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THE LEGAL ASPECTS OF MAJOR PROGRAMS ADMINISTERED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

FRANK A. BARRETT*

I. *Introduction.*

The gross farm income is approximately \$39 billion per year,¹ and, accordingly, the well being of our agricultural economy is a basic factor in the welfare of the United States. President Eisenhower in his Message to Congress in 1954 said that there are 10 fundamental considerations with respect to agriculture, and the first is that a "stable, prosperous, and free agriculture is essential to the welfare of the United States."² The widespread importance of the agricultural economy is emphasized by the fact that the

ties or the relationships among markets, in the recent decades of great expansion in mass production and distribution, are generally interstate in nature. The commercial and industrial forces of the Nation have given to our marketing system a national character, and agricultural products are distributed, under present-day conditions of mercantilism, on a nationwide market. Also our emergence as a world power in international trade affords an even broader public interest in the marts of trade and commerce.³

The Supreme Court of the United States has said that in our national economy "agriculture expresses functions and forces different from the other elements in the total economic process," and that "these are differences which may acted upon by the lawmakers."⁴ The divergent aspects of agriculture, including, of course, the production and the marketing of various commodities or products, have been the subject of numerous legislative enactments, particularly in recent decades.⁵ The marketing of farm products in our country has been the subject of regulation by the

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1. The Farm Income Situation, July, 1959 (Agricultural Marketing Service, United States Department of Agriculture), p. 43.
2. 100 Cong. Rec. 130 (1954).
3. Marketing, 1954 Yearbook of Agriculture (United States Department of Agriculture), p. 259. In 1931 the Secretary of Agriculture, in his Annual Report to the President, emphasized that "American agriculture is not a separate, but an integral part of the world's economic system, and it is always deeply affected by financial, industrial, and social conditions at home and abroad." 1932 Yearbook of Agriculture (United States Department of Agriculture), p. 1.
4. *Tigner v. Texas*, 310 U.S. 141, 147, 60 S.Ct. 879, 84 L.Ed. 124.
5. Some of the notable bills before Congress have been highly controversial, e.g., S. 4808, 69th Congress, was vetoed by President Coolidge although he recognized that the "conditions which Senate bill 4808 is designed to remedy have been and still are unsatisfactory in many cases. . . . No one could fail to want every proper step taken to assure to agriculture a just and secure place in our economic scheme. Reasonable and constructive legislation to that end would be thoroughly justified and would have the hearty support of all who have the interest of the Nation at heart." 68 Cong. Rec. 4771 (1927).

municipalities⁶ and by the states over a long period of time.⁷ Some of the attributes of the farm economy, however, are of such wide public importance that they are regarded as appropriate subjects for Congressional legislation.

The differences in conditions and circumstances in the broad field of agriculture preclude the use of a single or basic plan for the entire industry. President Eisenhower in his Message to Congress in 1954 said that, in the main, "each farm crop has its own problems and that these problems require specific treatment."⁸ Further, the President said "[n]o single program can apply uniformly to the whole farm industry. Some farm products are perishable, some are not; some farms consume the products of other farms; some foods and fibers we export, some we import."⁹ The factual foundation for the statement by the President, in this regard, is not of recent origin. The Secretary of Agriculture in 1928, in his Annual Report to the President, said:

The truth is, of course, that farm conditions vary in all parts of the country to such a degree that no single formula can be invented for the solution of all farm problems. Measures taken for the relief of agriculture must reckon with differences of farming technic in

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6. See, e.g., *St. John v. New York*, 201 U.S. 633, 636-638, 26 S.Ct. 554, 50 L.Ed. 896 (1906); *Fischer v. St. Louis*, 194 U.S. 361, 370, 24 S.Ct. 673, 48 L.Ed. 1018 (1904); *Mayor and Aldermen of Mobile v. Yuille*, 3 Ala. 137, 139-143 (1841); *Commonwealth v. Waite*, 93 Mass. 264, 265-266 (1865); *People v. Van De Carr*, 175 N.Y. 440, 444-455, 67 N.E. 913, 913-914 (1903), affirmed sub nom. *Lieberman v. Van De Carr*, 199 U.S. 552, 557-563, 26 S.Ct. 144, 50 L.Ed. 305 (1905); *Wartman v. Philadelphia*, 33 Pa. St. 202, 209-210 (1859); *State ex rel. Wilkinson v. City of Charleston*, 2 Speers 523 [old volume, 622], 523-526 (S.C. 1844). A municipality is precluded, however, from enacting a regulation which places a discriminatory burden on interstate commerce so as to create or invite "preferential trade areas destructive to the very purpose of the Commerce Clause." *Dean Milk Co. v. Madison*, 340 U.S. 349, 356, 71 S.Ct. 295, 95 L.Ed. 329 (1951).
7. See, e.g., *Pacific States Co. v. White*, 296 U.S. 176, 181, 56 S.Ct. 159, 80 L.Ed. 136 (1935); *Nebbia v. New York*, 291 U.S. 502, 527-539, 54 S.Ct. 505, 78 L.Ed. 940 (1934); *Merchants Exchange v. Missouri*, 248 U.S. 365, 366-368, 39 S.Ct. 114, 63 L.Ed. 300 (1919); *Savage v. Jones*, 225 U.S. 501, 519-540, 32 S.Ct. 715, 56 L.Ed. 182 (1912); *Brodnax v. Missouri*, 219 U.S. 285, 289-296, 31 S.Ct. 238, 55 L.Ed. 219 (1911); *Asbell v. Kansas*, 209 U.S. 251, 253-258, 28 S.Ct. 485, 52 L.Ed. 778 (1908); *Turner v. Maryland*, 107 U.S. 38, 39-58, 2 S.Ct. 44, 27 L.Ed. 370 (1882); *Munn v. Illinois*, 94 U.S. 113, 123-132, 24 L.Ed. 77 (1876). A statutory measure enacted by Colorado, an exercise of its police power, with respect to the quarantine and inspection of livestock was held to be valid exercise of the authority of the State inasmuch as the statute "comes within the scope of the general police power, which the states have never surrendered. While it is true that, under the guise of exerting its police power, the state must not go beyond what is necessary for the protection of its citizens and their property, or to such length as to interfere with, or obstruct, legislation of Congress calculated to regulate interstate commerce, or infringe upon any of the sovereign powers intrusted to Congress, yet, if it keeps within the scope of its authority and prescribes regulations which are reasonably necessary to further the legitimate object aimed at, its acts may be upheld." *Reid v. People*, 29 Colo. 333, 340, 68 Pac. 228, 230 (1902), affirmed sub nom. *Reid v. Colorado*, 187 U.S. 137, 23 S.Ct. 92, 47 L.Ed. 108 (1902). "This distinction between the power of the State to shelter its people from menaces to their health or safety and from fraud, even when those dangers emanate from interstate commerce, and its lack of power to retard, burden, or constrict the flow of such commerce for their economic advantage, is one deeply rooted in both our history and our law." *Hood & Sons v. DuMond*, 336 U.S. 525, 533, 69 S.Ct. 657, 93 L.Ed. 865 (1949).
8. 100 Cong. Rec. 130 (1954).
9. *Ibid.*

various sections, and differences in the human factor engaged in agriculture. In one district the chief need may be further scientific research; in another it may be more important for the moment to encourage a more general application of well-established scientific practice. Though all farmers may profit by improving their technic, the opportunity for progress in that direction is greater in some localities than in others. In like manner the opportunity to benefit agriculture by improvements in marketing is greater for some regions and for some crops than for others. If we forget these facts and fall into the habit of lumping all farm difficulties together under the general name of the "farm problem," we shall waste much time in discovering the true path of progress.¹⁰

The Acts of Congress with respect to the agricultural economy reflect the complexities which are inherent in the vast business of producing and marketing farm products. The magnitude of the measures enacted by Congress may be outlined by reference to the principal programs, administered by the Secretary of Agriculture, with respect to agricultural credit, conservation, price support, surplus removal, crop insurance, research, and numerous regulatory statutes designed by Congress to effectuate production adjustment, parity prices, orderly marketing, fair trade practices or other statutory goals.

