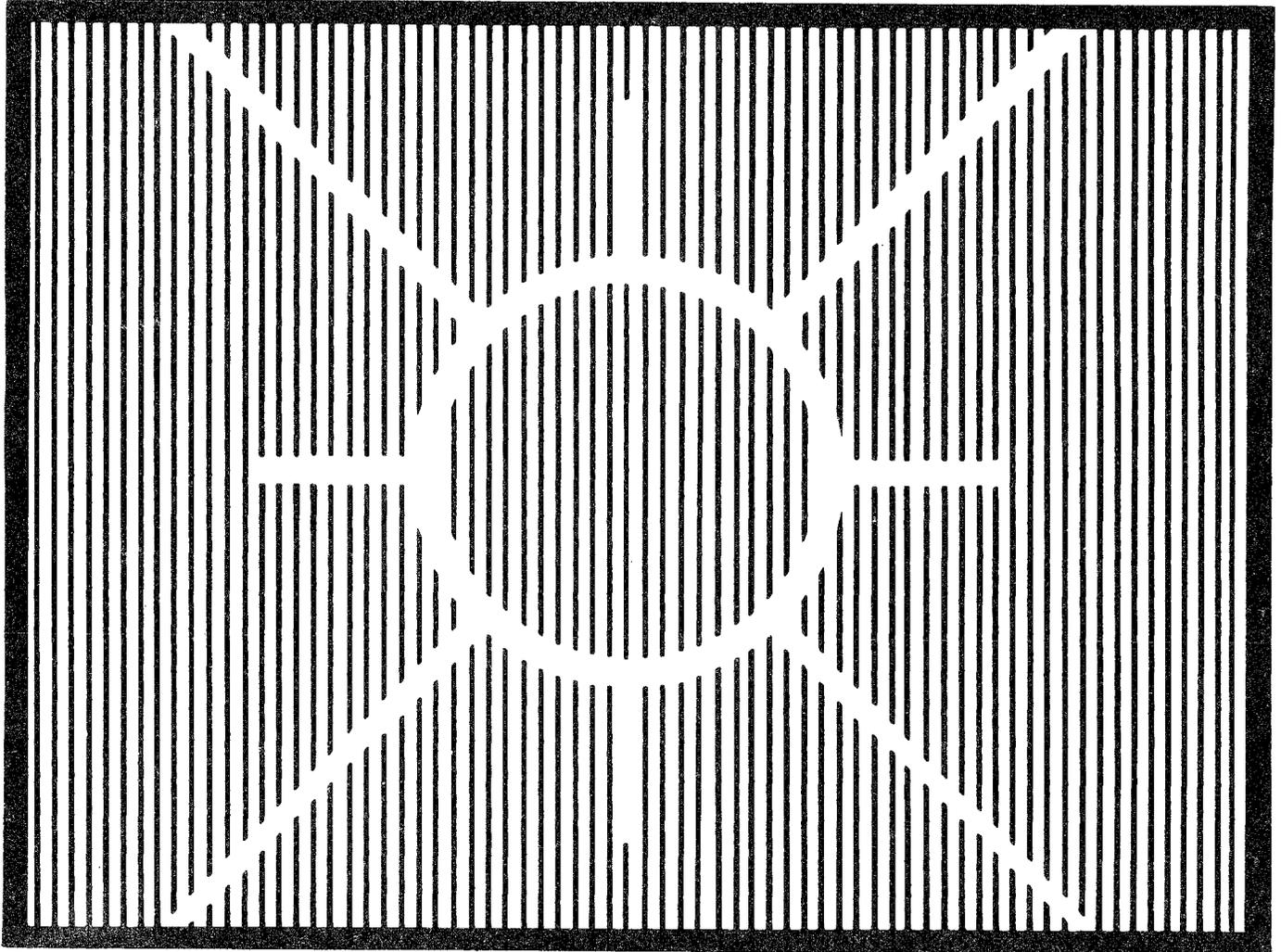


Minnesota Economic
Regulation Monograph 4

FEDERAL REGULATION OF THE U.S. FOOD MARKETING SYSTEM

AD-MR-2338



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Agricultural Experiment Station
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OF THE U.S.
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Tim Burke and Dale C. Dahl

Minnesota Economic Regulation Monograph #4

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FOREWORD

This monograph is part of the Minnesota Economic Regulation Monograph series, a comprehensive survey of law pertaining to the production, processing and distribution of food and other farm commodities in the United States. It outlines two types of regulations: (1) those designed to protect the health and safety of consumers and improve their knowledge about food purchasing; and (2) those that protect the farmer's product and input markets, particularly in terms of trade practices and bargaining power.

Dale C. Dahl
Project Leader

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PREFACE

Few people would be surprised at the amount of money spent annually in our nation for domestic agricultural products. Rising food prices and increased consumer attention to the food industry have probably served to make most consumers aware of the magnitude of agricultural production relative to our gross national product. Yet, many consumers may not be aware of how much of the agricultural dollar is attributable to marketing costs. Recent government statistics put that figure at nearly two thirds of the total amount spent by American consumers annually for domestic foods.^{1/} This immense and increasingly complex marketing system is the subject of this monograph.

Any attempt to cover this system entirely would be monumental. Therefore, the scope of this project will be more narrowly drawn. The focus here is on those legal constraints that regulate our domestic food marketing system. This limitation necessarily means that topics such as agricultural price and income maintenance policy, foreign markets and international trade, and the regulation of farm production will not be discussed directly, although each undeniably affects the domestic food marketing system. Limited attention, however, will be given to the regulation of food imports since this type of regulation has a more direct impact on the domestic market. The distinction between production and marketing aspects of agriculture is sometimes difficult, particularly regarding commodities handled through a vertically integrated system.^{2/} Nonetheless, the distinction is necessary to place manageable bounds on the scope of this project.

The legal constraints that regulate agricultural markets (or any other segment of our economy) are basically of two types: (1) statutes enacted by state and federal legislative bodies, and (2) regulations adopted by administrative agencies for the purpose of implementing those statutes. As in other areas, the regulations are far more numerous than the statutes. Since this monograph can provide only a broad overview of the subject area, the statutes will receive primary attention, although the more important regulations will also be covered; the approach taken in considering statutory regulation will be descriptive rather than analytical. The interpretation of statutes and regulations by judicial or administrative bodies is equally a part of the regulatory process, and some of the more far-reaching decisions from these sources will likewise be covered.

Given the large number of statutes germane to this area, it is hard to develop an analytic framework organizing them into a meaningful fashion. The scheme utilized here discusses the statutes according to whether they were primarily enacted for the benefit of agricultural producers or consumers.

These categories are not mutually exclusive, and some statutes could properly be classified in both. Uniform grain inspection legislation, for example, may ultimately serve the interests of producers as well as consumers. And, it is obvious that the Commodity Futures Trading Commission Act^{3/} benefits not only producers of agricultural commodities, but also others who trade or hedge in those commodities. These examples underscore the fact that the characterization of the law as a "seamless web" is especially appropriate when applied to food marketing regulation in our country.

Notes to Preface

1. U.S. Department of Agriculture, Fact Book of U.S. Agriculture 33 (Miscellaneous Pub. No. 1063, revised edition, 1976). Marketing costs include the expense of transporting, processing, and distributing food items. For the year 1974, the estimated cost of marketing domestic food products was \$92 billion. The total amount spent by consumers on food was \$148 billion, leaving \$56 billion as the gross return received by farmers. Id.
2. Sundquist, Removing Legal Constraints on Agriculture--Likely Impacts on Producers, Agribusiness Interests, and Consumers, 19 S.D.L. Rev. 512, 514, (1974).
3. Act of October 23, 1974, Pub.L.No. 93-463, 88 Stat. 1389, (codified) as amended in 7 U.S.C. § 1-22 (1976).

Chapter 1

HISTORICAL BACKGROUND

Government regulation of agricultural products is not a recent phenomenon. Its origins can be traced back at least to early Greece and Rome, where wine inspectors guarded against adulteration. 1/ During the Middle Ages, brewers who adulterated their product were fined or severely punished. 2/ The Magna Carta of 1215, perhaps more widely known for its revolutionary political ramifications, also established standardized measures for wine, ale, corn, and other farm products. 3/ Laws of a similar nature were enacted in other European nations in later years.4/

Development of American Food Laws in the Nineteenth Century

In our country, the movement for regulating food market trade on a national level did not really reach fruition until the latter part of the nineteenth century. Regulation of this type of commercial activity had at that time two general objectives: (1) protection of the public health and welfare (not unlike the laws of ancient or medieval times) and (2) promotion of fair trade practices (a more recent objective, arising contemporaneously with more generalized trade regulation and antitrust laws). Since other trade problems were beginning to be addressed by federal legislation, it does not seem incongruous that concerned groups would turn to Congress as a source of possible remedial legislation for abuses in the agricultural sector of the economy.

Changes within the food industry itself also provided an impetus for national legislative action. During this period a national system of food distribution had begun to take shape. Many factors undoubtedly contributed to the emergence of this system, but three in particular stand out. The development of refrigeration techniques enabled producers to market their goods across a much larger geographic area. Increased use of preservatives also expanded potential markets. Finally, the food industry itself was becoming more centralized. 5/ This evolving nationwide food marketing system required federal legislation to correct perceived problems.

State attempts to deal with such problems were circumscribed by early Supreme Court rulings on the proper relationship between state and federal regulatory authority. The Commerce Clause 6/ of the United States Constitution places the power to regulate interstate commerce in the hands of the federal government. As long as an item was in interstate commerce, action by the states was substantially limited. 7/ According to the "original package doctrine," an item was deemed to be in interstate commerce until it was removed from its original package and commingled with purely intrastate goods. 8/ Due to this rather broad interpretation of interstate commerce, Congress was left with a relatively broad area in which to legislate.

During this evolutionary period, it became apparent that the permissible state legislation, by itself, was an inadequate means of control. Political pressure by disgruntled farmers had prompted the creation of state agricultural departments to regulate sellers of imitation or adulterated farm products. There was, however, no uniformity among the statutes enacted by the various states, and some states had no regulatory program at all. Due to this lack of uniformity, the economic and technical growth of the food industry soon outpaced the ability of states acting independently to control it. It was from this historical background that the modern food regulatory laws emerged.

Evolution of the Major Federal Acts

Many of the 19th century federal food laws concerned the regulation of imports and the collection of duties and taxes. The Department of the Treasury, therefore, was given initial authority to administer many of these early programs. Its responsibilities included: enforcing the prohibition on importation of meat cattle (oxen or heifers) to prevent the introduction or spread of infectious disease;9/ collecting duties on liquors, provisions, spices and tobacco;10/ applying the standard of proof spirits for alcohol to prevent frauds, and enforcing the specifications for the construction of distillery apparatus;11/ regulating the manufacture of, and collecting a tax upon, oleomargarine;12/ and collecting a tax on "filled cheese."13/

The Department of the Interior shared this regulatory authority in certain areas. For example, while the Treasury Department was required to collect the tax on filled cheese, the Department of the Interior was authorized to regulate its manufacture, sale, importation and exportation.14/ The

departments also shared authority under an 1897 act prohibiting the importation of impure or unwholesome tea.^{15/} This act authorized the Secretary of the Treasury to establish uniform standards of purity, quality, and fitness for consumption, and seize unfit tea. ^{16/}

Some early federal legislation was geographically limited. Congress passed two laws that applied only to the District of Columbia. One, intended to protect dairymen and prevent deceptive sales of butter substitutes, required that all oleomargarine be clearly labeled as such.^{17/} The other aimed at preventing the manufacture or sale of adulterated food or drugs in the District of Columbia.^{18/}

While a number of similar federal laws were passed during the late 1800s, it was not until after the turn of the century that major federal regulatory programs began to take shape. They had their roots in the earlier statutes, but certain other historical forces also initiated and helped shape these major acts and so deserve special attention.^{19/} Three such acts are discussed here.

The Federal Food and Drugs Act of 1906

The first major federal act to regulate food purity was the Federal Food and Drugs Act of 1906.^{20/} The passage of this act represented the culmination of a struggle begun years earlier by various interest groups. Two bills to protect the public against adulterated food had been introduced in Congress as early as 1879.^{21/} In all, 103 bills of a similar nature were proposed prior to the enactment of the 1906 statute.^{22/}

One of the groups that had lobbied strongly for this sort of legislation was farmers. They were concerned with the sale of adulterated or imitation food (primarily dairy) products. Their political pressure had earlier brought about the creation of state agriculture departments, and the employment of state chemists to investigate these food items. In fact, by the time the federal act was passed in 1906 most of the states already had laws regulating food purity.^{23/} Since the states could not regulate interstate commerce in these adulterated foods, there was considerable impetus for a federal law.

Aside from pressure from farmers, much of the credit for the passage of the 1906 Act can be given to one government scientist, Dr. Harvey W. Wiley, who was chief chemist in the United States Department of Agriculture (USDA) at the time of the enactment. He went so far as to organize a "poison squad," composed of departmental employees, which tested the health effects of food preservatives.^{24/} The resulting demonstration of deleterious consequences received worldwide attention from the press. When the 1906 Act was passed, Dr. Wiley's Bureau of Chemistry was given the power to enforce it.^{25/} Another determining factor in the fight for this type of legislation was the support given to food and drug purity through legislation.

The original Act prohibited the manufacture, sale or distribution of food items containing poisonous or deleterious ingredients. The object was to prevent the use of interstate commerce in conveying and placing before the consumer misbranded or adulterated food. ^{26/}

The 1906 Act was not without shortcomings. For example, foods were considered to be adulterated if poisonous ingredients were added, but not if they contained poisons that were naturally present. Although "misbranding" prohibited deliberate misstatements of weight or measure on a food item package, no provision was made for assuring that all food packages were marked in a conspicuous, as well as truthful, manner. In an attempt to rectify these and other shortcomings, the Act was amended six times prior to being repealed and replaced by the Federal Food, Drug and Cosmetic Act of 1938.^{27/}

The original act was first amended just six years after its passage. The "Sherley Amendment"^{28/} expanded the prohibition against misbranded drugs. Six years later Congress enacted the so-called Net Weight Amendment ^{29/} which required that the weight, measure, or numerical count of food items be clearly marked on the package. The Kenyon Amendment ^{30/} was designed to bring wrapped meats, not previously considered package foods, within the purview of the Food and Drugs Act.

Congress amended the Act for the fourth time to establish a definition and standard for butter.^{31/} This was followed by the McNary-Mapes Amendment ^{32/} which gave the Secretary of Agriculture authority to establish quality standards for canned food. Interestingly, this amendment had been sponsored by reputable members of the canned food industry.^{33/}

The last of the six major amendments was the Sea Food amendment.^{34/} It too was sponsored by some of the members of the industry it was designed to regulate. The amendment gave the Secretary of Agriculture the power to inspect the production, packaging and labeling of sea food and authorized packagers of sea food to indicate their compliance with the regulations on the label of their products.

These amendments alleviated some of the problems with the 1906 Act, but officials charged with administering the Act became disenchanted with the process of attempting to cure its ills by continual amendments.^{35/} Changes of the most basic kind had become necessary. The use of preservatives, bleaches, coloring matter, and other food additives had increased to a point requiring entirely new definitions of "adulteration" and "misbranding."^{36/} Furthermore, the 1906 Act had made no provisions for the regulation of cosmetics, which had subsequently come into widespread use.^{37/} There was, therefore, considerable support for a new act, which Congress finally passed in 1938.^{38/}

The Packers and Stockyards Act

The Packers and Stockyards Act of 1921 ^{39/} was passed in response to the monopoly existing in the meat-packing industry during the early part of this century. At that time five major packers--Armour, Swift, Wilson, Cudahy, and Morris--controlled the market in meat and meat products.^{40/} The "Big Five," as they came to be called, also had begun to dominate the market for meat substitutes like cheese and eggs. Perhaps the most alarming economic factor was the fact that the Big Five owned many of the stockyards and controlled the distribution of most of the perishable meat.^{41/} This gave them control of not only the processing and packaging of meat, but also of supply and distribution as well.

Among the more outspoken critics of this situation were livestock producers and associations. They became increasingly critical of the way in which stock was sold in the market.^{42/} President Wilson responded in 1917, directing the newly created Federal Trade Commission (FTC) ^{43/} to investigate possible abuses in the meat-packing industry. The Commission determined that abuses did indeed exist, and issued a report on the situation the following year.^{44/}

The impact of the Commission's report was twofold. First, the Justice Department brought an antitrust lawsuit against the Big Five. The defendants ultimately agreed by way of a consent decree to divest themselves of their interests in stockyards, warehouses, and railroad terminals.^{45/}

The second major effect of the report was to stimulate controversy concerning the best legislative method of dealing with problems in the meat industry. One proposal was to allow the FTC to regulate stockyards. Another proposal called for the creation of a separate commission to regulate the entire industry. A third proposal suggested the Department of Agriculture as the regulatory agency. This last proposal was adopted as the Packers and Stockyards Act.

The Act gave the Secretary of Agriculture complete inquisitorial, visitatorial, supervisory, and regulatory power over packers and stockyards, and their activities.^{46/} A House Report indicated that Congress designed the Act to protect the interests of the public as well as the interests of "all of the elements of the industry from the producer to the consumer without destroying any unit of it."^{47/}

In very broad terms, the Packers and Stockyards Act regulates three areas of commerce: ^{48/} (1) the marketing of livestock at stockyards,^{49/} (2) the marketing of live poultry at poultry markets,^{50/} and (3) the business activities of meat packers. One of the Congressmen responsible for the passage of the Act characterized it as "a most comprehensive measure [that] extends further than any previous law in the regulation of private business, in time of peace, except possibly the interstate commerce act."^{51/}

The Fair Packaging and Labeling Act

The Fair Packaging and Labeling Act of 1966 ^{52/} appeared in response to certain developments in the marketing and labeling of consumer products.^{53/} Prior to the Act there existed a variety of

package weights and measures for food items, all of which made value comparisons difficult for most consumers. At the same time, many food processors and manufacturers were utilizing nonuniform quantity designations (e.g., "giant size").^{54/} The Act attempted to insure that the labels of packaged products, including food, adequately inform consumers of the quantity and composition of their contents, and promoted packaging practices that facilitate price comparisons by consumers.^{55/}

Regulatory authority under the Act is shared by the Food and Drug Administration (FDA) and the FTC. The FDA has jurisdiction over food, drugs, and cosmetics, while the FTC is responsible for all other consumer products. A third agency, the Department of Commerce, is given the power to correct an "undue proliferation" of weights or quantities by which a particular product is marketed.

The principal reason for this legislation is to establish uniformity and so preclude the necessity of case-by-case prosecution.^{56/} In order to achieve this end, both the FTC and the Secretary of Health, Education, and Welfare (HEW) are responsible for promulgating regulations governing label format and placement, quantity designations and quality statements. Both agencies may also issue regulations applying only to particular commodities or products.^{57/} Any food label or package that violates any of these regulations is deemed to be "misbranded" under the Federal Food, Drug and Cosmetic Act,^{58/} and is subject to injunction or seizure.^{59/}

Notes to Chapter 1

1. Kleinfield, Legislative History of the Federal Food, Drug and Cosmetic Act, 532 n.1 (1946).
2. Id.
3. Id.
4. Id.
5. M. Nadel, The Policies of Consumer Protection, 9 (1971).
6. U.S. Const., art. VII, sec. 8, cl. 3.
7. Rhodes v. Iowa, 170 U.S. 412 (1898).
8. Leisy v. Hardin, 135 U.S. 100 (1890).
9. Revised Statutes of 1895, title 33, 2493, 18 Stat. 460, 461 (vol. 1).
10. Id. at 2504.
11. Revised Statutes of 1895, title 35, ch. 4, 3249, 3269, 18 Stat. 628, 630, 635.
12. Act of August 2, 1886, ch. 80, 24 Stat. 209.
13. Act of June 6, 1896, ch. 337, 29 Stat. 253.
14. Id.
15. Act of March 2, 1897, ch. 358, 29 Stat. 604.
16. Id.
17. Act of January 25, 1879, ch. 22, 20 Stat. 264.
18. Act of October 12, 1888, ch. 1090, 25 Stat. 549.
19. This analysis does not attempt to provide a comprehensive legislative history of these acts; nor are all of the major federal acts covered. Rather, the intent is only to point out some of the important forces that helped shape the federal legislation in this regulatory area and their effects in terms of the statutory provisions ultimately enacted.

20. Act of June 30, 1906, 34 Stat. 768 (repealed 1938).
21. See H. R. 5916, 45th Cong., 3d, Sess., 8 Cong. Rec. 575 (1879); H. R. 2014, 46th Cong., 1st Sess., 9 Cong. Rec. 1552 (1879).
22. Dunn, Federal Food and Drugs Act of 1906: Its Legislative History, 1 Food Drug Cosm. L. J. 297 (1946).
23. Regier, The Struggle for Federal Food and Drugs Legislation, 1 Law & Contemp. Probs., 3 (1933).
24. Id.
25. Dunn, The Federal Food and Drugs Act of 1906: Its Legislative History, 1 Food Drug Cosm. L. J. 297, 304 (1946).
26. McDermott v. Wisconsin, 228 U.S. 115 (1913).
27. The 1906 Act was repealed by the Act of June 25, 1938, ch. 675, §#902(a) 52 Stat. 1059, with the exception of §#10(a) of the original act, which now appears as 21 U.S.C. §#372(a) (1976), and covers seafood inspection.
28. Act of August 23, 1912, 37 Stat. 416.
29. Act of March 3, 1913, 37 Stat. 732.
30. Act of July 24, 1919, 41 Stat. 234.
31. Act of March 4, 1923, 42 Stat. 1500.
32. Act of July 8, 1930, 46 Stat. 1019.
33. Hearings of H.R. 16031 Before the Committee on Agriculture, 70th Cong., 2nd Sess., 88 (1930).
34. Act of June 24, 1934, 48 Stat. 1204, as amended by Act of August 27, 1935, 49 Stat. 871.
35. The Chief of the Food and Drug Administration testified to a Senate committee in 1934 that attempting to keep the 1906 Act afloat by the amendment process constituted an "utterly impossible task." Hearings on S. 2800 Before The Senate Committee on Commerce, 73d Cong., 2d Sess., 568 (1934).
36. H. Toulmin, 1 Treatise on the Law of Food, Drugs and Cosmetics 16-17 (2d ed., 1963).
37. Id. at 17.
38. The Federal Food, Drug, and Cosmetic Act; of 1938, 52 Stat. 1040, (codified as amended, 21 U.S.C. #301-392 (1976)).
39. Act of August 15, 1921, 42 Stat. 159, (codified as amended, 7 U.S.C. §§#181-229 (1976)).
40. See Flavin, The Packers and Stockyards Act, 1921, 26 Geo. Wash. L. Rev. 161, 161-163 (1958) for a more extensive description of the economic conditions existing prior to the passage of the Act.
41. Id.
42. See 61 Cong. Rec. 2616 (1921) (statement of Sen. Kendrick).
43. The FTC was created in 1914 by the Federal Trade Commission Act of 1914, 38 Stat. 717, (codified as amended by 15 U.S.C. §§ #41-58 (1976)). The Act authorized the F.T.C. to administer and enforce several statutes designed to preserve and promote free and fair economic competition.

44. Hearings on Meat-Packer Legislation Before the House Committee on Agriculture, 66th Cong., 2nd Sess., 1855-1910 (1918) (Summary of the Federal Trade Commission's report on the meat-packing industry).
45. Flavin, The Packers and Stockyards Act, 1921, 26 Geo. Wash. L. Rev. 161,162 (1958).
46. H. R. Rep. No. 77, 67th Cong., 1st Sess., 2 (1921).
47. Id.
48. Barrett, The Legal Aspects of Major Programs Administered by the United States Department of Agriculture, 14 Wyo. L. Rev. 175, 179 (1960).
49. The Supreme Court has noted that the Act gave the Secretary of Agriculture "substantially the same jurisdiction over stockyard matters which the Interstate Commerce Commission has over railroads . . ." Tagg Bros. v. United States, 280 U.S. 420, 435, .3 (1930).
50. An amendment regulating the handling of live poultry in commerce was added in 1935. Act of August 14, 1935, 49 Stat. 648.
51. H.R. EP.NO. 77, 67th Cong., 1st Sess., 2 (1921).
52. Act of Nov. 3, 1966, 80 Stat. 1296 (codified as amended, 15 U.S.C. §§#1451-61 (1976)).
53. Sen. Rep. No. 1186, 89th Cong., 2d Sess., 1 (1966).
54. Id. at 3.
55. Id. at 1.
56. Id. at 2-4.
57. These include standards for qualitative size designations (such as "small," "medium," or "large"), standards for size designations by "serving," representation of savings on retail price, and ingredient labeling. 15 U.S.C. §#1454 (1976).
58. Act of June 25, 1938, 52 Stat. 1040, (codified as amended, 21 U.S.C. §§#301-392 (1976)).
59. 21 U.S.C. §§#332, 334 (1976).

Chapter 2

CONSUMER-ORIENTED REGULATION

Major Legislation

Federal Food, Drug, and Cosmetic Act

Structure of the Act

The Federal Food, Drug, and Cosmetic Act 1/ is composed of nine chapters. The first chapter 2/ simply states the short title by which the Act is to be cited. Chapter II 3/ contains the definitions for the most important terms used in the Act, including "food" 4/ and "raw agricultural commodity." 5/

The third chapter 6/ outlines prohibited acts and prescribes penalties for violations. It also provides for injunction proceedings 7/ or seizure 8/ of nonconforming foods 9/ as possible remedies for certain violations.

Chapter IV 10/ deals specifically with food, while Chapter V 11/ covers drugs, and Chapter VI 12/ addresses cosmetics. One provision of Chapter VI authorizes the Secretary of HEW to promulgate regulations defining and establishing quality standards for any type of food. 13/

The seventh chapter 14/ contains the general administrative provisions of the Act. Included among these are statutes governing hearings, 15/ examinations, 16/ and investigations. 17/

Provisions relating to imported and exported food items are found in Chapter VIII. 18/ Chapter IX 19/ consists of miscellaneous provisions, including a separability clause 20/ and a provision 21/ repealing almost all of the Federal Food and Drug Act of 1906. 22/

Relevant Definitions

For purposes of this Act, "food" 23/ means (1) articles used as food or drink for man or other animals. (2) chewing gum, and (3) articles used for components of any such article. A "raw agricultural commodity" 24/ is defined as any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

General Provisions

Probably the most important provision of the Federal Food, Drug, and Cosmetic Act is the one prohibiting the adulteration or misbranding of any food in interstate commerce. 25/ This general prohibition covers the introduction, or the delivery for introduction, 26/ as well as the receipt 27/ of any adulterated or misbranded food in interstate commerce. The Act similarly forbids the manufacture of adulterated or misbranded foods. 28/ Potential violations of these prohibitions may be restrained through injunction proceedings, 29/ and the food is subject to seizure and condemnation. 30/ Penalties for violating the Act include fines and imprisonment. 31/

Prohibition of Adulteration. A food may become adulterated because of what it contains, because of what has been added to it, or because of what has been omitted or abstracted from it. 32/ Most commonly a food is adulterated when it contains a deleterious substance rendering it injurious to human health. 33/ If the substance is naturally present in the food, there is no adulteration if the quantity does not ordinarily render it injurious to health. 34/ Of course, the addition of poisonous or deleterious substances 35/ to food is prohibited. 36/

Tolerances. In the course of manufacturing or processing certain food products it sometimes becomes necessary to add substances which in large quantities are poisonous or deleterious. Where such substances are unavoidable the Secretary of HEW (hereinafter referred to as the Secretary) may issue regulations limiting their quantity. 37/ In establishing these limits the Secretary is directed to take into account the extent to which the use of the substance is necessary in the production of the food product 38/ as well as the other ways in which the same or other deleterious substances may affect the consumer. 39/

Any food product containing quantities in excess of the applicable limit is adulterated.40/ Substances so regulated include food additives 41/ and pesticides.42/

The Act distinguishes between poisonous or deleterious substances added to the food and those which occur naturally. "Added" substances include anything not an inherent or intrinsic part of a food. There need not be a finding that the substance was intentionally added; only that under normal conditions it is not a component of the food. The standard for proving adulteration is higher in the case of a substance occurring naturally in the food.43/ Such substances must be found to be "ordinarily injurious to health."44/

Tolerance levels are also prescribed by the Secretary for pesticides used on raw agricultural commodities.45/ Therefore, a raw agricultural commodity is not adulterated if pesticide levels are lower than the tolerance level, or if the pesticide has been exempted entirely from the requirement of a tolerance level.46/

In promulgating tolerance regulations for pesticide chemicals, the Secretary must take into account, among other factors, (1) the need to produce an adequate, wholesome, and economical food supply, (2) other ways in which the consumer may be affected by the pesticide chemical, and (3) the opinion of the Secretary of Agriculture as to the usefulness of the pesticide in food production.47/ The tolerance level may be set at zero where justified by scientific data,48/ effectively banning use.

Any person who has registered a pesticide (or obtained an experimental permit) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) 49/ may file a petition with the Secretary proposing the issuance of a regulation establishing a tolerance for the pesticide chemical, or requesting the chemical's exemption from the Food Act.50/

Alternatively, the Secretary may, upon his own initiative or upon the request of any interested person, promulgate a tolerance regulation for a pesticide chemical.51/ Any regulation promulgated may subsequently be amended or repealed.52/

The Secretary must also publish tolerance regulations for food additives.53/ A food additive is defined as any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of or otherwise affecting the characteristics of any food.54/ There is some potential overlap between this category and poisonous or deleterious substances; that is, a poisonous or deleterious substance may have been added to a food product, and therefore could also be considered to be a food additive. The distinction that has evolved, however, is that poisonous or deleterious substances are generally those that are unavoidably added to the product but cannot qualify for approval as food additives. Furthermore, when a substance satisfies the standard of safety for food additives, it is automatically exempt from the standards for poisonous or deleterious substances.55/

Regulations for food additives also are initiated by a petition filed with the Secretary proposing the issuance of a regulation,56/ or by the Secretary's own initiative.57/ They may be amended or repealed.58/

In addition to the formal tolerance levels discussed above, the FDA may also issue what are known as "action levels."59/ These temporary levels, which are generally issued without a lengthy hearing process, are utilized when the need for controlling a particular substance is immediate and short-range. They generally apply only "until the appearance of more stable circumstances makes a formal tolerance appropriate."60/ As is the case with formal tolerance levels, the overriding consideration is whether the substance is injurious to health.

