insuring the maximum protection to his own interests. If the equivalent of court proceedings were granted to each person, or even to groups, the hearing would be unwieldly and not susceptible to a satisfactory conclusion. Obviously, a more workable balance must be struck between administrative efficiency and the protection of individual rights.

A Hearing Examiner appointed under the Administrative Procedure Act shall serve as the presiding officer at the hearing.[194] All interested persons shall be given an opportunity to be heard with respect to matters that are relevant and material to the proceeding. The testimony at the hearing shall be reported verbatim, shall be under oath, and cross-examination shall be permitted to the extent necessary for a full and true disclosure of the facts,[195] and documentary evidence may be received at the hearing.[196] Subsequent

189. 7 Code Fed. Regs. § 900.4 (Rev. 1952).
190. United States v. Wrightwood Dairy Company, 127 F. 2d 907, 910 (7th Cir. 1942). See also, Willapoint Oysters v. Ewing, 174 F. 2d 676, 684-685 (9th Cir. 1949), *certiorari denied,* 338 U.S. 860.
191. 5 U.S.C. 1952 ed. § 1001(c).
192. For a discussion of the difference between rule-making and adjudication, see Prentis v. Atlantic Coast Line, 211 U.S. 210, 226 (1908) and *In re* Federal Water & Gas Corp., 188 F. 2d 100, 104 (3rd Cir. 1951), *certiorari denied sub nom.,* Chenery Corporation v. Securities & Exchange Com., 341 U.S. 953 (1951).
193. 127 F. 2d 907, 910 (7th Cir. 1942).
194. 5 U.S.C. 1952 ed. § 1010.
195. 7 Code Fed. Regs. § 900.8(d)(1) (Rev. 1952) and 5 U.S.C. 1952 ed. § 1006(c). Also see, Southern Stevedoring Co. v. Voris, 190 F. 2d 275, 277 (5th Cir. 1951).
196. 7 Code Fed. Regs. § 900.8(d)(4) (Rev. 1952) and 5 U.S.C. 1952 ed. § 1006(c).

to the hearing, briefs and proposed findings and conclusions may be filed with the Hearing Clerk within the period of time specified by the Hearing Examiner.[197] A transcript of the hearing, as certified by the Hearing Examiner, shall be kept on file in the Office of the Hearing Clerk in the United States Department of Agriculture, and shall be available for examination as a public record.[198]

A recommended decision shall be prepared, subsequent to a hearing, and filed by the Department in accordance with the requirements in the regulations,[199] and the recommended decision shall include, *inter alia,* an explanation of the material issues of fact, law, or discretion presented on the record of the hearing, and shall set forth proposed findings and conclusions with respect to the issues as well as the reasons or basis for the findings and conclusions, and shall include a proposed marketing order if an order is warranted on the basis of the hearing record.[200] The recommended decision shall be published in the Federal Register, and opportunity shall be given to all interested persons to file exceptions thereto within the period of time specified in the notice of the recommended decision.[201] After due consideration of the record, the Secretary shall render a final decision, and the final decision shall include, *inter alia,* a statement of his findings and conclusions as well as the reasons and basis therefor with respect to all of the material issues of fact, law, or discretion presented on the record,[202] a ruling upon each exception filed to the recommended decision,[203] and shall set forth the marketing order — if the Secretary finds upon the record that the order and all of its terms and provisions will tend to effectuate the declared

197. 7 Code Fed. Regs. § 900.9(b) (Rev. 1952).
198. 7 Code Fed. Regs. § 900.11 (Rev. 1952).
199. 7 Code Fed. Regs. § 900.12 (Rev. 1952). This requirement is also in § 8 of the Administrative Procedure Act. 5 U.S.C. 1952 ed. § 1007.
200. 7 Code Fed. Regs. § 900.12(b) (Rev. 1952). One of the requirements for the issuance of an order is a finding by the Secretary that, on the basis of the evidence adduced at the hearing, the order and all the terms and provisions thereof will tend to effectuate the declared policy of the Act. 7 U.S.C. 1952 ed. § 608c(4).
201. 7 Code Fed. Regs. § 900.12(c) (Rev. 1952). The filing of the recommended decision may be omitted only if the Secretary finds on the basis of the record that due and timely execution of his functions imperatively and unavoidably requires such omission. 7 Code Fed. Regs. § 900.12(d) (Rev. 1952).
202. 5 U.S.C. 1952 ed. § 1007. The findings need not be formal or in separately numbered paragraphs, and it is enough if the findings appear in the form of a statement in the report or order of the administrative agency. Johnston Seed Co. v. United States, 191 F. 2d 228, 230 (10th Cir. 1951); Norfolk Southern Bus Corp. v. United States, 96 F. Supp. 756, 759-760 (3-judge Court, E.D. Va. 1950), *affirmed,* 340 U.S. 802 (1950); Beard-Laney v. United States, 83 F. Supp. 27, 31 (3-judge Court, E.D. S. C. 1949), *affirmed,* 338 U.S. 803 (1949).
203. 5 U.S.C. 1952 ed. § 1007.

policy of the Act[204] — which shall be complete except for the effective date and the determinations relative to handler and producer approval.[205] The program may become effective only if the Secretary subsequently finds that it meets with the requisite industry approval.[206]

The Act provides that no order shall become effective, except as hereinafter explained, unless the handlers of at least 50 per cent of the volume of the particular commodity have signed a marketing agreement with provisions similar to those in the order, and unless the order is approved by two-thirds of the producers by number or volume.[207] If the requisite approval by the handlers is not obtained, the Secretary may nevertheless issue an order if he finds that the issuance of an order is the only practical means of advancing the interests of the producers pursuant to the declared policy of the Act and if the issuance of the order meets with the requisite approval of the producers.[208] For the purpose of ascertaining whether the issuance of an order is approved or favored by the producers, the Secretary may conduct a referendum among the producers, and the statutory requirements for the producer approval "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 the percentage required" under the provisions of the Act.[209]

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204. The Act provides that the Secretary "shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing . . . that the issuance of such order and all of the terms and conditions thereof" will tend to effectuate the declared policy of the Act. 7 U.S.C. 1952 ed. § 608c(4).

205. 7 Code Fed. Regs. § 900.13a (Rev. 1952).

206. 7 Code Fed. Regs. § 900.14 (Rev. 1952) and 7 U.S.C. 1952 ed. § 608c(8) and (9).