The Congress has broad discretion in all of these areas of legislation. This means that Congress, in its wisdom, may determine the desirable policy, may legislate or not as it deems in the public interest, and, if legislation is enacted, may establish the metes and bounds of the enactments. In matters of price support, for example, it has been held that it is for Congress "to determine what methods should be employed to solve the economic problems arising in a difficult field and that the mandate of Congress must be obeyed."¹¹ Some of the major programs administered by the Secretary of Agriculture are based on the Commerce Clause in the Constitution, and with respect to one of these programs the Supreme Court said that:

It is of the essence of the plenary power conferred [by the Commerce Clause of the Constitution] that Congress may exercise its discretion in the use of the power. Congress may choose the commodities and places to which its regulation shall apply. Con-

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10. 1928 Yearbook of Agriculture (United States Department of Agriculture), pp. 44-45. The references in the Secretary's report in 1928 to different conditions, in different branches of agriculture, and to the fact that a program for agriculture "must reckon with . . . differences in the human factor engaged in agriculture" are exemplified in the President's Message to Congress in 1954 in which it is said that "[t]obacco farmers have demonstrated their ability to hold production in line with demand at the supported price without loss to the Government. The relatively small acreage of tobacco and the limited areas to which it is adapted have made production control easier than for other crops." 100 Cong. Rec. 130, 133 (1954).
 11. *Swift & Co. v. United States*, 257 F.2d 787, 796 (1958), certiorari denied, 358 U.S. 837, 79 S.Ct. 60, 3 L.Ed.2d 73 (1958). A court "neither approves nor disapproves any legislative policy. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the Constitution; and, having done that, its duty ends." *United States v. Butler*, 297 U.S. 1, 63, 56 S.Ct. 312, 80 L.Ed. 477 (1936). See, also, *Wickard v. Filburn*, 317 U.S. 111, 129, 63 S.Ct. 82, 87 L.Ed. 122 (1942).

gress may consider and weigh relative situations and needs. Congress is not restricted by any technical requirement but may make limited applications and resort to tests so that it may have the benefit of experience in deciding upon the continuance or extension of a policy which under the Constitution it is free to adopt. As to such choices, the question is one of wisdom and not of power.¹²

Chief Justice Marshall, in writing the Court's opinion in *McCulloch v. Maryland*,¹³ said that if a statute is not prohibited by the Constitution and is really calculated to effect any of the objects entrusted to the Government "to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretensions to such a power."¹⁴ The need or the wisdom of Federal legislation and the question of the effectiveness of legislation are, after all, matters for consideration by the Congress, not the courts.¹⁵ These matters which are for resolution by Congress and not by the courts do not fall within the scope of this article, which discusses only the legal aspects of some of the important programs administered by the Department of Agriculture.

Each of the statutes is specialized in design because of the vast and unlimited variations which exist in agriculture and in the marketing of agricultural commodities and products. Some of the statutory measures are enabling legislation which, standing alone, impose no regulation but instead direct the issuance of regulations, from time to time, by the administrative agency whenever it finds that the issuance of the regulations will effectuate the statutory goal.¹⁶ Some of the regulations are extensive, e.g., the regulations in effect pursuant to one of the statutes are set forth in 2 volumes of the Code of Federal Regulations.¹⁷

The space limitation with respect to an article for publication in the Law Journal manifestly precludes the discussion or even the outlining of each of the statutes administered by the Department. Hence, the statutes which have been selected for discussion in this article are illustrative but

12. *Currin v. Wallace*, 306 U.S. 1, 14, 59 S.Ct. 379, 83 L.Ed. 441 (1939).

13. 4 Wheat. 316, 4 L.Ed. 579 (1819).

14. *Id.* at 423.

15. *Secretary of Agriculture v. Central Roig Co.*, 338 U.S. 604, 606, fn. 1, 70 S.Ct. 403, 94 L.Ed. 381 (1950); *American Power Co. v. Securities and Exchange Comm.*, 329 U.S. 90, 106-107, 67 S.Ct. 133, 91 L.Ed. 103 (1946); *Arizona v. California*, 283 U.S. 423, 455-457, 51 S.Ct. 522, 75 L.Ed. 154 (1931); *Northern Securities Co. v. United States*, 193 U.S. 197, 350, 24 S.Ct. 436, 48 L.Ed. 679 (1904). "The conflicts of economic interests between the regulated and those who advantage by it are wisely left under our system to resolution by the Congress under its more flexible and responsible legislative process. Such conflicts rarely lend themselves to judicial determination. And with the wisdom, workability, or fairness of the plan of regulation we have nothing to do." *Wickard v. Filburn*, 317 U.S. 111, 129, 63 S.Ct. 82, 87 L.Ed. 122 (1942).

16. See, e.g., the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246 (1937), 7 U.S.C. §§ 601-602, 608a(5)-608d, 610(a)-610(c), 610(f)-610(j), 612, 614, 671-674 (1958).

17. 7 CFR §§ 900.1-1070.1. The regulations issued in accordance with the statute have the force and effect of law.

not exhaustive with regard to the duties and functions of the administrative agency.¹⁸

11. *Some of the Major Statutory Enactments Which Are Illustrative of the Department's Duties and Functions.*

A. *The Packers and Stockyards Act.*

Several regulatory statutes administered by the Department are designed to establish codes of conduct with respect to the marketing of agricultural commodities or products.¹⁹ One of these measures is the Packers and Stockyards Act,²⁰ which was enacted by the Congress in 1921. The Act provides, in the main, for (1) the regulation of the marketing of livestock²¹ at stockyards as defined in the Act or otherwise in commerce, (2) the regulation of the marketing of live poultry at live poultry markets designated by the Secretary of Agriculture or otherwise in commerce, and (3) the regulation of the business activities of meat packers engaged in commerce as defined in the Act. This statute is of marked importance to the producers of livestock and, also, to the producers of poultry. The importance of the regulatory program is indicated by the fact that cash receipts by farmers for "meat animals" in 1958 totaled approximately \$11 billion²² and the cash receipts by farmers for poultry in 1958 totaled approximately \$1.5 billion.²³

The integrated and inclusive character of the provisions in the Packers and Stockyards Act are manifest from the text and the legislative background. It has been observed that the original enactment

is a very broad and comprehensive law. . . . [T]hose in charge of the legislation were impressed with its comprehensiveness. In the report of the House Committee on Agriculture [H. Rept. No. 77, 67th Cong., 1st Sess., p. 2], it is stated that this law "and existing laws . . . [give] the Secretary of Agriculture complete

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18. The increase or expansion of statutory law has been an interesting subject of comment in this country for a long time. More than 100 years ago a writer on the subject of statutory and constitutional law noted the rapid expansion of statutory law. Sedgwick, *Statutory and Constitutional Law* (1857), preface. His observations have a very modern ring, for large areas of the law are within the broad sweep of legislative enactments. For example, the 84th Congress enacted 1,028 public laws set forth in 1,848 pages of the Statutes at Large (69 Stat. 3-726; 70 Stat. 3-1126) whereas a single volume of 755 pages contains all of the statutes passed by Congress during the ten-year period 1789-1799 (1 Stat. 23-755). It was said in 1947 by a member of the Supreme Court of the United States that "almost every case" before the Supreme Court "has a statute at its heart or close to it." Frankfurter, *Some Reflections on the Reading of Statutes*, 47 *Columbia L. Rev.* 527 (1947). See, also, Pound, *Sources and Forms of Law*, 22 *Notre Dame Lawyer* 1, 3-8 (1946).
19. See, e.g., the Commodity Exchange Act (Act of June 15, 1936, 49 Stat. 1491, as amended, 7 U.S.C. 1-17a (1958)); the Perishable Agricultural Commodities Act (Act of June 10, 1930, 46 Stat. 521, as amended, 7 U.S.C. 499a-499s (1958)); the Packers and Stockyards Act, 1921 (Act of August 15, 1921, 42 Stat. 159, as amended, 7 U.S.C. 181-231 (1958)).
20. Act of August 15, 1921, 42 Stat. 159, as amended, 7 U.S.C. 181-231 (1958).
21. The term "livestock" as defined in the Act means "cattle, sheep, swine, horses, mules, or goats—whether live or dead." 7 U.S.C. 182(4) (1958).
22. *The Farm Income Situation*, July, 1959 (Agricultural Marketing Service, United States Department of Agriculture), p. 15.
23. *Id.* at 28.