Food is considered adulterated if it consists in whole or in part of any filthy, putrid, or decomposed substance 61/ or is prepared, packed or held under unsanitary conditions whereby it may become contaminated with filth, or rendered injurious to health.62/ A separate provision prohibits filthy, putrid, or decomposed substances in butter, margarine, or oleomargarine.63/

Food that is processed wholly or partially from a diseased animal, or from an animal that has died by a means other than slaughter, is adulterated.64/ The statute also condemns food packed in a container composed of any poisonous or deleterious substance which is potentially injurious to health.65/

The prohibition against adulteration covers not only the addition of dangerous substances, but also the omission of substances from food. The Act considers food adulterated if: (1) any valuable constituent has been wholly or partially abstracted from it; (2) any substance has been substituted for a valuable constituent; or (3) damage or inferiority has been concealed in weight, or to reduce its quality or strength, making it appear to be of better or of greater value.66/

Prohibition of Misbranding. Misbranding of a food product occurs when its label is false or misleading.67/ This includes cases where the label does not comply with the statute 67/ governing the listing of vitamins and minerals on the labels of food products.68/ No food may be offered for sale under the name of another food.69/ If the food is an imitation of another product, the word "imitation" must be clearly visible on the label.71/ If any word, statement, or information required by the Act to appear on the label is not placed prominently and conspicuously thereon, the food is misbranded.72/

The misbranding provision requires any packaged food item to bear a label containing the name and place of business of the manufacturer, packager, or distributor, and an accurate statement of the quantity of the contents in terms of weight, measure, or count.73/ Any food container that is misleading as to its contents is mislabeled.74/

As a general rule, the use of any artificial flavoring, artificial coloring, or chemical preservative in a food product must be indicated on the label.75/ However, these labeling requirements do not apply to butter, cheese, or ice cream.76/ Separate provisions govern the listing of pesticide chemicals used in or on a raw agricultural commodity.77/ The Secretary may allow exemption from these requirements where compliance is impracticable.78/

A shipping container bearing any commodity 79/ to which a pesticide chemical has been applied after harvest is mislabeled unless it bears a label declaring the chemical's presence and function.80/ This declaration is not required for commodities that have been removed from their shipping containers and displayed for retail sale.81/

The labeling and packaging of margarine or oleomargarine 82/ also comes under the Act, regardless of whether it is actually sold in interstate commerce.83/ All margarine and oleomargarine must be packaged,84/ and sold in units of one pound or less.85/ The word "margarine" or "oleomargarine" must appear prominently on the package, and a full and accurate statement of all of the ingredients must appear on the label.86/ These special requirements are in addition to, and not in lieu of, the other requirements of the Act.87/

Food Standards. The prohibition of mislabeling relates to standards of food identity and quality. The Act authorizes the Secretary to promulgate regulations establishing a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of container fill for any food.88/ These standards are meant to promote honesty and fair dealing in the interests of consumers.89/ The Act prevents the Secretary from promulgating quality standards for butter or for any fresh or dried fruits or vegetables, citrus fruits, avocados, cantaloupes and melons.90/

A standard of food identity describes a food product in terms of size and shape, basic ingredients, optional ingredients, curing period, percentage of moisture, and required percentage of total solids.91/ A food may fail to conform to a standard of identity in three ways: (1) if it contains an ingredient not found in the identity standard; (2) if it fails to contain any ingredient required by the standard; and (3) if it does not contain the required quantity for an ingredient.92/ The Act prohibits marketing in interstate commerce of any food which fails to meet the applicable identity standard.93/

From the beginning, food identity standards have been of the "recipe" type,94/ listing both optional and mandatory ingredients. The product must contain ingredients listed as mandatory by the FDA. Only the ingredients chosen by the manufacturer from the optional list must be indicated on the label. Any food for which the FDA has established a standard of identity, and which does not conform with that standard, is misbranded within the meaning of the Act.95/

Food quality standards establish minimum levels for characteristics such as color, size, tenderness, and absence of bruises or marks. Quality standards are common for canned goods since they can be readily evaluated in terms of these characteristics.

The regulations for canned peaches 96/ are fairly typical. The rules establish seven standards, one of which tests tenderness according to the weight required to cause a metal rod to pierce a sample of the fruit. Other standards cover weight, allowable variance in weight between the largest and smallest pieces in the container, amount of peel remaining on peeled peaches, acceptable amount of blemish, retention of natural shape, lack of trimming, and acceptable amounts of crushed or broken pieces.97/

When peaches (or any other items) are determined to be below the prescribed standard of quality but are nonetheless wholesome, they must be labeled "below standard in quality." They must also be labeled with an appropriate phrase for the particular defect; for example, "not tender" or "not well peeled." The law does not prohibit the sale of substandard but wholesome food; producers commonly sell such food to institutions at discounted prices.

Food quality standards are not entirely distinct from food identity standards, but there are differences. In the case of corn, for example, the identity standard is basically descriptive, using terms such as "clean, sound kernels" and "succulent sweet corn."98/ The applicable quality standard uses a more objective approach; it specifies the maximum number of discolored kernels, pieces of husk, and amount of silk allowed.99/ It has been suggested that the purpose of the quality standard is sometimes to explain the non-objective language of the standard of identity.100/

Quality standards have been promulgated for a few foods for which there are no identity standards.101/ If a product fails to measure up to the quality standard, the label must indicate the fact, along with the reason for the quality deviation.102/

In addition to complying with identity standards and quality standards, food packages may not be misleading as to their contents. If the food's container is made, formed, or filled in a misleading manner, the article will be considered misbranded.103/ One way to remedy this problem is by repackaging. Or, if a container standard fill is in effect for the particular food product, the product may avoid being found misbranded if its label indicates that it does not comply with the applicable standard.104/

Container fill standards must give due consideration to the natural shrinkage of fresh food in storage or transit.105/ Another consideration is the need for various kinds of packing and protective material.106/ Settling of products after packaging, water absorption, reduced liquid content as a result of vacuum packaging, and the common practice of using assorted package sizes may all complicate the effective maintenance of standards for a particular product.

If a product is packed in liquid, the standard is usually determined by comparing the weight of the food after a prescribed draining time to the total weight of the package.107/ Then the total weight capacity of the container is determined by filling it with water to within 3/16 of an inch from the top.108/ The regulations usually express standards of fill in terms of the weight of the drained product as a percentage of the container's total weight capacity.

Special Provisions

The Seafood Inspection Act. The enactment of the Federal Food, Drug, and Cosmetic Act in 1938 repealed the 1906 Food and Drug Act and most of its amendments.109/ The amendment governing the inspection of seafood,110/ however, continues in force today. It now appears as part of the Federal Food, Drug, and Cosmetic Act,111/ and is commonly known as the Seafood Inspection Act.

The Act in its present form authorizes the Secretary of HEW to examine and inspect seafood and its production, packing and labeling. This inspection occurs upon the application of any seafood packer accompanied by the payment of a fee.112/ If the seafood passes the inspection, this fact may be indicated on the food by means of a mark, stamp, label, or other device. Sanctions for counterfeiting these means of identification include fines and imprisonment.113/

The Delaney Clause. One of the most important changes in the Federal Food, Drug, and Cosmetic Act occurred in 1958 with the passage of the Food Additives Amendment.114/ This amendment deals generally with the process of FDA approval of food additives,115/ but it also contains a proviso prohibiting the approval of any food additive causing cancer in humans or animals.116/ This proviso is commonly known as the Delaney Clause.

Generally a food additive may not be used until the FDA has issued regulation governing the permissible terms of its use.117/ Any person (including the Secretary of HEW) may propose the

issuance of a regulation proscribing the conditions for the additives used.118/ In most cases, the manufacturer of a food additive will file the petition.119/

The Delaney Clause 120/ is much more restrictive than the general safety provision 121/ applicable to all other food additives. The statute flatly prohibits the use of any food additive found to "induce" cancer, thus forbidding regulations authorizing the additive's use at any tolerance level. By its terms, the Clause applies to (1) any additive which induces cancer when ingested by man or animal, and to (2) any additive which, after tests which are appropriate for the evaluation of the safety of food additives, is found to induce cancer in man or animal.122/

Once a substance is determined to be carcinogenic, the FDA may not engage in a risk-benefit analysis to determine whether to allow its use.123/

It is interesting to note, however, that Congress recently intervened on behalf of one commonly used food additive now linked with cancer, saccharin. On April 15, 1977, the FDA proposed to ban the use of saccharin in foods or as a tabletop sweetener.124/ By its action, the FDA withdrew its prior approval of saccharin as a permissible food additive. The public reaction to this proposed ban on the artificial sweetener was decidedly negative. Congress responded by passing the Saccharin Study and Labelling Act 125/ which suspended any action on the sweetener for 18 months, and mandated a scientific reassessment of the problem. Some commentators have suggested that the policy reevaluation required by the Act may lead to the evolution of a more rational and scientific approach to regulating the processing of food.126/

Animal Feed Additives. The Animal Drug Amendment 127/ was added to the Federal Food, Drug and Cosmetic Act in 1968. It is similar to the Food Additives Amendment in that it contains both a general safety clause 128/ and an anticancer clause.129/ However, the anticancer clause of the Animal Drug Amendment allows the FDA to permit the use of carcinogenic animal drugs if no residue of the drug remains in the edible portions of a treated animal after slaughter, or in any food yielded or derived from the living animals.130/ The drug must not adversely affect animals ingesting it.131/ The anticancer clause is commonly referred to as the DES Amendment because it was originally enacted to allow continued use of diethylstilbestrol (DES), a synthetic estrogen which promotes growth in certain animals.

Chemicals such as DES should be distinguished from substances found in animal feed which have a "secondary" carcinogenic effect. An example is selenium, an essential nutrient for many animals raised for slaughter. Selenium has been found to cause a pathological change in laboratory animals which in turn induces the formation of tumors; it has not been found to induce cancer directly.132/ Laboratory rats fed large amounts of selenium developed liver damage leading to tumors. The FDA therefore decided to regulate selenium under the general safety clause rather than the anticancer clause.133/ The regulations permit selenium's use as an animal nutrient so long as it does not exceed prescribed safety levels. Thus, chemicals whose carcinogenic effect is only secondary constitute a second exception to blanket prohibition of cancer-causing substances.

Fair Packaging and Labeling Act

As its name implies, the Fair Packaging and Labeling Act 134/ regulates some of the same areas as the Federal Food, Drug, and Cosmetic Act 135/ enacted some 28 years before. In the intervening years, some of the earlier Act's shortcomings had become apparent. It had proved effective in dealing with the more blatant forms of packaging deception, e.g., false bottoms, incorrect weights, and false ingredient listings, but could not possibly reach all of the more subtle forms of deception.136/ In addition, the Act's case-by-case method of adjudication hindered its effectiveness.137/

The retail marketplace for food had itself changed dramatically over the years. In 1966, when the Fair Packaging and Labeling Act was enacted, there were over 8,000 promotionally designed items in a typical grocery store, compared with 1,500 items only 20 years previously.138/ The food package or label had begun to take on some of the informational functions formerly performed by the grocery store clerk. These informational functions were often at odds with the package's role as an enthusiastic advertisement and promotional device.139/

During the 1960s product proliferation increased to the point where 20 new or improved products were entering the market every working day.140/ For many of the food products, new and old alike, a variety of package sizes and shapes was available. For example, the Senate Report issued with the

Fair Packaging and Labeling Act pointed out that at that time manufacturers were marketing potato chips in 71 different quantities.^{141/}

It was with these problems in mind that Congress enacted the Fair Packaging and Labeling Act. It sought not only to protect the consumer from deliberate frauds and deceits, but also to affirmatively require that relevant information appear on the package in a meaningful and uniform manner.^{142/} The Act states that its purpose is to ensure that packages and labels enable consumers to obtain accurate information as to the quantity of the contents.^{143/} This facilitates comparisons among similar products.^{144/} In making these comparisons, the consumer performs the important market function of rewarding the efficient producer.^{145/}

Basic Provisions

The Act's major provision makes it unlawful for any person ^{146/} to distribute any consumer commodity if its packaging or labeling does not comply with the Act.^{147/} Any consumer commodity that is introduced into commerce in violation of the Act or its regulations is misbranded within the meaning of Chapter III ^{148/} of the Federal Food, Drug, and Cosmetic Act.^{149/} This prohibition does not apply to wholesale or retail distributors of consumer commodities unless they are engaged in the packaging and labeling of those commodities or by any means specify the manner in which the commodities are packaged or labeled.^{150/}

The term "consumer commodity" encompasses any food, drug, device, or cosmetic (as those terms are defined in the Federal Food, Drug, and Cosmetic Act),^{151/} or any other commodity which is customarily produced or distributed for human consumption.^{152/} From this broad definition, the Act excludes certain products for which specific labeling and packaging requirements have already been imposed.^{153/} Among the items excluded from coverage are ^{154/} meat or meat products, poultry or poultry products, and tobacco or tobacco products; any commodity subject to the packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act ^{155/} or pursuant to the Virus-Serum Toxin Act;^{156/} any beverage subject to the packaging and labeling requirements imposed under the Federal Alcohol Administration Act;^{157/} and any commodity subject to the provisions of the Federal Seed Act.^{158/}

The basic provisions of the Act stipulate the requirements for packaging or labeling consumer commodities. The Act regulates those containers or wrappings in which any consumer commodity is enclosed for use in the delivery or display of that product to retail purchasers.^{159/} The statute does not govern bulk shipping containers used to transport the commodity to manufacturers, processors, packers, or distributors.^{160/}

A consumer commodity must bear a label ^{161/} specifying its identity and the place of business of the manufacturer, packer, or distributor.^{162/} The principal display panel ^{163/} of the label must state the weight, measure, or numerical count of the contents.^{164/} If a label specifies a number of servings, it must also indicate the net quantity of each serving.^{165/}

Any package containing less than four pounds must state the net quantity of the contents listed in both ounces and pounds.^{166/} Any remainder over one pound must be listed in ounces, or common or decimal fractions of the pound. A package containing less than one gallon must indicate its contents in terms of the largest whole unit (quarts, quarts and pints, or pints, as appropriate), with any remainder expressed in terms of fluid ounces, or common or decimal fractions of the pint or quart.^{167/} Linear measure is to be expressed in inches and the largest whole unit (yards, yards and feet, or feet).^{168/} Inches or fractions of the foot or yard are used for indicating any remainder.^{169/} Similarly, area is to be expressed in square inches and the largest whole square unit (square yards, square yards and square feet, or square feet).^{170/} Remainders for area measure must be expressed in square inches, or fractions of the square foot or yard.^{171/}

There is a separate provision governing the listing of weight on what is known as "random package" -- one of a lot of packages of the same consumer commodity with varying weights.^{172/} On a random package, the weight may be expressed in pounds carried out to not more than two decimal places.^{173/}

Any food item complying with these net quantity requirements may also utilize a supplemental statement elsewhere on the package.^{174/} This statement may describe the net quantity of the contents in nondeceptive terms, provided that the statement does not use terms that tend to exaggerate the amount of the commodity contained in the package.^{175/}

The Act also attempts to facilitate cooperation with state authorities in regulating the packaging and labeling of food. A copy of any regulation promulgated under the authority of the Act must be transmitted to the Secretary of Commerce,176/ who in turn distributes a copy of the regulation to all appropriate state officers and agencies. The Secretary of Commerce is also directed by the statute to furnish state officers and agencies with information and assistance in order to promote uniformity in state and federal regulation of the labeling of consumer commodities.177/

The Act does, however, supersede all state laws regulating the labeling of any consumer commodity covered by the Act if that law is less stringent or requires information different from that required under the Act.178/ State labeling statutes and regulations which are more stringent than federal standards are valid.179/ One court has, in fact, interpreted the Act as superseding only state "net contents" regulations.180/ According to this interpretation, Congress did not intend to pre-empt other areas of state regulation of the packaging and labeling of food.181/

There is a savings provision 182/ in the Act which expressly states that it does not operate to repeal the Federal Trade Commission Act,183/ the Federal Food, Drug and Cosmetic Act,184/ or the Federal Hazardous Substances Labeling Act.185/ Therefore, the labeling and packaging requirements, exemptions, and tolerances of these other acts remain in effect. For example, in a recent Supreme Court case 186/ a manufacturer relied on a provision 187/ of the Federal Food, Drug, and Cosmetic Act which allows for reasonable variations from the net weight stated on the label of a food product due to the loss or gain of moisture during the course of good manufacturing or distributing practices. Nothing in the Fair Packaging and Labeling Act explicitly permits such variations. Nonetheless, because of the savings clause the allowances established by the Federal Food, Drug, and Cosmetic Act remain in effect. The manufacturer, therefore, was not subject to any enforcement action for the reasonable weight variations.

Enforcement Authority

The responsibility for enforcing the Act lies primarily with two authorities.188/ The Secretary of Health and Human Services has the authority to regulate any consumer commodity which is a food, drug, device, or cosmetic, as those terms are defined in the Federal Food, Drug, and Cosmetic Act. The FTC regulates every other consumer commodity. Either may promulgate regulations exempting particular commodities from full compliance with the requirements that would otherwise apply under the Act.

The Secretary of Commerce also plays a role in the administration of the Act. If he determines that there is an undue proliferation of the weights, measures, or quantities in which any consumer commodity is being distributed for sale at retail, he can request manufacturers, packers, and distributors to participate in the development of voluntary product standards for that commodity.189/ These standards are necessary when the undue proliferation of any product impairs the reasonable ability of consumers to make value comparisons between alternative brands.190/

A separate statute sets forth procedures for the adoption of voluntary product standards.191/ The voluntary procedure must provide for representation of manufacturers, packers, distributors, and consumers.192/ If a voluntary product standard is adopted and the Secretary of Commerce is not satisfied with the industry's compliance he may recommend that Congress enact legislation providing regulatory authority to deal with the situation.193/

The Secretary of the Treasury is responsible for enforcing the Act as it pertains to imported consumer commodities.194/ The enforcement procedure is the same as that for enforcing the provisions of the Federal Food, Drug, and Cosmetic Act pertaining to imported food products.195/

Poison Prevention Packaging Act

The Poison Prevention Packaging Act 196/ regulates the packaging and distribution of certain poisonous household substances. The term "household substances" includes any food, drug, cosmetic, fuel, or hazardous substance 197/ produced or distributed for individual consumption or use in the household.198/ The Act incorporates the definition of food found in the Federal Food, Drug, and Cosmetic Act.199/

The basic purpose of the Act is to provide for the establishment of special packaging standards 200/ for any household substance presenting a potential hazard to children.201/ Once a federal standard for a particular household substance has been adopted, no state may establish a

different standard.^{202/} The responsibility for establishing federal standards was initially entrusted to the Secretary of HEW.^{203/} The responsibility for this and other functions of the Act has since been transferred to the Consumer Products Safety Commission.^{204/}

The Commission is directed to take into account the feasibility and practicability of any packaging standard it proposes.^{205/} It must rely on the available scientific, medical, and engineering data concerning special packaging,^{206/} and must also consider the manufacturing practices of the industries affected by the Act.^{207/} The Commission is empowered to appoint a technical advisory committee composed of consumers, manufacturers, and scientists to assist in making these determinations.^{208/}

Inspection Acts

Federal Meat Inspection Act

The first comprehensive attempt to regulate the processing and sale of meat on the federal level was the Meat Inspection Act of 1907. One deficiency of that Act was that it did not stop the sale of unfit meat from packinghouses not subject to federal inspection. Congress overhauled the 1907 Act in 1967 with the Wholesome Meat Act ^{209/} which, among other changes, provided for cooperation between state and federal inspection authorities.^{210/}

In its statement of legislative intent, Congress expressly recognized that meat and meat food products constitute an important part of our total food supply.^{211/} The Act ensures that meat and meat products are wholesome, unadulterated, and properly marked, labeled, and packaged.^{212/} Congress felt that meat which does not meet these standards is injurious to the public health and destroys the market for wholesome and properly packaged meat. Inferior meat can be sold at lower prices and otherwise unfairly compete with properly processed and packaged meat.^{213/} This situation is detrimental to consumers and the general public, thus necessitating new meat inspection legislation.^{214/}

Basic Provisions

Inspection Services. The present program requires examination of cattle, sheep, swine, goats, horses, mules, and other equines prior to slaughter.^{215/} All diseased animals must be slaughtered separately from healthy animals.^{216/} The carcasses of diseased animals are subject to separate inspection and examination pursuant to USDA regulations.^{217/}

After slaughter, inspectors examine all carcasses capable of being used as human food.^{218/} The carcasses are then marked as either "Inspected and passed" or "Inspected and condemned." ^{219/} The condemned carcasses and any parts thereof must be destroyed in the presence of the inspector.^{220/} If a carcass initially passes but then subsequently becomes adulterated, the inspectors may reexamine it.^{221/}

Any meat or meat food product passing federal inspection and subsequently packed in a container or receptacle of any kind must have the notation "Inspected and passed" placed on its label (or on the container or receptacle itself).^{222/} The federal inspection process is not technically completed until the meat or meat food product has been sealed in the container under the supervision of a federal inspector.^{223/} The forgery of the inspection notation, or any other official device, mark, or certificate, is illegal.^{224/}

The federal inspectors examine not only the meat itself but also the sanitary conditions under which the meat is processed at slaughterhouses and packing plants.^{225/} The Secretary of Agriculture ^{226/} may prescribe regulations governing the sanitary conditions at such establishments. If these sanitation regulations are not complied with, no meat may be labeled "Inspected and passed" at that establishment.^{227/}

Adulteration. In addition to establishing federal inspection services, the Act also prohibits certain activities. Uninspected meat or meat products may not be transported in commerce.^{228/} Any act which adulterates meat or meat product being transported in commerce is also illegal.^{229/}

Adulteration occurs when the meat or meat product contains any poisonous or deleterious substance which may render it injurious to health.^{230/}

The conditions under which the meat was packed or processed may cause it to be adulterated. Preparation or storage under unsanitary conditions leading to contamination with filth or rendering the product injurious to health, constitute adulteration.^{231/} The same is true if the meat consists wholly or partially of any filthy, putrid, or decomposed substance,^{232/} or if its container is composed in whole or in part of a poisonous or deleterious substance.^{233/}

Standards of Identity and Fill of Container. The Act allows the Secretary to establish food identity ^{234/} and container fill standards for meat or meat products. These standards must be consistent with standards for the same food items under the Federal Food, Drug, and Cosmetic Act.^{235/} To achieve this consistency, the Secretary of Agriculture must consult with the Secretary of Health and Human Services before issuing food standards under either act.^{236/} The Secretary of Agriculture must also consult with the appropriate state authorities ^{237/} prior to promulgating food standards so that state and federal standards may be consistent.^{238/}

Personal Exemption

The slaughter of an animal by its owner is exempt from inspection requirements.^{239/} It is not, however, exempt from the Act's adulteration and misbranding provisions.^{240/}

An individual may slaughter an animal for consumption by his household, guests, or employees without complying with the inspection provisions of the Act. Custom-slaughter operations performed by any firm or individual for the owner's benefit enjoys a similar exemption. If the animal is custom-slaughtered, any packaged meat must bear the mark "Not for Sale."^{241/} The establishment performing the custom operation must be maintained and operated in a sanitary manner.

Imported and Exported Meat

Before being exported, animals must be inspected ^{242/} and an official certificate stating the animal's condition at the time of inspection must be issued.^{243/} No ship containing animals subject to federal inspection can leave port without this certificate.^{244/}

Animal carcasses and parts intended for export also must be inspected.^{245/} An official certificate, similar to the one required for export animals, is required.^{246/} The certificate must indicate that the animals were healthy at the time of inspection and that their meat is sound and wholesome.^{247/} The Secretary of Agriculture may waive the certificate requirements for individual countries.^{248/}

Imported carcasses, meat, or meat food products must comply with the Act.^{249/} Upon entry into the United States, all such articles qualify as domestic articles subject to the Federal Food, Drug, and Cosmetic Act ^{250/} and the Federal Meat Inspection Act.^{251/} They must bear the required marks and labels listed in the regulations pertaining to imported articles.^{252/} One exception exists however, from compliance with these regulations: an individual may purchase up to 50 pounds of meat or meat products outside of the United States for personal consumption without falling under the Act's provisions on imported meat.^{253/}

Imported meat which fails to comply with the Act must be destroyed or exported by the consignee within certain time limits.^{254/} If the sole reason for noncompliance is misbranding, it may be brought into compliance under the supervision of the USDA.^{255/}

Federal and State Cooperation

In passing the Federal Meat Inspection Act, Congress intended to assist state agencies in protecting the consuming public from adulterated or misbranded meat products.^{256/} It therefore authorized the Secretary of Agriculture to cooperate with state ^{257/} agencies in developing state meat inspection, reinspection, and sanitation requirements which are as least as stringent as those of the Act.^{258/} The Secretary may furnish advice in planning and developing the programs, technical and laboratory assistance, training, and financial aid.^{259/} Federal financial aid may not exceed 50 percent of the estimated total cost of any cooperative program.^{260/} Available funds must be equitably allocated among participating states.^{261/}

If the Secretary believes that a particular state has not developed or is not enforcing an inspection program as stringent as the federal program, he must notify its governor.^{262/} After a 30-day waiting period, the Secretary may designate the state as one in which the federal meat

inspection provisions will apply to intrastate operations and transactions.^{263/} The Secretary must publish the designation in the Federal Register. Thirty days later the provisions of the Federal Meat Inspection Act become fully operative on intrastate transactions within the designated state.^{264/}

The designation may be revoked if the Secretary determines that the state has developed and will enforce meat inspection provisions at least as stringent as the federal provisions.^{265/} Termination of the special designation does not preclude redesignation at a later date.^{266/} As in the original designation procedure, the Secretary must give thirty days notice to the governor and publish the designation in the Federal Register.^{267/}

Poultry Products Inspection Act

The purpose of the Poultry Products Inspection Act ^{268/} is similar to that of the Federal Meat Inspection Act. Congress is seeking to protect, through this legislation, the health and welfare of consumers by assuring that poultry products distributed to them are wholesome and properly packaged.^{269/} This goal is largely achieved through processing and distribution regulations.^{270/} The Act establishes a system of compulsory inspection of poultry ^{271/} and poultry products, requires the maintenance of sanitary facilities and practices, and requires accurate and informative labeling.

The Secretary of Agriculture ^{272/} is authorized to inspect live poultry in any establishment that processes poultry or poultry products.^{273/} The Act also requires a post mortem inspection.^{274/} The Secretary may impose quarantines on diseased birds, and any bird is subject to reinspection.^{275/}

Any adulterated poultry carcass, part, or product ^{276/} must be condemned.^{277/} The condemnation decision may be appealed, but in the absence of a successful appeal, an inspector will supervise the destruction of the poultry or poultry products for human food purposes.^{278/} In the event of an appeal, the carcasses, parts, or products are appropriately marked and segregated pending the completion of the appeal inspection.^{279/} If the Secretary determines that the appeal was frivolous, the appellant must bear the cost of the reinspection.^{280/} On the other hand, the carcasses, parts, parts, or products need not be condemned and destroyed if, through the processing, they are again rendered wholesome. The reprocessing must occur under the supervision of a USDA inspector, who must find following the reprocessing that the poultry or poultry products are no longer adulterated.^{281/}

The USDA inspects not only poultry and poultry products, but also the premises, facilities, and equipment of poultry processing establishments.^{282/} The Secretary promulgates regulations establishing appropriate sanitary practices for these establishments. The Secretary will not inspect any establishment that does not maintain sanitary conditions in accordance with these regulations.^{283/}

Basic Provisions

Prohibition of Adulteration. The Act makes it illegal for any person ^{284/} to sell, transport, or receive for transportation in commerce any poultry products requiring inspection under the Act unless they have in fact been inspected and passed.^{285/} It is illegal to introduce adulterated or misbranded poultry products into the stream of commerce.^{286/} The statute also prohibits any act which causes products to become adulterated or misbranded after transportation.^{287/}

The Act defines adulteration rather extensively. A poultry product is adulterated if:

1. it bears or contains any poisonous or deleterious substance which may render it injurious to health. If the substance is naturally present in the product, the article is not adulterated if the substance does not ordinarily render it it injurious to health.^{288/}
2. it bears or contains any added poisonous or deleterious substance which may make it unfit for human food.^{289/}
3. it bears or contains an unsafe food additive ^{290/} or an unsafe color additive,^{291/} as those terms are used in the Federal Food, Drug, and Cosmetic Act.^{292/}
4. it consists wholly or partially of any filthy, putrid, or decomposed substance.^{293/}

5. its preparation, packaging or holding occurs under unsanitary conditions exposing it to contamination.294/
6. it is wholly or partially the product of any poultry which has died by means other than slaughter.295/
7. its container is composed of any poisonous or deleterious substance which may render the contents injurious to health.296/
8. it has been intentionally subjected to radiation.297/
9. any valuable constituent has been omitted or abstracted from the product, or any substance substituted therefore.298/

Prohibition of Misbranding. Any of the following conditions can cause an article to be misbranded under the Act:299/ false or misleading labeling; offering the product for sale under the name of another food, unless its label clearly indicates that fact; packing it in a container that is misleading as to its contents; use of a container which does not bear the official legend and official establishment number of the processing facility and any other information which the Act requires is not placed prominently on the label. The label must also show the name and place of business of the manufacturer, packer, or distributor, and indicate the weight, measure, or numerical count of the product.300/ Reasonable variations from this last requirement are permissible, and the Secretary may establish exemptions for small packages and for articles not sold in packages.301/

If a poultry product contains any artificial flavorings, coloring, or chemical preservative, its label must indicate this fact.302/ If the product purports to be for special dietary uses, its label must bear certain information concerning its vitamin, mineral, and other dietary properties to inform prospective purchasers of the product's value.303/ The Secretary determines the information required in consultation with the Secretary of Health and Human Services.

Dietary Standards. The Secretary may prescribe definitions and standards of identity for poultry or poultry products, and standards of fill for their containers.304/ These standards must be consistent with those of the Federal Food, Drug, and Cosmetic Act. To ensure consistency, the Secretary must consult with the Secretary of Health and Human Services before issuing standards.305/ The Secretary must also meet with state advisory committees to avoid inconsistency between state and federal standards.

A poultry product represented as food must conform to the definition and standard of identity prescribed by the Secretary. Failure to comply means that the product is misbranded. Its label must bear the name of the food and must list any optional ingredients specified by the USDA.306/

If a container fill standard exists, the article must meet that standard or indicate on its label that it does not meet the standard. If the label fails to reflect the fact that the product falls below the fill standard it is misbranded.307/

Exemptions

Certain persons and organizations are exempt from the Act's inspection program.308/ Retail dealers who sell poultry products directly to consumers are exempt if the only processing operation they perform is cutting up the poultry products on the premises.309/ Persons slaughtering or processing poultry according to recognized religious dietary laws are also exempt,310/ as are persons slaughtering poultry for personal consumption.311/ Custom slaughter of poultry for an owner does not fall under the Act.312/

The Secretary may also exempt any small enterprise that distributes its products solely within the state in which it is located.313/

Federal and State Cooperation

The provisions in the Act for federal and state cooperation in inspection 314/ are analogous to those found in the Federal Meat Inspection Act.315/ In fact, a report issued by a committee of the House of Representatives acknowledged the similarity between the provisions found in the two acts.316/ The basic purpose behind both provisions is to assure the wholesomeness of as much meat and poultry sold in our country as is possible.317/

The Secretary may furnish technical and financial assistance in the planning and development of state inspection programs.^{318/} Federal funds may be used to pay up to half the cost of a joint inspection program.^{319/}

The Act does not supersede state regulation of purely intrastate operations unless a state fails to develop inspection standards which are at least as stringent as the federal guidelines.^{320/} This is similar to the authority granted to the USDA under the Federal Meat Inspection Act.^{321/}

Federal case law supports the proposition that the Act does not preempt state regulation of poultry inspection. In Canton Poultry, Inc. v. Conner,^{322/} the court upheld the Florida poultry inspection statute, which authorized the inspection, grading, and tagging of poultry products solely within the state. The court found that the program was nondiscriminatory because it locally produced poultry offered for sale in Florida, as well as poultry shipped into the state.^{323/}

A similar case ^{324/} in a state court held that congressional regulation of poultry in interstate commerce does not automatically preempt state regulation. In this case, a state regulation required the disclosure of the geographic origin of poultry and poultry products. The court found no actual conflict between the state requirement and the federal regulatory scheme, nor any evidence of congressional design to preempt states entirely.^{325/}

Egg Products Inspection Act

The Egg Products Inspection Act ^{326/} is the most recent of the specialized inspection acts patterned after the Federal Food, Drug, and Cosmetic Act.^{327/} Its purpose and structure are similar to those of the federal meat ^{328/} and poultry ^{329/} inspection acts. Like its predecessors, Congress enacted it primarily to protect consumers from unwholesome, adulterated, and misbranded food.^{330/}

Testimony taken by a congressional committee prior to the Act's passage ^{331/} indicated the great need for federal inspection to reduce or eliminate the transportation of cracked, leaking, or dirty eggs in interstate commerce. Defective eggs can spread harmful bacteria, particularly salmonella.^{332/} One reason for the new legislation, therefore, was to control potential health hazards.