207. 7 U.S.C. 1952 ed. § 608c(8). Approval is required by three-fourths of the producers of citrus fruits produced in any area producing what is known as California citrus fruits. *Ibid.* The approval by number or by volume relates to those producers who were engaged in that business during a representative period determined by the Secretary. *Ibid.*

208. 7 U.S.C. 1952 ed. § 608c(9), and § 102 of the 1947 Reorg. Plan No. 1 (12 Fed. Reg. 4534).

209. 7 U.S.C. 1952 ed. § 608c(19). Only the producers who are affected by an order are entitled to participate in the referendum. H. P. Hood & Sons v. United States, 307 U.S. 588, 597-599 (1939); United States v. Wrightwood Dairy Co., 127 F. 2d 907, 911 (7th Cir. 1942). A finding as to producer approval is not invalid merely because it is not "in the exact words" of the statute — the absence of such parrotry is not fatal. United States v. Wrightwood Dairy Co., *supra.* "There is no authority in the courts to go behind this conclusion of the Secretary [as to producer approval in the referendum] to inquire into the influences which caused the producers to favor the resolution," *i. e.,* the program. United States v. Rock Royal Co-op., 307 U.S. 533, 559 (1939).

The statutory provisions with respect to approval by the specified percentage of producers do not involve a delegation of legislative authority.[210] Under similar provisions in another regulatory statute it has been held that Congress "exercises its legislative authority in making the regulation and in prescribing the conditions of its application," and the "required favorable vote upon the referendum is one of these conditions".[211] Congress could have provided for the marketing order to become effective without a determination as to approval by the producers, and the requirements, in this regard, in the Act constitute merely a restriction or condition with respect to regulation.

In a referendum relative to the issuance of a marketing order, cooperative associations of producers may, under the terms of the Act, "express the approval or disapproval for all of their members or patrons".[212] "This is not an unreasonable provision, as the cooperative is the marketing agency for those for whom it votes. . . . These associations of producers . . . have a vital interest in the establishment of an efficient marketing system."[213]

In the administration of the Act, the Secretary of Agriculture is required to "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".[214] Different treatment and special considerations have been accorded to cooperative associations of producers by State and Congressional legislation alike, and the "distinctions between such cooperatives and business organizations have repeatedly been held to justify different treatment".[215] Numerous Acts of Congress deal with cooperatives differently from proprietary business enterprises and enunciate the policy of aiding and encouraging the establishment, operation, and growth of marketing cooperatives.[216] The policy of Congress to put agriculture on a basis of economic equality with other industries is to be accomplished, in part at least, by encouraging the organizations of producers into

210. United States v. Rock Royal Co-op., 307 U.S. 533, 577-578 (1939).
211. Currin v. Wallace, 306 U.S. 1, 16 (1939).
212. United States v. Rock Royal Co-op., 307 U.S. 533, 559 (1939).
213. *Ibid.*
214. 7 U.S.C. 1952 ed. § 610(b)(1).
215. United States v. Rock Royal Co-op., 307 U.S. 533, 563 (1939). See also, Hulbert, LEGAL PHASES OF CO-OPERATIVE ASSOCIATIONS (Farm Credit Administration, May 1942) pp. 307-322.
216. See, *e. g.*, 7 U.S.C. 1952 ed. §§ 10a, 291, 610(b)(1); 12 U.S.C. 1952 ed. §§ 1141 and 1141j; 15 U.S.C. 1952 ed. §§ 13b and 17.

effective associations, under their own control, for greater unity of effort in marketing.[217] Also strong cooperative organizations are generally necessary in the effective operation of a marketing order,[218] and it has been concluded that in one of the large marketing areas "[a]ctive participation by producers [in the regulatory program] . . . is feasible only by means of cooperative associations of producers".[219]

In an order the Secretary shall select, or provide a method for the selection of, an agency to administer the order, in accordance with its terms and provisions, and the agency may be authorized to make rules and regulations to effectuate the terms and provisions of the order; to recommend to the Secretary amendments to the order; and to receive, investigate, and report to the Secretary complaints as to violations of the order.[220] A market administrator is selected, as the agency, to administer a milk order, and a committee or board is selected as the agency to administer a marketing order for fruits, vegetables, or specialty crops. The statute permits broad discretion to be exercised relative to the selection of an administrative agency under a marketing order. The expenses of an administrative agency thus established under a marketing order are defrayed by means of collecting assessments from the handlers regulated by the order.[221] Each handler is required to pay to the administrative agency "such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find" are reasonable and likely to be incurred by the administrative agency during a particular period.[222] The exaction of assessments to cover administrative expenses is auxiliary to the regulation of commerce, and is a familiar statutory provision

217. 12 U.S.C. 1952 ed. § 1141(a). It has been said that: "More and more, in its social engineering, the law is looking to cooperative effort by those within an industry as a force for social good. It is harnessing the power that is latent within groups, as it is harnessing the power in wind and fall and stream. Conspicuously is it doing this in its dealing with agricultural producers, spread often over wide areas, and thus deficient in cohesion, but yielding up new energies when functioning together . . . . We see it in the co-operative marketing associations . . . of recent years . . . , associations with privileges and powers peculiar to themselves." People v. Teuscher, 248 N.Y. 454, 463, 162 N.E. 484, 487 (1928), opinion by Cardozo, J.

218. Report of the Associate Administrator of the Agricultural Adjustment Administration, in Charge of the Division of Marketing and Marketing Agreements, and the President of the Federal Surplus Commodities Corporation (1939), p. 30.

219. Decision by the Secretary of Agriculture relative to certain amendments to the New York metropolitan milk marketing order, 18 Fed. Reg. 6458, 6460 (1953).

220. 7 U.S.C. 1952 ed. § 608c(7)(C).

221. 7 U.S.C. 1952 ed. § 610(b)(2).

222. *Ibid.*

under the commerce clause.[223] An employee of an administrative agency, under a marketing order, acts on behalf of the United States, and may be subject to provisions in the Criminal Code relative to persons who are officers of the United States or persons acting for or on behalf of the United States in an official capacity.[224]

All persons subject to the regulatory provisions of a program under the Act may be required to maintain books and records and submit such information as may be necessary to enable the administrative agency and the Secretary to determine compliance with the provisions of the marketing order.[225] Additional information may be required by the Secretary to determine "whether or not there has been any abuse of the privilege of exemptions from the antitrust laws".[226]

Any handler subject to an order may file a petition with the Secretary of Agriculture stating that the order or any provision of the order or any obligation imposed on the handler pursuant to the order is not in accordance with law, and thereupon the handler shall be given a hearing with respect to the contentions in his petition.[227] The regulations require that the petition shall state, *inter alia,* all the grounds "on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law," and the petition shall be filed with the Hearing Clerk in the United States Department of Agriculture.[228] An answer shall be filed to the petition, and the

223. Head Money Cases, 112 U.S. 580, 595-596 (1884). See also, Hamilton v. Dillin, 21 Wall. (88 U.S.) 73, 90-97 (1874); Varney v. Warehime, 147 F. 2d 238, 245 (6th Cir. 1945), *certiorari denied,* 325 U.S. 882 (1945); Combs v. United States, 98 F. Supp. 749, 754-756 (D. Vermont 1951).