inquisitorial, visitorial, supervisory, and regulatory power over the packers, stockyards, and all activities connected therewith; . . . it is a most comprehensive measure and extends farther than any previous law in the regulation of private business, in time of peace, except possibly the interstate commerce act.²⁴

The arrangement of the Act is such that Title I contains definitions of certain general terms; Title II relates generally to packers; Title III relates to stockyards and the operations of market agencies and dealers; Title IV contains general provisions which are applicable to the entire Act; and Title V, added by the way of an amendment, relates to the handling of live poultry in commerce.²⁵

The legislative history of the original measure in 1921 shows that it was "worked out with great care" and with a view of providing "a constructive measure that would properly safeguard the interest of the public and all elements of the industry from the producer to the consumer without destroying any unit of it."²⁶ It was explained by the late United States Senator John B. Kendrick of Wyoming, in the debate in the Senate with respect to the enactment of the statute, that the proposals and efforts for this legislation had continued over a period of 33 years, and that the genesis of the matter was in the resolution of May 16, 1888, authorizing an investigation by the Senate with respect to the buying and selling of livestock.²⁷ Further it was said by Senator Kendrick, as a part of his argument in support of the bill, that this legislation was favored "by nearly every livestock association west of the Missouri River," including the Wyoming Livestock Association, and that it was also favored by some of the livestock associations "east of the Missouri River. . . ."²⁸ The avowed purpose of the measure is to subject certain business enterprises to governmental regulation, but it was said by Senator Kendrick that "it is a legitimate function of government to insist upon fair play in all lines of business,"²⁹ and that, he declared, "is all that this legislation proposes to do."³⁰

1. *Constitutionality of the Act.*

This statute is the basis for one of the great precedents in the field of constitutional law with respect to the scope of the Commerce Clause in the Federal Constitution. The national nature of the channels of commerce, which are subjected to regulation by the terms of the Packers and Stock-

24. *United States v. Donahue Bros.*, 59 F.2d 1019, 1022 (8th Cir. 1932).

25. Title V was enacted by the Act of August 14, 1935, 49 Stat. 648 (1935).

26. H. Rept. No. 77, 67th Cong., 1st Sess., p. 2 (1921).

27. 61 Cong. Rec. 2614 (1921). Senator Kendrick said that since he "was a young man on the range" there had been a prevalence of "criticism of the conditions under which stock was sold in the market." *Id.* at 2616. Also Senator Kendrick observed that "the stock producers of the United States, whether in the West or the East, are the highest class people in the country," and they "are the slowest to complain." *Id.* at 2619.

28. 61 Cong. Rec. 2614 (1921).

29. *Id.* at 2619.

30. *Ibid.* Senator Kendrick was not inclined or given to "speaking over-much" in the Senate; and after having served for than 2 years on the committee investigating the marketing of livestock, his views and explanations carried unusual weight. *Id.* at 2617.

yards Act, and also the avowed Congressional purpose of market regulation are summarized in *Stafford v. Wallace*³¹ in upholding the constitutionality of this statute. The decision in *Stafford v. Wallace*³² is a notable and far-reaching application of the doctrine of *Swift and Company v. United States*³³ in which it was said that "commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business."³⁴ Chief Justice Taft, in writing the Court's opinion in *Stafford v. Wallace*,³⁵ said that the

application of the commerce clause of the Constitution in the *Swift* case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are ever flowing are in their very-essence the commerce among the States and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control.³⁶

The decision in *Stafford v. Wallace* has been relied on again and again in subsequent decisions relative to the power of Congress to regulate commerce. See, e.g., *Labor Board v. Jones & Laughlin*,³⁷ upholding the constitutionality of the National Labor Relations Act; *Currin v. Wallace*³⁸ and *Wickard v. Filburn*,³⁹ upholding the constitutionality of the Agricultural Adjustment Act of 1938; and *United States v. Rock Royal Co-op.*,⁴⁰ upholding the constitutionality of the Agricultural Marketing Agreement Act of 1937, relative to an order issued by the Secretary of Agriculture establishing the minimum price that a dealer or handler shall pay to a producer for his milk.

2. *Methods of Regulation, in General.*

The regulatory terms of the Act with respect to packers⁴¹ are numerous and detailed. In brief, the Act provides that it shall be unlawful with respect to livestock, meats, meat food products, livestock products in unmanufactured form, poultry, or poultry products for any packer or any live poultry dealer or handler to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce or engage in certain other practices which may be characterized as of a monopolistic

31. 258 U.S. 495, 42 S.Ct. 397, 66 L.Ed. 735 (1922).

32. *Ibid.*

33. 196 U.S. 375, 25 S.Ct. 276, 49 L.Ed. 518 (1905).

34. *Id.* at 398.

35. 258 U.S. 495, 42 S.Ct. 397, 66 L.Ed. 735 (1922).

36. *Id.* at 518-519. It was said by Mr. Justice Sutherland, in writing the Court's opinion in *Euclid v. Ambler*, 272 U.S. 365, 387, 47 S.Ct. 114, 71 L.Ed. 303 (1926) that "while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operations. In a changing world, it is impossible that it should be otherwise."

37. 301 U.S. 1, 35, 57 S.Ct. 615, 81 L.Ed. 893 (1937).

38. 306 U.S. 1, 10-11, 59 S.Ct. 379, 83 L.Ed. 441 (1939).

39. 317 U.S. 111, 128, fn. 28, 63 S.Ct. 82, 87 L.Ed. 122 (1942).

40. 307 U.S. 533, 568, fn. 37, 59 S.Ct. 993, 83 L.Ed. 1446 (1939).

41. The word "packer" is a definitional term in the statute. 7 U.S.C. 191 (1958). See, also, *United Corporation v. Federal Trade Commission*, 110 F.2d 473 (4th Cir. 1940).

nature.⁴² The prohibited practices include, *inter alia*, engaging in any course of business or doing any act "for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce."⁴³ The statute provides for the issuance of complaints by the administrative agency with respect to alleged violations, the holding of hearings on such complaints, and the issuance of decisions in which findings are made.⁴⁴ A cease and desist order may be issued with respect to a violation.⁴⁵ Penalties are provided for by the Act with respect to a violation of an order.⁴⁶

The statutory requirement for the furnishing of "reasonable stockyards services" by stockyard owners and market agencies is a pivotal provision in the Act.⁴⁷ The Act prohibits a market agency or dealer from engaging in business at a stockyard unless the market agency or dealer is registered with the Secretary.⁴⁸ A market agency is "any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services."⁴⁹ A dealer is "any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser."⁵⁰

All rates or charges made for any stockyard service by a stockyard owner or market agency "shall be just, reasonable, and non-discriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful."⁵¹ Administrative proceedings are authorized whereby, in appropriate circumstances, the Secretary prescribes the rates or charges.⁵² On judicial review of the Secretary's determination, the inquiry into the facts goes no further than to ascertain whether there is adequate evidence, in the record before him, to support his findings of fact.⁵³

The Supreme Court has declared that the "dominant purpose" of the Act is "to secure to patrons of the stockyards prescribed stockyard services at just and reasonable rates."⁵⁴ Under the Packers and Stockyards Act the