A second reason for the Act was that state inspection laws were not entirely effective in halting the sale of unwholesome eggs.^{333/} At the time the federal Act was passed, 18 states had legislation concerning egg products but none required continuous inspection. Only eight states required the pasteurization of egg products. Five states had no requirements for egg products whatsoever. The remaining states conducted inspection programs under either a general food law or another nonspecific law.^{334/}

Basic Provisions

Inspection Program. The inspection program in this act is similar to those of the meat and poultry inspection acts. Inspections are conducted under the auspices of the Secretary of Agriculture ^{335/} with one exception: the Secretary of Health and Human Services retains jurisdiction over the inspection of restaurants, institutions, and food manufacturing establishments.^{336/} The Secretary of Agriculture has the authority to inspect the operations of all plants processing egg products.^{337/}

The Secretary of Agriculture ^{338/} is directed to set up a program of continuous inspection of egg products ^{339/} at each egg processing plant.^{340/} If necessary, the products under inspection may be segregated and reinspected.^{341/} The Act requires the condemnation and destruction of adulterated ^{342/} eggs or egg products unless the adulteration is removable through reprocessing.^{343/} Any reprocessing must occur under the supervision of the government inspectors, and the product must subsequently be reinspected. A processor may appeal a determination that its products are adulterated, but if the appeal is found to have been frivolous, the processor must pay all costs of the appeal.^{344/}

Egg products must be pasteurized before leaving the processing plant.^{345/} The package or shipping container must bear an official inspection seal and the official establishment number of the processing plant. The forgery of an official mark or label is illegal.^{346/} It is also unlawful to knowingly represent that any article subject to this Act has been inspected when, in fact, no

inspection has occurred.^{347/} Punishment for violating these prohibitions can include fines or imprisonment.^{348/}

Labeling. No label or container is permitted if it is false or misleading or has not been approved by the USDA.^{349/} The Secretary may stop the use of any container believed to be false and misleading as to its contents. The person or firm using the container may contest the Secretary's determination.^{350/} Following a hearing, the Secretary makes a final determination, which the processor may appeal to the federal courts.^{351/}

Exemptions

The Secretary may exempt certain products or activities from the Act.^{352/} For example, a poultry producer's sale of eggs directly to a noncommercial consumer may be exempt.^{353/} Similarly, the Secretary may also excuse a producer with fewer than 3,000 hens from certain provisions of the statute.^{354/}

The Act does not cover egg products which are not for human consumption.^{355/} The Act requires that these products undergo a denaturing process prior to their transportation in interstate commerce. It also subjects them to special identification regulations.^{356/}

Imports

Imported egg products must be processed under an approved continuous inspection system operated by the foreign government ^{357/} and must comply with standards established by the Act.^{358/} Upon entry into the United States, the foreign products must meet the same quality tests as domestic articles.^{359/} The provisions of the Act regulating imports do not apply to eggs or egg products purchased outside the United States by an individual for personal consumption, or for consumption by family, guests, or employees.^{360/}

Any imported articles which fail to comply with the Act must be destroyed under the Secretary's supervision or exported within a time limit established by the Secretary.^{361/} However, if the sole cause of noncompliance is misbranding, the defect may be corrected under the supervision of USDA representatives.^{362/}

State and Local Regulation

The Act authorizes the Secretary to cooperate with state inspection agencies to promote its purposes.^{363/} The USDA may utilize employees of state agencies to carry out its egg inspection program if it reimburses the state for its costs in the cooperative program.^{364/}

Even though state agents may participate in a cooperative inspection effort, federal, rather than state, statutes and regulations apply. Furthermore, the Act prohibits the creation of state standards for processing plants in addition to or different from the federal standards.^{365/} The Act allows states to impose additional requirements in limited areas. For example, state recordkeeping requirements need not be identical to those of the federal government;^{366/} they must, however, be consistent with federal requirements.^{367/} In addition, states may require containers to list the name, address, and license number of any individual or firm processing the eggs.^{368/}

Quality Control Legislation

Federal Insecticide, Fungicide, and Rodenticide Act

On the federal level, the registration and regulation of pesticides is governed primarily by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).^{369/} This act is not, however, the only federal statute pertaining to the use of pesticides on food. As we have previously seen,^{370/} FDCA ^{371/} authorizes the establishment of residue tolerances for all pesticide products designed for use on human or animal food.^{372/} FIFRA basically provides for the registration and classification of these pesticides.^{373/} From a legal perspective, the two acts are related.^{374/} They are also related in a practical sense: most pesticide manufacturers will simultaneously file for registration under FIFRA and petition for the establishment of a tolerance level under FDCA.^{375/}

Classification of Pesticides

FIFRA was enacted in 1947 376/ and later overhauled by the Federal Environmental Pesticide Control Act of 1972.377/ The Act in its present form requires the registration of all pesticides (including those distributed entirely within states) with the administrator of the Environmental Protection Agency (EPA).378/

Registration specifies whether a pesticide is suitable for general or restricted use.379/ A pesticide classifies for general use if, when applied in accordance with its directions, it will not generally cause unreasonable adverse effects on the environment.380/ Restricted-use pesticides are those which, when applied according to directions, may generally cause unreasonable adverse effects on the environment, including injury to the applicator.381/ Use of a restricted-use pesticide must be supervised by a certified applicator.382/ No such restriction exists for a general-use pesticide.

Different application methods may require different classifications.383/ It is possible, therefore, that a given pesticide may be classified for both general and restricted use. In that event, the general-use directions must be clearly separated from the restricted-use directions.384/

Cancellation or Suspension of Registration

A pesticide is registered for five years. At the end of this time, the Administrator 385/ cancels the registration unless the registrant 386/ requests its continuation.387/ Even if the registration is cancelled, the Administrator may permit the continued use and sale of existing stocks of the pesticide.388/

Cancellation or suspension of the registration may occur prior to the expiration of the five-year period. An Administrator who finds a need to cancel registration or change the classification, must inform the registrant and the public.389/ The Administrator may then schedule a hearing to determine whether the registration should be cancelled or the classification changed.390/ Any person who could be adversely affected by the proposed action may also request a hearing.391/

The Administrator must take into account the impact of the proposed action on the production and prices of agricultural commodities, retail food prices, and the agricultural economy as a whole.392/ He must also inform the Secretary of Agriculture of the proposed action and provide an analysis of its likely impact on the agricultural economy.393/

The Act establishes a procedure for suspending registration.394/ The Administrator is authorized to suspend the registration only when necessary to prevent an imminent hazard 395/ during the time required for normal cancellation or change of classification proceedings.396/

Before issuing the suspension order, the Administrator must provide the registrant notice of the action and a copy of the findings relevant to the "imminent hazard" issue.397/ The registrant may request an expedited hearing on the question of whether an imminent hazard exists.398/ If there is no such request within five days of the receipt of the notice, the suspension takes effect and is not subject to judicial review.399/

If an emergency does not permit a hearing prior to suspension, the Administrator may issue a suspension order immediately and then notify the registrant of the action taken.400/ This emergency order remains in effect until an expedited hearing is completed.

In evaluating the economic effects of a proposed suspension or cancellation, it is not necessary to show that the alternative means of pest control will be as effective. In a recent case,401/ the EPA determined that crop surveillance for infestations, together with the application of post-emergence baits or sprays, provided an effective alternative to the indiscriminate use of chlordane; the agency therefore suspended registration of the pesticide. The court upheld the EPA's determination that the benefits derived from the suspension outweighed any economic harm done and decided that there was no basis for disturbing the agency's balancing of the costs and benefits.

Registration of Establishments

The Act requires the registration of any establishment which manufactures pesticides.402/ The establishment must submit to the Administrator annual reports on the types and amounts of pesticides it produces.403/ EPA employees may enter any establishment holding pesticides for sale or distribu-

tion for the purpose of inspection and sampling.^{404/} If the inspection gives reason to believe that the Act is being violated, the Administrator may issue an order stopping the pesticide's sale, use or removal.^{405/} In addition, the pesticide may be seized through an in rem federal court proceeding because of (1) adulteration or misbranding, (2) failure to register in accordance with the Act, (3) omission of required information from the label, (4) coloration in violation of the Act, or (5) the existence of claims or directions for use different from those made in connection with the pesticide's registration.^{406/}

Penalties

The Act provides for both civil and criminal penalties.^{407/} Civil penalties include a fine of up to \$5,000 for each offense.^{408/} Criminal penalties are available against those who "knowingly" violate any provision of the Act, and include imprisonment as well as fines.^{409/}

Filled Milk Act

The Filled Milk Act ^{410/} prohibits the manufacture or interstate transportation of "filled milk",^{411/} any milk or cream (including condensed, evaporated, concentrated, powdered, or dried milk) to which any fat or oil other than milk fat has been added,^{412/} and which imitates or resembles milk or cream. Such articles are adulterated and injurious to the public health and their sale constitutes a fraud upon the public.^{413/}

Since its enactment in 1923,^{414/} the Act has been the subject of quite a bit of litigation. Some of the earliest cases were constitutional challenges brought before the Supreme Court. In U.S. v. Carolene Products Co.,^{415/} the manufacturer of a compound made from condensed milk and coconut oil argued that the Act violated the due process clause of the Constitution. In upholding the Act, the Court stated that a rational basis for the statute should be presumed unless there are known facts contradicting this presumption. The court went on to point out that, prior to the passage of this legislation, extensive research revealed the injurious effects of consuming substitutes for pure milk. The research also showed that milk from which butterfat had been extracted was lacking in vitamins A and D. The court held that Congress did not violate the due process clause in enacting legislation designed to correct these nutritional problems.

A later case ^{416/} involved the distribution of a filled milk product which was admittedly wholesome and properly labeled. The manufacturer argued that it was a violation of due process to include its product in the category of prohibited filled milk products. The product was made from skimmed milk, cottonseed oil, and fish liver oil, and was virtually indistinguishable from whole milk products. The court determined that the Act sought not only to ensure wholesomeness but also to correct the problem of vitamin deficiencies presented by filled milk. The fact that the milk compound in question was wholesome and nutritious did not exclude it from the regulated class. The court also held that Congress designed the Act to prevent consumers from confusing filled milk with whole milk. Since the defendant's milk compound so closely resembled whole milk, it violated the Act, notwithstanding the fact that no ingredient had been added to the compound to make it simulate whole milk. Proof of conscious imitation is not necessary as long as the product is normally perceived by purchasers to be whole milk.

Case law has established that it is not necessary to show that the filled milk product was intentionally shipped in interstate commerce in order to prove a violation of the Act.^{417/} It is sufficient that the product falls within the Act's definition of filled milk and has been manufactured or transported in interstate commerce.

A 1972 federal district court decision ^{418/} has cast some doubt on the continued validity of the Act. In recent years imitation dairy products have been developed which are nearly identical to the prohibited filled milk products. Since these new products do not technically come within the definition of filled milk, they are not prohibited. This discrepancy in treatment led the district court to examine the constitutionality of the Act.

The plaintiff in the case manufactured a filled milk product consisting of a blend of fat-free milk and soya oil. The new market conditions brought into question prior court rulings on the constitutionality of the Act. The court noted that the new imitation dairy products were competing directly with the filled milk products of the plaintiff and other manufacturers and were no less likely to be confused with whole milk products.^{419/} Because the two types of products were so simi-

lar in composition, appearance, and use, the difference in treatment under the Act violated the due process of law to which the plaintiff was constitutionally entitled.

Filled Cheese and Adulterated Butter Acts

Until recently, filled cheese and adulterated butter were regulated under federal statutes.^{420/} However, Congress repealed the Filled Cheese Act in 1974 ^{421/} and the Adulterated and Process or Renovated Butter Act in 1976.^{422/} While they were in force, both of these acts were essentially taxation measures administered by the Treasury Department to regulate the sale of the products.

Although the acts have been repealed, the products which they regulated are still covered by other federal statutes. For example, cheese and butter are subject to the adulteration and tolerance standards of the Federal Food, Drug, and Cosmetic Act ^{423/} and the labeling standards of the Fair Packaging and Labeling Act.^{424/} These products are naturally included in the definition of "food" as used in those acts. The repeal of the Filled Cheese Act and the Adulterated and Process or Renovated Butter Act served only to remove the special taxes on these items.

Federal Import Milk Act

The Federal Import Milk Act ^{425/} regulates the importation of dairy products in two important respects. First, it establishes a permit program, administered by the Secretary of Health and Human Services, for any importer of milk or cream.^{426/} Secondly, it authorizes Secretary to impose inspections where necessary to insure that milk and cream are fit for importation.^{427/} Inspections are made of the bacteria count in raw milk, the sanitary conditions of dairy farms and plants, and the temperature at which the milk is maintained during the importation period.^{428/} The Secretary retains the power to suspend or revoke any permit.^{429/}

Food Grading Acts

Agricultural Marketing Act of 1946

The Agricultural Marketing Act of 1946 ^{430/} gave the USDA authority to establish grading standards for various foods and food products. The Act directs the Secretary of Agriculture to "develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices."^{431/} Unlike the standards established pursuant to the Federal Food, Drug, and Cosmetic Act,^{432/} which set minimum criteria, the USDA grading system provides for of a whole range of food qualities.

In addition to authorizing the development of food standards, the Act also consolidates USDA market research activities within a single administrative agency ^{433/} and implements cooperative efforts with state agencies and private organizations to improve the efficiency of food marketing.^{434/} The legislative history of the Act indicates that the principal reasons for these changes were (1) to promote through research and federal and state cooperation a scientific approach to the problems of marketing, transporting, and distributing agricultural products, (2) to reduce distribution costs, (3) to narrow the price spread between the producer and the consumer, and (4) to develop new and wider markets for American agricultural products.^{435/}

The Food Grading System. The Food Safety and Quality Service of the USDA is authorized by the Act to develop and improve food standards.^{436/} The USDA grading system is voluntary; when it is used, the food must satisfy the proper criteria for the designated grade.

Food products for which standards have been developed include fresh ^{437/} and processed ^{438/} fruits and vegetables, livestock and meats,^{439/} rabbits,^{440/} poultry,^{441/} egg products,^{442/} shell eggs,^{443/} and dairy products.^{444/} Standards for certain other agricultural products are promulgated by the Secretary pursuant to other federal statutes.^{445/}

The factors considered in grading food vary. Some of the most commonly used criteria are color, cleanliness, freshness, firmness, size, shape, texture, damage, and ripeness.^{446/}

The grading system for any particular food may be rather detailed. For example, apples intended for processing are governed by different regulations than those governing other apples. Apples for processing may be graded "U.S. No. 1," "U.S. No. 2," or "U.S. Cider."^{447/} Other apples are graded as "U.S. Extra Fancy," "U.S. Fancy," "U.S. No. 1," "U.S. Utility," or a combination of any two of these grades.^{448/}

The number of possible grades for a given agricultural product can vary widely. Florida grapefruit have ten possible grades,^{449/} while broccoli greens have only one.^{450/}

The USDA grading service for livestock provides for the determination of the class, grade, and other qualities of the livestock.^{451/} "Class" refers simply to the major groups within each species. The grade is determined in accordance with the prescribed regulations.^{452/} The grading service is available for livestock traded in interstate commerce, or where the USDA determines that its use would facilitate the commercial marketing, distribution, processing, or utilization of agricultural products.^{453/}

The unauthorized use of a USDA grade stamp or label is prohibited. In Arrow Meat Co. v. Freeman,^{454/} employees of a meat packing plant had marked meat with a USDA "choice" stamp without the authorization of the federal grader. Federal meat grading services were subsequently suspended for 30 days.

In another case,^{455/} the Secretary of Agriculture suspended the license of a potato growers' cooperative for repeated violations of the statutory grading standards. Under the terms of the suspension, the cooperative could not trade in perishable agricultural commodities for a period of 60 days. The court upheld the suspension.

Federal and State Cooperation. One of the Act's primary purposes is to promote cooperation among state and federal agencies in solving the problems of marketing, transporting, and distributing agricultural products.^{456/} In furtherance of this goal, the Secretary has the authority to enter into contracts and agreements with states and state agencies for the purpose of conducting research and service work, making and compiling reports and surveys, and carrying out other relevant functions.^{457/} The results of any joint research must be made available to the public.^{458/}

Cooperative efforts with state agencies or private institutions are undertaken when their functions will be carried out more effectively, more rapidly, or at less cost than if performed by the USDA alone.^{459/} According to the interpretations of one court, however, this sort of cooperative effort is not mandatory. In P.A.M. News Corp. v. Butz ^{460/} the court held that the Act merely urges, but does not require, consultation with state agencies.

U.S. Grain Standards Act

The official standards for grain were adopted pursuant to the U.S. Grain Standards Act ^{461/} of 1916,^{462/} revised in 1968,^{463/} 1976,^{464/} and 1977.^{465/} The Act establishes official standards for grain, promotes uniform application of these standards by official inspection personnel, establishes an official inspection system for grain, and regulates the weighing and certification of grain being shipped in commerce.^{466/} The underlying objective is to ensure the orderly and timely marketing of, and to facilitate trade in, U.S. grain.^{467/}

The Act created the Federal Grain Inspection Service,^{468/} an administrative agency of the USDA. The Administrator of the Federal Grain Inspection Service is responsible for administering the Act, as well as establishing policies, guidelines, and regulations to carry out its provisions.^{469/} The Administrator may also perform related functions for grain and grain products under the authority of other statutes administered by the USDA if the Secretary delegates those functions.^{470/}

Development of Grain Standards. The Act authorizes the Administrator to investigate the handling, weighing, grading, and transportation of grain;^{471/} to establish standards of quality, condition, class, and kind for corn, wheat, rye, oats, barley, flaxseed, sorghum, soybeans, mixed grains, and other such grains where warranted;^{472/} and to set up procedures for accurate weighing and weight certification, including equipment calibration and maintenance.^{473/}

Once grain quality standards are established, no sale or consignment for sale of that kind of grain may employ grade designations other than the official ones.^{474/} This restriction applies to any advertising, price quotation, container labeling, sales contract, invoice, bill of lading, or other document relating to the grain. Additional information may, however, be included along with

the official grade designation. For example, the parties to a contract for the sale of grain may stipulate additional grain quality requirements.^{475/} Furthermore, a proprietary brand name or trademark may be used in describing grain if it does not resemble an official grade designation.^{476/} The use on export grain of an official grade designation or other false or misleading descriptive information prohibited by the Act.^{477/}

Official inspectors determine the grade of a particular lot of grain by sampling. According to regulations promulgated under the Act, the owner or shipper of the grain may appeal the official determination of the grade.^{478/} It may, in fact, be in his best interests to do so. In Tulsa Grain Storage Co. v. Commodity Credit Corp.,^{479/} the shipper's failure to exhaust this administrative remedy precluded him from making a subsequent collateral attack on the official grade determination.

Any of the established standards or procedures are subject to amendment or revocation whenever the necessities of modern grain trading require.^{480/} As a general rule, any amendment or revocation of standards does not become effective until one year after its promulgation ^{481/} unless the Administrator determines that such action is in the best interests of public welfare and safety.^{482/}

Inspection and Weighing. The Act prohibits the shipment of grain from the United States to any foreign port unless it has been officially weighed and inspected.^{483/} The shipper must secure a certificate showing the official grade designation and weight of the grain. The consignee receives this certificate along with the bill of lading and other legal documents covering the shipment.^{484/}

In addition to the inspection, all grain transferred into or out of an export elevator at an export port ^{485/} must be weighed according to official standards and procedures.^{486/} Whenever a lot of grain is officially inspected and weighed during transfer into or out of a grain elevator, warehouse, or other storage or handling facility, the inspector issues an official certificate showing its grade designation and certified weight.^{487/} All official inspection and weighing must occur under the supervision of representatives of the Administrator.^{488/}

The Administrator may waive inspection in an emergency if the basic objectives of the Act are impaired.^{489/} The parties to a contract for the sale of grain may also mutually agree to forgo the official inspection. If the Administrator ^{490/} receives a copy of the contract prior to the shipment,^{491/} shipment from the United States may occur without inspection.

Delegated Inspectors. The Administrator may delegate to qualified state agencies the authority to conduct inspections at export port locations within the state.^{491/} Prior to delegating inspection authority, the Administrator must determine whether the agency is qualified to conduct grain inspections and issue findings based on that investigation.^{493/} The evaluation must take place in consultation with the Department of Justice, the USDA Office of Investigation, and the General Accounting Office.^{494/}

The delegation of inspection powers may involve all of the inspection functions or only specified ones. The official inspection continues to be the direct responsibility of the Administrator.^{495/} The Administrator may revoke any delegation of the inspection power at his discretion upon proper notice to the state agency.^{496/}

Agencies may be designated for points other than export port locations. Upon application, any person or state agency may be designated as an official agency.^{497/} The agency would then serve at locations where the Administrator has determined official inspection is needed.

The applicant must demonstrate that it is qualified to be an official agency. At present, the requirements are quite stringent. Among other things, the applicant must show that (1) it has adequate facilities and qualified personnel for the performance of official inspection functions; (2) it will periodically rotate inspection personnel among grain storage and handling facilities; (3) it will meet training requirements and personnel standards promulgated under the Act; (4) it will not charge discriminatory or unreasonable inspection fees; (5) it will not use any money collected through fees for any purpose other than the maintenance of the official inspection program or other state-run agricultural programs, and (6) it will maintain complete and accurate records of its activities and fiscal operations.^{498/}

The designation remains in effect for no longer than three years,^{499/} and can be renewed or amended.^{500/} The Administrator may revoke an agency's designation if it fails to meet the requirements.^{501/} An opportunity for a hearing must ordinarily be afforded. In an urgent situation,

however, the Administrator may temporarily suspend the designation without an opportunity for a hearing. The Administrator must have reason to believe that there is cause for revoking the designation, and the suspension must be in the best interest of the overall inspection system. The agency must have an opportunity for a hearing within 30 days of the suspension.502/

Licensing. The Act provides for the licensing of individual inspectors as a means of ensuring technical competence in the inspection and weighing of grain.503/ The Administrator may license any employee of a designated official or state agency,504/ or of the Federal Grain Inspection Service.505/ A valid license is required to perform any official weighing or inspection functions.506/

A license terminates three years after the date of issuance, unless renewed.507/ It is automatically suspended if the licensee ceases employment at a designated agency.508/ The license may be reinstated if the licensee resumes employment with a designated agency within one year of the suspension date, provided the license has not expired in the interim.509/

The Act authorizes the Administrator to give an examination for the purpose of determining the competence of prospective licensees.510/ Under current regulations, the examination tests aptitude in specific tasks like color perception, differentiation of grain conditions, knowledge of inspection procedures, and knowledge of the U.S. Grain Standards Act.511/ Other factors taken into account include the applicant's educational achievement and work experience.

Export Standards

Special legislation authorizes quality standards for certain foods intended for export. Basically, there are two separate acts, one covering apples and pears,512/ and the other covering grapes and plums.513/ The purpose of these acts, according to the legislative history, is to protect the reputation of American-grown fruit in foreign markets.514/

The two acts are similar in structure and function. Both prohibit exportation of the named fruits unless they meet a quality standard established by the Secretary of Agriculture.515/ A certificate must accompany the fruit, showing that it meets the USDA quality standard.516/ The Secretary may prescribe requirements, other than those of grade, which the fruit must meet before receiving a certificate.517/ Any interested person may make recommendations as to any proposed standard prior to its adoption.

Some foreign governments have established standards different from their American counterpart. In that instance, the Secretary may inspect the fruit to determine if it complies with the standards and requirements of the country for which it is destined.518/ Special certificates may be issued under these circumstances.519/

A reasonable fee is collected to cover the costs of the inspection and certification services.520/ The Secretary may enforce the Acts by refusing to issue inspection certificates to any person who violates them 521/ for up to 90 days. Persons who violate provisions of either act are also subject to fines of up to \$10,000.522/

The Acts do not cover some shipments of fruit to foreign ports. The Secretary may exempt, for example, any variety of grapes or plums; he may also exempt the shipment of prescribed minimum quantities of grapes and plums.523/ Similarly, producers may ship apples and pears in less than carload lots to any foreign country without complying with the Act.524/

Food Inspection and Grading by the Department of Commerce

The Department of Commerce is responsible for developing food standards for fish, shellfish, and fish products. Originally, the USDA had jurisdiction over this area under the Agricultural Marketing Act of 1946.525/ In 1956, the Fish and Wildlife Act transferred these functions to the Department of the Interior.526/ Fourteen years later, they were transferred again, to the Commerce Department.527/

The Commerce Department also is responsible for inspecting fish, shellfish, and fish products. The Secretary of Commerce has promulgated fishery products regulations and has implemented fishery product inspection services.528/ Use of the inspection services is voluntary. Any person desiring to operate an establishment under the inspection service must first seek approval of the facilities

as an official establishment.^{529/} Once approved, the inspectors may use U.S. grades and inspection marks.

As a condition for providing the inspection service, the Department of Commerce requires the use of only wholesome raw fish which are handled under sanitary conditions and are suitable for processing. Failure to comply with the Commerce Department regulations means that the product will be deemed contaminated.^{530/} Separate requirements exist for efficiently discovering and segregating contaminated fish products.

U.S. Warehouse Act

Originally enacted in 1916,^{531/} the United States Warehouse Act ^{532/} establishes standards for the safe storage of agricultural products in federally licensed warehouses.^{533/} In general terms, the Act provides for a national system of bonding to protect those who deposit grain in warehouses, establishes warehouse receipts as a secure and readily negotiable form of property, and utilizes a uniform system for the inspection and grading of grain.^{534/} The achievement of these goals aids both producers and consumers of agricultural commodities. The Secretary of Agriculture is authorized to issue to any warehouseman ^{535/} a license to operate a warehouse in conformity with the provisions of the Act.^{536/} The warehouse must be suitable for the proper storage of the agricultural product(s) for which the license is issued. The USDA may investigate the warehouse prior to issuing the license to ensure compliance.^{537/} The Secretary may also issue licenses to persons who weigh, inspect, sample, or classify agricultural products at the warehouse.^{538/} Any licensed individual must agree to abide by all the terms of the Act.^{539/} Warehouse licenses may be suspended or revoked if the licensee fails to comply with any provision of the Act or with any regulation promulgated under its authority,^{540/} or charges unreasonable or exorbitant fees for services rendered.^{541/} Prior to taking any such action, the Secretary must afford the licensee an opportunity for a hearing.^{542/} The Secretary must publish a list of the licenses that have been terminated and the reasons for their termination.^{543/}

Each warehouseman applying for a license must execute and file with the Secretary a bond to secure the faithful performance of his obligations.^{544/} The Secretary prescribes the terms and conditions of the bond and may require fire and other types of insurance.^{545/} Once the applicant files an approved bond with the Secretary, the warehouse qualifies as a bonded warehouse.^{546/}

Inspection and Grading

Any fungible agricultural product intended for interstate or foreign commerce ^{547/} and stored in a federally licensed warehouse must undergo inspection and grading by a person licensed under the Act to perform these functions.^{548/} The Secretary has the authority to establish appropriate grading standards.^{549/} The U.S. Warehouse Act accepts federally legislated standards as the official standards for the agricultural products to which they relate. For example, the grain standards used for purposes of this act are the official standards of the U.S. Grain Standards Act.^{550/}

As a general rule, a warehouseman is required to keep the products stored by various depositors separate.^{551/} He must also separate the lots from the same depositor for which separate receipts have been issued.^{552/} This rule facilitates the identification and redelivery of products deposited at the warehouse.

If authorized by custom or agreement, however, a warehouseman may mingle fungible agricultural products stored in his warehouse.^{553/} The products must be of the same kind and grade. The warehouseman remains severally liable to each depositor for the care and redelivery of his share of the product.

Each depositor receives a receipt for all products stored in a warehouse licensed under the Act.^{554/} The receipt must show (among other things) (1) the location of the warehouse, (2) the date of issuance and consecutive number of the receipt, (3) the rate charged for storage, (4) a description of the product received, and (5) a statement indicating whether the product will be delivered to the bearer of the receipt, to a specified person, or to the person's order.^{555/} The receipt bears the signature of the warehouseman or his authorized agent.^{556/} A receipt may be either negotiable or nonnegotiable. If it is nonnegotiable, that fact must be plainly indicated on its face.^{557/}

A warehouseman must deliver the products stored in his warehouse on demand to the holder of the receipt.558/ The original depositor may demand delivery if his demand is accompanied by an offer to satisfy the warehouseman's lien and an offer to surrender the receipt with any endorsements necessary for its negotiation.559/ The depositor must also, if requested, sign an acknowledgment that the products have been delivered.560/ After the products have been delivered the warehouseman must cancel the receipt.561/

The Secretary may establish rules and regulations governing the operation of warehouses storing various agricultural commodities.562/ Current regulations cover cotton,563/ grain,564/ tobacco,565/ wool,566/ dry bean,567/ nut,568/ syrup,569/ cottonseed,570/ and field warehouses.571/ The warehouseman must keep complete and accurate records of all commodities stored in the warehouse,572/ showing all of the receipts that have been issued and all of the receipts that have been returned and cancelled. He may be required to send reports to the USDA. It may require operators to report on the conditions, contents, and operation of their business.573/

USDA inspectors may examine products stored at any federally licensed warehouse to determine if the warehouseman is complying with the statute and regulations.574/ The books, records, papers, and accounts of the warehouse are open to inspection.575/ If the inspection suggests that the warehouseman is not fully performing his duties under the Act, a hearing will be held.576/ The Secretary may publish the findings of the hearing.577/

Federal-State Relationship

As originally enacted, the Act did not preempt warehouse regulation and licensing by states.578/ In 1931 Congress amended the Act to make federal law controlling in this area.579/ The Secretary holds exclusive licensing authority.580/

The Supreme Court has reviewed this federal preemption of warehouse regulation. At issue in Rice v. Santa Fe Elevator Co. 581/ was an Illinois statute regulating warehouseman, rates, rebates, and other matters already regulated by federal law. The Court ruled that the federal act supersedes state law, except to the extent that it fails to cover the field or makes express exceptions in favor of state law.582/ If the state law attempts to act in any way contrary to the federal statute, the latter prevails even though it may involve lower standards than that proposed under the state plan.