224. United States v. Levine, 129 F. 2d 745, 747-748 (2d Cir. 1942).

225. United States v. Ruzicka, 329 U. S. 287, 288-289, 293 (1946); United States v. Turner Dairy Co., 162 F. 2d 425, 425-428 (7th Cir. 1947), *certiorari denied,* 332 U.S. 836 (1947); United States v. Turner Dairy Co., 166 F. 2d 1, 1-5 (7th Cir. 1948), *certiorari denied,* 335 U.S. 813 (1948); Panno v. United States, 203 F. 2d 504, 510 (9th Cir. 1953). Record-keeping and reporting requirements are, in general, valid provisions in Acts providing for the regulation of commerce. Baltimore & Ohio R.R. v. Interstate Commerce Comm., 221 U.S. 612, 620-623 (1911); United States v. Morton Salt Co., 338 U.S. 632, 647-654 (1950); Rodgers v. United States, 138 F. 2d 992, 994-996 (6th Cir. 1943); Bartlett Frazier Co. v. Hyde, 65 F. 2d 350, 351-353 (7th Cir. 1933).

226. 7 U.S.C. 1952 ed. § 608d(1).

227. 7 U.S.C. 1952 ed. § 608c(15)(A). This proceeding is "adjudicatory" under the Administrative Procedure Act. 5 U.S.C. 1952 ed. §§ 1001(d), 1006, and 1007. Many petitions have been filed by handlers, and the decisions of the Secretary are published in Agriculture Decisions. This section of the Act has been given a broad interpretation so as to enable handlers to submit all relevant controversies to the Secretary of Agriculture. A claim by a handler, for a diversion allowance, against the producer-settlement fund under a milk order has been regarded as an appropriate matter for hearing and adjudication under this section of the Act. Grandview Dairy v. Jones, 157 F. 2d 5 (2d Cir. 1946), *certiorari denied,* 329 U.S. 787 (1946).

228. 7 Code Fed. Regs. § 900.52(b)(3) (Rev. 1952).

hearing shall be conducted by a Hearing Examiner under the Administrative Procedure Act.[229] The hearing is an adversary proceeding, and all relevant evidence, oral or written, may be adduced at the hearing, and the Hearing Examiner may issue subpoenas requiring the attendance and testimony of witnesses and the production of books, records, and other documentary evidence.[230] Subsequent to the hearing, the Hearing Examiner shall prepare and file with the Hearing Clerk the proposed findings of fact, conclusions, and order, and the report shall be filed with the Hearing Clerk and copies shall be served by the Hearing Clerk on each of the parties.[231] Exceptions may be filed to the report within the time specified under the regulations, and the Hearing Examiner may revise his report in the light of the exceptions.[232] The entire record is then transmitted to the Secretary for final decision.[233] As soon as practicable after the receipt of the record from the Hearing Clerk, or in case argument is had as soon as practicable thereafter, the Secretary shall prepare and file with the Hearing Clerk his final decision in the proceeding, and this decision shall include findings of fact and conclusions of law.[234] The final decision or order shall be served upon the parties.[235]

The statute provides for judicial review of the ruling of the Secretary.[236] If the United States District Court, in which review is appropriately sought, determines that the ruling by the Secretary is not in accordance with the law, the Court may remand the proceeding with directions to the Secretary to make such ruling as the Court determines is in accordance with law or to take such further proceedings as in the Court's opinion the law requires.[237] The scope of judicial review, with respect to the Secretary's findings, is limited

229. 7 Code Fed. Regs. §§ 900.52(c)(3), 900.52a, and 900.55 (Rev. 1952).
230. 7 Code Fed. Regs. § 900.55(c) (Rev. 1952).
231. 7 Code Fed. Regs. § 900.64(c) (Rev. 1952).
232. 7 Code Fed. Regs. § 900.64(e) (Rev. 1952).
233. The Judicial Officer may act for the Secretary of Agriculture pursuant to authority delegated (10 Fed. Reg. 13769, 18 Fed. Reg. 3648) under the Act of April 4, 1940, c. 75, 54 STAT. 81, 5 U.S.C. § 516a *et seq.*, which provides that whenever a delegation is made under the statute "all provisions of law shall be construed as if the regulatory function or the part thereof delegated had (to the extent of the delegation) been vested by law in the individual to whom the delegation is made, instead of in the Secretary of Agriculture". For several years, all of the decisions in adjudicatory proceedings under this Act have been made by the Judicial Officer.
234. 7 Code Fed. Regs. § 900.67 (Rev. 1952).
235. 7 Code Fed. Regs. § 900.67 (Rev. 1952).
236. 7 U.S.C. 1952 ed. § 608c(15)(B). On judicial review of an administrative order to ascertain whether it is "in accordance with law," constitutional issues as well as other issues may be presented. Oklahoma v. Civil Service Comm'n, 330 U.S. 127, 138-140 (1947).
237. 7 U.S.C. 1952 ed. § 608c(15)(B).

to inquiry as to whether substantial evidence, on the record as a whole, supports the findings by the Secretary.[238]

The statutory proceeding, before the administrative agency, whereby a handler may challenge the validity of a marketing order, a provision in the order, or any obligation imposed on him under the order, "is exclusive".[239] It is a "long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted".[240] This doctrine involves a policy of orderly procedure which favors a preliminary administrative sifting process.[241] It is particularly desirable with respect to matters peculiarly within the competence of an administrative authority[242] or where uniformity is essential for purposes of the regulatory statute.[243]

In *United States v. Ruzicka*,[244] an enforcement action arising under this statute, the issue was whether a handler may resist in District Court a claim against him without previously having sought to challenge the claim by means of the administrative remedy defined in the Act. In holding that the administrative remedy provided for by the statute is the exclusive avenue for challenging the validity of the obligation imposed on the handler, it was said:

> To be sure, Congress did not say in words that, in a proceeding under § 8a(6) [of the Act] to enforce an order, a handler may not question an obligation which flows from it. But meaning, though not explicitly stated in words, may be imbedded in a coherent scheme. And such we find to be the provisions taken in their entirety, as a means for attaining the purposes of the Act while at the same time protecting adequately the interests of individual handlers . . .
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> . . . Failure by handlers to meet their obligations promptly would threaten the whole scheme. Even temporary defaults

238. Ogden Dairy Co. v. Wickard, 157 F. 2d 445, 447 (7th Cir. 1946); Wawa Dairy Farms v. Wickard, 149 F. 2d 860, 862 (3rd Cir. 1945); Crull v. Wickard, 137 F. 2d 406, 409 (6th Cir. 1943).