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42. 7 U.S.C. 192 (1958).
 43. 7 U.S.C. 192 (e) (1958).
 44. 7 U.S.C. 193 (a) (1958).
 45. 7 U.S.C. 193 (b) (1958).
 46. 7 U.S.C. 195 (1958).
 47. 7 U.S.C. 205 and 208 (1958).
 48. 7 U.S.C. 203 (1958). "Every other person operating as a market agency or dealer," as defined in the Act, may be required by the Secretary to register. *Ibid.*
 49. 7 U.S.C. 201 (c) (1958).
 50. 7 U.S.C. 201 (d) (1958). A packer-buyer is required to register as a dealer. *Amshoff v. United States*, 228 F.2d 261, 262-267 (7th Cir. 1956), certiorari denied, 351 U.S. 939, 76 S.Ct. 836, 100 L.Ed. 1466 (1956).
 51. 7 U.S.C. 206 (1958).
 52. 7 U.S.C. 212 (1958).
 53. *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 51, 56 S.Ct. 720, 80 L.Ed. 1033 (1936).
 54. *United States v. Morgan*, 307 U.S. 183, 188-189, 59 S.Ct. 795, 83 L.Ed. 1211 (1939). Many of the notable decisions in the field of administrative law, e.g., *United States v. Morgan*, *supra*, relate to programs administered by the Department of Agriculture.

Secretary of Agriculture is vested with authority, on the basis of a hearing record, to prescribe the rates to be charged by a stockyard owner and the commission rates of market agencies operating at a stockyard if he finds that the rates being charged are unreasonable. There are 62 terminal yards posted under the Packers and Stockyards Act. These range from substantial terminal markets to some which are no larger than the average auction market. Since this Act became effective in 1921, formal rate orders have been issued applicable only to the following eleven stockyards:

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|------------|---------------------------------|
| St. Paul | Nashville |
| Sioux City | Cleveland |
| Omaha | St. Louis National |
| Denver | Mississippi Valley at St. Louis |
| Peoria | Chatanooga |
| St. Joseph | |

The charges for selling and buying livestock on a commission basis have been prescribed at the following stockyards:

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| Chicago | Ogden |
| Denver | Omaha |
| Ft. Worth | Mississippi Valley at St. Louis |
| Kansas City | Salt Lake City |
| St. Louis National | Sioux City |

Among the 51 terminal yards not subject to a rate order, the principal yards are:

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|---------------|-------------|
| Kansas City | Wichita |
| Chicago | Cincinnati |
| Oklahoma City | Fargo |
| Ft. Worth | Sioux Falls |
| Indianapolis | |

These yards, together with those under order, probably constitute the 20 most important terminal markets. Prior to the Act of September 2, 1958,⁵⁵ there were 600 auction and terminal stockyards subject to regulation. Since the Act of September 2, 1958, additional stockyards have been posted, under the Act, and there were 1,931 posted stockyards on January 1, 1960. Additional auction rings over the country will be posted, from time to time, and must file their rate schedules with the Department before they can be made effective. Rate orders establish departmental policy and therefore, act as a guide to all stockyards. Through negotiations and suggestions by representatives of the Department the level of the rates filed has been kept within what is considered to be a reasonable range, avoiding the necessity for numerous rate proceedings.

All practices in connection with "the livestock passing through the yards shall be just, reasonable, non-discriminatory and non-deceptive."⁵⁶ Recently, the Supreme Court held that stockyards and market agencies "are made public utilities by the Act," and their "duty is to serve all,

55. Public Law 85-909, 85th Cong.

56. *Stafford v. Wallace*, 258 U.S. 495, 513-514, 42 S.Ct. 397, 66 L.Ed. 735 (1922).

impartially and without discrimination."⁵⁷ Specifically, the Act provides that it is the "duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services. . . ."⁵⁸ Reasonable "services" including reasonable "facilities"—*i.e.*, "reasonable stockyard services"—must be furnished by a stockyard owner and a market agency with respect to (1) the "receiving" of livestock, (2) the "buying" of livestock, (3) the "selling"—on a commission basis or otherwise—of livestock, (4) the "marketing" of livestock, (5) the "feeding" of livestock, (6) the "watering" of livestock, (7) the "holding" of livestock, (8) the "delivery" of livestock, (9) the "shipment" of livestock, (10) the "weighing" of livestock, and (11) the "handling" of livestock.⁵⁹

It has been held that a "service" under this statute is any result of useful labor which does not produce a tangible commodity.⁶⁰ The word "facilities," as used in a regulatory statute, is generally regarded as a widely inclusive term, embracing anything which "aids or makes easier the performance of the activities involved in the business of a person. . . ."⁶¹ The Congress did not undertake, in the enactment of this statute, to forsee in detail the "services" and "facilities" to be furnished in each market. Congress selected words of general import in the Act and left their application to the factual circumstances in each situation. The terms of the statute, in this respect, call for a continuous process of application.

The business practices or methods of buying, selling, and marketing livestock are not, of course, uniform at the various stockyards throughout the country. "At terminal markets, market agency salesmen sell livestock received from producers on a consignment basis through direct negotiations with buyers,"⁶² whereas livestock consigned to auction markets "is offered to buyers in sales rings and sold by auction methods."⁶³ In addi-

57. *Denver Stock Yard v. Livestock Ass'n.*, 356 U.S. 282, 286, 78 S.Ct. 738, 2 L.Ed.2d 771 (1958).

58. 7 U.S.C. 205 (1958). See also, 7 U.S.C. 213 (1958) which makes it unlawful "for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with the receiving, marketing, buying or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of livestock."

59. 7 U.S.C. 201 (b) (1958).

60. *State of Colorado v. United States*, 219 F.2d 474, 476 (10th Cir. 1954).

61. *Hartford Electric Light Co. v. Federal Power Com.*, 131 F.2d 953, 961 (2d Cir. 1942), certiorari denied, 319 U.S. 741, 63 S.Ct. 1028, 87 L.Ed. 1698 (1943). An example of the discretion vested in a stockyard owner is found in *Farmers Union Livestock Ass'n. v. St. Paul Union S. Co.*, 97 F.Supp. 539, 540-542 (D. Mont. 1951), in which it was held that the allocation of stockyard pens, at a posted stockyard, on the basis of the amount of business done by commission firms to whom the pens are assigned is not unreasonably discriminatory so as to impinge on the duty of the stockyard owner to furnish reasonable stockyard services on reasonable request. See, also, *DeVries v. Sig Ellingson & Co.*, 100 F.Supp. 781, 786 (D. Minn. 1951), affirmed, 199 F.2d 677 (8th Cir. 1952), certiorari denied, 344 U.S. 934 (1953); *Carnes v. St. Paul Union Stockyards Co.*, 175 Minn. 294, 221 N.W. 20, 21 (1928).

62. *Marketing*, 1954 Yearbook of Agriculture. (United States Department of Agriculture), p. 282.