The Court also held that states are free to regulate matters untouched by the warehouse act.583/ The Illinois act required prior state approval in three areas which the Court found were not covered by the federal legislation: (1) management, construction, engineering, and other contracts between the warehouse and its affiliates, (2) contracts and leases between the warehouse and other public utilities, and (3) issuance of securities.584/ The U.S. Warehouse Act contained no provisions relating to these three areas.

The Act does, however, authorize the Secretary to cooperate with state officials in charge of administering state laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, and classifiers.585/ Cooperation is at the discretion of the Secretary.586/

Penalties

Penalties for violation of the Act can be quite heavy. A warehouseman who converts for his own use any agricultural products stored in his warehouse faces imprisonment of up to 10 years 587/ and fines of up to \$10,000 or double the value of the products involved.588/ If the violator is fined, the rightful owner of the converted property can seek reimbursement for his loss from the money collected by the Secretary of Agriculture.589/

Standards of Weight and Measure

A uniform system of standard weights and measures is an important means by which the federal government controls the manufacture and sale of food. The Bureau of Standards within the Department of Commerce is responsible for developing quantity standards applicable to various consumer products, including food.590/ The Bureau also maintains the actual weights and measures which serve as permanent standards.

In addition to developing comprehensive quantity standards applicable to all consumer products, the Commerce Department also is responsible for one standard specific to the food industry: the standard for barrels.^{591/} Its authority is derived from the Standard Barrels Act, originally enacted in 1912.^{592/}

The Act specifies the physical dimensions for barrels designed to hold apples,^{593/} fruits, vegetables, and other dry commodities.^{594/} If a barrel does not meet the specifications it is below standard, unless it is marked to indicate the fractional relationship between actual and statutory capacity.^{595/} The Act makes it unlawful to transport in interstate commerce any barrel below standard.^{596/} Reasonable variations from the standards may be permitted by regulations issued by the Bureau of Standards and approved by the Secretary of Commerce.^{597/}

Until 1968 there was specific legislation establishing standards for baskets and containers for fruits and vegetables.^{598/} Although this legislation was repealed, these types of containers still fall under the auspices of the Fair Packaging and Labeling Act.^{599/} As discussed previously,^{600/} the Commerce Department may ask Congress to enact specific legislation to counteract an undue proliferation of product sizes.

Comparison of Legal Standards: Packaging and Labeling

Although consumer-oriented food statutes take many different forms, they share some common goals, e.g., ensuring that food meets minimum quality standards; ensuring that packaged foods live up to the descriptions found on their labels or containers; and making the consumer's job easier by standardizing the sizes and forms used in marketing various types of food.

There may be a number of statutes relevant to the processing and distribution of any particular food item. It is not surprising, then, that there is some overlap in certain areas. In fact, for any given area of market regulation, there are probably a number of applicable statutes. Therefore, it is useful at this point to compare the effects of the various statutes within a particular regulatory area. Packaging and labeling is used here as an example.

Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act

Many provisions of the Federal Food, Drug, and Cosmetic Act ^{601/} and the Fair Packaging and Labeling Act ^{602/} are similar, especially in regard to the packaging and labeling of food.^{603/} The Fair Packaging and Labeling Act provides that its regulations are to be promulgated ^{604/} and reviewed ^{605/} in the same manner as those of the Federal Drug, Food, and Cosmetic Act.

A large number of packaging and labeling regulations apply to both acts,^{606/} and are administered by the Department of Health and Human Services through the FDA.^{607/}

On the other hand, some packaging and labeling regulations derive from only one of the acts. For example, under the Fair Packaging and Labeling Act, the Secretary of Commerce can promulgate regulations for voluntary product standards.^{608/} There are no comparable regulations derived from the Federal Food, Drug, and Cosmetic Act. This section covers only those regulations applicable to both acts, while the subsequent section deals with the other packaging and labeling regulations.

Basic Regulations

Two important terms, "principal display panel" ^{609/} and "information panel," ^{610/} are used in the regulation of food packaging and labeling. The principal display panel is that part of the label most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.^{611/} The information panel is contiguous to and to the right of the principal display panel.^{612/} Certain information must appear on each panel, while other information may appear on either panel.^{613/}

The principal display panel must contain a statement of identity; i.e., the common or usual name by which the food is known.^{614/} Additional identity information may be necessary, depending on the circumstances.^{615/} If the food can be marketed in various forms, e.g., whole, sliced, or diced, then the form should ordinarily be shown on the panel.^{616/} This regulation does not apply if the form is depicted by an appropriate picture or is clearly visible through the container.^{617/}

Identity information must be printed in bold type and in a size reasonably related to the other prominent information printed on the principal display panel.618/ Where a package bears alternate display panels, the required information must be duplicated on each panel.619/

The label must specify the name and place of business of the manufacturer, packer, or distributor.620/ In the case of a corporation, the actual corporate name must be used.621/ If the food is not manufactured by the firm listed on the label, the name must be qualified by a phrase that reveals the connection that firm has with the food.622/ If the packaged food is manufactured at a location other than the manufacturer's principal place of business, the label may state the principal place of business rather than the actual place of manufacture, unless such a statement would be misleading.623/

The ingredients for a food product must be listed on either panel by common or usual name in descending order by weight.624/ As a general rule, specific rather than generic names must be used to describe ingredients.625/ Special rules apply to spices, flavorings, colorings, and chemical preservatives.626/

Ingredient labeling is regulated in conjunction with food identity standards, which specify mandatory and/or optional ingredients.627/ Optional ingredients must be listed on the label if they are contained in the food.628/ Mandatory ingredients (those required by the identity standards) need not be listed on the label.629/ Evidently the law assumes the consumer will know that the mandatory ingredients are present in an item with a particular food identity. The FDA apparently is not entirely satisfied with this approach, and encourages all manufacturers and distributors to disclose all ingredients in a standardized food.630/

A food package may indicate the number of servings it contains. If it does so, it must also indicate the net quantity per serving.631/ The unit of measurement used to designate the serving size does not have to be the same as that used to designate the package's net contents.632/ For example, a container of oatmeal which is measured in ounces could designate its net quantity per serving in terms of cups. The unit of measurement must be commonly used in cooking, and the statement of quantity per serving must not be misleading.633/

Nutrition Labeling

Any food that contains added vitamins, minerals, or protein must meet special labeling requirements.634/ These requirements also apply if any nutritional claim or information appears on the label or in advertising for the product.635/ The manufacturer does not meet this requirement merely by making nutritional information available upon written request.636/

All nutrient quantities (including vitamins, minerals, calories, protein, carbohydrates, and fat) must be given for the average or usual serving 637/ of the product.638/ For foods which are typically consumed more than once a day, a separate column of figures may be used to designate the nutrient quantities in relation to the average amount consumed on a daily basis.639/ The declaration of nutrient quantities must be on the basis of the food as packaged.640/ A separate column of figures may declare the nutrient quantities on the basis of the food as consumed after cooking or other specified methods of preparation.641/

Detailed regulations govern the measurement of calories, protein, carbohydrates, and fat content for labeling purposes.642/ If proteins, vitamins, or minerals are added, the label must express the amount of these nutrients as a percentage of the U.S. Recommended Daily Allowances (U.S. RDA).643/ A manufacturer may not claim that a food is a significant source of a particular nutrient unless it contains at least ten percent of the U.S. RDA for that nutrient in a single serving.644/ Furthermore, a food is not nutritionally superior to another food unless it contains at least ten percent more of the U.S. RDA for the claimed nutrient.645/ Special rules apply for listing U.S. RDA levels on food sold for infant consumption.646/ The regulations flatly prohibit certain nutritional or medicinal claims from appearing on food labels.647/ A label may not suggest that the food, because of the presence or absence of certain dietary properties, is effective in the prevention, cure, or treatment of any disease.648/ Nor can manufacturers imply that a balanced diet of ordinary foods will not supply an adequate amount of nutrients.649/ A manufacturer or distributor may not suggest that a natural vitamin in a food is superior to an added or synthetic vitamin.650/ The label may not differentiate in any way vitamins naturally present from those which have been added.651/ If any of these representations or suggestions appear, the food is mislabeled.652/

Special Regulations Under the Fair Packaging and Labeling Act

In addition to the regulations shared with the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act is also the source of more specialized packaging regulations 653/ relating to the power of the Secretary of Commerce to request the formulation of "voluntary product standards."654/ A voluntary product standard is simply a standard for measuring the weight or quantity manufacturers use in distributing a particular commodity for sale at retail.655/

Before the process of developing voluntary product standards begins, the Secretary of Commerce must determine on a case-by-case basis whether there is an "undue proliferation" of sizes and containers for a particular food product.656/ Any person or group, including a state or local governmental entity, can inform the Secretary of the possible existence of undue proliferation.657/ A hearing on the issue will take place,658/ after which the Secretary can make a final determination of the existence of undue proliferation if the evidence and testimony so warrant.659/

After such a finding, the Secretary must invite manufacturers, packers, and distributors of the affected commodity to participate in the development of voluntary product standards.660/ Since the process is voluntary, the industry cannot be required to develop and comply with the product standards. However, if a standard is not adopted within a year after the initial request, the Secretary may recommend to Congress that it enact legislation giving the Department of Commerce the authority to develop mandatory product standards.661/ The Secretary can also make this recommendation if voluntary standards are not effective.662/

Voluntary product standards limit the variety in size and shape of containers for various food items. These are essentially quantity regulations, but the Secretary has authority under the Act to regulate the nonfunctional slack fill 663/ of packages containing consumer commodities as well.664/ The Secretary may also regulate the use of representations that food is being offered for retail sale at a price lower than the ordinary or customary price ("cents-off" provisions) or that a retail price advantage is available because of the size of the package or the quantity of its contents ("economy size" provisions).665/

A "cents-off" representation is valid if it meets certain criteria. The product must have an established regular selling price 666/ at the retail level.667/ The sponsor's selling price and the selling price at all subsequent levels in the marketing process must be less than the regular price by at least the savings differential represented on the packaging.668/ The sponsor and all subsequent sellers must maintain records for each promotion. These records must show a reduction in the cost to the retailer in an amount sufficient to enable him or her to pass along the savings to the purchaser.669/ The retailer must display the regular price on the label or on a sign or shelf marker.670/

There are similar rules governing the use of "economy size" representations. The sponsor must offer the same brand of the particular food product in at least one other package size or labeled form.671/ Only one packaged or labeled form of that brand may contain the "economy size" designation.672/ The sponsor and all subsequent sellers must sell the product at a price per unit of measure which is substantially (at least five percent)673/ less than the actual price of the other packaged units of the same product.674/

Federal Meat Inspection Act

The definitions of "label" and "labeling" in the Federal Meat Inspection Act are virtually the same as those found in the Federal Food, Drug, and Cosmetic Act.675/ The definitions in both acts encompass any display of written, printed, or graphic matter appearing on a food container or package. Since meat must be inspected before marketing, there are additional packaging and labeling regulations governing it.

A container or package may not bear an official legend or mark unless the meat has been inspected under the supervision of USDA employees.676/ The process of marking inspected meat is closely regulated; the regulations even specify the colors and types of ink to be used.677/ For most official markings, the Administrator of the Food Safety and Quality Service must approve the size and style of lettering.678/

Meat labeling regulations rely on the concept of the principal display panel.679/ In this respect, they are similar to the more general labeling regulations of the Federal Food, Drug, and

Cosmetic Act and the Fair Packaging and Labeling Act.680/ As in the case of those regulations, the name of the product must appear on the principal display panel.681/ If the product consists of two or more ingredients, each must appear on the panel.682/ The common or usual names of ingredients must be listed in descending order of predominance.683/ The display panel must also list name and place of business of the manufacturer, packer, or distributor.684/ In addition, the official inspection legend and the number of the official establishment must be included.685/

As with other foods, the Act requires an accurate statement of the net quantity of the contents of the package or container.686/ The quantity may appear either in terms of "net weight" or "net contents."687/ Reasonable variations due to loss or gain of moisture during good manufacturing and distributing practices are permitted.688/

Poultry Products Labeling

The container of any poultry product passing inspection must be labeled before leaving the plant.689/ Certain information must appear on the principal display panel,690/ which is defined here as it is for the labeling of meat 691/ and for foods governed by the labeling regulations of the Federal Food, Drug, and Cosmetic Act.692/ Similarly, there are very specific rules here that determine where to locate the principal display panel on any given size or shape of container.693/ The regulations even state the size of the display panel relative to the total surface area of the produce container.694/

The name of the poultry product must appear on the label.695/ Poultry products containing light and dark chicken or turkey meat in quantities other than their natural proportions must state this fact.696/ Boneless poultry products must describe their actual form and composition.697/ If the product is cooked, this information must also appear.698/

If the poultry product is made from two or more ingredients, the label must contain a statement of the ingredients 699/ under their common or usual names in order of their descending proportions. Spices, flavorings, and colorings may be listed as such.700/ However, if artificial flavorings or colorings are used, the label must contain a separate statement indicating this fact.701/ The containers of poultry products bearing any chemical preservative must bear a label naming the additive and the purpose for its use.702/

The net quantity (weight, measure, or count) must appear on the label.703/ If a package contains both poultry and nonpoultry products, the net weight may be the total net weight of both products.704/ The type size used to print the net quantity statement for poultry products is regulated, as it is for other food products.705/ The rules allow reasonable variations from the stated net weight due to gain or loss of moisture during good manufacturing and distribution practices.706/

Random-weight packages 707/ may be used, but the net weight, price per pound, and total price must be indicated.708/ A package may state that it contains a certain number of servings if it indicates the quantity per serving.709/

The label must include the name and address of the manufacturer, packer, or distributor.710/ If the food is not manufactured by the firm whose name appears on the label, the label must reveal the connection the listed firm has with the product's packing or distribution.711/ The official U.S. inspection legend and the official establishment number must be stamped or printed on poultry products which have passed inspection.712/

Special dietary regulations apply for poultry, just as for other foods. If a poultry product purports to be for any special dietary use, the label must state its vitamin, mineral, and other dietary properties.713/ Furthermore, the label must comply with any additional dietary regulations of the Federal Food, Drug, and Cosmetic Act.714/

Notes to Chapter 2

1. 21 U.S.C. §§301-392 (1976).
2. 2 U.S.C. §301 (1976).
3. 21 U.S.C. §§321-321(c) (1976).
4. 21 U.S.C. §321(f) (1976).
5. 21 U.S.C. §321(r) (1976).
6. 21 U.S.C. §§331-337 (1976).
7. 21 U.S.C. §332 (1976).
8. 21 U.S.C. §334 (1976).
9. As is evident from its title the Act regulates drugs and cosmetics as well as food. Many of the Act's provisions pertain to all three categories of consumer products. Here, any provision is examined only insofar as it relates to food, even though it may also regulate drugs and cosmetics.
10. 21 U.S.C. §§341-350(a) (1976).
11. 21 U.S.C. §§351-360k (1976).
12. 21 U.S.C. §§361-363 (1976).
13. 21 U.S.C. §341 (1976).
14. 21 U.S.C. §§371-3799a) (1976).
15. 21 U.S.C. §371 (1976).
16. 21 U.S.C. §372 (1976).
17. Id.
18. 21 U.S.C. §381 (1976).
19. 21 U.S.C. §§391-392 (1976).
20. 21 U.S.C. §391 (1976).
21. Act of June 25, 1938, ch. 675 §902, 52 Stat. 1040, 1059.
22. Act of June 30, 1906, 34 Stat. 768 (repealed 1938).
23. 21 U.S.C. §321(f) (1976).
24. 21 U.S.C. §321(r) (1976).
25. 21 U.S.C. § 331(b) (1976).
26. 21 U.S.C. § 331(a) (1976).
27. 21 U.S.C. § 331(c) (1976).
28. 21 U.S.C. § 331(g) (1976).

29. 21 U.S.C. § #332(a) (1976).
30. 21 U.S.C. § #332(a)(1) (1976).
31. 21 U.S.C. § #343,333(a) & (b) (1976).
32. 21 U.S.C. § #342 (1976).
33. 21 U.S.C. § #342(a)(1) (1976).
34. Id.
35. The addition of any deleterious substance is prohibited (above a certain tolerance level in some instances), but specific prohibitions are established by the Act for four categories of substances, See infra notes 21-34, and accompanying text.
36. 21 U.S.C. § #342(a)(2) (1976).
37. 21 U.S.C. § 346 (1976).
38. Id.
39. Id.
40. Id.
41. Id.
42. Id.
43. 21 U.S.C. § #342(a)(1) (1976).
44. Id.
45. 21 U.S.C. § #346a (1976).
46. 21 U.S.C. § #346a(a) (1976).
47. 21 U.S.C. § #346a(b) (1976).
48. Id.
49. 7 U.S.C. §§ 135-135k (1976).
50. 21 U.S.C. § #346a(d)(1)(j) (1976).
51. 21 U.S.C. § #346a(e) (1976).
52. 21 U.S.C. § #346a(m) (1976).
53. 21 U.S.C. § #348 (1976).
54. 21 U.S.C. § #321(s) (1976).
55. 39 Fed. Reg. 42, 745 (1974).
56. 21 U.S.C. § #348(b)(1) (1976).
57. 21 U.S.C. § #348(d) (1976).
58. 21 U.S.C. § #348(h) (1976).
59. 39 Fed. Reg. 42, 745 (1974).

60. Id.
61. 21 U.S.C. § #342(a)(3) (1976).
62. 21 U.S.C. § #342(a)(4) (1976).
63. 21 U.S.C. § #342(e) (1976).
64. 21 U.S.C. § #342(a)(5) (1976).
65. 21 U.S.C. & #342(a)(6) (1976).
66. 21 U.S.C. § #342(b) (1976).
67. 21 U.S.C. § #343(a)(1) (1976).
68. 21 U.S.C. § #350 (1976).
69. 21 U.S.C. § #343(a)(2) (1976). In regard to dietary foods, the label must bear information concerning its vitamin, mineral, and other dietary properties, in order to fully inform purchasers as to its value for such uses. U.S.C. § #343(j) (1976).
70. 21 U.S.C. § #343(b) (1976).
71. 21 U.S.C. § #343(c) (1976).
72. 21 U.S.C. § #343(f) (1976).
73. 21 U.S.C. § #343(e) (1976). There is a proviso here allowing reasonable variations from the requirement of quantity designation, according to the Secretary's regulations. Id.
74. 21 U.S.C. § #343(d) (1976). foods with color additives. 21 U.S.C. § #376 (1976).
75. 21 U.S.C. § #343(k) (1976).
76. Id.
77. 21 U.S.C. § #343(l) (1976).
78. 21 U.S.C. § #343(k) (1976).
79. A raw agricultural commodity is defined as any food in its raw or natural states including all fruits that are washed, colored, or otherwise treated in their unpeeled form prior to marketing. 21 U.S.C. § #321(r) (1976).
80. 21 U.S.C. § #343(l) (1976).
81. Id.
82. Interestingly, the applicable definition for margarine or oleomargarine is not provided in this Act, but rather in the Federal Trade Commission Act. 15 U.S.C. § #55(f) (1976). The definition in the latter act applies to both acts, and is as follows: "(1) all substances, mixtures, and compounds known as oleomargarine or margarine; (2) all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter." Id.
83. 21 U.S.C. § #347(a) (1976).
84. 21 U.S.C. § #347(b)(1) (1976).
85. 21 U.S.C. § #347(b)(2) (1976).
86. 21 U.S.C. § #347(b)(3) (1976).

87. 21 U.S.C. § #347(b) (1976).
88. 21 U.S.C. § #341 (1976).
89. Id. One Congressman described this authorization as "the most important economic provision in the bill" for the purpose of maintaining the integrity of food products and giving consumers meaningful knowledge of the value of the products. See, Goodrich, Food Standardization: Past, Present and Future, 24 Food Drug Cosm. L.J., 464, 466 (1969).
90. 21 U.S.C. § #341 (1976). The Act permits only regulations governing maturity and the effects of freezing for these four items. Id.
91. Food identities, established by the Food and Drug Administration, are found at 21 C.F.R. §§ 130.3-129 (1981).
92. See 21 C.F.R. § 130.8 (1981).
93. 21 U.S.C. § #343(g) (1976).
94. For a criticism of this approach to food standardization, see Merrill & Collier, Like Mother Used to Make: An Analysis of FDA Food Standards of Identity, 74 Colum. L. Rev. 561 (1974).
95. 21 U.S.C. § 343(g) (1976).
96. 21 C.F.R. § 343(g) (1976).
97. 21 C.F.R. § 145.125(a) (1981).
98. 21 C.F.R. § 155.130(a) (1981).
99. 21 C.F.R. § 145.125(a) (1981).
100. W. Thomas, Cases and Materials on Food and Drug Law: A Study in Consumer Legislation, 186 (1966).
101. See 21 C.F.R. § 103 (1981).
102. Id.
103. 21 U.S.C. § 343(d) (1976).
104. 21 U.S.C. § 343(h)(2) (1976).
105. 21 U.S.C. § 341 (1976).
106. Id.
107. See, e.g., 21 C.F.R. § 145.135 (c) (1981).
108. 21 C.F.R. § 130.12(a) (1981).
109. The Federal Food, Drug, and Cosmetic Act in 1938, ch. 675, § 902(a), 52 Stat. 1040, 1059.
110. Act of June 22, 1934, ch. 712, 48 Stat. 1204, as amended by Act of August 27, 1935, ch. 739, 49 Stat. 871.
111. 21 U.S.C. § #372a (1976).
112. Id.
113. Id.
114. Pub. L. No. 85-296, 72 Stat. 1784. (1958) (codified as amended at 21 U.S.C. §§ 321, 331, 342, 346, 348 (1976)).

115. The term "additive" is defined at 21 U.S.C. § 321(s) (1976), and is not synonymous with the more general term "added substance."
116. 21 U.S.C. § 348(c)(3)(A) (1976).
117. 21 U.S.C. § 348(a) (1976). The procedure for adoption of food additive regulations is detailed at 21 U.S.C. § 348(b)-(h) (1976).
118. 21 U.S.C. § 348(b)(1) (1976).
119. Kessler, Implementing the Anticancer Clause of the Food, Drug, and Cosmetic Act, 44 U. Chi. L. Rev. 817, 821 (1977).
120. 21 U.S.C. § 348(c)(3) (A) (1976).
121. Id.
122. Id.
123. 21 U.S.C. § 346 (1976).
124. 42 Fed. Reg. 19996 (1977).
125. Act of Nov. 23, 1977, Pub.L.No. 95-203, 91 Stat. 1451.
126. See, e.g., Menteleff, The Delaney Myths, 33 Food Drug Cosm. L.J. 396 (1978).
127. Pub. L. No. 90-399, 82 Stat. 342. (1968).
128. 21 U.S.C. § 351 (a)(5) (1976).
129. 21 U.S.C. § 360b(d)(1)(H) (1976).
130. 21 U.S.C. §§ 360b(1)(H)(ii), 348(c)(3)(A) (1976).
131. 21 U.S.C. § 260b(d)(1)(H)(i) (1976).
132. 38 Fed. Reg. 10458, 10460 (1973).
133. Id.
134. Act of November 3, 1966, Pub.L.No. 89-755, 80 Stat. 1296, (codified as amended at 15 U.S.C. §§ 1451-1461 (1976)).
135. 21 U.S.C. §§ 301-392 (1976).
136. Note, Truth-in-Packaging under the Fair Packaging and Labeling Act: An Untapped Source of Consumer Protection, 6 Colum. J.L. & Soc.Probs. 280, 280 (1970).
137. Sen. Rep. No. 1186, 89th Cong. 2d Sess., reprinted in 1966 U.S. Code Cong. & Ad. News 4069, 4071-72.
138. Id. at 4070.
139. Id.
140. Truth in Pricing: A Proposal for Marking Retail Grocery Offerings to Show Their Price per Measure and Thereby Enable Consumers to Know What They Are Getting for Their Dollar, New York City Department of Consumer Affairs, (1969).
141. Sen. Rep. No. 1186, 89th Cong., 2d Sess., reprinted in 1966 U.S. Code Cong. & Ad. News 4069, 4071.
142. Id.

143. 15 v. S.C. § 1451 (1976).
144. Jones v. Rath Packing Co., 421 U.S. 925 (1977).
145. Sen. Rep. No. 1186, 89th Cong., 2d Sess., reprinted in 1966 U.S. Code Cong. & Ad. News 4069, 4071.
146. Common carriers for hire, contract carriers for hire, and freight forwarders are excluded. 15 U.S.C. § 1452(a) (1976).
147. Id.
148. 21 U.S.C. §§ 331-337 (1976).
149. See 15 U.S.C. § 1456(a) (1976).
150. 15 U.S.C. § 1452(b) (1976).
151. 21 U.S.C. § 321(f), -(i) (1976).
152. 15 U.S.C. § 1459(a) (1976).
153. Sen. Rep. No. 1186, 89th Cong., 2d Sess., reprinted in 1966 U.S. Code Cong. & Ad. News 4069, 4079.
154. 15 U.S.C. § 1459(a)(1)-(5) (1976).
155. 7 U.S.C. §§ 136-136y (1976).
156. 21 U.S.C. §§ 151-157 (1976).
157. 27 U.S.C. §§ 201-212 (1970).
158. 7 U.S.C. §§ 1551-1610 (1976).
159. 15 U.S.C. § 1459(b) (1976).
160. 15 U.S.C. § 1459(b)(1) (1976).
161. For purposes of the Act, "label" means any written, printed, or graphic matter affixed to any consumer commodity or to the package of any consumer commodity. 15 U.S.C. § 1459(c) (1976).
162. 15 U.S.C. § 1453(a)(1) (1976).
163. "Principal display panel" refers to that part of a label which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. 15 U.S.C. § 1459(f) (1976).
164. 15 U.S.C. § 1453(a)(2) (1976).
165. 15 U.S.C. § 1453(a)(4) (1976).
166. 15 U.S.C. § 1453(a)(3)(A)(i) (1976).
167. Id.
168. 15 U.S.C. § 1453(a)(3)(A)(iii) (1976).
169. Id.
170. 15 U.S.C. § 1453(a)(3)(A)(iv) (1976).
171. Id.

172. 15 U.S.C. § 1453(a)(5) (1976).
173. 15 U.S.C. § 1453(a)(3)(A)(ii) (1976).
174. 15 U.S.C. § 1453(b) (1976).
175. Id.
176. 15 U.S.C. § 1458(a) (1976).
177. Id.
178. 15 U.S.C. § 1461 (1976).
179. Jones v. Rath Packing Co., 431 U.S. 925 (1977). In this case the state regulations did not make any allowances for reasonable variations from stated weight resulting from loss of moisture in the course of good distribution practices. Since the state standards were more stringent than the federal standards, they were not superseded by the federal regulations.
180. Atlantic Ocean Products, Inc. v. Leth, 292 F.Supp. 615 (D. Ore 1968).
181. Id.
182. 15 U.S.C. § 1460 (1976).
183. Ibid.
184. op. cit.
185. Ibid.
186. Jones v. Rath Packing, 451 U.S. 555 (1979).
187. 21 U.S.C. § 343(e) (1976).
188. 15 U.S.C. § 1454(a) (1976).
189. 15 U.S.C. § 1454(d) (1976).
190. Id.
191. 15 U.S.C. § 272 (1976).
192. 15 U.S.C. § 1454(d) (1976).
193. 15 U.S.C. § 1454(e) (1976).
194. 15 U.S.C. § 1456(c) (1976).
195. See 21 U.S.C. § 38(a) and (b) (1976).
196. 15 U.S.C. §§ 1471-1476 (1976).
197. The term "hazardous substance" is defined in the Federal Hazardous Substances Act, 15 U.S.C. § 1261(f) (1976).
198. 15 U.S.C. § 1471(2) (Supp. 1978). Until recently, pesticides were included within the definition of household substances. Pesticides were deleted by the amendment of May 11, 1976, Pub.L.No. 94-294, § 3(a), 90 Stat. 503.
199. 15 U.S.C. § 1471(2)(B) (1976). Pub.L.No. (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article. 21 U.S.C. § 321(f) (1976).

200. Defined at 15 U.S.C. § 1471(4) (1976).
201. 15 U.S.C. § 1472(a) (1976).
202. 15 U.S.C. § 1476 (Supp. II 1978).
203. Act of December 30, 1970, Publ. L. No. 91-601, 84 Stat. 1670.
204. 15 U.S.C. § 2079(a) (1976).
205. 15 U.S.C. § 1472(a) (1976).
206. 15 U.S.C. § 1472(b) (2) (1976).
207. 15 U.S.C. § 1472(b) (3) (1976).
208. 15 U.S.C. § 1475 (1976).
209. Act of December 15, 1967, Pub. L. No. 90-201, 81 Stat. 548, (codified as amended at 21 U.S.C. §§ 601-695 (1976))j. Section 1 of Pub. L. No. 90-201 states that the provisions of the original 1907 Act, now amended and reclassified as Chapters I-IV (21 U.S.C. §§ 601-680 (1976)) of the current act are to be designated as the "Federal Meat Inspection Act."
210. 21 U.S.C. § 671 (1976).
211. 21 U.S.C. § 602 (1976).
212. Id.
213. Id.
214. Id. Congress also determined that the sale of meat and meat products affects interstate commerce, and that regulation by the Secretary of Agriculture, with the cooperation of state authorities, is an appropriate means of regulating this commerce. Id.
215. 21 U.S.C. § 603 (1976).
216. Id.
217. Id.
218. 21 U.S.C. § 604 (1976). The fact that the phrase "capable of use as human food" is employed here means that the Agriculture Department's burden of proof is eased somewhat. The Department need not prove that the intended use of the food was human consumption, but only that it is capable of being used for that purpose.
219. Id.
220. Id.
221. Id. The meat inspection acts confer a continuing power of inspection upon the Secretary of Agriculture which is not exhausted by the first exercise. Brougham v. Blanton Manufacturing Co., 249 U.S. 495 (1919).
222. 21 U.S.C. § 607 (a) (1976).
223. Id.
224. 21 U.S.C. § 611 (1976).
225. 21 U.S.C. § 608 (1976).
226. Hereinafter referred to as "the Secretary."