239. United States v. Ruzicka, 329 U.S. 287, 292 (1946); LaVerne Co-op Citrus Ass'n v. United States, 143 F. 2d 415, 418 (9th Cir. 1944).

240. Myers v. Bethlehem Corp., 303 U.S. 41, 50-51 (1938).

241. Federal Trade Commission v. Claire Co., 274 U.S. 160, 174 (1925).

242. Natural Gas Co. v. Slattery, 302 U.S. 300, 311 (1937).

243. Rochester Tel. Corp. v. United States, 307 U.S. 125, 139-140 (1939). Also see Texas & Pac. Ry. v. Abilene Cotton Oil Company, 204 U.S. 426, 439-448 (1907); Anniston Mfg. Co. v. Davis, 301 U.S. 337, 342-343 (1937); Sunshine Coal Co. v. Adkins, 310 U.S. 381, 404 (1940); Macauley v. Waterman S. S. Corp., 327 U.S. 540, 544-545 (1946); Aircraft & Diesel Corp. v. Hirsch, 331 U.S. 752, 767-769 (1947).

244. 329 U.S. 287 (1946).

> by some handlers may work unfairness to others, encourage wider non-compliance, and engender those subtle forces of doubt and distrust which so readily dislocate delicate economic arrangements. To make the vitality of the whole arrangement depend on the contingencies and inevitable delays of litigation, no matter how alertly pursued, is not a result to be attributed to Congress . . . That Congress avoided such hazards for its policy is persuasively indicated by the procedure it devised for the careful administrative and judicial consideration of a handler's grievance. . . .[244a]

Criminal sanctions are imposed by the statute,[245] and any person wilfully exceeding any quota or allotment shall forfeit to the United States a sum equal to three times the current market value of such excess, and a forfeiture is recoverable in a civil suit brought in the name of the United States.[246] In a criminal proceeding in which a defendant is charged with having violated the requirements of a regulatory program under the statute, the administrative order is presumptively valid and the defendant who failed to avail himself of the administrative remedy for testing the validity of the program or the obligation imposed on him is precluded in the criminal case from asserting the invalidity of the program or the invalidity of the obligation imposed on the defendant.[247] That principle has been applied in various cases,[248] and its application has precluded a defendant from urging the invalidity on constitutional grounds of certain administrative action.[249]

A defendant in a criminal proceeding may on default of the payment of the fine imposed on the defendant be remitted to the custody of the Attorney General until the fine is paid or the defendant is otherwise discharge in due course of law.[250] A partnership may be a handler under a marketing order, and the partnership and the in-

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244a. *Id.* at 292-3.
245. 7 U.S.C. 1952 ed. §§ 608a (4) and 608c(14).
246. 7 U.S.C. 1952 ed. § 608a(5). It has been held under a treble damage provision in another statute that an action for treble damages does not survive the death of the person charged with the violation. Bowles v. Farmers Nat. Bank of Lebanon, 147 F. 2d 425, 428-430 (6th Cir. 1945).
247. Panno v. United States, 203 F. 2d 504, 508-509 (9th Cir. 1953).
248. See, *e. g.*, Yakus v. United States, 321 U. S. 414, 427-443 (1944); United States v. Corrick, 298 U.S. 435, 439-440 (1936); White v. Johnson, 282 U.S. 367, 373-374 (1931); Bradley v. Richmond, 227 U.S. 477, 485 (1913).
249. Bradley v. Richmond, 227 U.S. 477, 485 (1913).
250. Panno v. United States, 203 F. 2d 504, 508-510 (9th Cir. 1953). See also, Hill v. United States, *ex rel.* Wampler, 298 U.S. 460, 463 (1936); Boyd v. Archer, 42 F. 2d 43, 43-44 (9th Cir. 1930).

dividual partners are subject to criminal sanctions and may be fined separately for violating the regulatory program.[251]

A marketing order is not applicable to any producer in his capacity as a producer.[252] But producers may, in some circumstances, have such an interest in the operations of a marketing order as to be able to challenge the validity of the program, or a provision in the marketing order, by a proceeding in court. It has been held that dairy farmers have a sufficient interest in the producer-settlement fund under a marketing order with respect to milk that the dairy farmers may in a proceeding in court assert the invalidity of a provision in the marketing order whereby certain deductions are made from the producer-settlement fund prior to the final computation of the uniform blended price to be paid to producers for their milk.[253]

Numerous statutory provisions, *e. g.,* for arbitration and mediation,[254] and some of the regulatory requirements are not within the compass of this article.

III.

The Packers and Stockyards Act, 1921, provides in general for (1) the regulation of the marketing of livestock at stockyards posted by the Secretary of Agriculture; (2) the regulation of the marketing of live poultry at live poultry markets designated by the Secretary of Agriculture, and (3) the regulation of the business activities of meat packers engaged in "commerce" as defined in the Act.[255] The statute is within the power of Congress under the Constitution to regulate commerce,[256] and the broad purpose of the original enactment and the applicability of the Act to the flow of commerce are reviewed in *Stafford v. Wallace.*[257]

The statute prohibits (1) unfair, unjustly discriminatory, or deceptive practices by stockyard owners, market agencies, and dealers

251. Panno v. United States, 203 F. 2d 504, 508-509 (9th Cir. 1953). In determining the meaning of an Act of Congress, unless the context indicates otherwise, the word "person" includes a partnership as well as individuals. 1 U.S.C. 1952 ed. § 1.

252. 7 U.S.C. 1952 ed. § 608c(13)(B).

253. Stark v. Wickard, 321 U.S. 288, 302-311 (1944); Brannan v. Stark, 342 U.S. 451 (1952).

254. 7 U.S.C. 1952 ed. § 671.

255. 42 STAT. 159 (1921) as amended, 7 U.S.C. 1952 ed. § 181 *et seq.* Numerous provisions in the Act and the regulations, particularly the details of the regulatory requirements, are not within the limits of this article.