63. *Ibid.*

tion, the methods of sale at the auction markets are not uniform.⁶⁴ New developments in transportation and commerce since 1921, the date of the enactment of the Act, have had a pronounced impact on our marketing system, and also other changes in our economy have affected the business operations at the stockyards.⁶⁵

There are numerous statutory provisions for the enforcement of the Act. Whenever a "complaint is made to the Secretary by any person, or whenever the Secretary has reason to believe, that any stockyard owner, market agency, or dealer" is engaging in or using any unfair, unjustly discriminatory, or deceptive practice or device in connection with the handling of livestock in commerce, "the Secretary after notice and full hearing may make an order that he shall cease and desist from continuing such violation to the extent that the Secretary finds that it does or will exist."⁶⁶ The Secretary is authorized, on the basis of an administrative proceeding, to suspend the registration of a market agency or dealer.⁶⁷ Various penalties are specified in the Act with respect to violations.⁶⁸ In addition, the statute provides for administrative proceedings for reparations with respect to damages which result from certain violations of the Act.⁶⁹

The Act provides for licensing of live poultry dealers or handlers who conduct business at the designated live poultry markets.⁷⁰ Title V of the Act with respect to live poultry dealers and handlers incorporates, by reference, the prior statutory provisions relative to services, facilities, rates, and charges.⁷¹ The Secretary may, on the basis of an administrative proceeding, suspend or revoke the license of a live poultry dealer or handler.⁷²

3. *Jurisdiction of the Courts.*

Exclusive jurisdiction is vested in the United States Court of Appeals to enjoin, set aside, suspend (in whole or in part), or to determine the validity of all "final orders" of the Secretary, under this statute, except a reparation order or an order relating to brand inspection.⁷³ Whether or not the statutory requirement of finality is satisfied in a particular case "depends not upon the label affixed to its action by the administrative

64. Fowler, *The Marketing of Livestock and Meat* (1957 ed.), pp. 256-266.

65. Fowler, *The Marketing of Livestock and Meat* (1957 ed.), pp. 26-27; *Marketing, 1954 Yearbook of Agriculture* (United States Department of Agriculture), pp. 95, 101, 489; *In re St. Louis National Stockyards Co.*, 2 Agr. Dec. 664, 669-670 (1943).

66. 7 U.S.C. 213 (1958). See, also 7 U.S.C. 210-212 (1958).

67. 7 U.S.C. 204, 205, 217a, 218d (1958); *Cella v. United States*, 208 F.2d 783 (7th Cir. 1953), certiorari denied, 347 U.S. 1016, 74 S.Ct. 864, 98 L.Ed. 1138 (1954). As originally passed, the statute did not contain a provision for the suspension of a registrant. The statute was amended, however, in this respect by means of a rider on an appropriation measure. "Congress has the power to enact permanent legislation in an appropriation act. . . . The use of the word 'hereafter' [in an appropriation act] by Congress as a method of making legislation permanent is a well-known practice." *Cella v. United States*, supra, 208 F.2d at 790.

68. See, e.g., 7 U.S.C. 203 and 215 (1958).

69. 7 U.S.C. 209, 210, 218c (1958).

70. 7 U.S.C. 218a (1958).

71. 7 U.S.C. 218c (1958).

72. 7 U.S.C. 218d (1958).

73. Act of December 29, 1950, 64 Stat. 1129, as amended, 5 U.S.C. 1032-1036 (1958).

agency but rather upon a realistic appraisal of the consequences of such action."⁷⁴ 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.⁷⁵ The venue of a judicial proceeding with respect to a "final order" of the Secretary—other than a reparation order or a brand inspection order—is 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."⁷⁶ A petition for review may be filed by an aggrieved party within 60 days after the entry of the final order by the administrative agency.⁷⁷ The record of the hearing before the administrative agency is certified to the appellate court.⁷⁸

A reparation complaint is subject to trial *de novo* in a United States District Court.⁷⁹ The suit may, however, be brought in a State court instead of the United States District Court.⁸⁰ The action in court proceeds in all respects like all other civil suits for damages, except that, by the terms of the Packers and Stockyards Act, the findings and order of the Secretary in the reparation proceeding "shall be prima facie evidence of the facts therein stated," and, if the petitioner finally prevails, he is entitled to a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit.⁸¹

B. *The Sugar Act of 1948.*

Some of the statutes administered by the Secretary of Agriculture provide for marketing quotas applicable to certain agricultural commodities or products.⁸² The Sugar Act of 1948 has been characterized by the Supreme Court as providing the "familiar device of a quota system."⁸³ This method of prescribing marketing quotas for sugar was originally provided for by the Jones-Costigan Act of 1934,⁸⁴ and, subsequently, by the Sugar Act of 1937.⁸⁵

74. *Ibrandtsen Co. v. United States*, 211 F.2d 51, 55 (D.C. Cir. 1954), certiorari denied, 347 U.S. 990 (1954). See, also, *Columbia Broadcasting System v. United States*, 316 U.S. 407, 424-425, 62 S.Ct. 1194, 86 L.Ed. 1563 (1942); *Frozen Food Exp. v. United States*, 351 U.S. 40, 43-45, 76 S.Ct. 569, 100 L.Ed. 910 (1956).

75. *Ibid.*

76. 5 U.S.C. 1033 (1958).

77. 5 U.S.C. 1034 (1958).

78. 5 U.S.C. 1036 (1958).

79. 77 U.S.C. 210 (f) (1958).

80. *Ibid.*

81. *Ibid.*

82. See, e.g., the Agricultural Adjustment Act of 1937, 52 Stat. 31 (1938), as amended, 7 U.S.C. 1281-1407 (1958); the Sugar Act of 1948 (61 Stat. 922, as amended, 7 U.S.C. 1100-1161 (1958)); the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246 (1937), as amended, 7 U.S.C. 601-602, 608a (5)-608d, 610 (a)-610 (c), 610 (f)-610 (j), 612, 614, 671-674 (1958)).

83. *Secretary of Agriculture v. Central Roig Co.*, 338 U.S. 604, 606, 70 S.Ct. 403, 94 L.Ed. 381 (1950).

84. Act of May 9, 1934, 48 Stat. 670 (1934).

85. Act of September 1, 1937, 50 Stat. 903 (1937).

The Sugar Act is designed to maintain a healthy and competitive domestic sugar industry of limited size and to improve our import trade. As stated in the Act, the objective is to achieve prices that will not be excessive to consumers and will fairly maintain and protect the domestic industry.⁸⁶

The importance of the legislation, with respect to sugar, is indicated by the fact that the estimated value of the 1958 crops of sugar beets and sugarcane, produced in the continental United States, was approximately \$224 million to the growers.⁸⁷ Sugar beets are produced in 22 states,⁸⁸ and the total crop in 1958 was valued at approximately \$175 million.⁸⁹ The acreage planted in sugar beets in 1957 in the Far West region was 352,000 acres; in the Central region (including Wyoming), the acreage in sugar beets in 1957 was 461,000 acres; and in the so-called Eastern region the acreage planted in sugar beets was 107,000 acres in 1957.⁹⁰

The sugar beets and sugarcane produced in the continental United States and the sugar cane produced in the domestic offshore areas supply approximately 53 per centum of the requirements of the consumers of sugar in the continental United States.⁹¹ The sugar beets and sugarcane produced in the continental United States, generally, make available a quantity of sugar which is approximately 28 per centum of our consumptive demand for sugar; and Hawaii, Puerto Rico, and the Virgin Islands supply an additional 25 per centum of our requirements.

Sugar has a wide variety of industrial uses; *e.g.*, in the form of invert molasses, it was used in large quantities in World War II to make industrial alcohol which was necessary in the "program for making synthetic rubber."⁹² For many years, "it has been the policy of the United States Government—for defense and strategic reasons—to preserve within the United States the ability to produce a portion of our sugar requirements."⁹³

The United States consumes more sugar than any other nation. In order that the national importance of our domestic sugar industry may be readily appreciated, I said in a speech I made in the United States Senate in 1955, with respect to S. 1635, 84th Cong., 1st Sess., a bill to liberalize and increase quotas for our domestic producers of sugar beets and sugarcane, that:

86. Marketing, 1954 Yearbook of Agriculture (United States Department of Agriculture), p. 437. "Unlike many other major commodities, sugar is not produced in surplus on American soil." Crops in Peace and War (United States Department of Agriculture), p. 293.

87. Crop Production, June 10, 1959 (Crop Reporting Board, Agricultural Marketing Service, United States Department of Agriculture), p. 23.

88. *Id.* at 37.

89. *Id.* at 23.

90. Sugar Statistics and Data, Statistical Bulletin No. 244, February, 1959 (Sugar Division, Commodity Stabilization Service, United States Department of Agriculture), p. 17.