227. 21 U.S.C. § 608 (1976).
228. 21 U.S.C. § 610(b) (2) (1976). The Supreme Court has determined that it is within the power of Congress to require meat food products to be inspected and passed as a condition to interstate or foreign shipment. Pittsburg Melting Co. v. Toten, 248 U.S. 1 (1918).
229. 21 U.S.C. § 610(c) (1976).
230. 21 U.S.C. § 601(m)(1) (1976). In the case of a substance which is not an added substance but rather is naturally present in the food, the article will not be considered adulterated if the quantity present does not ordinarily render it injurious to health. Id.
231. 21 U.S.C. § 601(m)(4) (1976).
232. 21 U.S.C. § 601(m)(3) (1976).
233. 21 U.S.C. § 601(m)(6) (1976).
234. 21 U.S.C. § 607(c)(2) (1976).
235. 21 U.S.C. § 321 (1976).
236. 21 U.S.C. § 607(c)(2) (1976).
237. See infra notes 53-58 and accompanying text for the discussion of state and federal cooperation in the enforcement of meat inspection laws.
238. 21 U.S.C. § 607(c)(2) (1976).
239. 21 U.S.C. § 623(a) (1976).
240. 21 U.S.C. § 623(c) (1976).
241. 21 U.S.C. § 623(a) (1976).
242. 21 U.S.C. § 612 (1976).
243. 21 U.S.C. § 613 (1976).
244. 21 U.S.C. § 614 (1976).
245. 21 U.S.C. § 615 (1976).
246. 21 U.S.C. § 616 (1976).
247. 21 U.S.C. § 617 (1976).
248. Id.
249. 21 U.S.C. § 620 (1976).
250. 21 U.S.C. § 301-392 (1976).
251. 21 U.S.C. § 620(a) (1976).
252. Id.
253. Id.
254. 21 U.S.C. § 620(b) (1976).
255. Id.
256. 21 U.S.C. § 661(a) (1976).

257. As used in this part of the Act, the term "state" means any state or original territory, 21 U.S.C. § 661(d) (1976).
258. 21 U.S.C. § 661(a)(1) (1976).
259. 21 U.S.C. § 661(a)(3) (1976).
260. Id.
261. Id.
262. 21 U.S.C. § 661(c)(3) (1976).
263. Id.
264. 21 U.S.C. § 261(c)(1) (1976).
265. Id.
266. 21 U.S.C. § 261 (c)(3) (1976).
267. Id.
268. 21 U.S.C. § 451-470 (1976).
269. 21 U.S.C. § 451 (1976).
270. 21 U.S.C. § 452 (1976).
271. "Poultry" includes any domesticated bird, whether alive or dead. 21 U.S.C. § 453(e) (1976).
272. This Act, like the Federal Meat Inspection Act, is administered by the Secretary of Agriculture. 21 U.S.C. § 453(1). The term "Secretary" will be used when referring to the Secretary of Agriculture or his representatives.
273. 21 U.S.C. § 455(a) (1976).
274. 21 U.S.C. § 455(b) (1976).
275. Id.
276. The term "adulterated" is defined at 21 U.S.C. § 453(g) (1976).
277. 21 U.S.C. § 455(c) (1976).
278. Id.
279. Id.
280. Id.
281. Id.
282. 21 U.S.C. § 456(a) (1976).
283. 21 U.S.C. § 456(b) (1976).
284. Defined as any individual, partnership, corporation, association, or other business unit. 21 U.S.C. § 453(j) (1976).
285. 21 U.S.C. § 458(a)(2)(B) (1976).
286. 21 U.S.C. § 458(a)(2)(A) (1976).

287. 21 U.S.C. § 458(a)(3) (1976).
288. 21 U.S.C. § 453(g)(1) (1976).
289. 21 U.S.C. & 453(g)(2) (1976).
290. 21 U.S.C. § 453(g)(C) (1976).
291. 21 U.S.C. § 453(g)(D) (1976).
292. See, 21 U.S.C. § 321(s) and (t) (1976).
293. 21 U.S.C. § 453(g)(3) (1976).
294. 21 U.S.C. § 453(g)(4) (1976).
295. 21 U.S.C. § 453(g)(5) (1976).
296. 21 U.S.C. § 453(g)(6) (1976).
297. 21 U.S.C. § 453(g)(7) (1976).
298. 21 U.S.C. § 453(g)(8) (1976).
299. 21 U.S.C. § 453(h)(1), (2), (3), (4) and (6) (1976).
300. 21 U.S.C. § 453(h)(5)(A) (1976).
301. 21 U.S.C. § 453(h)(5)(B) (1976).
302. 21 U.S.C. § 453(h)(1) (1976). If compliance with this provision is impractical, the Secretary may establish exceptions.
303. 21 U.S.C. § 453(h)(10) (1976).
304. 21 U.S.C. § 457(b)(2) (1976).
305. 21 U.S.C. § 457(b) (1976).
306. 21 U.S.C. § 453(h)(7)(B) (1976).
307. 21 U.S.C. § 453(h)(8) (1976).
308. 21 U.S.C. § 464 (1976).
309. 21 U.S.C. § 464(a)(1) (1976).
310. 21 U.S.C. § 464(a)(3) (1976).
311. 21 U.S.C. § 464(c)(1)(A) (1976). The poultry may also be consumed by members of the person's household, guests, and employees. Id.
312. 21 U.S.C. § 464(c)(1)(B) (1976).
313. 21 U.S.C. § 464(c)(2) (1976).
314. 21 U.S.C. § 454 (1976).
315. 21 U.S.C. § 661 (1976). See supra pp. 50-52.
316. H.R. #Rep. No. 1333, 90th Cong., 2d Sess., reprinted in 1968 U.S. Code Cong. & Ad. News 3426, 3427.
317. Id.

318. 21 U.S.C. § 454(a)() (1976).
319. Id.
320. 21 U.S.C. § 454(c) (1976).
321. 21 U.S.C. § 66(c) (1976).
322. 278 F.Supp. 822 (N.D.Fla. 1968).
323. Id. at 826.
324. Pacific Meat Co. v. Otagak, 47 Hawaii, 65, 394 P. 2d 618 (1964).
325. Id.
326. Act of Dec. 29, 1970, Pub. L. No. 91-597, 84 Stat. 1620, [codified as amended at 21 U.S.C. §§ 1031-1056 (1976).]
327. 21 U.S.C. §§ 301-392 (1976).
328. 21 U.S.C. §§ 601-695 (1976).
329. 21 U.S.C. § 451-469 (1976).
330. 21 U.S.C. § 1031 (1976).
331. H.R. Rep. No. 91-1670, 91st Cong., 2d. sess., reprinted in 1970 U.S. Code Cong. & Ad. News 5242, 524 .
332. Id.
333. Id. at 5244.
334. Id.
335. 21 U.S.C. § 1034 (1976).
336. 21 U.S.C. § 1034(d) (1976).
337. 21 U.S.C. § 1052(c) (1976).
338. Hereinafter referred to simply as "the Secretary."
339. The term "egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contains eggs only in a relatively small proportion. 21 U.S.C. § 1033(f) (1976). Only the eggs of chickens, turkeys, ducks, geese, or guineas fall under the Act. 21 U.S.C. § 103 (g) (1976).
340. 21 U.S.C. § 1034(a) (1976).
341. 21 U.S.C. § 1034(b) (1976).
342. The definition of adulteration in this act is similar to the definition found in the Federal Meat Inspection Act. Compare 21 U.S.C. § 1033(a) (1976) with 21 U.S.C. § 601(m) (1976) and 21 U.S.C. § 453(g) (1976).
343. 21 U.S.C. § 1034(c) (1976).
344. Id.
345. 21 U.S.C. § 1036(a) (1976).
346. 21 U.S.C. § 1037(d)(1) and (2) (1976).

347. 21 U.S.C. § 1037(d)(7) (1976).
348. 21 U.S.C. § 1041(a) (1976).
349. 21 U.S.C. § 1036(b) (1976).
350. Id.
351. Id.
352. 21 U.S.C. § 1044 (1976).
353. 21 U.S.C. § 1044(a)(3) (1976).
354. 21 U.S.C. § 1044(a)(7) (1976).
355. 21 U.S.C. § 1039 (1976).
356. Id.
357. 21 U.S.C. § 1046(a) (1976).
358. Id.
359. Id.
360. Id.
361. 21 U.S.C. § 1046(b) (1976).
362. Id. All charges for storage, cartage, and labor with respect to any imported articles not in compliance with the Act must be paid by the owner or consignee of the articles. 21 U.S.C. § 1046(c) (1976).
363. 21 U.S.C. § 1038 (1976).
364. Id.
365. 21 U.S.C. § 1052(a) (1976j).
366. Section 1040 of the Act authorizes the Secretary to establish recordkeeping requirements for any individual or firm engaged in the business of transporting, shipping, or receiving eggs or egg products. Compare 21 U.S.C. § 1052(a) (1976).
367. 21 U.S.C. § 1052(a) (1976).
368. 21 U.S.C. § 1052(b) (1976).
369. 7 U.S.C. §§ 136-136y (1976).
370. See supra, pp. 23-24.
371. 21 U.S.C. §§ 301-392 (1976).
372. 21 U.S.C. § 346(a) (1976).
373. The term "pesticide" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. 7 U.S.C. § 136(u) (1976). It does not include any "new animal drug" (21 U.S.C. § 321(w) (1976)) or animal feed (21 U.S.C. § 321(x) (1976)) within the meaning of the Federal Food, Drug, and Cosmetic Act. Id.
374. Environmental Defense Fund, Inc. v. Hardin, 428 F. 2d 1093 (D.C. Cir. 1970).

375. S. Bloom & S. Degler, Pesticides and Pollution, 41 (1969).
376. Act of June 25, 1947, ch. 125, 61 Stat. 163, (codified as amended, at 7 U.S.C. 135-135k (1970)). The original act was completely revised and redesignated 7 U.S.C. §§ 136-136y, as part of the Federal Environmental Control Act of 1972. Act of October 21, 1972, Pub. L. No. 92-516, 86 Stat. 973. The original act and the pre-1972 amendments were granted temporary continuing application while the new act and its regulations were implemented; that temporary grant of authority has now expired. Act of October 21, 1972, Pub. L. No. 92-516, § 4(b), 86 Stat. 998, as amended by Act of Nov. 28, 1975, Pub. L. No. 94-140, § 4(b), 89 Stat., superseded by sections 136 to 136(y) of that title.
277. Act of October 21, 1972, Pub. L. No. 92-516, 86 Stat. 973.
378. 7 U.S.C. § 136a(a) (1976).
379. 7 U.S.C. § 136a(d)(1) (1976).
380. 7 U.S.C. § 136a(d)(1)(B) (1976).
381. 7 U.S.C. § 136a(d)(1)(C) (1976).
382. 7 U.S.C. § 136a(d)(C) (1976).
383. 7 U.S.C. § 136a(d)(1)(A) (1976).
384. Id.
385. The title "Administrator" refers to the Administrator of the EPA.
386. A "registrant" is any person who has registered a pesticide pursuant to the provisions of the Act. 7 U.S.C. § 136(y) (1976).
387. 7 U.S.C. § 136d(a) (1976).
388. Id.
389. 7 U.S.C. § 136d(b)(1) (1976).
390. 7 U.S.C. § 136d(b)(2) (1976).
391. 7 U.S.C. § 136d(b) (1976).
392. Id.
393. Id.
394. 7 U.S.C. § 136d(c) (1976).
395. The term "imminent hazard" means a situation which exists when the continued use of a pesticide, during the time required for a cancellation proceeding, would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazards to the survival of an endangered or threatened species. 7 U.S.C. § 136d(1) (1976).
396. 7 U.S.C. § 136d(c)(1) (1976).
397. Id.
398. 7 U.S.C. § 136d(c)(2) (1976).
399. 7 U.S.C. § 136d(c)(3) (1976).
400. 7 U.S.C. § 136d(c)(3) (1976).

401. Environmental Defense Fund, Inc. v. Environmental Protection Agency, 548 F. 2d 998 (D.C. Cir. 1976).
402. 7 U.S.C. § 136e (1976).
403. 7 U.S.C. § 136e(c) (1976).
404. 7 U.S.C. § 136g(a) (1976).
405. 7 U.S.C. § 136k(a) (1976).
406. 7 U.S.C. § 136k(b) (1976).
407. 7 U.S.C. § 136l(b) (1976).
408. 7 U.S.C. § 136l(a) (1976).
409. 7 U.S.C. § 136l(b) (1976).
410. 21 U.S.C. §§ 61-64 (1976). The Filled Milk Act is enforced by the Secretary of Health.
21 U.S.C. § 64 (1976).
411. 21 U.S.C. § 62 (1976).
412. 21 U.S.C. § 61(c) (1976). This definition excludes certain food compounds designed for feeding infants or young children and not likely to be mistaken in taste for milk or cream.
Id.
413. 21 U.S.C. § 62 (1976).
414. Act of March 4, 1923, ch. 262, 42 Stat. 1486.
415. 304 U.S. 144 (1938).
416. Carolene Products Co. v. U.S., 323 U.S. 18 (1944).
417. U.S. v. Carolene Products, 51 F. Supp. 675 (D.C. W. Va.), affd., 140 F. 2d 61 (4th Cir.), affd., 323 U.S. 18 (1944).
418. Milnot Co. v. Richardson, 350 F. Supp. 221 (S.D. Ill. 1972).
419. Id. at 225.
420. The Filled Cheese Act was codified at 26 U.S.C. §§ 4831-4834, 4836, 4841, 4842, and 4846 (1970); the Adulterated and Process or Renovated Butter Act was codified at 26 U.S.C. §§ 4811-4819, 4821, 4822, and 4826 (1970).
421. Act of October 26, 1974, Pub. L. No. 93-490, § 3(a)(1), 88 Stat. 1466.
422. Act of October 4, 1976, Pub. L. No. 94-455, § 1904(a)(17), 90 Stat. 1814.
423. 21 U.S.C. §§ 301-392 (1976).
424. 15 U.S.C. §§ 1451-1461 (1976).
425. 21 U.S.C. §§ 141-149 (1976).
426. 21 U.S.C. § 141 (1976).
427. 21 U.S.C. § 143 (1976).
428. 21 U.S.C. § 142 (1976).
429. 21 U.S.C. § 143 (1976).

430. 7 U.S.C. §§ 1621-1627 (1976).
431. 7 U.S.C. § 1622(c) (1976).
432. 21 U.S.C. §§ 301-392 (1976).
433. 7 U.S.C. § 1625 (1976).
434. 7 U.S.C. § 1621 (1976).
435. Sen Rep. No. 1843, 79th Cong., 2d. Sess., reprinted in 1946 U.S. Code Cong. & Ad. News 1584.
436. 7 U.S.C. § 1622(c)
437. 7 C.F.R. Part 2851 (1981).
438. 7 C.F.R. Part 2852 (1981).
439. 7 C.F.R. Part 2853 (1981).
440. 7 C.F.R. Part 2870 (1981).
441. 7 C.F.R. Part 2870 (1981).
442. 7 C.F.R. Part 2855 (1981).
443. 7 C.F.R. Part 2856 (1981).
444. 7 C.F.R. Part 2828 (1981).
445. For example, standards for grain are promulgated under the U.S. Grain Standards Act. 7 U.S.C. §§ 71-87h (1976). Special export standards have been adopted for apples and pears (7 U.S.C. §§ 581-590 (1976) as well as grapes and plums (7 U.S.C. §§ 591-599 (1976)). These standards and their corresponding statutes are discussed separately infra.
446. See, e.g., 7 C.F.R. Parts 2851-58, 70 (1981).
447. 7 C.F.R. §§ 2851.340-2851.342 (1981).
448. 7 C.F.R. §§ 2851.300-2851.304 (1981).
449. 7 C.F.R. §§ 2851.750-2851.759 (1981).
450. 7 C.F.R. § 2851.521 (1981).
451. 7 C.F.R. § 2853.4 (1981).
452. 7 C.F.R. § 2853.112-2853.137 (1981).
453. 7 C.F.R. § 2853.5 (1981).
454. 261 F.Supp. 622 (D.Ore. 1966).
455. Maine Potato Growers, Inc. v. Butz, 54U F. 2d 518 (1st Cir. 1976).
456. 7 U.S.C. § 1621 (1976).
457. 7 U.S.C. § 1624 (1976).
458. Id.
459. Id.

460. 514 F 2d 272 (D.C.Cir. 1975).
461. 7 U.S.C. §§ 71-87h (1976).
462. Act of August 11, 1916, ch. 313, 39 Stat. 482.
463. Act of August 15, 1968, Pub. L. No. 90-487, 82 Stat. 761.
464. Act of Oct. 21, 1976, Pub. L. No. 94-582, 90 Stat. 2867.
465. Act of Sept. 29, 1977, Pub. L. No. 95-113, 91 Stat. 1025.
466. 7 U.S.C. § 74 (1976).
467. Id.
468. 7 U.S.C. § 75a (1976).
469. Id.
470. Id.
471. 7 U.S.C. § 76(a) (1976).
472. 7 U.S.C. § 76(a)(1) (1976). The current grain standards are promulgated through the Agricultural Marketing Service and are found at 7 C.F.R. Part 26 (1981).
473. 7 U.S.C. § 76(a)(2) (1976).
474. 7 U.S.C. § 78(a) (1976).
475. Hayes Grain Co. v. Rea-Patterson Milling Co., 145 Ark, 65, 22 S.W. 390 (1920).
476. 7 U.S.C. § 78(a) (1976).
477. 7 U.S.C. § 78(b) (1976).
478. 7 C.F.R. Part 26 (1981).
479. 231 F.Supp. 432 (D.Ok1. 1964). Accord, Farmers Elevator Mutual Ins. Co. v. Stanford, 280 F.Supp. 523 (D.Tex.), aff'd, 408 F.2d 776 (1967).
480. 7 U.S.C. § 76(a) (1976).
481. 7 U.S.C. § 76(b) (1976).
482. Id.
483. 7 U.S.C. § 77(a)(1) (1976).
484. Id.
485. The term "export port location" means a commonly recognized port of export in the United States or Canada, as determined by the Administrator, from which grain produced in the United States is shipped to any place outside the United States. 7 U.S.C. § 75(w) (1976).
486. 7 U.S.C. § 77(a)(2) (1976).
487. 7 U.S.C. § 77(a)(3) (1976).
488. 7 U.S.C. § 77(b) (1976).
489. 7 U.S.C. § 77(a)(1) (1976).

490. The term "Administrator" is used to refer to the Administrator of the Federal Grain Inspection Service or his delegates. 7 U.S.C. § 75(z) (1976).
491. 7 U.S.C. § 77(a) (1) (1976).
492. 7 U.S.C. § 79(e) (2) (1976). See also 7 U.S.C. § 71(e) (2) (1976).
493. 7 U.S.C. § 79(e)(3) (1976).
494. Id.
495. 7 U.S.C. § 79(e)(2) (1976).
496. Id.
497. 7 U.S.C. § 79(f) (1976).
498. 7 U.S.C. § 79(f)(1)(A) (1976).
499. 7 U.S.C. § 79(g)(1) (1976).
500. 7 U.S.C. § 79(g)(2) (1976).
501. 7 U.S.C. § 79(g)(3) (1976).
502. Id.
503. 7 U.S.C. § 84 (1976).
504. 7 U.S.C. § 84 (1976).
505. 7 U.S.C. § 84(a)(1) (1976).
506. 7 U.S.C. § 84(a) (1976).
507. 7 U.S.C. § 84(b) (1976).
508. Id.
509. Id.
510. 7 U.S.C. § 84(c) (1976).
511. 7 C.F.R. § 26.78 (1981).
512. 7 U.S.C. §§ 581-590 (1976).
513. 7 U.S.C. §§ 591-599 (1976).
514. H.R. Rep. No. 2107, 85th Cong., 2d Sess., reprinted in 1960 U.S. Code Cong. & Ad. News 3273.
515. 7 U.S.C. §§ 581, 591 (1976).
516. Id.
517. Id. The regulations for apples and pears appear at 7 C.F.R. Part 33 (1981). The corresponding regulations for grapes and plums appear at 7 C.F.R. Part 35 (1981).
518. U.S.C. §§ 583, 593 (1981).
519. Id.
520. 7 U.S.C. §§ 585, 595 (1976).

521. 7 U.S.C. §§ 586, 596 (1976).
522. Id.
523. 7 U.S.C. § 594 (1976).
524. 7 U.S.C. § 584 (1976).
525. Act of August 14, 1946, ch. 966, 60 Stat. 107.
526. Act of August 8, 1956, ch. 1036, § 6(a), 70 Stat. 1119.
527. Reorg. Plan No. 4 of 1970, § 1, 84 Stat. 2090.
528. 50 C.F.R. § 260 (1981).
529. 50 C.F.R. § 260.96 (1981).
530. 50 C.F.R. § 260 (1981).
531. Act of August 11, 1916, ch. 313, 39 Stat. 486.
532. 7 U.S.C. §§ 241-273 (1976).
533. Greater Baton Rouge Port Comm. v U.S., 287 F.2d 86 (5th Cir.), cert. denied, 368 U.S. 985 (1961).
534. Farmers Elevator Mutual Insurance Co. v. Jewett, 394 F.2d 896 (10th Cir. 1968).
535. A "warehouseman" is a person lawfully engaged in the business of storing agricultural products. 7 U.S.C. § 242 (1976).
536. 7 U.S.C. § 244 (1976).
537. 7 U.S.C. § 243 (1976).
538. 7 U.S.C. § 252 (1976).
539. 7 U.S.C. § 244, 252 (1976).
540. 7 U.S.C. § 246 (1976).
541. Id.
542. Id.
543. 7 U.S.C. § 266 (1976).
544. 7 U.S.C. § 247 (1976).
545. Id.
546. 7 U.S.C. § 250 (1976).
547. It should be noted that the Act itself states that any agricultural product stored in a federally licensed warehouse is automatically subject to the terms of the Act and the regulations promulgated thereunder. 7 U.S.C. § 255 (1976). This provision means that grain stored in such a warehouse is presumed to be intended for interstate commerce. Girand v. Kimbell Milling Co., 116 F.2d 999 & 1001 (5th Cir. 1941).
548. 7 U.S.C. § 256 (1976).
549. 7 U.S.C. § 257 (1976).

550. 7 U.S.C. §§ 71-87h (1976).
551. 7 U.S.C. § 258 (1976).
552. Id.
553. Id.
554. 7 U.S.C. § 259 (1976).
555. 7 U.S.C. § 260 (1976).
556. Id.
557. Id.
558. 7 U.S.C. § 262 (1976).
559. Id.
560. Id.
561. 7 U.S.C. § 263 (1976).
562. 7 U.S.C. § 268 (1976).
563. 7 C.F.R. Part 101 (1981).
564. 7 C.F.R. Part 102 (1981).
565. 7 C.F.R. Part 103 (1981).
566. 7 C.F.R. Part 104 (1981).
567. 7 C.F.R. Part 106 (1981).
568. 7 C.F.R. Part 107 (1981).
569. 7 C.F.R. Part 108 (1981).
570. 7 C.F.R. Part 111 (1981).
571. 7 C.F.R. Part 151 (1981).
572. 7 U.S.C. § 264 (1976).
573. Id.
574. 7 U.S.C. § 265 (1976).
575. 7 U.S.C. § 267 (1976).
576. 7 U.S.C. § 265 (1976).
577. Id.
578. Act of August 11, 1916, ch. 313, Part C, § 29, 39 Stat. 490.
579. 7 U.S.C. § 269 (1976).
580. Rice v. Santa Fe Elevator Co., 331 U.S. 218 (1947).
581. 331 U.S. 218 (1947).

582. Id. at 234.
583. Id. at 236-237.
584. Id.
585. 7 U.S.C. § 269 (1976).
586. Id.
587. 7 U.S.C. § 270 (1976).
588. Id.
589. Id. Additional penalties are also available.
590. 15 U.S.C. § 272(a) (1976).
591. 15 U.S.C. §§ 231-242 (1976).
592. Act of August 3, 1912, ch. 273, 37 Stat. 250.
593. 15 U.S.C. § 231 (1976).
594. 15 U.S.C. § 234 (1976).
595. 15 U.S.C. § 232 (1976).
596. 15 U.S.C. § 235 (1976).
597. 15 U.S.C. § 236 (1976).
598. Act of October 22, 1978, Pub. L. No. 90-628, § 1(a), 82 Stat. 1320 repealed 15 U.S.C. §§ 251-256 (1964).
599. 15 U.S.C. §§ 1451-1461 (1976).
600. See discussion at p. 40, supra.
601. 21 U.S.C. §§ 301-392 (1976).
602. 15 U.S.C. §§ 1451-1461 (1976).
603. The following provisions of the two acts are roughly equivalent: 21 U.S.C. § 343(3) (1) (1976) and 15 U.S.C. § 1453(a) (1) (1976); 21 U.S.C. § 343(e) (2) (1976) and 15 U.S.C. § 1453(a) (2) (1976); 21 U.S.C. § 343(f) (1976) and 15 U.S.C. § 1453(a) (3) (1976); 21 U.S.C. § 343(d) (1976) and 15 U.S.C. § 1454(c) (4) (1976).
604. 15 U.S.C. § 1455(a) (1976).
605. 15 U.S.C. § 1455(b) (1976).
606. 21 C.F.R. Part 101 (1981).
607. 21 C.F.R. Part 1 (1981).
608. See 15 C.F.R. Part 12 (1981).
609. 21 C.F.R. § 101.1 (1981).
610. 21 C.F.R. § 101.2(a) (1981).
611. 21 C.F.R. § 101.1 (1981).

612. 21 C.F.R. § 101.2(a) (1981).
613. 21 C.F.R. § 101.2(b) (1981).
614. 21 C.F.R. § 101.3(b)(2) (1981).
615. 21 C.F.R. § 101.3(a) (1981).
616. 21 C.F.C. § 101.3(c) (1981).
617. Id.
618. 21 C.F.R. § 101.3(d) (1981).
619. 21 C.F.R. § 101.1 (1981).
620. 21 C.F.R. § 101.5(a) (1981).
621. 21 C.F.R. § 101.5(b) (1981).
622. 21 C.F.R. § 101.5(c) (1981). Examples of qualifying statements given in the regulation are "Manufactured for _____" or "Distributed by _____."
623. 21 C.F.R. § 101.5(e) (1981).
624. 21 C.F.R. § 101.4(d) (1981).
625. 21 C.F.R. § 101.4(b) (1981).
626. 21 C.F.R. § 101.22 (1981).
627. 21 U.S.C. § 341 (1976).
628. 21 C.F.R. § 101.6(b) (1981).
629. 21 C.F.R. § 101.6(c) (1981).
630. 21 C.F.R. § 101.6(a) (1981).
631. 21 C.F.R. § 101.8(a) (1981)
632. Id.
633. Id.
634. 21 C.F.R. § 101.9(a) (1981).
635. Id. However, if the only nutritional claim is in regard to sodium content, the special rules do not apply. Id.
636. 21 C.F.R. § 101.9(a) (1) (1981).
637. The term "serving" means the reasonable quantity of food suited for consumption as part of a meal by an adult male engaged in light physical activity, or by an infant or child under four years of age when the article purports to be for consumption by an infant or child under four years of age.
638. 21 C.F.R. § 101.9(b) (1981).
639. Id.
640. 21 C.F.R. § 101.9(b) (3) (1981).
641. Id.

642. 21 C.F.R. § 101.9(c) (3)-(6) (1981).
643. 21 C.F.R. § 101.9(c) (7) (1981). The U.S. Recommended Daily Allowances for vitamins and minerals are found at 21 C.F.R. 101.9(c) (7) (iv) (1981).
644. 21 C.F.R. § 101.9(c) (7) (v) (1981).
645. Id.
646. 21 C.F.R. § 101.9(h) (1981).
647. 21 C.F.R. § 101.9(i) (1981).
648. 21 C.F.R. § 101.9(i) (1) (1981).
649. 21 C.F.R. § 101.9(i) (2) (1981).
650. 21 C.F.R. § 101.9(i) (6) (1981).
651. Id.
652. 21 C.F.R. § 101.9(i) (1981).
653. 15 C.F.R. Part 12 (1981).
654. 15 U.S.C. § 1454(d) & (e) (1976).
655. 15 C.F.R. § 12.3(a) (1981).
656. 15 C.F.R. § 12.1(d) (1981).
657. 15 C.F.R. § 12.2(a) (1981).
658. 15 C.F.R. § 12.2(d) & (e) (1981).
659. Id.
660. 15 C.F.R. § 12.3(a) (1981).
661. 15 C.F.R. § 12.1(c)(3) (1981).
662. Id.
663. "Nonfunctional slack-fill" occurs when a package is filled to substantially less than its capacity for reasons other than the protection of its contents or the requirements of the machines used for enclosing the contents in the package. 15 U.S.C. § 1454(c)(4) (1976).
664. Id.
665. 15 U.S.C. § 1454(c)(2) (1976).
666. The regular price (or "ordinary and customary price") is the price at which the product has been openly and actively sold in the most recent regular course of business in a particular retail outlet or trade area for a reasonably substantial period of time (at least 30 days). 21 C.F.R. § 1.35(b)(3) (1981). For products that fluctuate in price, the ordinary and customary price is the lowest price at which any substantial sales were made in the last 30 days. Id.
667. 21 C.F.R. § 1.35(a)(1) (1981).
668. 21 C.F.R. § 1.35(a)(2) (1981).
669. 21 C.F.R. § 1.35(a)(3) (1981).
670. 21 C.F.R. § 1.35(b)(1) (1981).

671. 21 C.F.R. § 1.31(a)(1) (1981).
672. 21 C.F.R. § 1.31(a)(2) (1981).
673. 21 C.F.R. § 1.31(a)(3) (1981).
674. Id.
675. Compare 21 U.S.C. § 601(o) & (p) (1976) with 21 U.S.C. § 321(k) (1976).
676. 9 C.F.R. § 316.3(a) (1981).
677. 9 C.F.R. § 316.5 (1981).
678. 9 C.F.R. § 316.7 (1981).
679. 9 C.F.R. § 317.2(b) (1981).
680. See 21 C.F.R. § 101.1 (1981).
681. 9 C.F.R. § 317.2(c)(1) (1981).
682. 9 C.F.R. § 317.2(c)(2) (1981).
683. 9 C.F.R. § 317.2(f)(1) (1981).
684. 9 C.F.R. § 317.2(c)(3) (1981).
685. 9 C.F.R. § 317.2(c)(5) (1981).
686. 9 C.F.R. § 317.2(c)(4) (1981).
687. 9 C.F.R. § 317.2(h)(3) (1981).
688. 9 C.F.R. § 317.2(h)(2) (1981).
689. 9 C.F.R. § 381.115 (1981).
690. 9 C.F.R. § 381.116(b) (1981).
691. 9 C.F.R. § 317.2(b) (1981).
692. 21 C.F.R. § 101.1 (1981).
693. 9 C.F.R. § 381.116(b) (1981).
694. 9 C.F.R. § 381.116(b)(2) & (3) (1981).
695. 9 C.F.R. § 381.117(a) (1981).
696. 9 C.F.R. § 381.117(c) (1981).
697. 9 C.F.R. § 381.117(d) (1981). Boneless poultry products may not have a bone solids content of more than one percent calculated by weight. Id.
698. Id.
699. 9 C.F.R. § 381.118(a) (1981).
700. 9 C.F.R. § 381.118(a) (1981).
701. 9 C.F.R. § 381.119(b) (1981).
702. 9 C.F.R. § 381.120 (1981).