256. Stafford v. Wallace, 258 U.S. 495, 513-528 (1922); Tagg Bros. v. United States, 280 U.S. 420, 436-439 (1930); Farmers' Livestock Commission Co. v. United States, 54 F. 2d 375, 378 (E.D. Ill. 1931); Trunz Pork Stores v. Wallace, 70 F. 2d 688, 689-690 (2d Cir. 1934); O. V. Handy Bros. Co. v. Wallace, 16 F. Supp. 662, 664-666 (E.D. Pa. 1936); Nostrand Poultry Market v. United States, 59 F. Supp. 245, 247-248 (3-judge Court, E.D. N. Y. 1945).

257. 258 U.S. 495 (1922).

at posted stockyards,[258] (2) unfair, unjustly discriminatory, or deceptive practices by live poultry licensees at designated markets,[259] (3) unjust and unreasonable rates for stockyard services, at posted stockyards, and services and facilities in connection with the marketing of live poultry at designated markets,[260] and (4) unfair, unjustly discriminatory, deceptive, or monopolistic practices by packers.[261] The statute requires (1) livestock market agencies and dealers operating at posted stockyards to register with the Secretary of Agriculture and, under the regulations, submit bonds,[262] and (2) live poultry dealers or handlers, operating at designated live poultry markets, to be licensed by the Secretary.[263] The statute authorizes the Secretary (1) to issue cease and desist orders against violators of the Act after notice and hearing,[264] (2) to prescribe reasonable rates for services and facilities furnished by stockyard owners, market agencies, and live poultry licensees,[265] (3) to order payment by persons subject to the Act of reparations for damages resulting from certain violations of the Act,[266] and (4) to suspend or revoke registrations and licenses.[267] The regulations under the Act set forth numerous requirements with respect to the various proceedings and activities pursuant to the statute.[268] The Secretary is also empowered to authorize a brand inspection agency in any State, where branding prevails, to inspect brands of livestock from such State at posted stockyards and to charge fees for the inspection, and to suspend and, after hearings, revoke any such authorization.[269]

The term "livestock," as defined in the Act, means cattle, sheep, swine, horses, mules, or goats.[270] The term "stockyard," as defined in the statute, means any place, establishment, or facility commonly known as a stockyard, conducted or operated for compensation or profit as a public market, consisting of pens or other inclosures and their appurtenances, in which live cattle, sheep, swine, horses, mules,

258. 7 U.S.C. 1952 ed. §§ 205, 208, 211, 212, 213.
259. 7 U.S.C. 1952 ed. § 218a, 218b, 218c.
260. 7 U.S.C. 1952 ed. §§ 206, 207, 212, 217a, 218c.
261. 7 U.S.C. 1952 ed. § 192.
262. 7 U.S.C. 1952 ed. §§ 203, 204; 9 Code Fed. Regs. § 201.27 *et seq.* (1949 ed.).
263. 7 U.S.C. 1952 ed. § 218a.
264. 7 U.S.C. 1952 ed. §§ 193, 211, 213, 217a, 218c.
265. 7 U.S.C. 1952 ed. §§ 207, 211, 217a, 218c.
266. 7 U.S.C. 1952 ed. §§ 209, 210, 218c.
267. 7 U.S.C. 1952 ed. §§ 204, 205, 217a, 218d.
268. 9 Code Fed. Regs. §§ 201.1 *et seq.* and 202.1 *et seq.* (1949 ed.). The regulations include, *inter alia,* the rules of practice applicable to disciplinary proceedings, rate proceedings, and reparation proceedings under the Act.
269. 7 U.S.C. 1952 ed. § 217a.
270. 7 U.S.C. 1952 ed. § 182(4). The definition includes livestock "whether live or dead".

or goats are received, held, or kept for sale or shipment in commerce, but the term does not apply to a stockyard in which the area normally available for handling livestock, exclusive of runs, alleys, or passageways, is less than 20,000 square feet.[271] The Secretary is directed to ascertain, after such inquiry as he deems necessary, the stockyards which come within the definition of that term in the Act; and if the Secretary determines that a particular stockyard is within the statutory definement, notice of such determination shall be given to the stockyard owner or owners concerned and to the public, and thereafter the marketing of livestock at such stockyard is subject to the regulatory terms of the Act.[272]

The Act prohibits a person from carrying on the business of a market agency or dealer at a posted stockyard unless he is registered with the Secretary of Agriculture in accordance with the provisions of the statute and the regulations.[273] "The Act does not require that a dealer in order to come under the Act be engaged in the sole business of buying or selling livestock" at a posted stockyard.[274] An isolated transaction may not be enough to bring a person within the ambit of the Act, but transactions which chart a well-defined course of business, at a posted stockyard, are adequate to warrant the conclusion that the person engaging in the transactions is engaging in the business of buying or selling livestock at a posted stockyard.[275] In every case the totality of the facts is to be considered and appraised. The significant words of the Act are similar to the language in another statute under which it was held that "the words of the statute . . . are not phrases of art with a changeless connotation," but "[t]hey have a color and a content that may vary with the setting."[276]

A person who carries on the business of a market agency or dealer at a posted stockyard without having registered as required by the Act is subject to a penalty which shall accrue to the United

271. 7 U.S.C. 1952 ed. § 202(a).
272. 7 U.S.C. 1952 ed. § 202(b).
273. 7 U.S.C. 1952 ed. § 203; 9 Code Fed. Regs. § 201.10 *et seq.* (1949 ed.). The term "market agency" means any person engaged in the business of (1) buying or selling in commerce livestock at a posted stockyard on a commission basis, or (2) furnishing stockyard services. The term "dealer" means any person not a market agency engaged in the business of buying or selling livestock at a posted stockyard either on his own account or as an employee or agent of the vendor or purchaser. 7 U.S.C. 1952 ed. § 201(c) and (d).
274. Kelley v. United States, 202 F. 2d 838, 841 (10th Cir. 1953).
275. *Ibid. Compare* United States v. Roberts & Oake, 65 F. 2d 630, 631-632 (7th Cir. 1933), in which it was held that a packer is not a dealer under the Act, *with* Kelley v. United States, 202 F. 2d 838, 841 (10th Cir. 1953).
276. First National Bank v. Beach, 301 U.S. 435, 437, 440-441 (1937). See also, Board of Governors v. Agnew, 329 U.S. 441, 446-447 (1947).