91. S. Rep. No. 1461, 84th Cong., 2d Sess. 1 (1956). See, also, Marketing, 1954 Yearbook of Agriculture (United States Department of Agriculture), pp. 79, 82.

82. Ballinger, Sugar During World War II (War Records Monograph No. 3, United States Department of Agriculture), p. 1.

93. H. R. 1348, 84th Cong., 1st Sess. 10 (1955).

If our annual consumption of sugar was hauled by one train, it would take 201,454 freight cars, each carrying 80,000 pounds, propelled by 1,967 triple unit diesel locomotives. The head engine, after traveling through the great beet sugar towns of Scottsbluff, Nebr., and Torrington, Wyo., would reach Worland, Wyo., the center of a thriving beet growing area, while the caboose of the train would still be in the Union Station at Washington, D.C.⁹⁴

The consumption of sugar has greatly increased in the United States since 1948, and I said in the debate in the Senate on S. 1635, 84th Cong., 1st Sess., that "it is only fair, right and proper that the domestic producers of beet sugar and the domestic producers of cane sugar should participate in the additional consumption in the United States occasioned by an increase in our population,"⁹⁵ particularly, an increase as was provided for by the terms of S. 1635. In Wyoming and other States producing sugar beets, "the production of sugar beets is very important, not only because sugar beets are a good cash crop, but also because the production of sugar beets complements the livestock industry in an important way."⁹⁶ As I pointed out in the debate, it is generally recognized that:

The nature of the sugar beet and the rotation system make it abundantly clear why farm conditions improve where sugar beets are grown. As I indicated earlier, the root system of the beet penetrates the ground to a depth of 6 or 7 feet and when the beets are cut, thousands of roots are cut off and left in the soil to an estimated average of a ton per acre and this constitutes a valuable contribution to the richness of the soil. Furthermore, the root system loosens up the compact soil, permitting air to reach down below the surface and fertilizing the soil. When rotation is practiced, the roots of subsequent crops follow the channels of the beets and thereby draw nutriment from much greater depth, which promotes growth. . . .

Millions of sheep and cattle from the ranges of 11 Western States are annually fattened on the feed lots of the beet-sugar regions. The growth in the production of sugar beets is followed immediately by a corresponding expansion of livestock-feeding operations. To many of our Western States this means that the livestock industry can carry on a complete operation—feeding and fattening as well as growing. In fact, it means a wholly new industry for those areas.

Thus it is clear that growing beets means more than producing sugar. It has made possible the development of some of the most productive farm areas in the country. It has helped in a big way in crop rotation and farming diversification. It has made a great contribution to a well-rounded-out livestock operation in the Mountain States. No wonder, then, that beet growers and the region as a whole have a great stake in a thriving sugar beet industry.⁹⁷

94. 101 Cong. Rec. 8824 (1955).

95. Id. at 8830.

96. Id. at 8831.

97. Id. at 8834-8835.

The importance of our domestic sugar industry is clearly apparent. These factors of importance are to be considered and evaluated by Congress in its reconsideration, from time to time, of the quota system provided for by this legislative measure.

1. *Methods of Regulation, in General.*

Under the terms of the Sugar Act of 1948, the Secretary of Agriculture determines, for each calendar year, the amount of sugar needed by the consumers of sugar in the continental United States.⁹⁸ The Secretary's determination is published in the Federal Register, and it includes an explanation with respect to the grounds or the basis for the determination.⁹⁹ Quotas, in accordance with the provisions of the statute, are then made effective for the domestic sugar producing areas and for foreign countries.¹⁰⁰ The statutory provisions for quotas, including quotas for liquid sugar, are lengthy and complex. It was said, by a member of Congress prominently identified with the drafting and enactment of this legislation, that the statute is "one of the most complicated pieces of legislation" that Congress "has ever been called upon to consider."¹⁰¹ This article, in view of the space limitation, cannot carry the weight of the details of the Act.

Quotas for each area, including the amount of a quota which can be filled by direct consumption sugar, are established by the terms of the Act. But the allotment of a quota or proration for an area to the persons who market or import sugar, or liquid sugar, is a matter for determination by the Secretary of Agriculture. It was said by the Supreme Court in *Secretary of Agriculture v. Central Roig Co.*,¹⁰² that:

Congress could not itself, as a practical matter, allot the area quotas among individual marketers. The details on which fair judgment must be based are too shifting and judgment upon them calls for too specialized understanding to make direct Congressional determination feasible. Almost inescapably the function of allotting the area quotas among individual marketers becomes an administrative function. . . .¹⁰³

The criteria to govern the Secretary, in allotting a quota or proration, are set forth in the statute, and the administrative action, in this respect, is based on the evidence adduced at a public hearing. The hearing is a formal, rule making proceeding, including the customary notice of hearing and the customary post hearing procedure.¹⁰⁴ The Secretary's decision is based upon reliable, probative, and substantial evidence adduced at the hearing, and the decisions includes a statement of the Secretary's findings

98. 7 U.S.C. 1111 (1958).

99. 7 U.S.C. 1153 (b) (1958).

100. 7 U.S.C. 1112 (1958).

101. Statement by the Chairman of the House Agriculture Committee, 101 Cong. Rec. 12434 (1955).

102. 338 U.S. 604, 70 S.Ct. 403, 94 L.Ed. 381 (1950).

103. *Id.* at 610.

104. 7 CFR 801.1-801.19.

and conclusions, as well as the reasons or basis therefor, upon all of the material issues of fact, law, or decision presented on the record.¹⁰⁵

2. *Judicial Review with Respect to Allotment Determinations.*

Congress may determine how the rights which it creates shall be enforced.¹⁰⁶ The statute provides that a person whose application for an allotment is denied or a person who is aggrieved by reason of a decision of the Secretary granting or revising any allotment to him may obtain judicial review of the Secretary's determination by filing, within 20 days after the effective date of the administrative decision, a petition for review in the United States Court of Appeals for the District of Columbia Circuit.¹⁰⁷ The Court, on judicial review, is not, however, to substitute its judgment for that of the Secretary, and the review is limited to the record in the administrative proceedings. The administrative findings are not to be set aside unless they are baseless or arbitrary.¹⁰⁸

3. *Statutory Penalties and Enforcement Actions.*

The statute specifies the prohibited acts, provides for civil penalties, and for enforcement actions.¹⁰⁹ The district courts of the United States are given jurisdiction to enforce the provisions of the Act or the provisions of any order or regulation issued pursuant to the Act, and the district courts also have jurisdiction to prevent and restrain any person from violating the Act or from violating an order or regulation pursuant to the Act.¹¹⁰

4. *Proportionate Shares and Conditional Payments.*

A declared purpose of the statute is to insure that domestic producers and workers in the sugarcane and sugar beet fields receive a fair share of the returns from sugar. The production of sugar needed to fill the quota for each area is divided among the farmers in the particular area, and the "proportionate share" of each farm is established in accordance with the provisions of the Act.¹¹¹ A producer who does not exceed his proportionate share is entitled to receive certain payments if he complies with specified conditions, e.g., the payment of fair and reasonable wages and, if the producer is also a processor who processes sugar beets and sugarcane grown by other producers, the payment of a fair and reasonable price to the other producers for their sugar beets or sugarcane.¹¹² The Secretary determines the fair and reasonable wages and prices, and his determination is final and conclusive with respect to the facts constituting the basis for a payment or the amount of a payment.¹¹³

105. 7 CFR 801.14-801.16.

106. *Secretary of Agriculture v. Central Roig Co.*, 338 U.S. 604, 70 S.Ct. 403, 94 L.Ed. 381 (1950); *Mario Mercado E. Hijos v. Benson*, 231 F.2d 251 (D.C. Cir. 1956). See, also, *Switchmen's Union v. National Mediation Board*, 320 U.S. 297, 301, 64 S.Ct. 95, 88 L.Ed. 61 (1943).

107. 7 U.S.C. 1115 (b) - 1115 (f) (1958).

108. 7 U.S.C. 1115 (e) (1958).