703. 9 C.F.R. § 381.121(a) (1981).
704. 9 C.F.R. § 381.121(b) (1981).
705. 9 C.F.R. § 381.121(c)(3) (1981). Compare this regulation with 21 C.F.R. § 101.15 (1981) (Food and Drug Administration Regulations) and 9 C.F.R. § 316.7 (1981) (labeling regulations for meat.)
706. 9 C.F.R. § 381.121(c)(6) (1981).
707. A random weight package is one of a lot, shipment, or delivery of packages of the same product with varying weights and with no fixed weight patterns 9 C.F.R. § 381.121(c)(9) (1981).
708. Id.
709. 9 C.F.R. § 381.121(c)(7) (1981).
710. 9 C.F.R. § 381.122 (1981).
711. Id.
712. 9 C.F.R. § 381.123(a) and (b) (1981).
713. 9 C.F.R. § 381.124 (1981).
714. Id. The regulations referred to are found at 21 C.F.R. Part 125 (1981).

Chapter 3

PRODUCER-ORIENTED MARKET REGULATION

Packers and Stockyards Act

Since its enactment in 1921,^{1/} the Packers and Stockyards Act ^{2/} has regulated meat packers, stockyards and stockyard dealers, and live poultry dealers and handlers. Shortly after passage, its constitutionality was challenged and upheld by the Supreme Court in Stafford v. Wallace.^{3/}

In a subsequent case,^{4/} the Supreme Court stated that the dominant purpose of the Act is to make sure that stockyard patrons can obtain services at fair and reasonable rates. The lower federal courts have delineated other purposes of the Act: to stabilize and encourage livestock production by building confidence in the financial stability of dealers,^{5/} to maintain free and open competition among buyers,^{6/} to insure the proper handling of a shipper's funds and their proper transmission to the shipper,^{7/} to protect consumers by regulating stockyards in a manner similar to public utilities,^{8/} and to protect producers and consumers of poultry against certain deleterious practices of middlemen.^{9/}

The Act empowers the Secretary of Agriculture to regulate the business of public stockyards and their market agencies. This power has been construed as encompassing all of the material incidents and relationships of the marketing process.^{10/} Since the Packers and Stockyards Act is remedial legislation, courts have reasoned that it should be liberally construed.^{11/}

A packer, for the purposes of this act, is any person who (1) buys livestock in commerce for the purpose of slaughter, (2) manufactures or prepares meat or meat food products for sale or shipment in commerce, or (3) markets meats or meat food products in an unmanufactured form, acting as a wholesale dealer, broker, or distributor in commerce.^{12/} A stockyard is defined as any place, establishment, or facility conducted or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, and consisting of pens in which cattle, sheep, swine, horses, mules, or goats are received and held for sale or shipment in commerce. ^{13/} The Secretary of Agriculture is allowed to determine what is considered a stockyard under the Act,^{14/} and must give notice to the public and to the facility's owners ^{15/} when he determines that a particular establishment is a federally regulated stockyard.^{16/}

General Prohibitions

The Act includes sections which prohibit certain kinds of conduct by packers and live poultry dealers ^{17/} including:^{18/} (1) engaging in any unfair, unjustly discriminatory, or deceptive practice, (2) giving unreasonable preference or advantage to any person or locality, (3) subjecting any particular person or locality to any unreasonable prejudice or disadvantage, (4) selling or transferring any article to another packer or poultry dealer for the purpose of apportioning the supply of that article and creating a restraint on commerce or a monopoly, (5) selling or transferring any article for the purpose of manipulating or controlling prices, or (6) engaging in any course of business for the purpose of manipulating prices or creating a monopoly.

A conspiracy, combination, or agreement with others to engage in any of the proscribed activities also violates the Act,^{19/} as do conspiracies or agreements to apportion territory, manipulate prices, or apportion purchases or sales of any article.^{20/}

The responsibility for enforcement lies with the Secretary of Agriculture.^{21/} The provisions do not, however, give the Secretary the power to directly regulate prices, discounts, or sales methods,^{22/} or create any private right of action for civil damages.^{23/}

The application of these provisions to private contracts, particularly those which prohibit bias against a particular person or locality, may produce some unexpected results. In Sullivan Co. v. Wells ^{24/} the seller of a load of cattle received a worthless check in payment. In the interim, the buyer sold the cattle to an innocent third party. The original buyer used the services of the defendant, a licensed commission dealer, to make the sale. The original seller sought recovery from the commission dealer. The dealer successfully defended his actions on the ground that he had no choice in agreeing to be the agent for the original buyer in his sale to the innocent third party.

Since the Act prohibits discriminatory treatment, he argued that he was not in a position to pick his principal and, therefore, should not be held accountable.

Most courts exhibit flexibility when determining whether preferential or discriminatory treatment is "unreasonable" under any given set of circumstances. In Swift & Co. v. Wallace ^{25/} the court held that all of the factors that determine the scope and nature of the preferential treatment must be considered. The case involved the use of certain allegedly discriminatory discounts, terms of credit and other trade practices. The court upheld the use of the practices on the grounds that they were required by the exigencies of the business and were not otherwise unlawful.

Regulation of Stockyards and Stockyard Dealers

The Act also establishes rules governing stockyards, market agencies, and stockyard dealers.^{26/} A market agency is defined as any individual or firm engaged in the business of buying or selling livestock on a commission basis or furnishing stockyard services.^{27/} A dealer is any person, not a market agency, engaged in the business of buying and selling livestock, either on his own account or as an employee or agent of the vendor or purchaser.^{28/}

When it is determined that a stockyard is subject to federal regulation, the Secretary of Agriculture must post notices declaring that at the stockyard.^{29/} Within 30 days of posting, every market agency or dealer doing business at the stockyard must register his name and address, the character of the business in which he is engaged, and the kinds of services which he furnishes at the stockyard with the Secretary.^{30/} The stockyard owner must determine that the services of the market agency or dealer will be beneficial to the stockyard and its customers.^{31/} This determination must not be unreasonable or unjustly discriminatory. If the Secretary finds that a registrant has violated any provision of the Act or has become insolvent, he may temporarily suspend registration.^{32/}

The Secretary may require reasonable bonds from most market agencies, dealers, and packers in connection with their livestock purchase operations.^{33/} Packers whose average annual purchase of livestock is less than \$500,000 are exempt.^{34/} The bond's purpose is to secure the performance of market agencies, dealers, and packers and so protect farmers and ranchers against losses from selling livestock to insolvent or defaulting purchasers.^{35/}

The stockyard owner and all market agencies at the stockyard are required to file with the Secretary a schedule of rates and charges for stockyard services ^{36/} within 60 days of the public notice that the stockyard is covered by the Act. If a market agency commences business at the stockyard after the 60-day period, its schedule must be filed with the Secretary before it may begin furnishing any stockyard services.^{37/} The schedule must be available for public inspection.^{38/} The Secretary prescribes the preparation and content of the schedules.^{39/}

A stockyard owner or market agency may not deviate from the charges for services listed on its schedule.^{40/} However, the schedule may be amended if ten days notice is given to the Secretary and to the public.^{42/} The Secretary may allow less than ten days in special or unusual circumstances.^{43/}

The Secretary may prescribe rates and charges in certain instances.^{44/} If he determines, after a full hearing, that any rate, charge, regulation, or practice of a stockyard owner or market agency is unreasonable or discriminatory, he may take corrective action. He may specify reasonable minimum and maximum rates ^{45/} and may prescribe allowable practices and regulations.^{46/} Owners and market agencies may be ordered to comply with the rates and terms established by the Secretary.^{47/}

The Secretary establishes rates in a formal rate proceeding similar to that used by public utility commissions to determine utility rates.^{48/} A rate base is calculated from the value of the property owned by the stockyard. After allowing for the costs of operation, a reasonable rate of return is determined.

The Secretary's power to establish stockyard rates has been the subject of much litigation. In Union Stock Yards Co. v. United States ^{49/} the court upheld the use of a rate base/rate of return formula. The rates derived from the base value were held to have been reasonable.

One method used in determining rates is to examine the rates charged in previous years. In St. Joseph Stock Yards Co. v. United States ^{50/} the Supreme Court held that the Secretary is not

limited to the year immediately preceding the rate hearing, but may also consider rates charged in previous years. In that case, the Secretary had examined the rate structure over the preceding six years.

The USDA is not required to use the same method to determine the rates for different types of stockyards (e.g., auction stockyards, terminal stockyards),^{51/} but may consider differences in determining the applicable rate formula. Therefore, if a rate base/rate of return formula is used for auction stockyards, it does not necessarily follow that the same formula must also be used for terminal stockyards.

Regulation of Poultry Dealers and Handlers

The Packers and Stockyards Act was expanded in 1935 to cover live poultry markets.^{52/} The constitutionality of this extension has been upheld by lower courts.^{53/} The extension applies to live poultry dealers and handlers,^{54/} and is designed to suppress unfair, deceptive, and fraudulent practices in the handling of live poultry.

The Act authorizes the Secretary to license poultry dealers and handlers.^{55/} Any person desiring a license must provide the prescribed information to the Secretary. A license will then be issued unless the applicant has engaged in any prohibited activities within the previous two years^{56/} or is financially unable to fulfill the obligations of a licensee.^{57/} The applicant must have an opportunity for a hearing on these issues.^{58/}

A poultry license may be suspended if the licensee violates any provision of the Act.^{59/} If the violation is flagrant or repeated, the license may be revoked.^{60/} However, one court held that the mere fact that the licensee no longer has the financial capacity to fulfill his obligations (a prerequisite to obtaining a license) is not a sufficient reason for revoking the license.^{61/}

Records

The Act requires that the stockyard owner, packer, market agency, dealer, and live poultry handler keep accurate accounts and business records^{62/} which disclose all transactions, including the true ownership of the business. The Secretary, upon determining that the records do not meet the statutory standards, may prescribe the manner and form in which those business records must be kept.^{63/} This authority has been recognized by the courts as essential to accomplishing the purposes of the Act.^{64/} The Secretary may not, however, examine the business records of any party prior to issuing a complaint or charging that party with a violation of the Act.^{65/}

Enforcement Authority

Certain provisions of the Federal Trade Commission Act^{66/} have been expressly made applicable to enforcement of the Packers and Stockyards Act by the Secretary of Agriculture.^{67/} The reason for this, according to the statute, is twofold: (1) to provide for the efficient execution of the Packers and Stockyards Act, and (2) to provide information for Congress.^{68/}

The FTC has jurisdiction over meat, livestock, and poultry products in certain instances in which jurisdiction would ordinarily lie with the USDA.^{69/} One such instance is when the Secretary of Agriculture requests the Commission to investigate and report on the marketing situation of any commodity.^{70/} The FTC also has jurisdiction over all transactions involving margarine and oleomargarine and over the retail sales of meat, meat food products, livestock products in unmanufactured form, and poultry products.^{71/}

A disclaimer in the Packers and Stockyards Act states that it should not be construed as affecting the power or the jurisdiction of the Interstate Commerce Commission (ICC).^{72/} Furthermore, the Act does not confer upon the Secretary of Agriculture concurrent power or jurisdiction over any matter within the power or jurisdiction of the ICC.^{73/} Therefore, a stockyard company serving common carriers by loading and unloading stock has been held to be subject to the ICC and not to the Secretary of Agriculture.^{74/}

The opposite situation is equally true: the ICC may not encroach upon the regulatory jurisdiction of the Secretary of Agriculture. In one Supreme Court case,^{75/} the Commission brought action

against certain railroad companies engaged in transporting livestock. The companies' obligation terminated upon unloading the animals at the stockyards. The court held that the Commission did not have the jurisdiction to inquire into the reasonableness of yardage charges made by the stockyards.76/

Any violations of the Packers and Stockyards Act may be reported by the Secretary of Agriculture to the U.S. Attorney General.77/ The Attorney General may begin appropriate proceedings and prosecute in the federal courts.78/

Perishable Agricultural Commodities Act

Congress enacted the Perishable Agricultural Commodities Act 79/ to regulate the interstate shipping and handling of perishable commodities such as fruits and vegetables.80/ The Act is designed to prevent unscrupulous merchants and dealers from taking advantage of producers by wrongfully rejecting goods upon their arrival at a point where it is expensive and impractical for the producers to enforce their rights.81/ The Act achieves its goals by licensing merchants, dealers, and brokers and by prohibiting various kinds of unfair conduct.

General Prohibitions

The Act prohibits any commission merchant,82/ broker,83/ or dealer from engaging in any unfair, discriminatory, or deceptive practice in connection with weighing, measuring, or counting perishable agricultural commodities.84/ For the purposes of this Act, the term "perishable agricultural commodities" covers only fresh fruits and vegetables including those that have been frozen or packed in ice.85/

As a general rule, any person who buys or sells perishable agricultural commodities in wholesale quantities is considered to be a dealer.86/ However, the Act contains some exceptions. A person purchasing these commodities solely to sell them at the retail level is not a dealer if the invoice cost of his purchases is less than \$200,000 in any calendar year.87/ Producers are not considered dealers with respect to the sale of their own products.88/ Those who buy commodities (other than potatoes) for canning or processing within the state where they were grown are not dealers, even though the processed or canned products are subsequently shipped in interstate commerce.89/

The Act prohibits a dealer from failing to deliver any perishable agricultural commodity in accordance with the terms of the contract.90/ Commission merchants are forbidden to discard, dump, or destroy perishable commodities without reasonable cause.91/ A dealer, broker, or commission merchant is required to make prompt payments in any transaction involving perishable commodities.92/

A dealer will be held liable under the Act for rejecting without reasonable cause any shipment of perishable commodities he has contracted to buy.93/ Of course, not all rejections will be deemed unreasonable. In J.R. Simplot Co. v. L. Yokon & Son Produce Co. 94/ a dealer contracted for a shipment of clean potatoes. The potatoes actually delivered were caked with dirt and were rejected by the dealer. The court held that the Act did not prevent the rejection since the seller had not been complied with the contract.

Licensing

All brokers, dealers, and commission merchants must be licensed.95/ Any other person desiring to be licensed under the Act must apply to the Secretary of Agriculture.96/ For example, a person who is exempted by one of the provisions of the Act may still secure a license.97/ The form and details of the license application are prescribed by the Secretary.98/

A licensee may conduct business under more than one trade name or change the name under which the business is conducted without securing a new or additional license.99/ The Secretary may disallow the use of a deceptive or confusing trade name.100/ The license of anyone who continues to use a trade name disapproved by the Secretary may be suspended for up to 90 days.101/

The Secretary may refuse to license any person who has committed flagrant or repeated violations of the Act 102/ or whose license has been revoked 103/ within two years of the date of application. An ineligible applicant may seek a new license at the end of the two-year period, but must furnish a

surety bond.104/ Without a surety bond, the applicant must wait three years after the date of the disqualifying incident.105/

Every licensee is required to maintain accounts and records that fully and accurately disclose all business 106/ and indicate the true ownership of the business, whether by stockholding or otherwise. Failure to maintain the required records may result in the suspension of the license.107/

Remedies

A person who violates the Act is liable to the person injured by his actions for the full amount of the damages sustained.108/ This liability may be enforced by a complaint made to the Secretary of Agriculture or by a suit in any court of competent jurisdiction.109/ A complaint in the form of a petition stating the facts supporting the alleged violation may be filed with the Secretary within nine months of the cause of action.110/ If the Secretary decides that the facts justify the complaint, he will send a copy of the complaint to the person charged.111/

A complaint may also be brought by any state officer, state agency or USDA employee for the purpose of investigating possible violations of the Act by persons within their jurisdiction.112/ The Secretary may investigate the matter if the facts warrant.113/

A hearing be held on any complaint where the damages claimed exceed \$3,000.114/ Lesser complaints may be resolved on the basis of depositions and verified statements of fact.115/ The hearing also may be waived by the person accused of violating the Act. The Secretary decides whether a violation has actually occurred.116/ If a violation is found, he may determine the damages and issue a reparation order for that amount.117/ The order may be appealed within 30 days to a federal district court.118/

Produce Agency Act

The Produce Agency Act 119/ prohibits the destruction or dumping of farm produce 120/ without good cause.121/ Enacted in 1927,122/ three years before the Perishable Agricultural Commodities Act,123/ the Produce Agency Act does not abrogate or nullify any other statute 124/ except to the extent that it is inconsistent with the Act.126/

The Act also prohibits defrauding those who supply or ship farm produce.127/ All produce received is subject to truthful and accurate accounting. Violation of these prohibitions is a misdemeanor.128/

The Secretary of Agriculture is authorized to establish rules and regulations for implementing the Act.129/ In enforcing the Act, the Secretary may cooperate with state agencies and officers and employees of state agencies.130/ The Justice Department is responsible for prosecuting violators.131/

Federal Seed Act

The Federal Seed Act,132/ administered by the USDA, is designed to insure that producers know the kind and quality of seed they are purchasing. According to one interpretation,133/ the purpose of the Act is simply to make the buyer aware of the product and to protect against adulteration. The burden of ascertaining what is actually being sold is placed upon the seed distributor, who is presumed to be in the best position to know.134/

The Act makes it unlawful to ship improperly labeled seeds 135/ in interstate commerce.136/ Labeling must include the name of the kind or variety of agricultural seed 137/ and its origin,138/ if the Secretary of Agriculture has determined that the point of origin is important. In the case of mixtures, any seed comprising more than five percent must be identified.139/ The label must indicate the percentage by weight of any inert matter.140/ The name of the company that ships the seeds must appear on the label.141/

The USDA may analyze or examine seeds that are subject to the Act.142/ The rules and regulations for examining seeds are promulgated by the Secretary of Agriculture,143/ or, for seeds shipped in foreign commerce, jointly by the Treasury Department and the USDA.144/

Reasonable tolerance and percentage regulations may be established for seeds.^{145/} To insure compliance with these regulations, seed samples may be taken.^{146/} The samples must be substantially uniform with respect to the mass of seeds from which they are taken.^{147/}

Any seed shipped in violation of the Act in interstate commerce may be seized.^{148/} The Secretary may report the violation to a United States Attorney for prosecution.^{149/} The person against whom the proceeding is instituted must be given appropriate notice and an opportunity to respond.^{150/} A federal district court may condemn the seed, in which case it must be destroyed, sold, or returned to the owner.^{151/} If the seed is returned, the owner must pay the court costs and fees. He must also execute a surety bond guaranteeing that the seed will not be disposed of in any manner contrary to the provisions of the Act.^{152/}

Some litigation has resulted on the issue of state versus federal enforcement of seed laws. In Ferry Morse Seed Co. v. Corley ^{153/} an action was brought in a federal district court to enjoin state officials from seizing seeds shipped into the state by an out-of-state seller. The state officials had determined that the seeds were not in compliance with state law. The district court held that the state officials could be enjoined from enforcing the state statute since such action constituted an unlawful burden on interstate commerce.

Legislation Affecting Agricultural Producers' Associations

Early cooperative marketing efforts ran afoul of the nation's antitrust laws.^{154/} Now, however, due largely to the enactment of the Clayton Act, the Capper-Volstead Act, and the Cooperative Marketing Act of 1926,^{155/} agricultural producers may legitimately form cooperatives. Furthermore, the Agricultural Fair Practices Act ^{156/} prohibits discriminatory action against those producers who form or join a cooperative.

Clayton Act

The first provision granting producers' cooperatives some protection from the antitrust laws was section 6 of the Clayton Act,^{157/} which provided that nonprofit agricultural organizations without capital stock would not be viewed as conspiracies in restraint of trade. This limited exemption from the antitrust laws did not achieve the intended purpose because the cooperatives could not offer stock, were required to be nonprofit, and were required to confine their activities to the mutual aid of their individual members.

Capper-Volstead Act

The Capper-Volstead Act,^{158/} enacted eight years after the Clayton Act, did much to clarify and extend the earlier act. The Act does not expressly exempt producers' associations from the antitrust laws, but rather lists certain activities in which those associations may engage. For this reason, it is usually referred to as an "implied exemption."

The Act authorizes producers of agricultural products to join together in associations (with or without capital stock) in order to collectively process, prepare for market, handle, and market their products in interstate and foreign commerce.^{159/} The provisions do restrict voting rights, maximum dividends, and the marketing of nonmembers' products. Qualifying organizations are allowed to use a common marketing agency and may enter into agreements to carry out their legitimate objectives.^{160/}

The Act prohibits producers' associations from monopolizing or restraining trade to such an extent that the price of any agricultural product is "unduly enhanced."^{161/} If the Secretary of Agriculture believes that prices have been unduly enhanced, he may file a complaint against the association. After a hearing, a cease and desist order may be issued,^{162/} which may be appealed in the Federal district courts.

Cooperative Marketing Act of 1926

The Cooperative Marketing Act of 1926 further expanded the agricultural exemption.^{163/} This act allows producers of agricultural products to "acquire, exchange, interpret, and disseminate

past, present, and prospective crop, market, statistical, and other similar information by direct exchange...and/or by and through a common agent selected by them."164/

Agricultural Fair Practices Act

The Agricultural Fair Practices Act 165/ was passed in 1968 to establish standards of fair practices for handlers of agricultural products 166/ in their dealings with producers.167/ The Act recognizes the importance of numerous individual farmers voluntarily joining together in cooperative organizations to improve their marketing and bargaining positions. Interference with this right adversely affects the free and orderly flow of goods in interstate commerce, and is deemed by the Act to be contrary to the public interest.168/

The Act proscribes certain forms of interference with cooperative associations. A handler 169/ may not coerce any producer to join or refrain from joining an association of producers 170/ or refuse to deal with any producer because he has joined or belongs to such an association.171/ Discrimination against any producer with respect to price, quantity, quality, or other term of purchase is prohibited if it is based on membership in a cooperative association.172/ A handler may not coerce or intimidate any producer to enter into or to terminate a membership agreement or marketing contract with an association of producers,173/ or offer an inducement to a producer for refusing to join a cooperative.174/ A conspiracy, combination, or agreement to commit any of these proscribed acts is also a violation of the Act.175/

A disclaimer in the Act states that it should not be construed as preventing handlers from selecting their customers and suppliers for any reason other than membership in a cooperative association 176/ or requiring them to deal with an association of producers.177/ This section is designed to protect the rights of handlers to continue to deal with producers directly, even though the producers may be members of a cooperative association.178/

The Secretary of Agriculture may enforce the Act by requesting the Attorney General to bring a civil action against violators.179/ The aggrieved party may also bring civil action 180/ seeking preventive relief in the form of a restraining order or a preliminary injunction to furnish a bond.181/ Any person injured because of a violation of the Act may seek to recover the amount of damages sustained.182/

Agricultural Marketing Agreement Act

The Agricultural Marketing Agreement Act of 1937 183/ reenacted many of the provisions of the Agricultural Adjustment Act of 1933.184/ The Act states that "the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure...."185/ The Act, therefore, seeks to maintain orderly market conditions for agricultural commodities so that parity prices for farmers will be achieved.186/ The Act also seeks to protect consumers through a gradual correction of prices at a rate deemed by the Secretary of Agriculture to be in the public interest.187/ The demand in domestic and foreign markets must be taken into consideration. Milk prices may exceed parity if certain price factors in farmer purchases are involved.188/

The Agricultural Marketing Agreement Act allows the Secretary of Agriculture to regulate marketing between agricultural producers and handlers. "Handlers," for the purposes of this Act, are processors, associations of producers, and others engaged in the handling of any agricultural product covered by the Act.189/

Only those products specifically listed in the Act fall under the Secretary's jurisdiction.190/ Basically, the regulated products can be grouped into two categories: (1) milk and dairy products and (2) fresh fruits, vegetables, peanuts, and tree nuts. Separate provisions govern each group.

The Act authorizes the use of two kinds of regulatory devices. The first of these is the marketing agreement, which is essentially a contract between producers and handlers. 191/ The agreement is voluntary in that not all producers have to participate. A producer need not be a member of agricultural cooperative in order to become a party to the marketing agreement.

The marketing agreement sets forth the terms of trade between the parties. When approved by the Secretary of Agriculture, an agreement is specifically exempted from antitrust laws.^{192/} This statutory exemption has been upheld by the courts.^{193/}

The second regulatory device authorized by the Act is the marketing order.^{194/} This marketwide contract between producers and handlers, issued by the Secretary of Agriculture for a particular commodity, establishes the price which all handlers must pay for that commodity in a defined geographic area.^{195/}

A market order is usually initiated when a group of producers in a particular market area petitions the Secretary of Agriculture to establish an order program for their area. A hearing is then held in that area.^{196/} USDA employees may investigate the market situation to determine what terms are needed. They may also participate in the decisionmaking process when the final order is drafted.

This activity on the part of USDA employees was challenged in Marketing Assistance Program, Inc. v. Berglund.^{197/} In that case, a USDA employee had met with members of a dairy cooperative prior to a hearing on the market order and had helped draft the proposed order. He later helped the Secretary of Agriculture write his final decision. The court ruled that nothing in the Act prevented this sort of action by USDA investigators.

Market order proceedings also may be initiated by the Secretary if he feels that it will further the purposes of the Act.^{198/} He must give all parties proper notice of and an opportunity for a hearing upon a proposed order.^{199/}

Before a proposed market order is issued, the Secretary must submit it to a referendum of the affected producers. The order must be approved by two-thirds of the producers of the commodity in the market area, or by producers who account for two-thirds of the volume of trade in the commodity.^{200/} If a marketing agreement is signed by handlers a referendum is unnecessary.^{201/} However, this is seldom the case.

The referendum provision of the Act has been ruled constitutional. In United States v. H. P. Hood & Sons, Inc.,^{202/} the referendum procedure was challenged as an unconstitutional delegation of legislative authority to producers and officers of producers' cooperatives. The court ruled against this interpretation, noting that the procedure accurately assessed producer sentiment on an important issue.

The Act equates approval or disapproval by a producer's cooperative with approval or disapproval of its members.^{203/} A problem may occur, however, when producers are represented by more than one cooperative. In George Benz & Sons v. Hardin,^{204/} for example, 542 producers were represented by two cooperative associations. Both associations voted on behalf of their members in favor of a market order referendum. Those opposed to the market order argued that there was a possibility of duplication in this situation. The court upheld the vote, citing the fact that the total vote was overwhelmingly in favor of approval. It also held that the provision in the Act allowing a cooperative to vote for its members prevails over a state law restricting proxy voting by members of a cooperative.

In regard to milk and dairy products, the market order may include minimum prices as well as virtually all other terms of trade.^{205/} For all other commodities, all terms of trade other than price (e.g., grades, quantities, sizes, and qualities)^{206/} may be negotiated.^{207/} No term of a market order or marketing agreement however, may regulate or restrict the advertising of the commodity.^{208/}

Any handler subject to an order can petition the Secretary of Agriculture to have it modified.^{209/} The handler must be afforded an opportunity for a hearing. After the hearing the Secretary makes a ruling, which is generally considered to be final.^{210/} The federal district courts have jurisdiction in equity to review the Secretary's ruling.^{211/}

A marketing order may be terminated or suspended by the Secretary if he determines that it no longer meets the intent of the Act.^{212/} Furthermore, a marketing order or a marketing agreement must be terminated if a majority of the producers,^{213/} accounting for more than 50 percent of the volume of the commodity in the market area, so desire. The termination date is the end of the current marketing period, as specified in the agreement or order.^{214/}

Milk Orders

Dairy products are regulated separately by the Act because of the special perishability and pricing problems they present. Surplus milk can cause problems for producers, since it cannot be stored economically for a long period. Milk is usually disposed of in the fluid or manufactured milk market. However, manufactured milk prices are generally lower than fluid milk prices, and fluid milk is usually produced under more elaborate quality standards which tend to increase the cost of production.^{215/} The regulatory program must deal with these inequities.

A milk market order establishes minimum (but not maximum) prices for different classes of milk sold by producers to handlers.^{216/} Minimum prices ^{217/} may be determined through a classified pricing scheme or the use of uniform blended prices.^{218/}

Under the latter scheme, a producer receives the same price for all milk, regardless of its intended use. This blend price is computed by dividing the value of all of the milk sold in the market area by the total quantity.^{219/} Although handlers may purchase varying proportions of fluid milk and milk for manufacturing, they settle their differences through the use of an equalization fund.^{220/} Under this system, a handler who uses the fluid milk form more than the market average pays into the fund, and one who uses less fluid milk than average receives money to bring the payment to producers up to the blend price.^{221/}

The Supreme Court has upheld the use of blend prices. In United States v. Rock Royal Co-op ^{222/} the Court noted that under a blend price system "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."^{223/} In another federal case,^{224/} the court noted that the use of a blend price not only prevents cutthroat competition among producers, but also helps mitigate the adverse effects of seasonal supply fluctuations on the consumer.

Nonmilk Orders

Market orders for commodities other than dairy products may encompass a variety of terms and conditions. Quantity limitations may be established for the various grades and sizes of the commodity.^{225/} Allotments may be established so that supplies can be equitably apportioned among the producers.^{226/} Such allotments are based on the amounts sold by each producer in the past and/or the quantities available.^{227/}

The market order may provide for the control and disposition of a commodity surplus.^{228/} These provisions should help equalize the burden of the existence and operation of reserve pools which might also be dealt with in the market order.^{229/}

The parties to a market order may wish to delineate inspection requirements.^{230/} They may also specify the kinds and sizes of containers to be used in packing the product.^{231/}

If producers wish to promote the marketing, distribution, and consumption of their products, they can provide in their market order for the establishment of production and marketing research projects.^{232/} The expenses for the projects could be paid from funds collected pursuant to the order.^{233/}

Market orders should be limited to the smallest reasonable regional production or marketing areas.^{234/} If feasible, the Secretary is to issue several orders within a marketing or production region.^{235/}

Handler Regulation

Handlers within each area where a market order is in effect may be fully regulated, partially regulated, or unregulated.^{236/} A handler who purchases a commodity and sells products largely within the market area is fully regulated. The partially regulated handler procures most commodities within the market order area (and usually is physically located there) but transacts most sales outside of the order area. The unregulated handler may engage in some transactions within the market order area, but usually does not reside in or have many sales or procurements in the order area.

Fully regulated handlers are bound completely by the market order. Those who are partially regulated must abide by terms that apply to the particular transactions (procurements or sales) that occur in the sales area. A handler, particularly one that operates in a large urban area, may be partially regulated in more than one market order area. Unregulated handlers are exempt from the market order.

Administration of the Order

The Secretary of Agriculture may select an agency to administer the market order.^{237/} The agency may make rules and regulations and may investigate complaints of violations.^{238/} Following an investigation, a report and recommendations may be made to the Secretary.^{239/} Regulated handlers are assessed for the expenses of the administrative agency.^{240/}

Records

The Act sets forth recordkeeping requirements for all parties to a marketing agreement and all handlers subject to a market order.^{241/} The Secretary can request the information needed to determine whether the market order or agreement is being carried out ^{242/} and whether there has been any abuse of exemption from the antitrust laws.

The required information must be furnished on forms prescribed by the Secretary.^{243/} The Secretary may also examine income tax reports, contracts, correspondence and other relevant documents to ensure compliance.^{244/} However, the use of this information is governed by strict rules of confidentiality.^{245/}

Enforcement

The Act is enforced through the use of both civil and criminal penalties. Any person who exceeds an allotment established pursuant to the Act may be forced, through a civil suit, to forfeit to the federal government an amount equal to the value of the excess at current market prices.^{246/} A handler who violates a marketing order can be criminally prosecuted and fined for each violation.^{247/} A defendant who does not pay the fine can be remitted to the custody of the Attorney General.^{248/}

Commodity Futures Trading Commission Act

Commodity futures were first regulated in the 1920s. The Futures Trading Act, passed in 1921, was soon struck down as an unconstitutional attempt to use taxation to regulate market activity.^{249/} The Grain Futures Act, which reflected that ruling, was enacted in 1922.^{250/} This was designed primarily to curb abuses by speculators that adversely affected the agricultural commodity futures market ^{251/} rather than to protect market investors.

