



United States Department of Agriculture

Federal Statutes of Special Importance to Farmer Cooperatives

115TH CONGRESS EDITION

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Rural Business-Cooperative Service
United States Department of Agriculture

Federal Statutes

of Special Importance to Farmer Cooperatives

115TH CONGRESS EDITION

Revised August 2017

Federal Statutes of Special Importance to Farmer Cooperatives provides a single, readily available source of laws that address how cooperatives conduct their business. It was originally compiled by Donald A. Frederick and LaTonya St. Clair, and includes all references to cooperatives in Federal law that are significant to cooperatives. This update reflects laws that are current as of August 2017.

Several of the citations in the compilation pay deference to popular convention. In the antitrust portion of the report, the section number at the start of each provision is the number in the original act; the U.S. Code uses the codified section number found in parentheses () throughout. Also, the laws in the antitrust section are presented in chronological order by date of enactment; in other sections the laws are arranged in numerical order by title and section, as they appear in the Code. The headers, which appear in bold letters, are those that appear in the official Code.

If you would like to suggest any materials that could be added to make the report more useful or if you have found any errors, please contact Meegan Moriarty at Rural Business Cooperative Service, Rural Development, U.S. Department of Agriculture, Room 4232-S, Mail Stop 3254, 1400 Independence Ave. SW, Washington, DC 20250, Office: (202) 260-9114, Cell: (703) 201-3211, email: Meegan.Moriarty@wdc.usda.gov.

USDA and Rural Development invite you to explore the information they have provided on the internet. The USDA home page is: www.usda.gov; Rural Development's website is: www.rd.usda.gov. The Cooperative Program's website is at: <http://www.rd.usda.gov/programs-services/all-programs/cooperative-programs> .

Federal Statutes of Special Importance to Farmer Cooperatives (Cooperative Information Report 65) was originally compiled by Donald A. Frederick and LaTonya St. Clair in 1990 and was last updated in 2007. This updated version was revised and edited by Lorraine Armstrong and Meegan Moriarty, August 2017. This report is also posted online at: www.RD.usda.gov.

For copies of this report, contact USDA at: coopinfo@wdc.usda.gov.

Federal Statutes of Special Importance to Farmer Cooperatives

Contents

Federal Statutes of Special Importance to Farmer Cooperatives . Error! Bookmark not defined.

Antitrust and Trade Regulation	5
Sherman Act	5
<i>The Sherman Act makes it illegal to enter into contracts and combination in restraint of trade (§1) and to monopolize or attempt to monopolize interstate commerce (§ 2).</i>	5
Federal Trade Commission Act	6
<i>The Act gives the Federal Trade Commission the authority to investigate and prosecute persons who engage in unfair methods of competition and deceptive acts.</i>	6
Clayton Act	9
<i>The Clayton Act makes certain specific trade practices illegal, authorizes triple damages in litigation, requires pre-notification of certain acquisitions; and includes a limited exemption for nonstock cooperatives (§6).</i>	9
Capper-Volstead Act.....	16
<i>The Capper-Volstead Act gives farmers a limited exemption from the antitrust laws for marketing activities, and directs the Secretary of Agriculture to prevent abuses of the limited exemption.</i>	16
Cooperative Marketing Act of 1926.....	18
<i>This Act authorizes a unit within USDA to assist cooperatives and permits exchanges of information among farmers.</i>	18
Fisherman’s Collective Marketing Act.....	20
<i>This law gives fishermen the same limited antitrust protection accorded farmers under Capper-Volstead.</i>	20
Price Discrimination Act (Robinson-Patman).....	22
<i>This Act makes it illegal to engage in unjustifiable price discrimination among purchasers; exclusion for patronage refunds.</i>	22
Agricultural Fair Practices Act of 1967	23
<i>This provision prohibits discrimination against a farmer because of membership in a cooperative.</i>	23
Federal Trade Commission Improvements Act of 1980	27