109. 7 U.S.C. 1119, 1153 (a), 1155, 1156, 1157 (1958).

110. 7 U.S.C. 1154 (1958).

111. 7 U.S.C. 1131 (b), 1132 (1958).

112. 7 U.S.C. 1131 (1958). A producer must also refrain from using child labor. *Ibid.*

113. 7 U.S.C. 1131 and 1136 (1958); *Mario Mercado E. Hijos v. Benson*, 231 F.2d 251 (D.C. Cir. 1956).

This aspect of the Sugar Act was summarized and explained by me in the debate in the United States Senate—in urging, on my part, that consideration be given to our domestic sugar beet producers and sugarcane producers—as follows:

It is now and always has been one of the principal purposes of the sugar acts to provide a fair and reasonable return to domestic growers of sugarcane and sugar beets. In this connection, one of the often-misunderstood and misinterpreted provisions of our sugar-quota legislation is the provision for conditional payments to sugar farmers who comply with all the restrictive requirements of the legislation. These payments actually have a double purpose—to enforce compliance by growers with the restrictive features of the law, and to assure a fair distribution of the sugar dollar among growers and labor and processors. The payments are part and parcel of the tax-quota-compliance provisions of the law, and they work like this:

The price of sugar is determined by the free play of the factors of competition and supply and demand. Part of the price which the processors and refiners receive for their sugar is collected by the Government in the form of an excise tax of one-half cent a pound. The Government, in turn, pays farmers part of their expected return for their sugar beets or sugarcane—if they comply with all the restrictive features of the law, such as wages paid to fieldworkers, planting within the number of acres prescribed by the Government, and so forth. . . .

It is especially important to point out that the operations of the Sugar Act result in a net gain to the Treasury of the United States. . . . [T]he Government has collected excise taxes of some quarter of a billion dollars more than the total of payments made to producers, and the total net gain to the Government, including tariff collections, has been more than \$300 million. Under the Sugar Act, the Government annually collects an average of \$15 million to \$20 million more than it pays out, including all payments to producers and the costs of administering the Act. I know of no other Government program involving farm production which consistently results in a net gain or profit to the United States Treasury.¹¹⁴

C. *The National Wool Act of 1954.*

Some of the statutes administered by the Department provide for price support with respect to certain agricultural commodities or products. One of these statutes is the National Wool Act of 1954, defined by Congress “as a measure of national security” and to promote “the general economic welfare.”¹¹⁵ It is the declared policy of Congress “to encourage the annual domestic production of approximately three hundred million pounds of shorn wool, grease basis, at prices fair to both producers and consumers in a manner which will have the least adverse effects upon foreign trade.”¹¹⁶

114. 101 Cong. Rec. 8832-8833 (1955).

115. Act of August 28, 1954, 68 Stat. 910, as amended, 7 U.S.C. 1781-1787 (1958). The importance of the domestic production of wool to the national security was emphasized in the debate in the United States Senate on the bill which became the National Wool Act of 1954. 100 Cong. Rec. 13921-13925 (1954).

116. 7 U.S.C. 1781 (1958).

Congress recognized, in the declaration of its policy in connection with this legislation, that wool

is an essential and strategic commodity which is not produced in quantities and grades in the United States to meet the domestic needs and that the desired domestic production of wool is impaired by the depressing effects of wide fluctuations in the price of wool in the wool markets.¹¹⁷

President Eisenhower, in his Message to Congress in 1954, directed attention to the fact that "[t]wo-thirds of the wool used in the United States is imported; yet our own wool piles up in storage."¹¹⁸ The President said that a "program is needed which will assure equitable returns to growers and encourage efficient production and marketing."¹¹⁹ Further, the President said that the program should "require a minimum of governmental interference with both producers and processors, entail a minimum of cost to taxpayers and consumers, and align itself compatibly with overall farm and international trade policies."¹²⁰ This recommendation with respect to wool serves to illustrate the Presidents' observation that the "most thorough and comprehensive study ever made of the farm problem and of governmental farm programs" shows that each branch of our agricultural economy has its own problems and that these problems require specific treatment.¹²¹

The need for legislation favorable to the wool industry was summarized, as follows, in my speech on January 22, 1958, to the Convention of the National Wool Growers Association:

When the present Administration came into office in 1953 it was generally agreed that our domestic wool industry was at the cross-roads and that it would take drastic action to keep it from being completely wiped out. The program in effect before the enactment of the wool bill was not only exceedingly cumbersome but extremely costly to the Government. From 1952 to 1954 the support was through loans at 90% of parity and that sent the wool directly from the sheep's back into storage and the end result was to create a floor under the prices of wool produced in other countries which was mighty fine for foreign producers but of no help whatsoever to our own growers. . . . The end result of that program was to stockpile our domestic wool in the hands of the Commodity Credit Corporation while foreign producers captured the American market practically in its entirety. . . .

President Eisenhower recognized the desperate condition confronting our wool growers and six months after he took office he asked the Department of Agriculture to submit a report on the sheep industry. In addition, the President directed the Tariff Commission to investigate the effects of imports on the domestic wool price support program.

117. *Ibid.*

118. 100 Cong. Rec. 134 (1954).

119. *Ibid.*

120. *Ibid.*

121. *Id.* at 130.

The Department of Agriculture conducted a searching inquiry into the complex problems confronting the industry and submitted its special report to the President entitled "Achieving a Sound Domestic Wool Industry." The report outlined the factors responsible for the decline in our domestic wool production, and indicated the steps necessary to correct the situation.

The Tariff Commission reported to the President in February, 1954, that "It is clear that comparable foreign wools laid down in the United States, duty paid, have generally been available below the sale and loan prices of domestic wools and that the production goal for wool set by the Congress cannot be achieved without resorting to measures outside the framework of the present price-support program for wool. . . ."

Wool and sugar are the two major agricultural commodities in which our country is deficient in production. We have separate legislation for both sugar and wool and that is precisely as it should be. Both face heavy import competition. Legislation and programs for commodities produced in surplus simply do not operate satisfactorily for commodities such as wool and sugar. . . .

The importance of the National Wool Act of 1954 to our agricultural economy may be measured by reference to the fact that in 1957 domestic producers received approximately \$128 million for shorn wool.¹²² Wool is produced in many of the states,¹²³ e.g., the producers of wool in Wyoming received approximately \$10 million in 1957 for their production of 19,354,000 pounds of shorn wool.¹²⁴

The terms of the Act provide that the Secretary of Agriculture shall support the prices of wool and mohair, respectively, to the producers thereof "by means of loans, purchases, payments, or other operations."¹²⁵ The price support program is limited to wool and mohair marketed during the period beginning April 1, 1955, and ending March 31, 1962. Certain provisions of the Act are applicable with respect to shorn wool, and other provisions apply with regard to pulled wool and mohair.

The support price for shorn wool is at such "incentive level" as the Secretary, after consultation with producer representatives and after taking into consideration prices paid and other cost conditions affecting sheep production, "determines to be necessary in order to encourage an annual production consistent with the declared policy" of the Act.¹²⁶ The statute provides for some flexibility with respect to the level of the support price for shorn wool, subject, however, to the requirement that:

If the support price so determined does not exceed 90 per centum of the parity price for shorn wool, the support price for shorn wool shall be at such level, not in excess of 90 per centum nor less than 60 per centum of the parity price therefor, as the Secretary

122. Agricultural Statistics, 1958 (United States Department of Agriculture), pp. 346-347.

123. Ibid.

124. Ibid.

125. 7 U.S.C. 1782 (1958).