The Grain Futures Act was amended in 1936 to incorporate some protection for commodity futures investors. The name of the act was changed to the Commodity Exchange Act ^{252/} to more accurately reflect its scope, which now included nongrain agricultural products such as cotton, butter, and eggs. Subsequent amendments brought other agricultural commodities within the purview of the Act.^{253/}

The next major overhaul of the Act occurred in 1968. The revision added livestock futures to the list,^{254/} restricted broker licensing, and broadened antifraud provisions. The Secretary of Agriculture was given the power to disapprove any exchange rule that violated the act.

The most recent amendment occurred with the passage of the Commodity Futures Trading Commission Act of 1974.^{255/} The Act created a five-member regulatory agency, the Commodity Futures Trading Commission (CFTC).^{256/} Commissioners are appointed to a five-year term by the President with the advice and consent of the Senate. They must be knowledgeable in the field of futures trading.^{257/}

Although the Commission is independent, it does maintain an office within the USDA to facilitate communication between the two entities. ^{258/} This office is staffed by employees of the

Commission. The Secretary of Agriculture in turn appoints a liaison officer to maintain liaison between the two bodies.

All of the powers formerly vested in the Secretary of Agriculture and the Commodity Exchange Commission were transferred by the Act to the CFTC.259/

The records, funds, property, and personnel of the former commission were also transferred. The CFTC is required to submit annual reports to Congress.260/ In addition, the General Accounting Office may examine the Commission's documents and records and may audit the Commission.261/

The CFTC has much broader jurisdiction than the old Commission. It is authorized to regulate virtually all futures trading in virtually all goods and articles,262/ including "all services, rights, and interests in which contracts for future delivery are presently or in the future dealt with."263/

Contract Markets

A person can only deal in commodity futures through a member of a board of trade 264/ that has been designated by the CFTC as a "contract market."265/ This covers not only the execution of futures contracts but also the quotation and reporting of futures contract prices. All contracts must be written, and show the date, the parties and their addresses, the property covered and its price, and the terms of delivery. 266/ The board member must keep the record for three years, and make it available for inspection by a representative of the CFTC or of the U.S. Department of Justice.267/

The Commission may designate a board of trade as a "contract market" only under certain conditions.268/ Official inspection services (approved by the CFTC or by the Secretary of Agriculture) must be available to the board of trade.269/ Reports must be filed showing the details and terms of all cash purchases of or futures contracts delivery for commodities entered into by the board or its members.270/ The Commission determines the manner and form of the reporting requirements. The governing board must seek to prevent the dissemination of false or misleading information or information on conditions that affect or tend to affect the price of commodities 271/ by the board or its members.272/

The board must prevent the manipulation of prices or the cornering of any market.273/ It may not exclude from membership any duly authorized representative of a producer's cooperative engaged in cash commodity business.274/ A cooperative association must demonstrate financial responsibility and must agree to comply with the same terms and conditions as other members of the board of trade. However, a contract market cannot issue a rule that could be construed as prohibiting cooperatives from paying dividends to their patrons.275/

Each contract market must furnish the Commission with copies of its bylaws, rules, regulations, and resolutions.276/ All books, records, minutes, and journals of proceeding must be kept three years and be available for inspection.277/ Operators of warehouses used to store commodities for future delivery must also comply with specific recordkeeping requirements.278/

The CFTC must approve or disapprove any bylaws and regulations proposed by a designated contract market.279/ The contract market must revoke any disapproved bylaw or regulation.280/ In limited circumstances, a contract market may adopt temporary rules without prior Commission approval.281/ These temporary measures must be initiated by a two-thirds vote of the market's governing board, and the CFTC must be notified of the action with a complete explanation of the situation.282/

The Commission may require that the commodities traded under contract for future delivery conform to official U.S. grade standards.283/ It may also require a contract market to accept receipts issued under the U.S. Warehouse Act 284/ in satisfaction of any futures contract.285/ The warehouse in which the commodity is stored must comply with requirements imposed by the contract market on other warehouses in regard to accessibility and suitability for warehousing and delivery.286/

Registration With the CFTC

Any person wishing to operate as a futures commission merchant 287/ must register with the CFTC.288/ Rules are set forth in the statute regulating the care and use of money received by com-

mission merchants from their customers.289/ Floor brokers 290/ are also required to register with the commission.291/

The application forms for commission merchants and floor brokers are designed by the CFTC.292/ Commission merchants must supply the names and addresses of all branch office managers and of all agents soliciting or accepting futures orders.293/ A partnership or a corporation seeking registration must supply names of the officers, partners, directors, and stockholders. The registration expires at the end of each calendar year but may be renewed unless it has been revoked or is currently suspended.294/

Applicants may be required to meet and maintain minimum financial requirements established by the Commission.295/ These requirements will be considered met if the applicant is a member of a contract market and conforms to the minimum financial standards and reporting requirements established by that market in its bylaws and regulations.296/

The CFTC is charged with adopting standards which govern qualifications for commission merchants and floor brokers 297/ and their associates and may develop written proficiency examinations for applicants. In lieu of examinations administered by the Commission itself, approved contract markets or futures associations may adopt and administer appropriate examinations.298/

The Act also requires that commodity trading advisors and commodity pool operators 299/ be registered.300/ A commodity trading advisor is any person who engages in the business of advising others, either directly or through publications, as to the value of commodities or the advisability of trading in commodity futures.301/ Specifically excluded from this definition are: (1) banks and trust companies, (2) newspaper reporters, editors, lawyers, accountants, or teachers, (3) publishers of bona fide newspapers, magazines, or business publications or general interest, (4) floor brokers or future commission merchants, and (5) any contract market.302/ The Commission may also exempt other classes of persons by means of a rule or regulation. In any event, the furnishing of commodity advisory services by any of the exempted persons must be purely incidental to the conduct of their business or profession.303/

Fraudulent activity or misrepresentation on the part of trading advisors or commodity pool operators is prohibited.304/ Even registered individuals may not hold themselves out as being approved, sponsored, or recommended by the federal government.305/

Excessive speculation in any commodity for future delivery is deemed to be a burden on interstate commerce.306/ In order to control such speculation, the CFTC may limit the amount of trading which may be done or positions which may be held by any person.307/ Different trading or position limits may be established for different commodities, markets, futures, or delivery months. The Commission issues orders to implement rules and limitations. No order, however, may regulate bona fide hedging transactions or positions.308/

Records

The Act specifies reporting and recordkeeping requirements for the various entities involved in commodity futures trading. Futures commission merchants and floor brokers must maintain records of their own transactions or positions and of those of their customers.309/ The record books must be open to inspection by any representative of the CFTC or of the Justice Department. Every clearinghouse and contract market must maintain daily trading records.310/ Brokers and commission merchants are required to maintain daily trading records for each customer so as to be identifiable with the records kept by the clearinghouses and contract markets.311/ The Commission may report on information contained in the records.312/

Before each trading day, the exchanges must publicize the volume of trading of each type of contract for the previous day 313/ and other information required by the Commission.314/ The Commission may establish different reporting requirements for the various clearinghouses, contract markets, and exchanges.315/

Registered Futures Associations

A Futures association may register with the CFTC by submitting a required form with information 316/ on its organization, membership, and rules of procurement as well as copies of the

constitution, articles of incorporation, or bylaws. The Commission will only register associations that operate in the public interest.^{317/} The rules of the association must provide that any contract market, or any unit registered under the Act, or any other unit designated pursuant to the rules of the association may restrict its membership on the basis of the type of business done.^{318/}

Investigatory Power

The CFTC is authorized to investigate boards of trade and persons subject to the provisions of the Act;^{319/} to investigate marketing conditions, including supply and demand, cost to the consumer, and handling and transportation charges; and to furnish producers, consumers, and distributors with information on commodity markets and conditions in our country and in foreign countries that affect the markets.^{320/} The Commission may publish information it considers to be in the public interest.

The results of the Commission's investigations are to be made available to Congress.^{321/} In addition, the Commission is required to submit a written report detailing its operations to Congress within 120 days of the end of each fiscal year.^{322/} Typically, the report will include information relevant to the administration of the Act and recommendations for future legislation.^{323/}

One of the new provisions of the 1974 Act related to technical innovation in commodity futures trading.^{324/} It directs the CFTC to research the feasibility of trading by computer; the use of modern information systems technology and electronic data processing; and modern communication systems for commodity exchanges, boards of trade, and the Commission itself.

Antitrust Considerations

A provision of the Act requires the CFTC to take the least anticompetitive means of achieving its objectives.^{325/} Therefore, antitrust considerations must play a part in the adoption of any Commission rule or regulation or in the approval of any bylaw, rule, or regulation of a contract market or registered futures association.^{326/}

In a recent case,^{327/} however, the Supreme Court noted that the Commodity Exchange Act does contemplate some form of anticompetitive activity which might otherwise not be allowed, since the exchange and its members will of necessity restrain trade to a certain extent. The courts must distinguish between the ordinary application of antitrust principles and the special self-regulatory powers the Act grants to exchanges.^{328/}

Farmer-to-Consumer Direct Marketing Act

The Direct Marketing Act was passed in 1974 to facilitate the direct marketing of agricultural produce from farmers to consumers ^{329/} through appropriate means and on an economically sustainable basis.^{330/} The Act is designed to increase the food quality and to provide increased financial returns to farmers. The marketplaces within the purview of the Act include, but are not limited to, roadside stands, city markets, and vehicles used for house-to-house marketing of agricultural commodities.^{331/}

The Secretary of Agriculture is directed to provide a continuing survey of direct marketing methods.^{332/} This survey may be undertaken by the USDA's Economic Research Service or any other agency which the Secretary considers appropriate. The survey reviews such topics as the number of various marketing methods in existence, the volume of business conducted through each marketing method, and the impact of the marketing methods upon financial returns to farmers and food quality and costs to consumers. The impact on the economic viability of small farmers must also be taken into account.^{333/}

In order to implement the program, funds are distributed among the individual states ^{334/} according to the feasibility of direct marketing programs within each state.^{335/} The funds are divided between a state's agriculture department and its extension service on the basis of each agency's ability to perform the activities required by the Act.^{336/}

The Act requires the development of conferences for sharing direct marketing information among farm producers, consumers, and other interested persons or groups.^{337/} Other activities include

formulating direct marketing legislation, determining locations for direct marketing facilities, and disseminating information on the establishment and operation of direct marketing systems.338/ The agriculture departments and extension services may provide technical assistance to individuals or groups interested in establishing such facilities or systems.339/

The Secretary of Agriculture periodically reviews the activities carried out under the Act and reports to the appropriate Congressional committees.340/ Annual reports must attempt to analyze the effectiveness of the Act. A state-by-state summary of USDA survey results and of the activities and accomplishments of the state extension services and agriculture departments is required.341/

Food Research and Promotion

Potato Research and Promotion

The federal potato research and promotion program seeks to maintain, expand and improve potato markets 342/ by regulating potato handlers.343/ A common or contract carrier of potatoes owned by another is exempt.344/ Any order issued by the Secretary of Agriculture under the program is referred to as a "plan."345/ The Secretary is authorized to adopt a plan for collecting assessments on potatoes.346/ The funds raised in this manner are used to provide research, development, advertising, and promotion of potatoes.

The Secretary must give due notice and opportunity for a hearing on a proposed plan.347/ A hearing also may be requested by any person who proposes a plan.348/ The Secretary of Agriculture conducts a referendum on a proposed plan among potato producers.349/ The plan must be approved by at least two-thirds of the producers voting in the referendum, or by the producers of at least two thirds of the potatoes produced during a representative period.350/ A plan also may be terminated by referendum.351/ In either case, the balloting is confidential.352/

A National Potato Promotion Board administers the plan issued by the Secretary.353/ The Board, whose members serve without compensation, is composed of representatives of producers 354/ selected by the Secretary from nominations made by producers.355/

The Board may make rules and regulations to implement the plan.356/ It may receive, investigate, and report to the Secretary any complaints of violation of the plan.357/ The Board may also recommend amendments to the plan.358/

The Board must prepare a budget for research, development, advertising, and promotion.359/ It may recommend a particular assessment to cover anticipated expenses.360/ An individual producer who is not in favor of the potato research and promotion program can demand a refund of the assessment.361/

The funds raised through the program may be used to develop and extend foreign markets for domestic potatoes.362/ Assessments may accumulate over the years as a reserve fund to offset lower revenues in years when potato production is reduced.363/ However, the reserve fund cannot exceed the amount budgeted for two years' operation.364/

Some restrictions apply to the ways in which the funds may be spent. The Board may not use them to attempt to influence governmental policy or action,365/ or to promote any private brand names.366/

Beef Research and Promotion

The Beef Research and Information Act of 1976 367/ was designed to strengthen cattle and beef markets and to provide for a continuous and coordinated program of research, consumer information, and producer information.368/ The primary tool of this program is the beef research and promotion order.369/ The order is applicable to producers and slaughterers 370/ in all areas of the United States.

The Secretary of Agriculture must give due notice and opportunity for a hearing 371/ and conduct a referendum among beef producers 372/ for any proposed order. Producers must be notified of the referendum and must register with the Agriculture Stabilization and Conservation Service (ASCS)

prior to voting. An order cannot be issued unless at least 50 percent of the registered producers vote and a majority 373/ of these favor the order.

Any promotion plan must be directed toward increasing the general demand for cattle, beef, or beef products. No references to private brands or trade names may be made if the Secretary determines that such action will result in undue discrimination against the cattle, beef, or beef products of other persons.374/ False or misleading claims on behalf of beef or with respect to the quality or value of any competing product are prohibited.375/

The Act authorizes the Secretary of Agriculture to appoint a Beef Board of not more than 68 members.376/ The term of appointment is three years, with no member being allowed to serve more than six consecutive years. The Beef Board appoints from its members a 7- 11-member executive committee to conduct routine business as determined by the Board. The Executive committee must broadly represent the beef and cattle industry.377/

The Board may develop advertising, sales promotion, consumer information, research, and development plans.378/ Such plans are not effective until approved by the Secretary. Proposed budgets must also be submitted to the Secretary for approval and copies of the budget must be submitted to the House Committee on Agriculture and to the Senate Committee on Agriculture, Nutrition and Forestry.379/

The assessments which finance the promotion programs are collected from cattle producers at the time of the sale or transfer of cattle 380/ based on the value of the transaction. The assessment rate must not exceed one half of one percent.381/ Cattle slaughtered by a producer for his own consumption are not subject to the assessment.382/ Assessments can be refunded to those producers who do not want to participate in the program.383/

Wheat Research and Promotion

The Wheat and Wheat Foods Research and Nutrition Education Act, passed by Congress in 1977,384/ is similar to the potato and beef promotion legislation. The Secretary of Agriculture may issue an order to promote American wheat in foreign and domestic markets.385/ The order may establish nutrition education programs for wheat, processed wheat, and end products.386/ Promotion of private brands or trade names and unfair or deceptive practices on behalf of the wheat industry or with respect to competing products are prohibited.387/

The promotional agency created by the Act is the Wheat Industry Council, which may consist of up to twenty members.388/ The Council administers the order issued by the Secretary, makes rules and regulations to effectuate the order, may suggest amendments to the order, and may also receive, investigate, and report to the Secretary complaints of violations.389/

The Council is composed of wheat producers, processors, and consumer representatives appointed by the Secretary. Its functions are financed through an assessment based upon the volume of transactions,390/ not to exceed five cents per hundredweight of processed wheat purchased or transferred.391/ The assessments may be accumulated to establish a reserve.

The Council must maintain records available to the Secretary for inspection.392/ It must also report on receipts and disbursements of funds.393/

An order is adopted on the basis of a referendum conducted among endproduct manufacturers.394/395/ An order may likewise be terminated through the referendum process.396/

Egg Research and Promotion

The Egg Research and Consumer Information Act,397/ passed in 1974, affects persons engaged in the hatching of egg-type chicks and started pullets, as well as persons engaged in the production of commercial eggs.398/ This legislation is designed to develop egg markets and to increase consumer awareness of the nutritional value of eggs. Congress felt that individual egg producers would not be able to carry out the necessary research and promotion to implement these goals without a collective program to provide adequate financing.399/

In order to achieve the objectives of the Act, the Secretary of Agriculture may issue an order 400/ which will be administered by the Egg Board, composed of up to 18 appointed members.401/ The Egg Board is responsible for investigating complaints of violations of the order and it may make recommendations on possible amendments.402/

Board members must be egg producers, representatives of egg producers, or consumer representatives.403/ They are appointed by the Secretary from nominations submitted by eligible organizations, associations, or cooperatives.404/

Eligible organizations are those certified by the Secretary. Certification is based on a report submitted by the organization 405/ which details the nature and size of its active membership, its geographic range, its functions, and the sources of its operating funds.406/ If more than one organization is certified by the Secretary for a particular area, the organizations may caucus to determine the area's nominations for the Egg Board.407/

The Secretary has the right to approve advertising, promotion, or research plans developed by the Egg Board.408/ The Board must submit fiscal-year budgets for approval.409/

Assessments are collected by handlers from each producer 410/ and turned over to the Egg Board. The assessment cannot exceed 10 cents per case of commercial eggs.411/ The funds may not be used to influence governmental policy or action.412/ Producers who do not want to participate in the program may file for a refund.413/

All orders must be approved by referendum. An order must be favored by at least two-thirds of the producers voting in the referendum, or by a majority of the producers voting if they produce at least two-thirds of total egg production during a representative period.

An order may be terminated or suspended by the Secretary or by a referendum of producers.414/ Only a simple majority is required to terminate or suspend an order, but the action does not become effective until six months after the vote.415/ Orders may be amended in the same way in which they are approved.416/

An order may specify the terms and conditions under which a producer may be exempted from the Act.417/ To be eligible for exemption, an egg producer may not have more than 3,000 laying hens during the three-month period preceding the assessment date.418/ Producers whose eggs are used primarily for baby chicks may be exempted.419/

Tobacco Statistics

The Secretary of Agriculture collects and publishes statistics on the quantity of leaf tobacco in the United States and Puerto Rico owned by dealers, manufacturers, warehouse operators, brokers, cooperatives, and others who are not the original growers of tobacco.420/ The statistics, compiled quarterly for an annual report, are broken down by type, grade, quality, and color. Owners or possessors of tobacco whose output exceeds a minimum level established by the statute 421/ are required to supply the necessary information to the Secretary on a quarterly basis.

The Secretary establishes standards for the classification of leaf tobacco, demonstrates them by preparing and distributing representative samples,423/ and designs the forms used to collect the required information. The information collected can be used only for the statistical purposes for which it was supplied. The Secretary cannot publish any data which would identify any particular establishment.424/ Only USDA employees may examine the individual reports.

Transportation of Agricultural Products

The Interstate Commerce Act governs most types of interstate transportation.425/ Some vehicles or activities, however, are specifically exempt.426/ Among those exempted are vehicles which transport agricultural products.

A motor vehicle used by a farmer to transport agricultural (including horticultural) products 427/ or to bring supplies to the farm 428/ is not regulated by the Interstate Commerce Act. Vehicles operated by a cooperative association or by a federation of cooperative associations 429/ are also exempted under certain conditions. Any interstate transportation performed by these orga-

nizations for persons who are not association members, farmers, cooperative associations, or federations must be incidental to the primary transportation operation and necessary for its effective performance.^{430/} Such transportation may not exceed 15 percent of the organization's total transportation volume (measured in tons) for any fiscal year. Transportation performed for the federal government or any of its agencies is included in the total. Before transporting goods for nonmembers, the association or federation must notify ICC of its intent.

A third exemption exists for motor vehicles used to carry ordinary livestock, fish, or agricultural commodities (not including the manufactured products made from these commodities) if the vehicles are not used in carrying other property or passengers for compensation.^{431/} The Act specifies commodities that do and do not fall into these described categories. The ICC also has drawn up a list of "exempt" and "nonexempt" commodities. However, the delineation made in the Act itself takes precedence over the ICC ruling.^{432/}

The agricultural exemption in transportation law has been frequently litigated over the years. In a 1948 case, for example, a trucker was engaged in a basically intrastate operation and had secured the necessary certificate from state authorities.^{433/} However, he also used the trucks to transport cotton outside the state. No nonagricultural items were transported on the trips out of state. The court held that these activities were exempt and that the ICC could not require the trucker to obtain an ICC certificate.

The Supreme Court has ruled that a determination by the ICC that a particular commodity is not exempt is reviewable by the courts.^{434/}

An important question in some cases is whether a processed farm product is an "agricultural commodity" or a "manufactured product." In Home Transfer & Storage Co. v. U.S.,^{435/} fruits and vegetables were processed and frozen prior to shipment. Noting that the fruits and vegetables retained essentially the same shape and form after processing, the court held that they were agricultural commodities and thus entitled to the exemption.

Other federal legislation also affects the transportation of agricultural products. A provision of the Agricultural Adjustment Act of 1938 ^{436/} allows the Secretary of Agriculture to have an impact on the costs of transporting farm products by filing a complaint with the ICC with respect to transportation rates, charges, tariffs, and practices.^{437/} The Secretary may prosecute the complaint before the Commission. In addition, before hearing any complaint about agricultural transportation rates filed by a person other than the Secretary of Agriculture, the Commission must give due notice to the Secretary, who must be permitted to appear and be heard. The ICC may in turn utilize the records, services, and facilities of the USDA.^{438/}

In any case involving the public interest where rates, charges, tariffs, or practices are challenged, the ICC may make the Secretary a party to the proceedings.^{439/} In such a case the Secretary has the rights of a party before the Commission, and, consequently, may pursue original and appellate judicial proceedings in regard to the Commission's determination.^{440/}

Not all matters pertaining to the transportation of agricultural products are subject to intervention on the part of the Secretary. In Frozen Food Express v. U.S.,^{441/} the Secretary attempted to intervene in an ICC proceeding concerning a charge that a company was transporting meat and poultry products between points in interstate commerce not authorized in its certificate. The court held that since the dispute was not one concerning "rates, charges, tariffs, and practices" of transportation of farm products, the Secretary was not entitled to notice.

Forestry

A provision of the Cooperative Forest Management Act allows the Secretary of Agriculture to provide technical assistance to private landowners who process forest products.^{442/} The Secretary may cooperate with state foresters in providing technical services to private landowners, forest operators, and wood processors with respect to the harvesting, marketing, and processing of forest products. The assistance is provided in accordance with a plan agreed upon between the Secretary and the appropriate state official. This legislation also is designed to promote the protection and improvement of trees and shrubs in urban areas as well as in open spaces.^{443/}

The Taylor Grazing Act allows the president to place any national forests lands principally valuable for grazing under the administration of the Department of the Interior.^{444/} These lands remain subject to all public land laws and regulations applicable to grazing districts authorized elsewhere in the Act.

Notes to Chapter 3

1. Act of August 15, 1921, ch. 64, 42 Stat. 159 & (Supp. IV 1980).
2. 7 U.S.C. §§ 181-229 (1976) & Supp. IV 1980).
3. 258 U.S. 495 (1922).
4. United States v. Morgan, 307 U.S. 183 (1939).
5. Travelers Indemnity Co. v. Manley Cattle Co., 553 F.2d 943 (5th Cir. 1977).
6. Bowles v. Albert Glauser, Inc., 61 F.Supp. 438 (S. Mo. 1945).
7. Bowman v. United States Department of Agriculture, 363 F.2d 81 (5th Cir. 1966).
8. United States Fidelity and Guaranty Co. v. Quin Bros. of Jackson, Inc., 384 F.2d 241 (5th Cir. 1967).
9. United States v. Marshall Durbin & Co., 363 F.2d'1 (5th Cir. 1966).
10. Sioux City Stock Yards Co. v. United States, 49 F.Supp. 801 (D.Iowa 1943).
11. Travelers Indemnity Co. v. Manley Cattle Co., 553 F.2d 943 (5th Cir. 1977).
12. 7 U.S.C. § 191 (1976).
13. 7 U.S.C. § 202(a) (1976).
14. 7 U.S.C. § 202(b) (1976).
15. Id.
16. Id.
17. The term "live poultry dealer" means any person engaged in the business of buying or selling live poultry in commerce for purposes of slaughter, either on his own account or as the employee or agent of the vendor or purchaser. 7 U.S.C. § 2186 (1976).
18. 7 U.S.C. § 192(a)(e) (1976).
19. 7 U.S.C. § 192(g) (1976).
20. 7 U.S.C. § 192(f) (1976).
21. Pacific Trading Co. v. Wilson and Co., 547 F.2d 367 (7th Cir. 1976).
22. Swift & Co. v. Wallace, 105 F.2d 848 (7th Cir. 1939).
23. Pacific Trading Co. v. Wilson & Co., 547 F.2d 367 (7th Cir. 1976).
24. 89 F. Supp. 317 (D.C. Neb. 1950).
25. 105 F.2d 848 (7th Cir. 1939).
26. 7 U.S.C. §§ 201-217(a) (1976).

27. 7 U.S.C. § 201(c) (1976).
28. 7 U.S.C. § 201(d) (1976).
29. 7 U.S.C. § 202(b) (1976).
30. 7 U.S.C. § 203 (1976).
31. Id.
32. 7 U.S.C. § 204 (1976).
33. Id.
34. Id.
35. Travelers Indemnity Co. case, 553 F.2d 943 (5th Cir. 1977).
36. 7 U.S.C. § 207(a) (1976).
37. Id.
38. Id.
39. 7 U.S.C. § 207(b) (1976).
40. 7 U.S.C. § 207(f) (1976).
41. Id.
42. 7 U.S.C. § 207(d) (1976).
43. Id.
44. 7 U.S.C. § 211 (Supp. IV 1980).
45. 7 U.S.C. § 211(a) (Supp. IV 1980).
46. Id.
47. 7 U.S.C. § 211(b) (Supp. IV 1980).
48. Flavin, The Packers and Stockyards Act, 1921, 26 Geo.Wash. L.Rev. 161,168 (1968).
49. 9 F.Supp. 864 (D.Neb. 1934).
50. 298 U.S. 38 (1936).
51. See, e.g., Giles Lowery Stockyards, Inc. v. Department of Agriculture, 565 F.2d 321 (5th Cir. 1977).
52. Act of August 14, 1935, ch. 532, 49 Stat. 648.
53. Nostrand Poultry Market, Inc. v. United States, 59 F.Supp. 245 (D.N.Y. 1945).
54. The term "live poultry dealer" means any person engaged in the business of buying or selling live poultry in commerce for purposes of slaughter, either on his own account or as the employee or agent of the vendor or purchaser. 7 U.S.C. § 2186 (1976).
55. 7 U.S.C. § 218a(a) (1976).
56. 7 U.S.C. § 281a(b) (1976).
57. Id.

58. Id.
59. 7 U.S.C. § 218d (1976).
60. Id.
61. Mirotznik v. United States, 64 F.Supp. 635 (D.N.Y. 1946).
62. 7 U.S.C. § 221 (1976).
63. Id.
64. See, e.g., Hyatt v. United States, 276 F.2d 308 (10th Cir. 1960).
65. Cudahy Packing Co. v. United States, 15 F.2d 133 (7th Cir. 1926).
66. 15 U.S.C. §§ 46, 48-50 (1976).
67. 7 U.S.C. § 222.
68. Id.
69. 7 U.S.C. § 227(a) (1976).
70. 7 U.S.C. § 227(a)(1) (1976).
71. 7 U.S.C. § 227(a)(3) (1976).
72. 7 U.S.C. § 226 (1976).
73. Id.
74. Union Stock Yard & Transit Co. v. United States. 308 U.S. 213 (1939).
75. Swift & Co. v. United States, 316 U.S. 216 (1942).
76. Id.
77. 7 U.S.C. § 224 (1976).
78. Id.
79. 7 U.S.C. §§ 499a-499s (1976).
80. George Steinberg & Son, Inc. v. Butz, 491 F.2d 9 (2nd Cir. 1974), cert. den., 419 U.S. 830 (1974).
81. LeRoy Dyal Co. v. Allen, 161 F.2d 152 (4th Cir. 1947).
82. The term "commission merchant" means any person engaged in the business of receiving perishable agricultural commodities for sale, on commission, or on behalf of another. 7 U.S.C. § 499a(5) (1976).
83. The term "broker" refers to any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity for or on behalf of the vendor or purchaser. 7 U.S.C. § 499(a)(7) (1976). Those who do less than \$200,000 worth of business in any calendar year are exempted. Id.
84. 7 U.S.C. § 499b(1) (1976).
85. 7 U.S.C. § 499a(4) (1976).
86. 7 U.S.C. § 499a(6) (Supp.IV 1980).

87. 7 U.S.C. § 499a(6)(B) (Supp.IV 1980).
88. 7 U.S.C. § 499a(6)(A) (Supp.IV 1980).
89. 7 U.S.C. § 499a(6)(C) (Supp.IV 1980). This exception does not apply to cherries in brine or to commodities that are frozen or packed in ice. Id.
90. 7 U.S.C. § 499b(2) (1976).
91. 7 U.S.C. § 499b(3) (1976).
92. 7 U.S.C. § 499b(4) (1976).
93. Cove Valley Packers, Inc. v. Pilgrim Fruit Co., 297 F.Supp. 200 (D.Mass. 1969).
94. 227 F.2d 67 (8th Cir. 1955).
95. 7 U.S.C. § 499c (a) (1976).
96. 7 U.S.C. § 499c(b) (Supp.IV 1980).
97. 7 U.S.C. § 499a(6) (Supp.IV 1980).
98. 7 U.S.C. § 499c(c) (1976).
99. 7 U.S.C. § 499c(c) (1976).
100. Id.
101. Id.
102. 7 U.S.C. § 499d(b)(B) (1976).
103. 7 U.S.C. § 499d(b)(A) (1976).
104. 7 U.S.C. § 499d(b)(C) (1976).
105. Id.
106. 7 U.S.C. § 499i (1976).
107. Id.
108. 7 U.S.C. § 499e(a) (1976).
109. 7 U.S.C. § 499e(b). The Act states that this provision does not in any way abridge or modify any other remedies that may be available at common law or by statute. Id.
110. 7 U.S.C. § 499f(a) (1976).
111. Id.
112. 7 U.S.C. § 499f(b) (1976).
113. 7 U.S.C. § 499f(c) (1976).
114. 7 U.S.C. § 499f(d) (1976).
115. 7 U.S.C. § 499f(c) (1976).
116. 7 U.S.C. § 499f(d) (1976).
117. 7 U.S.C. § 499g(a) (1976).