States and may be recovered in a civil action brought by the United States.[277] Market agencies and dealers are required to submit reasonable bonds to secure the performance of their obligations, and if the Secretary finds after notice and hearing that a market agency or dealer is insolvent or has violated any provision of the Act, the Secretary may issue an order suspending such registrant for a reasonable period.[278]

Schedules of rates at posted stockyards must be filed with the Secretary, and either upon his own initiative or upon the basis of a complaint the Secretary may, after a reasonable notice, initiate a hearing to determine the lawfulness of a rate, and a proposed rate may be suspended for not more than 60 days pending the hearing.[279] The Secretary may, after the full hearing, prescribe reasonable rates if he determines that the schedule of rates on file is unreasonable.[280] The rates are determined by the Secretary and are reviewed by the courts upon the hearing record before the Secretary.[281] The issuance of rate orders is subject to the requirements of the Act, the regulations pursuant to the Act, and the Administrative Procedure Act.[282]

The Secretary is authorized, *inter alia,* to exercise the following adjudicatory functions under the Act upon condition that his action be based upon the record of an agency hearing: (1) The registration of any market agency or dealer may be suspended and a cease-and-desist order may be issued against any market agency or dealer for failure to render reasonable stockyard service, for engaging in the unfair practices prohibited by the Act, or for charging rates other than those filed with or prescribed by the Secretary; (2) a cease-and-desist order may be issued against any packer who has engaged in any unfair and discriminatory practice; (3) a license

277. 7 U.S.C. 1952 ed. § 203.

278. 7 U.S.C. 1952 ed. § 204. Cella v. United States, No. 10744, in the United States Court of Appeals for the Seventh Circuit, decided on December 2, 1953, affirmed the authority of the Secretary or Judicial Officer to suspend the registration of a dealer who has violated the Act.

279. 7 U.S.C. 1952 ed. §§ 207 and 211.

280. 7 U.S.C. 1952 ed. § 211.

281. Acker v. United States, 298 U.S. 426, 434 (1936). See also, St. Joseph Stockyards Co. v. United States, 298 U.S. 38, 50-54 (1936); Tagg Bros. v. United States, 280 U.S. 420, 442-445 (1930).

282. The rules of practice applicable to rate proceedings are in 9 Code Fed. Regs. § 202.23 *et seq.* (1949 ed.). The hearing is under 5 U.S.C. 1952 ed. §§ 1006, 1007, and 1010. See also, Morgan v. United States, 298 U.S. 468, 472-482 (1936); Morgan v. United States, 304 U.S. 1, 13-22 (1938); United States v. Morgan, 313 U.S. 409, 413-422 (1941). "The proceedings before the Secretary 'has a quality resembling that of a judicial proceeding'," and the administrative agency and the courts are "collaborative instruments of justice and the appropriate independence of each should be respected by the other." 313 U.S. at 422.

may be refused to any live poultry dealer or handler who (a) within a period of two years prior to the application has engaged in practices of the nature prohibited by the Act or (b) is financially unable to fulfill the obligations that he would incur as a licensee; and (4) a license of a live poultry dealer or handler may be suspended or revoked if the licensee has engaged in a practice prohibited by the Act.[283]

The United States Court of Appeals has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of all "final orders"[284] of the Secretary under the Packers and Stockyards Act, except a reparation order under 7 U.S.C. § 210(e) or an order under 7 U.S.C. § 217a.[285] The venue of any proceeding in a court of appeals to review an order of the Secretary shall be in the judicial circuit "wherein is the residence of the party or any of the parties filing the petition for review, or wherein such party or any of such parties has its principal office, or in the United States Court of Appeals for the District of Columbia".[286] A petition for review must be filed by the aggrieved party within 60 days after the entry of the order by the administrative agency.[287] The hearing record before the administrative agency must be certified to the appellate court.[288]

Reparation orders by the Secretary under the Packers and Stockyards Act may be the subject of suit in a United States District Court.[289] If the defendant does not comply with an order for the payment of money within the time limit of such order, the complainant in a reparation proceeding may within one year of the date of the administrative order file in the United States District Court for the district in which the complainant resides, or in which is located the principal place of business of the defendant, or in any State court

283. 7 U.S.C. 1952 ed. §§ 193, 204, 211(b), 213, 218a(b), 218d. The authority of the Secretary with respect to regulatory functions under the Act has been delegated to the Judicial Officer. 10 Fed. Reg. 13769, 18 Fed. Reg. 3648. All of the regulatory decisions in recent years have been made by the Judicial Officer. These proceedings are under the Administrative Procedure Act, 5 U.S.C. 1952 ed. § 1001 *et seq.*, except reparation proceedings which are reviewed *de novo* in court.

284. A "final order," under this statutory provision, need not necessarily be the very last order, and finality is not dependent upon the label affixed to its action by an administrative agency. Isbrandtsen Co. v. United States, No. 11,679, in the United States Court of Appeals for the District of Columbia Circuit, decided on January 21, 1954. An administrative order is ordinarily reviewable if it imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process. *Ibid.*

285. 5 U.S.C. 1952 ed. § 1032.

286. 5 U.S.C. 1952 ed. § 1033.

287. 5 U.S.C. 1952 ed. § 1034.

288. 5 U.S.C. 1952 ed. § 1036.

289. 7 U.S.C. 1952 ed. § 210(f).

having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the Secretary in the reparation proceeding.[290] The action in court shall proceed in all respects like all other civil suits for damages except that the findings and order of the Secretary "shall be prima facie evidence of the facts therein stated," and if the petitioner finally prevails he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit.[291]

Any stockyard owner, market agency, livestock dealer, or live poultry dealer or handler who violates the regulatory requirements relative to services, rates, or practices is liable to the person or persons injured thereby "for the full amount of damages sustained in consequence of such violation," and the liability may be enforced "either (1) by complaint to the Secretary . . . or (2) by suit in any district court of the United States of competent jurisdiction . . . ."[292] The Secretary, however, has primary jurisdiction to determine what are the discriminatory practices which are prohibited by the Act, and the courts are without jurisdiction in this respect in the absence of a prior complaint to the Secretary and a hearing and decision thereon by the Secretary.[293] This interpretation of the Act is based upon *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*,[294] which established the doctrine of primary jurisdiction in an administrative agency under statutory terminology similar to that in the Packers and Stockyards Act. "To say, however, that the primary jurisdiction doctrine is applicable to cases arising under the Packers and Stockyards Act is not to say that it applies to defeat the jurisdiction of the courts in all such cases, for the Supreme Court has clearly indicated that the doctrine is operative only in certain classes of cases, those in which 'the inquiry is essentially one of fact and of discretion in technical matters; and uniformity can be secured only if its determination is left' " to the administrative agency.[295]