126. 7 U.S.C. 1782 (1958). It is stated in a proviso, however, that the support price for shorn wool "shall not exceed 110 per centum of the parity price therefor." Ibid.

determines necessary in order to encourage an annual production of approximately three hundred and sixty million pounds of shorn wool.¹²⁷

The support prices for pulled wool and for mohair are to be established by the Secretary at such levels, in relationship to the support price for shorn wool, as the Secretary determines "will maintain normal marketing practices for pulled wool, and as the Secretary shall determine is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool."¹²⁸ The area for administrative discretion relative to the level of support price for mohair is limited, however, by the statutory requirement that the "deviation of mohair support prices shall not be calculated so as to cause it to rise or fall more than 15 per centum above or below the comparable percentage of parity at which shorn wool is supported."¹²⁹ A further qualification with respect to the level of support prices under the Act is the statutory provision that, notwithstanding the foregoing terms of the Act, "no price support shall be made available, other than through payments, at a level in excess of 90 per centum of the parity price for the commodity."¹³⁰

The Secretary shall, insofar as practicable, announce the support price levels for wool and mohair sufficiently in advance of each marketing year as will permit the producers to plan their production for that marketing year.¹³¹ The term "marketing year," as that term is used in the Act, means the 12-month period beginning on April 1 of each calendar year or, for either wool or mohair, such other period or periods for prescribed areas as the Secretary determines to be desirable to effectuate the purpose of the Act.¹³²

The statute contains provisions with respect to the terms on which support prices are made available, and, in addition, it is provided in the Act that the Secretary may issue regulations relative to the "amounts, terms, and conditions of the price support operations and the extent to which such operations are carried out. . . ."¹³³

The various provisions in the Act and the regulations¹³⁴ are too numerous for summarization within the limits of this article. The regulations issued by the Secretary with respect to shorn wool relate, in the main, to (1) the incentive level and payments, (2) the eligibility for incentive payments, (3) the specified marketing year for the purpose of payments, (4) the rate of incentive payment and the computation of the payment, (5) the supporting documents, including the contents of the sales documents, (6) the application for payment, and (7) the report of purchases of

127. 7 U.S.C. 1782 (1958).

128. *Ibid.*

129. *Ibid.*

130. *Ibid.*

131. *Ibid.*

132. 7 U.S.C. 1786 (1958).

133. 7 U.S.C. 1785 (1958).

134. 24 F.R. 649-658 (1959).

unshorn lambs.¹³⁵ The regulations issued by the Secretary with respect to pulled wool relate, generally, to (1) the rate of payment, (2) eligibility for payments on lambs, (3) computation of payment, (4) application for payment and supporting documents, including the contents of the sales documents, and (5) the report with respect to the purchases of unshorn lambs.¹³⁶ The regulations also contain general provisions which are applicable with respect to the price support program under the statute.¹³⁷

The program is administered by the Commodity Stabilization Service under the general supervision and direction of the Executive Vice President of the Commodity Credit Corporation.¹³⁸ In the field, the program is administered through the Agricultural Stabilization and Conservation state and county offices.¹³⁹

An applicant for a payment has certain administrative remedies in the event his application is denied.¹⁴⁰ Within 15 days from the date of mailing of the notice that an application for payment on either shorn wool or unshorn lambs has been rejected in whole or in part by the ASC county office, or that any other action has been taken by the ASC county office which unfavorably affects a payment to the applicant, the applicant may appeal, in writing, to the ASC county committee. If the ASC county committee sustains the decision of the ASC county office, the applicant may appeal, in writing, to the ASC state committee within 15 days after the date of mailing of the notice by the ASC county committee. If the ASC state committee sustains the decision of the ASC county committee, the applicant may appeal, in writing, to the Director, Livestock and Dairy Division, Commodity Stabilization Service, United States Department of Agriculture, within 15 days after the date of mailing of the notice by the ASC state committee. It is further provided, in the regulations, that a determination by the Director, on such an appeal, "as to a question of fact shall be deemed final and conclusive unless it is found by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessarily to imply bad faith, or it is not supported by substantial evidence."¹⁴¹

135. Sections 472.1002-472.1010 of the regulations, 24 F.R. 649, 653 (1959). A person who knowingly files a false claim is subject to penalties under 18 U.S.C. 287 (1958). See, also, 18 U.S.C. 286 (1958); *Rainwater v. United States*, 356 U.S. 590, 78 S.Ct. 946, 2 L.Ed.2d 996 (1958); *United States v. McNinch*, 356 U.S. 595, 78 S.Ct. 950, 2 L.Ed.2d 1001 (1958).

136. Sections 472.1021-472.1026 of the regulations, 24 F.R. 653-654 (1959).

137. Sections 472.1041-472.1063 of the regulations, 24 F.R. 654-658 (1959).

138. Section 472.1001 of the regulations, 24 F.R. 649 (1959).

139. *Ibid.*

140. Section 472.1056 of the regulations, 24 F.R. 656-657 (1958). The doctrine which requires the exhaustion of administrative remedies applies with respect to a remedy provided by regulations as well as a remedy provided by statute. *National Lawyers Guild v. Brownell*, 225 F.2d 552, 557 (D.C. Cir. 1955), certiorari denied, 351 U.S. 927, 76 S.Ct. 778, 100 L.Ed. 1457 (1956); *Miller v. United States*, 242 F.2d 392, 395 (6th Cir. 1957), certiorari denied, 355 U.S. 833, 78 S.Ct. 47, 2 L.Ed. 44 (1957).

141. Section 472.1056(c) of the regulations, 24 F.R. 656-657 (1959). See, also, 7 U.S.C. 1785 (1958).

CONCLUSION

It is generally recognized that agriculture is a rapidly changing industry. Technological advances are contributing to increased production. Marketing practices, particularly in some branches of agriculture, are undergoing substantial changes. An illustration, which may be briefly stated, is this: Since the enactment of the Packers and Stockyards Act in 1921 there has been a marked increase in the "country buying" of livestock *i.e.*, the buying by packers or livestock dealers direct from the producers, without the livestock going through a public stockyard or market. It was said in 1958 by the House Committee on Agriculture—in its report on proposed amendments to the statute—that: "There was little or no such buying at the time the Packers and Stockyards Act became law but it is today a common practice in almost every part of the country and more than 40 percent of all livestock sold moves in this manner."¹⁴² In view of the fact that agriculture is a changing industry, it follows that the various legislative measures, administered by the Department, in order to be relevant to the current needs of the Nation should be considered from time to time by Congress.

There is another important circumstance which merits consideration. It has been observed, with respect to a major statute administered by the Department of Agriculture, that the success of the program designed by Congress "must depend on the efficiency of its administration."¹⁴³ That observation is relevant with respect to all of the statutory measures. The integrity, devotion, and skill of the persons who compose an administrative agency are matters of primary importance.¹⁴⁴ This importance is underscored by the wide economic impact of the major statutes administered by the Department, by the complexities and difficulties which are inherent in some of these programs, and by the latitude of administrative discretion which is provided for by the statutory enactments.

The interpretation and application of the Acts of Congress call for the use of discernment and wisdom. In the writing of these statutory measures and in their administration, the legal requirements, while carefully observing the constitutional principles which are so well established in our system of law, should not be stretched or distorted so as to thwart or prevent the administrative workability of the measures designed by Congress as the law of the land. Chief Justice Marshall said in *McCulloch v. Maryland*¹⁴⁵ that in the areas in which Congress is given power to legislate "it is the interest of the nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention to clog and embarrass its execution, by withholding the most

142. H. Rept. No. 1048, 85th Cong., 1st Sess., p. 3.

143. *United States v. Ruzicka*, 329 U.S. 287, 293, 67 S.Ct. 207, 91 L.Ed. 290 (1946).

144. *United Public Workers v. Mitchell*, 330 U.S. 75, 121, 67 S.Ct. 556, 91 L.Ed. 754 (1947), opinion by Mr. Justice Douglas.

145. 4 Wheat. 316, 4 L.Ed. 579 (1819).

appropriate means.”¹⁴⁶ Measures should be drafted so as to be administratively workable, and the legal aspects of a program, provided for by Congress, should be carefully considered in order that the legislative goal may be achieved.

146. *Id.* at 408.