118. 7 U.S.C. § 499g(c) (1976).
119. 7 U.S.C. § 491-497 (1976).
120. Farm produce refers to any fruits, vegetables, melons, dairy or poultry products or any perishable farm products of any kind. 7 U.S.C. § 491 (1976).
121. Id.
122. Act of March 3, 1927, ch. 309, 44 Stat. 1355.
123. Act of June 10, 1930, ch. 436, 46 Stat. 531.
124. 7 U.S.C. § 496 (1976).
125. Id.
126. 7 U.S.C. § 491 (1976).
127. Id.
128. 7 U.S.C. § 494 (1976). The regulations for the enforcement of the Produce Agency Act are found at 7 C.F.R. Part 48 (1978).
129. 7 U.S.C. § 494 (1976).
130. 7 U.S.C. § 494 (1976).
- 131.
132. 7 U.S.C. §§ 1551-1661 (1976).
133. E. K. Hardison Seed Co. v. Jones, 149 F.2d 252,256 (6th Cir. 1945).
134. Id. at 256.
135. Seeds are considered to be of basically two types under the Act. "Agricultural seeds" are grass, forage, and field crop seeds. 7 U.S.C. § 1561(a)(7)(A) (1976). "Vegetable seeds" include the seeds of those crops that are or may be grown in gardens or on truck farms, or may be generally known and sold under the name of vegetable seeds. 7 U.S.C. § 1561(a)(7)(B) (1976).
136. 7 U.S.C. § 1571 (1976).
137. 7 U.S.C. § 1571(a)(1), 1571(b)(1)(A) (1976).
138. 7 U.S.C. § 1571(a)(3) (1976).
139. 7 U.S.C. §§ 1571(a)(1) (1976).
140. 7 U.S.C. § 1571 (a)(7) (1976).
141. 7 U.S.C. §§ 1571(a)(9), 1571(b)(1)(B) 1571 H(2)(cj), 1571(b)(3)(d)
142. 7 U.S.C. § 1593(a) (1976).
143. 7 U.S.C. § 1593(a) (1976).
144. 7 U.S.C. § 1592(b) (1976).
145. 7 U.S.C. § 1593(b) (1976). The regulations for the Federal Seed Act are found at 7 C.F.R. Part 201 (1977).
146. 7 U.S.C. § 1593(a) (1976).

147. E. K. Hardison Seed Co. v. Jones, 149 F.2d 252 at 256 (6th Cir. 1945).
148. 7 U.S.C. § 1595 (1976).
149. 7 U.S.C. § 1598 (1976).
150. 7 U.S.C. § 1598 (1976). The term "person" includes a partnership, corporation, company, society, or association. 7 U.S.C. § 1561(a)(2) (1976).
151. 7 U.S.C. § 1595(b) (1976).
152. 7 U.S.C. § 1595(b)(2) (1976). Additional penalties are provided for by the Act. See 7 U.S.C. §§ 1596, 1599 (1976).
153. 94 F.Supp. 523 (D.Miss. 1946).
154. Connolly v. Union Sewer Pipe Co., 184 U.S. 40 (1902). Cooperatives had unsuccessfully attempted to obtain an exemption in the Sherman Act (15 U.S.C. §§ 1-7 (1976) when it was being considered by Congress in 1890. 21 Cong.Rec. 2726 (1890).
155. These three statutes are covered quite extensively in another monograph in the NC-117 series: W. Grant, D. Dahl, L. Geyer, and J. Kennedy, Federal Antitrust Policy and the U.S. Food System (1985).
156. 7 U.S.C. §§ 2301-2306 (1976).
157. 14 U.S.C. § 17 (1976).
158. 7 U.S.C. §§ 291,292 (1976).
159. 7 U.S.C. § 291 (1976).
160. Id.
161. 7 U.S.C. § 292 (1976).
162. Id.
163. 7 U.S.C. § 455 (1976).
164. Id.
165. Act of April 16, 1978, Pub.L.No. 90-288, 82 Stat. 93, as amended, 7 U.S.C. §§ 2301-2306 (1976).
166. The term "agricultural products" does not include cotton or tobacco or their products. 7 U.S.C. § 2302(e) (1976).
167. 7 U.S.C. § 2301 (1976).
168. Id.
169. The term "handler" means any person engaged in the business or practice of (1) acquiring agricultural products from producers or associations of producers for processing or sale, or (2) grading, packaging, handling, scoring, or processing agricultural products received from producers or associations of producers, or (3) contracting or negotiating contracts or other arrangements, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product, or (4) as an agent or broker for a handler in the performance of any functions or acts prohibited above. 7 U.S.C. § 2303(a) (1976).
170. 7 U.S.C. § 2303(a) (1976). An "association of producers" means any association of producers of agricultural products engaged in marketing, bargaining, shipping, or processing. 7 U.S.C. § 230 (c) (1976).

171. 7 U.S.C. § 2303(a) (1976).
172. 7 U.S.C. § 2303(b) (1976).
173. 7 U.S.C. § 2303(c) (1976).
174. 7 U.S.C. § 2303(e) (1976).
175. 7 U.S.C. § 2303(f) (1976).
176. 7 U.S.C. § 2304 (1976).
177. Id.
178. Butz v. Lawson Milk Co., 386 F.Supp. 227 (D. Ohio 1974).
179. 7 U.S.C. § 2305(b) (1976).
180. 7 U.S.C. § 2305(a) (1976).
181. Id.
182. 7 U.S.C. § 2305(c) (1976).
183. Act of June 3, 1937, ch. 296, 50 Stat. 246, as amended, 7 U.S.C. §§ 601-624 (1976).
184. Act of May 12, 1973, ch. 25, 48 Stat. 31.
185. 7 U.S.C. § 601 (1976).
186. 7 U.S.C. § 602(1)(1976). Parity prices are defined at 7 U.S.C. § 1301 (a)(1976).
187. 7 U.S.C. § 602(2)(1976).
188. 7 U.S.C. § 608(c)(18) (Supp.IV 1980).
189. 7 U.S.C. § 608c(1) (1976).
190. The regulated agricultural commodities are listed in 7 U.S.C. § 608c(2) (1976).
191. 7 U.S.C. § 608b (1976).
192. Id.
193. United States v. Wrightland Dairy Co., 127 F.2d 907 (7th Cir. 1942).
194. 7 U.S.C. § 608c (1976) & (Supp.IV 1980).
195. Id.
196. 7 U.S.C. § 608(3) (1976).
197. 562 F.2d 1305 (1939).
198. 7 U.S.C. § 608c(3) (1976).
199. Id.
200. 7 U.S.C. § 608c(19) (1976).
201. 7 U.S.C. § 608c(9)(A) (1976).
202. 307 U.S. 588 (1939).

203. 7 U.S.C. § 608c(12) (1976).
204. 342 F.Supp. 88 (D.Minn. 1972).
205. 7 U.S.C. § 608c(5) (1976) & (Supp.IV 1980).
206. 7 U.S.C. § 608c(6) (1976) & (Supp.IV 1980).
207. 7 U.S.C. § 608c(7) (1976).
208. 7 U.S.C. § 608c(10) (1976).
209. 7 U.S.C. § 608c(15)(A) (1976). 7 C.F.R. 900.50 (1978).
210. Id.
211. 7 U.S.C. § 608c(15)(B) (1976).
212. 7 U.S.C. § 608c(16)(B) (1976).
213. 7 U.S.C. § 608c(16)(B) (1976).
214. Id.
215. Nebbia v. New York, 291 U.S. 502 (1934).
216. 7 U.S.C. § 608c(5) (1976) & (Supp.IV 1980).
217. Id.
218. 7 U.S.C. § 608c(5)(D) (1976).
219. Brooks, The Marketing of Farm Products under Some of the Federal Regulatory Statutes, 6 S.C.L.Q. 247, 269 (1954).
220. United States v. Rock Royal Co-op, 307 U.S. 533 (1939).
221. Fairmont Foods Co. v. Hardin, 442 F.2d 762 (D.C.Cir. 1971).
222. 307 U.S. 533 (1939).
223. Id. at 571.
224. Oak Tree Farm Dairy, Inc. v. Butz, 390 F.Supp. 852 (D.N.Y. 1975).
225. 7 U.S.C. § 608c(6)(A) (1976).
226. 7 U.S.C. § 608c(6)(B) (1976).
227. Id.
228. 7 U.S.C. § 608c(6)(D) (1976).
229. 7 U.S.C. § 608c(6)(E) (1976).
230. 7 U.S.C. § 608c(6)(F) (1976).
231. 7 U.S.C. § 608c(6)(H) (1976).
232. 7 U.S.C. § 608c(6)(I) (Supp.IV 1980).
233. Id.
234. 7 U.S.C. § 608c(11)(B) (1976).

235. 7 U.S.C. § 608c(11)(A) (1976).
236. The Agricultural Marketing Service regulations are found at 7 C.F.R. Parts 945-1139. Each order specifies handler status. Another type of handler is the producer-handler, who is generally exempt from all but the reporting requirements.
237. 7 U.S.C. § 608c(7)(C)(i) (1976).
238. 7 U.S.C. § 608c(7)(C)(ii) and (iii) (1976).
239. 7 U.S.C. § 608c(7)(C)(iv) (1976).
240. 7 U.S.C. § 610(b)(2) (1976).
241. 7 U.S.C. § 608d (1976).
242. 7 U.S.C. § 608d(1) (1976).
243. Id.
244. Id.
245. 7 U.S.C. § 608d(2) (1976).
246. 7 U.S.C. § 608a(5) (1976).
247. 7 U.S.C. § 608c(14) (1976).
248. Panno v. U.S., 203 F.2d 504 (9th Cir. 1953).
249. The Futures Trading Act was struck down in Hill v. Wallace, 259 U.S. 44 (1922).
250. Act of September 21, 1922, ch. 369, 42 Stat. 998.
251. A historical account of these early efforts is presented in Johnson, The Futures Trading Commission Act: Selected Challenges to Agriculture, 1976 U. Ill. L.F. 509, 512-516.
252. Act of June 15, 1936, ch.
253. 7 U.S.C. § 2 (Supp.IV 1980).
254. Act of Feb. 19, 1968, Pub.L.No. 90-258, § 6, 82 Stat. 27.
255. Act of Oct. 23, 1974, Pub.L.No. 93-463, 88 Stat. 1389, as amended, 7 U.S.C. §§ 1-22 (1976).
256. 7 U.S.C. § 4a (1976) & (Supp.IV 1980).
257. 7 U.S.C. § 4a(a)(1)(Supp.IV 1980).
258. 7 U.S.C. § 4a(g)(Supp.IV 1980).
259. 7 U.S.C. § 1 (1976).
260. 7 U.S.C. § 12 (1976).
261. 7 U.S.C. § 12(e) (Supp.IV 1980).
262. Onions are excepted from this definition. 7 U.S.C. § 2 (Supp. IV 1980).
263. Id.
264. The words "board of trade" are defined as any exchange or association, whether incorporated or unincorporated, of persons who are engaged in the business of buying or selling any commodity, or receiving any commodity for sale or for consignment. 7 U.S.C. § 2 (Supp.IV 1980).

265. 7 U.S.C. § 6 (1976).
266. Id.
267. Id.
268. 7 U.S.C. § 7 (1976).
269. 7 U.S.C. § 7(a) (1976).
270. 7 U.S.C. § 7(b) (1976).
271. 7 U.S.C. § 7(c) (1976).
272. Id.
273. 7 U.S.C. § 7(d) (1976).
274. 7 U.S.C. § 7(e) (1976).
275. Id.
276. 7 U.S.C. § 7a(1) (1976).
277. 7 U.S.C. § 7a(2) (1976).
278. 7 U.S.C. § 7a(3) (1976).
279. 7 U.S.C. § 7a(12) (Supp.IV 1980).
280. 7 U.S.C. § 7a(8) (1976).
281. 7 U.S.C. § 7a(12) (1976).
282. Id.
283. 7 U.S.C. § 7a(6) (1976).
284. 7 U.S.C. §§ 241-273 (1976).
285. 7 U.S.C. § 7a(7) (1976).
286. Id.
287. A "futures commission merchant" is an individual, association, partnership, corporation, or trust engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and that accepts money, securities, or property (or extends credit) to margin, guarantee, or secure any trade or contracts that result from that activity. 7 U.S.C. § 2 (Supp.IV 1980).
288. 7 U.S.C. § 6d(1)(Supp.IV 1980).
289. 7 U.S.C. § 6d(2)(Supp.IV 1980).
290. A floor broker is any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of other persons similarly engaged, purchases or sells for any other person commodity futures contracts subject to the rules of the contract market. 7 U.S.C. § 2 (Supp.IV. 1980).
291. 7 U.S.C. § 6e(1976).
292. 7 U.S.C. § 6f(1) (Supp.IV 1980).
293. Id.

294. Id.
295. 7 U.S.C. § 6f(2)(1976).
296. Id.
297. 7 U.S.C. § 6p (1976).
298. Id.
299. A "commodity pool operator" is defined as a person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who solicits or receives from others, funds, securities, or properties for the purpose of trading in any commodity for future delivery. 7 U.S.C. § 2 (Supp.IV 1980).
300. 7 U.S.C. § 6n(1) (1976).
301. 7 U.S.C. § 2 (Supp.IV 1980).
302. Id.
303. Id.
304. 7 U.S.C. § 6o(1) (Supp.IV 1980).
305. 7 U.S.C. § 6o(2) (1976).
306. 7 U.S.C. § 6a(1) (1976).
307. 7 U.S.C. § 6a(1) (1976).
308. 7 U.S.C. § 6a(3) (1976).
309. 7 U.S.C. § 6g(1) (1976).
310. 7 U.S.C. § 6g(2) (1976).
311. 7 U.S.C. § 6g(3) (Supp.IV 1980).
312. 7 U.S.C. § 6g(4) (1976).
313. 7 U.S.C. § 6g(5) (1976).
314. Id.
315. 7 U.S.C. § 6g(6) (1976).
316. 7 U.S.C. § 21(a) (1976).
317. 7 U.S.C. § 21(b)(1)(1976).
318. 7 U.S.C. § 21(b)(2)(1976).
319. 7 U.S.C. § 12 (Supp.IV 1980).
320. Id.
321. Id.
322. 7 U.S.C. § 12(f)(Supp.IV 1980).
323. Id.
324. 7 U.S.C. § 22 (1976).

325. 7 U.S.C. § 19 (Supp.IV 1980).
326. Id.
327. Ricci v. Chicago Mercantile Exchange, 409 U.S. 289 (1973).
328. Id.
329. Act of October 8, 1976, Pub.L.No. 94-463, 90 Stat. 1982, 7 U.S.C. §§ 3001-06 (1976).
330. 7 U.S.C. § 3001 (1976).
331. 7 U.S.C. § 3002 (1976).
332. 7 U.S.C. § 3003 (1976).
333. Id.
334. 7 U.S.C. § 3004 (1976).
335. 7 U.S.C. § 3004(a) (1976).
336. Id.
337. 7 U.S.C. § 3004(a)(1) (1976).
338. 7 U.S.C. § 3004(a)(2) (1976).
339. 7 U.S.C. § 3004(a)(4) (1976).
340. 7 U.S.C. § 3005 (1976). The appropriate committees are the House Committee on Agriculture, and the Senate Committee on Agriculture, Nutrition and Forestry.
341. Id.
342. 7 U.S.C. § 2611 (1976).
343. 7 U.S.C. § 2613 (1976).
344. 7 U.S.C. § 2612(d) (1976).
345. 7 U.S.C. § 2613.
346. Id.
347. 7 U.S.C. § 2614 (1976).
348. Id.
349. 7 U.S.C. § 2623 (1976).
350. Id. In the latter case, a majority of the producers voting must favor the plan.
351. 7 U.S.C. § 2624(b) (1976).
352. 7 U.S.C. § 2623 (1976).
353. 7 U.S.C. § 2617(a) (1976).
354. The term "producer" includes any person engaged in the growing of five or more acres of potatoes. 7 U.S.C. § 2612(e) (1976).
355. 7 U.S.C. § 2617(b) (1976).

356. 7 U.S.C. § 2617(a)(2) (1976).
357. 7 U.S.C. § 2617(a)(3) (1976).
358. 7 U.S.C. § 2617(a)(4) (1976).
359. 7 U.S.C. § 2617(d) (1976).
360. 7 U.S.C. § 2617(e) (1976). However, the assessment rate cannot exceed one percent of the value of the potatoes handled.
361. 7 U.S.C. § 2617(g) (1976).
362. 7 U.S.C. § 2618(f) (1976).
363. 7 U.S.C. § 2618(e) (1976).
364. Id.
365. 7 U.S.C. § 2617(f)(3) (1976).
366. 7 U.S.C. § 2617(f)(2) (1976).
367. Act of May 28, 1976, Pub.L.No. 94-294, § 1, 90 Stat. 529.
368. 7 U.S.C. § 2901 (1976).
369. 7 U.S.C. § 2903 (1976).
370. "Slaughterer" means any person, specified in the order itself or in the rules and regulations of the order, who slaughters cattle, including cattle of his own production. 7 U.S.C. § 2903(q) (1976).
371. 7 U.S.C. § 2904 (1976).
372. 7 U.S.C. § 2908 (Supp.IV 1980).
373. Previously the requirement was for a two-thirds majority in favor of the order but this provision was amended in 1978 to reduce the requirement to a simple majority. Act of Aug. 4, 1978, Pub.L.No. 95-334. Title III, § 302, 92 Stat. 443, 7 U.S.C. § 2908 (Supp.IV 1980).
374. 7 U.S.C. § 2906(a) (1976).
375. Id.
376. 7 U.S.C. § 2907 (1976).
377. Id.
378. 7 U.S.C. § 2907(c) (1976).
379. 7 U.S.C. § 2907(d) (1976).
380. 7 U.S.C. § 2907(e) (1976).
381. 7 U.S.C. § 2907(e)(2) (1976).
382. 7 U.S.C. § 2907(e)(1) (1976).
383. 7 U.S.C. § 2911 (1976).
384. Act of September 29, 1977, Pub.L.No. 95-113, Title XVII, § 1701, 91 Stat. 1031.
385. 7 U.S.C. § 3403 (Supp.IV 1980).

386. The term "end product" means any product which contains processed wheat as an ingredient and which is intended for consumption as human food, not withstanding any incidental preparation which may be necessary by the ultimate consumer. 7 U.S.C. § 3402(c)(Supp.IV 1980).
387. 7 U.S.C. § 3404(a)(Supp.IV 1980).
388. 7 U.S.C. § 3405(a)(Supp.IV 1980).
389. 7 U.S.C. § 3405(a)(3)(Supp.IV 1980).
390. 7 U.S.C. § 3405(e)(Supp.IV 1980).
391. Id.
392. 7 U.S.C. § 3405(f)(Supp.IV 1980).
393. Id.
394. Any end product manufacturer who is a retail baker is exempt from the provisions of this Act.
7 U.S.C. § 3406 (Supp.IV 1980).
395. 7 U.S.C. § 3407 (Supp.IV 1980).
396. 7 U.S.C. § 3411 (Supp.IV 1980).
397. Act of October 1, 1974, Pub.L.No. 93-428, § 1, 88 Stat. 1711. The federal regulations governing egg research and promotion are found at 7 C.F.R. Part 1250 (1978).
398. 7 U.S.C. § 2703 (1976).
399. 7 U.S.C. § 2701 (1976).
400. 7 U.S.C. § 2703 (1976).
401. 7 U.S.C. § 2707(d) (1976).
402. 7 U.S.C. § 2707(a)(3) and (4)(Supp.IV 1980).
403. 7 U.S.C. § 2707(b)(Supp.IV 1980).
404. 7 U.S.C. § 2707(b)(Supp.IV 1980).
405. 7 U.S.C. § 2707(b)(Supp.IV 1980).
406. 7 U.S.C. § 2715 (1976).
407. 7 U.S.C. § 2715(g) (1976).
408. 7 U.S.C. § 2707(c) (1976).
409. 7 U.S.C. § 2707(d) (1976).
410. 7 U.S.C. § 2707(e)(Supp.IV 1980).
411. Id. In fiscal 1981, the assessment rate could not exceed 7 1/2 cents per case.
412. 7 U.S.C. § 2707(h) (1976).
413. 7 U.S.C. § 2712 (1976).
414. 7 U.S.C. § 2709 (1976).
415. Id.

416. 7 U.S.C. § 2710 (1976).
417. 7 U.S.C. § 2711 (1976).
418. 7 U.S.C. § 2711(a) (1976).
419. 7 U.S.C. § 2711(b) (1976).
420. 7 U.S.C. § 501.(1976).
421. Id.
422. 7 U.S.C. § 503 (1976).
423. 7 U.S.C. § 502 (1976).
424. 7 U.S.C. § 507 (1976).
425. 49 U.S.C. § 10101 (Supp.III 1979).
426. 49 U.S.C. § 10526 (Supp.III 1979).
427. 49 U.S.C. § 10526(a)(4)(A)(Supp.III 1979). In Florida Gladiolas Association v. U.S., 106 F.Supp. 525 (D.Fla. 1952), the court invalidated an order of the ICC which held that nursery stock, flowers, and bulbs were not agricultural products. The court noted that "horticulture" is included in the term "agriculture."
428. 49 U.S.C. § 10526(a)(4)(B)(Supp.III 1979).
429. The federation cannot possess greater power or purposes than the cooperatives themselves. 49 U.S.C. § 10526(a)(5)(Supp.III 1979).
430. Id.
431. 49 U.S.C. § 10526(a)(6)(Supp.III 1979).
432. Id.
433. Interstate Commerce Commission v. Dunn, 166 F.2d 116 (5th Cir. 1948).
434. Frozen Food Express v. U.S., 351 U.S. 40 (1956).
435. 141 F.Supp. 599 (D.Wash. 1956).
436. Act of February 16, 1938, ch. 30, 52 Stat. 36
437. 7 U.S.C. § 1291(a) (1976).
438. 7 U.S.C. § 1291(c) 1976).
439. 7 U.S.C. § 1291(b) (1976). The liability of the Secretary in any such case would extend to the liability for court costs. Id.
440. Id.
441. 128 F.Supp. 374 (D.Tex. 1955), revised on other grounds 351 U.S. 40 (1956), and affirmed 351 U.S. 40 (1956).
442. 16 U.S.C. § 568(c) (1976).
443. Id.
444. 43 U.S.C. § 3151 (1976).

COMPARISON OF REGULATORY SCHEMES

The regulations promulgated for the various agricultural commodities are similar in many respects. The regulatory programs established for beef,^{1/} eggs,^{2/} and potatoes ^{3/} illustrate this point.

In each of the three programs, promotion plans may be proposed by producers, or the Secretary of Agriculture, or other interested persons.^{4/} A written application and a copy of the proposal must be filed with the Administrator of the Agricultural Marketing Service,^{5/} who then initiates an investigation of the proposed plan. If the Administrator concludes that a hearing should be conducted, notice of the hearing must be given. If the Administrator concludes that the plan will not effectuate the policy of the Act, the application may be denied and a hearing is not conducted. The unsuccessful applicant must be notified of the decision and of the reasons for the denial.

Any interested person may participate in a hearing.^{6/} Oral arguments may be presented before an administrative law judge,^{7/} and written briefs may be filed.^{8/} Any objections to the plan should be aired at the hearing. All testimony is preserved in a transcript.^{9/}

The Administrator makes a recommended decision based on the proceedings of the hearing.^{10/} This decision must describe the history of the proceedings, explain the issues of fact or law raised by the record, proposed findings and conclusions, and formulate a plan to effectuate the recommendations.^{11/} Parties who disagree with the recommendations may file briefs explaining their objections.^{12/} After the period allowed for filing exceptions has expired, the recommended decision of the Administrator and the hearing transcript are sent to the Secretary's office.^{13/} The Secretary then reaches a decision based on these documents, ruling on any exceptions that have been filed. The Secretary may then issue a plan or order if it has been approved by the procedures specified elsewhere in the Act.^{14/} The plan or order normally cannot become effective until thirty days after its publication in the Federal Register. The Secretary can select an earlier effective date if there is good reason for taking this action.^{15/}

The regulations prohibit USDA employees from discussing the evidence or issues involved in any proposed plan with any of the interested parties after the hearing but prior to the issuance of the plan. ^{16/} However, the judge supervising the hearing may discuss matters of procedure related to the hearing with interested parties.^{17/}

The Secretary may act as a judge in any hearing.^{18/} The Secretary may issue a tentative decision before the final decision.^{19/} In that event, the parties to the hearing may file exceptions before the final decision is made.

The procedures for conducting referenda on research and promotion orders are similar for egg and potato producers, but somewhat different for beef producers.^{20/} The purpose of all three, however, is to determine whether an order or the suspension of an order is favored by the producers.^{21/}

Each egg producer or potato producer is entitled to one vote in the referendum.^{22/} The referendum is conducted by a referendum agent under the supervision of the Administrator. The Administrator may prescribe instructions in addition to the established regulations as long as they are consistent with the established regulations.^{23/} The referendum agent determines the beginning and end of the referendum, the time by which all ballots must be received,^{24/} and whether ballots will be cast by mail, at polling places, or at meetings of producers.^{25/}

The material issued with each ballot requests information used to determine voter eligibility.^{26/} Information is also collected on the total volume of commodities produced during the representative period.^{27/} The referendum agent tabulates the balloting results and reports the outcome to the Administrator.^{28/}

For beef referenda, producers are required to register with the ASCS office in the county in which their farm or ranch headquarters are located.^{29/} A list of registered producers is prepared and posted daily at the county ASCS office during the registration period.^{30/} A final list is posted on the fifth day after the close of the registration period.

Producers may vote in person or by mail.^{31/} Each county ASCS office must provide facilities for voting in person.^{32/} Ballots may be mailed only to producers who have registered to vote.^{33/} Voting is by secret ballot, although the public may witness the opening of the ballot box and the counting of the ballots.^{34/}

The county ASCS office must notify the state ASCS office of the results of the referendum ^{35/} before it releases the unofficial results to the public. A final report must be filed with the state office within seven days of balloting.^{36/} Questions about a producer's eligibility must be settled before that time.^{37/} A summary of the report must be posted in the county ASCS office for public inspection for thirty days.^{38/}

The state ASCS office collects the preliminary referendum results from each county office and sends the Deputy Administrator of the Agricultural Marketing Service a summary.^{39/} It may then release the unofficial state results to the public.^{40/} A final report from the state ASCS office must be submitted to the Deputy Administrator within ten days of balloting.^{41/} The state office must also maintain one copy of its report for public inspection for one year.^{42/} The Deputy Administrator submits the results to the Secretary, and they in turn are published in the Federal Register.^{43/}

The three regulatory programs also differ in regard to bonding requirements. In the case of a proposed beef order, a bond must be posted which is sufficient to cover the cost of preparing an order or conducting a referendum.^{44/} The exact amount of the bond required is determined by the Secretary. If a beef referendum fails to receive the necessary approval, the bond is forfeited to cover the expenses. No similar bonding regulations exist for egg or potato orders.

Notes to Chapter 4

1. 7 C.F.R. Part 1260 (1981).
2. 7 C.F.R. Part 1250 (1981).
3. 7 C.F.R. Part 1207 (1981).
4. 7 C.F.R. § 1260.3 (1981) (beef); 7 C.F.R. § 1250.3 (1981) (eggs); 7 C.F.R. § 1207.3 (1981) (potatoes).
5. Id. However, these requirements do not apply if the Secretary of Agriculture proposes the plan.
6. 7 C.F.R. § 1260.10(b) (1981); 7 C.F.R. § 1250.8(b) (1981); 7 C.F.R. § 1207.8(b) (1981). Unless otherwise indicated, the citations will be given first for beef, then for eggs, and then finally for potatoes.
7. 7 C.F.R. § 1260.11(a) (1981); 7 C.F.R. § 1250.9(a) (1981); 7 C.F.R. § 1207.9(a) (1981).
8. 7 C.F.R. § 1260.11(b) (1981); 7 C.F.R. § 1250.9(b) (1981); 7 C.F.R. § 1207.9(b) (1981).
9. 7 C.F.R. § 1260.12 (1981); 7 C.F.R. § 1250.10 (1981); 7 C.F.R. § 1207.10 (1981).
10. 7 C.F.R. § 1260.14 (1981); 7 C.F.R. § 1250.12 (1981); 7 C.F.R. § 1207.12 (1981).
11. 7 C.F.R. § 1260.14(b) (1981); 7 C.F.R. § 1250.12(b) (1981); 7 C.F.R. § 1207.12(b) (1981).
12. 7 C.F.R. § 1260.14(c) (1981); 7 C.F.R. § 1250.12(c) (1981); 7 C.F.R. § 1207.12(c) (1981).
13. 7 C.F.R. § 1260.15 (1981); 7 C.F.R. § 1250.13 (1981); 7 C.F.R. § 1207.13 (1981).
14. 7 C.F.R. § 1260.17(a) (1981); 7 C.F.R. § 1250.15(a) (1981); 7 C.F.R. § 1207.15(a) (1981).
15. 7 C.F.R. § 1260.17(b) (1981); 7 C.F.R. § 1250.15(b) (1981); 7 C.F.R. §
16. 7 C.F.R. § 1260.19 (1981); 7 C.F.R. § 1250.17 (1981); 7 C.F.R. § 1207.17 (1981).

17. Id. This section prevails over any provisions of Regulation 1544 of the regulations of the USDA that are inconsistent.
18. 7 C.F.R. § 1260.21 (1981); 7 C.F.R. § 1250.19 (1981).
19. Id.
20. 7 C.F.R. § 1260.200 to 1260.217 (1981); 7 C.F.R. §§ 1250.200 to 1250.207 (1981); 7 C.F.R. §§ 1207.200 to 1207.207 (1981).
21. 7 C.F.R. § 1260.200 (1981); 7 C.F.R. § 1250.200 (1981); 7 C.F.R. § 1207.200 (1981).
22. 7 C.F.R. § 1250.202 (1981); 7 C.F.R. § 1207.202 (1981).
23. 7 C.F.R. § 1250.203 (1981); 7 C.F.R. § 1207.203 (1981).
24. 7 C.F.R. § 1250.203(a) (1981); 7 C.F.R. § 1207.203(a) (1981).
25. 7 C.F.R. § 1250.203(b) (1981); 7 C.F.R. § 1207.203(b) (1981).
26. 7 C.F.R. § 1250.203(c)(1) (1981); 7 C.F.R. § 1207.203(c)(1) (1981).
27. 7 C.F.R. § 1250.203(c)(2) (1981); 7 C.F.R. § 1207.203(c)(3) (1981).
28. 7 C.F.R. § 1250.203(h) (1981); 7 C.F.R. § 1207.203(h) (1981).
29. 7 C.F.R. § 1260.207(a) (1981).
30. 7 C.F.R. § 1260.207(b) (1981).
31. 7 C.F.R. § 1260.208(b) (1981).
32. 7 C.F.R. § 1260.208(a) (1981).
33. 7 C.F.R. § 1260.208(b) (1981).
34. 7 C.F.R. § 1260.211(c) (1981).
35. 7 C.F.R. § 1260.212(a) (1981).
36. 7 C.F.R. § 1260.212 (b) (1981).
37. Id.
38. Id.
39. 7 C.F.R. § 1260.213(a) (1981).
40. Id.
41. 7 C.F.R. § 1260.213(b) (1981).
42. Id.
43. 7 C.F.R. § 1260.214(a) (1981).
44. 7 C.F.R. § 1260.4 (1981).

The University of Minnesota, including the Agricultural Experiment Station, is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, religion, color, sex, national origin, handicap, age, or veteran status.