Criminal sanctions are provided for by the Act with respect to violations of certain administrative orders and statutory provisions,[296] and the Act also provides for civil penalties.[297]

290. *Ibid.*
291. *Ibid.*
292. 7 U.S.C. 1952 ed. §§ 209 and 218c.
293. Kelly v. Union Stockyards & Transit Co., 190 F. 2d 860, 861-864 (7th Cir. 1951).
294. 204 U.S. 426, 439-448 (1907).
295. Kelly v. Union Stockyards & Transit Co., 190 F. 2d 860, 864 (7th Cir. 1951). Great Northern Ry. v. Merchants Elevator Co., 259 U.S. 285, 291 (1922) supports this principle which was applied in Kelly v. Union Stockyards & Transit Co., *supra.*
296. 7 U.S.C. 1952 ed. §§ 195, 207(h), 218a, 221, 222; 15 U.S.C. 1952 ed. § 50.
297. 7 U.S.C. 1952 ed. §§ 203, 207(g), and 215(a). See also, United States v. Donahue Bros., 59 F. 2d 1019, 1020-1022 (8th Cir. 1932).

There were 325 stockyards posted under the provisions of this Act as of June 30, 1953, and on that date 4,965 active livestock market agencies and dealers were registered under the terms of the Act.[298] There were 1,365 poultry sales agencies licensed under the statute as of June 30, 1953, and on that date there were 16 live poultry marketing areas designated under the Act.[299] There were 1,914 meat packers subject to the provisions of the Act on June 30, 1953.[300] Bonds on file by registrants under the Act to assure payment for livestock purchased or sold totaled approximately $44,000,000 on June 30, 1953.[301]

IV.

The Perishable Agricultural Commodities Act, 1930, is designed to suppress unfair and fraudulent practices in the marketing, in interstate or foreign commerce, of fresh fruits and fresh vegetables, whether or not frozen or packed in ice.[302] The Act "was passed by Congress in the exercise of its power under the commerce clause to facilitate the free flow of perishable agricultural commodities . . . by regulating . . . commerce through the licensing of commission merchants, dealers, and brokers engaged in it and the prohibiting of various kinds of unfair conduct which in the past had proved to be productive of serious disputes and difficulties obstructive to the free flow of these essential commodities".[303] A cardinal purpose of the Act is to make it "difficult for unscrupulous persons to take advantage of shippers by wrongful rejection of the goods upon arrival at a point where it is expensive and impracticable for the shipper to enforce his legal rights".[304]

298. Report of the Administrator of the Production and Marketing Administration, United States Department of Agriculture, for the fiscal year ending June 30, 1953, p. 52.

299. *Ibid.* and Report of the Solicitor, United States Department of Agriculture, for the fiscal year ending June 30, 1953, p. 8.

300. Report of the Administrator of the Production and Marketing Administration, United States Department of Agriculture, for the fiscal year ending June 30, 1953, p. 52.

301. *Ibid.*

302. 46 STAT. 531 (1930), as amended, 7 U.S.C. 1952 ed. § 499a *et seq.* The statute is a valid exercise of the power of Congress to regulate commerce. Krueger v. Acme Fruit Co., 75 F. 2d 67, 68 (5th Cir. 1935).

303. Rothenberg v. H. Rothstein & Sons, 183 F. 2d 524, 526 (3rd Cir. 1950).

304. LeRoy Dyal Co. v. Allen, 161 F. 2d 152, 156 (4th Cir. 1947). The Act "was intended to prevent produce from becoming distress merchandise and to protect sellers who often were at a great distance from the buyer." L. Gillarde Co. v. Joseph Martinelli & Co., 169 F. 2d 60, 61 (1st Cir. 1948), *certiorari denied,* 335 U.S. 885 (1948). In addition to a shipper's right to reparation, under the Act, for wrongful rejection of perishable agricultural commodities, inspection service is available at designated markets, as well as at shipping points, and an application for appeal inspection may be made under the regulations. 7 Code Fed. Regs. § 51.4 *et seq.* (Cum. Supp. 1952).

Every commission merchant, dealer, or broker who engages in the business of marketing perishable agricultural commodities, as defined in the Act, is required to be licensed in accordance with the Act and the regulations.[305] A penalty for operating without a license is imposed by the statute.[306] In addition, the Act (1) requires licensees to keep records of transactions; (2) prohibits improper practices or unfair conduct, *e. g.,* makes it unlawful (a) for a dealer to reject or fail to deliver perishable agricultural commodities, in accordance with the terms of the contract, "without reasonable cause" or (b) for a commission merchant to discard, dump, or destroy "without reasonable cause" any perishable agricultural commodity; (3) requires correct and prompt accounting and payment; (4) authorizes the investigation of complaints, the issuance of reparation orders, the publication of facts concerning violations; and (5) authorizes, on the record made at an agency hearing, the refusal, suspension, or revocation of a license.[307]

In adjudicatory proceedings[308] under the Act, the Secretary may take the following action upon evidence adduced at a hearing: (1) Refuse to issue a license if he finds any of the grounds enumerated in the statute, *e. g.,* that the applicant has failed, except in case of bankruptcy, to pay within the time limit provided therein any reparation award which has been issued, within two years, against the applicant; (2) suspend a license for 90 days if he finds that the licensee has violated the Act or any regulations thereunder, and revoke the license if the violation is flagrant or repeated; and (3) revoke the license of any person who after having been given a 30-day notice continues to employ in a responsible position any individual whose license was revoked or who was responsibly connected with a firm whose license was revoked.[309]

Any commission merchant, dealer, or broker who violates the provisions of the Act is liable in damages to the person or persons in-

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305. 7 U.S.C. 1952 ed. § 499c; 7 Code Fed. Regs. § 46.4 *et seq.* (1949 ed.). Numerous regulatory provisions in the Act, particularly the details of the general plan of regulation, are not within the limits of this article.

306. 7 U.S.C. 1952 ed. § 499c.

307. 7 U.S.C. 1952 ed. §§ 499b, 499d, 499f, 499g, 499h, 499i, and 499m. Regulations and Rules of Practice have been issued under the statute. 7 Code Fed. Regs. § 46.1 *et seq.* (1949 ed.) and 7 Code Fed. Regs. § 47.1 *et seq.* (1949 ed.).

308. The adjudicatory proceedings referred to in this paragraph are under §§ 7 and 8 of the Administrative Procedure Act. 5 U.S.C. 1952 ed. §§ 1006 and 1007. The authority of the Secretary in rogatory proceedings has been delegated to the Judicial Officer. 10 Fed. Reg. 13769, 18 Fed. Reg. 3648.

309. 7 U.S.C. 1952 ed. §§ 499d, 499h; 7 Code Fed. Regs. § 47.26 *et seq.* (1949 ed.).

jured thereby, and the liability may be enforced "either (1) by complaint to the Secretary . . . or (2) by suit in any court of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, and the provisions of this chapter are in addition to such remedies".[310] Under the reparation provisions of the Act, the Secretary entertains complaints for damages, makes investigations, holds hearings, or receives written submissions of evidence, makes findings of fact and rulings of law, and issues reparation orders on the basis of his findings and conclusions.[311] A party ordered to pay reparations must within 30 days from the date of the order either make the required payment or file an appeal in the United States District Court for the district in which the hearing was held.[312] Failure to appeal or to pay the reparation award within the time allowed results in automatic suspension of the respondent's license.[313] A reparation award, under the statute, is not a judgment upon which execution may be had, and the suspension of the respondent's license is the administrative sanction for non-compliance. The Act provides, however, for judicial review of a reparation proceeding, and suit for that purpose may be instituted in a United States District Court, or an action to enforce liability may be filed in a United States District Court or in any State court having general jurisdiction of the parties.[314] The action in court proceeds in all respects like other civil proceedings for damages, *i. e.,* it is tried *de novo,* except that "the findings and orders of the Secretary" are "prima facie evidence of the facts

310. 7 U.S.C. 1952 ed. § 499e. This statutory language is similar to that in another regulatory statute which was interpreted in Kelly v. Union Stockyards & Transit Co., 190 F. 2d 860, 861-864 (7th Cir. 1951).

311. 7 U.S.C. 1952 ed. §§ 499f and 499g. The rules of practice set forth the procedure to be followed in a reparation proceeding, including the method of instituting the proceeding, the service of the complaint and answer, the taking of evidence, the post-hearing procedure, the final decision, and the grounds for re-hearing. 7 Code Fed. Regs. § 47.6 *et seq.* (1949 ed.). Where the amount of damages claimed does not exceed $500, an oral hearing shall not be held, unless deemed necessary by the administrative agency or unless granted by the Examiner on application of the complainant or respondent setting forth the peculiar circumstances which make an oral hearing necessary for a proper presentation of the case. 7 Code Fed. Regs. § 47.15 (1949 ed.). If an oral hearing is not held, the parties may submit, in accordance with the regulations, their evidence in documentary or written form, under oath. 7 Code Fed. Regs. § 47.20 (1949 ed.). Stipulations of fact may also be submitted. *Ibid.* The reparation proceedings may be reviewed *de novo* by the United States District Court (7 U.S.C. 1952 ed. § 499g (c)) and, therefore, the reparation proceedings before the Secretary are exempt from the provisions of the Administrative Procedure Act (5 U.S.C. 1952 ed. § 1004).

312. 7 U.S.C. 1952 ed. § 499g(c).

313. 7 U.S.C. 1952 ed. § 499g(d).

314. 7 U.S.C. 1952 ed. § 499g(b) and (c). Venue is determined by the criteria in the statute. *Ibid.*

therein stated".[315] If the petitioner finally prevails in court he is entitled to be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit.[316]

The Act does not abrogate or nullify any other statute, whether State or Federal, dealing with the same subject matter, except insofar as any other statutory provision is antithetical or repugnant to the Act.[317] It has been held, therefore, that "while the validity of contracts to sell perishable agricultural commodities in interstate commerce is to be determined by the federal act and the regulations issued under it to the extent that they are applicable, the law of the state the rules of which would be applicable under the conflict of laws continues to be applicable to the determination of the question of validity to the extent that the federal act and regulations do not provide a rule for its solution".[318] Accordingly, if the applicable state Statute of Frauds has the substantive effect of rendering a parol contract wholly void it would have the same effect upon a contract to which it was applicable relative to the sale of perishable agricultural commodities in interstate commerce.[319] But a state Statute of Frauds which is procedural only, and not substantive, is inapplicable in an action, in a United States District Court, based on the Perishable Agricultural Commodities Act.[320]

Except with respect to reparation orders, all "final orders" under the Act are subject to review in the United States Court of Appeals for the judicial circuit in which the petitioner on appeal resides or has his principal office or, in the alternative, judicial review may be had in the United States Court of Appeals for the District of Columbia.[321] The hearing record before the administrative agency is certified to the appellate court in the event of an appeal,[322] and judicial review follows the familiar pattern in adjudicatory proceedings.

In addition to formal decisions by the Department in rogatory

315. 7 U.S.C. 1952 ed. § 499g(b) and (c). See, *e. g.*, A. E. Barker & Co. v. Gilinsky Fruit Co., 100 F. 2d 863, 864 (8th Cir. 1939); Wesco Foods Co. v. De Mase, 194 F. 2d 918, 919 (3rd Cir. 1952); Smith v. White, 48 F. Supp. 554, 556-557 (E.D. Mo. 1942).

316. *Ibid.*

317. 7 U.S.C. 1952 ed. § 499o, Hartford Indemnity Co. v. Illinois, 298 U.S. 155, 158-159 (1936).

318. Rothenberg v. H. Rothstein & Sons, 183 F. 2d 524, 526 (3rd Cir. 1950).

319. *Id.* at 527.

320. *Id.* at 527-528. The rule of Erie R. Co. v. Tompkins, 304 U.S. 64 (1938), in an action based on diversity of citizenship, is inapplicable in a proceding based on the Perishable Agricultural Commodities Act. Rothenberg v. H. Rothstein & Sons, 183 F. 2d 524, 528 (3rd Cir. 1950).

321. 5 U.S.C. 1952 ed. §§ 1032 and 1033. Only "final orders" are reviewable. Isbrandtsen Co. v. United States, No. 11,679, in the United States Court of Appeals for the District of Columbia Circuit, decided on January 21, 1954.

322. 5 U.S.C. 1952 ed. § 1036.

proceedings under the Perishable Agricultural Commodities Act, the Department's explanatory and mediative efforts are conducive to the settlement of many disputes or controversies relative to the marketing of perishable agricultural commodities.[323] Almost one-half of the reparation complaints during the fiscal year ending June 30, 1953, were settled, as a result of the Department's efforts, without the necessity of formal decisions.[324]

323. Report of the Administrator of the Production and Marketing Administration, United States Department of Agriculture, for the Fiscal Year Ending June 30, 1953, p. 32.
324. *Ibid.*