<i>Section 20 of Pub. L. 96-252, reauthorized through various appropriation acts, bars Federal Trade Commission involvement in cooperative conduct protected by Capper-Volstead and in marketing order programs.</i>	27
Internal Revenue Code	28
IRC Section 56. Alternative Minimum Tax	28
<i>This section includes a special rule for cooperatives.</i>	28
IRC Section 68A. Deductions for Dividends Received	30
<i>Section 68A specifies that the deduction for dividends received is not applicable to dividends from § 521 cooperatives.</i>	30
IRC Section 199. Deduction for Domestic Production Activities.....	30
<i>This section provides a limited deduction for qualified production activities income from products that are manufactured, produced, grown or extracted in the United States, and includes special rules for cooperatives and their members.....</i>	30
IRC Section 277. Membership Organizations.....	37
<i>Section 277 contains limits on certain tax options for cooperatives and other organizations.</i>	37
IRC Section 521. Exemption of Farmers’ Cooperatives From Tax.....	38
<i>Section 521 lists requirements farmer cooperatives must meet to be treated as “exempt” organizations and deduct dividends on stock and patronage-based distributions of nonpatronage income.</i>	38
Subchapter T: Cooperatives and Their Patrons	40
<i>Subchapter T sets forth special rules for businesses operating on a cooperative basis and their patrons concerning single tax treatment of patronage refunds and per-unit retain allocations.....</i>	40
IRC Section 1381. Subchapter T Organizations	40
IRC Section 1382. Taxable Income of Cooperatives.....	41
IRC Section 1383. Computation of Tax Where Cooperative Redeems Nonqualified Written Notices of Allocation or Nonqualified Per-Unit Retain Certificates.....	44
IRC Section 1385. Amounts Includible in Patron’s Gross Income.....	45
IRC Section 1388. Definitions; special rules.	47
IRC Section 3121. Federal Insurance Contributions Act	54
<i>This section provides a limited exemption for IRC Section 521 cooperatives.....</i>	54
IRC Section 3306. Federal Unemployment Tax Act	55
<i>Section 3306 provides a limited exemption for IRC Section 521 cooperatives.....</i>	55

IRC Section 4421. Taxes on Wagering	56
<i>Section 4421 provides a limited exemption for IRC Section 521 cooperatives.</i>	56
IRC Section 5392. Bonded Wine Premises	56
<i>This section defines "affiliated" to include members of farm cooperatives.</i>	56
IRC Section 6044. Reporting Payments of Patronage Dividends	57
IRC Section 6072. Time for Filing Income Tax Returns	59
IRC Section 6652. Failure to File Information Returns	60
Agriculture	61
Commodity Exchange Act	61
<i>The Act defines "cooperative association of producers" and bars discrimination against them.</i>	61
Cotton Standards.....	63
<i>The statute authorizes USDA to use cooperatives for classing cotton.</i>	63
Packers and Stockyards Act.....	63
<i>The law states that patronage refunds are not illegal rebates.</i>	63
Perishable Agricultural Commodities Act	64
<i>The Act provides an exemption from the trust for the benefit of unpaid sellers.</i>	64
Tobacco Statistics Act.....	65
<i>The Act authorizes the Secretary to collect data from cooperatives</i>	65
Agricultural Marketing Agreement Act of 1937.....	65
<i>The Act sets up the Federal market order system.</i>	65
Rural Electrification Act.....	76
<i>The Act authorizes loans by REA to rural electric and telephone cooperatives.</i>	76
Federal Crop Insurance Act	77
<i>The statute authorizes Federal Crop Insurance Corporation to utilize cooperatives.</i>	77
Consolidated Farm and Rural Development Act.....	78
<i>The law provides a program of grants and technical assistance for rural and cooperative development.</i>	78
Dairy Research and Promotion	95
<i>The law provides voting rules for members of cooperatives.</i>	95
Act to Prevent Discrimination Against Farmers' Cooperative Associations By Boards of Trade	95

<i>The Act provides a cause of action to sue in Federal Court when a representative of a cooperative is excluded from membership in an agricultural board of trade</i>	95
Commodity Credit Corporation Charter Act	96
<i>The law allows the CCC to use cooperative associations.</i>	96
Soil Conservation Act	97
<i>The law states that the USDA Secretary shall provide technical assistance and incentives to encourage cooperatives to engage in conservation efforts.</i>	97
Finance	98
Federal Reserve Act.....	98
<i>The Act provides that notes issued by a cooperative are deemed issued for an agricultural purpose.</i>	98
Agricultural Marketing Act	99
<i>The Act defines “cooperative association” and encourages Farm Credit Administration support of cooperatives.</i>	99
Farm Credit Act of 1971	102
<i>The Act authorizes the farmer-owned cooperative Farm Credit System.</i>	102
Securities Act of 1933.....	110
<i>The statute exempts securities issued by IRC Section 521 cooperatives are from registration.</i>	110
Securities Exchange Act of 1934	110
<i>The Act exempts farmer cooperative securities from most trading restrictions.</i>	110
Transportation	112
Agricultural Adjustment Act of 1938.....	112
<i>The Act authorizes the Agriculture Secretary to assist farmer cooperatives before the Surface Transportation Board.</i>	112
Interstate Commerce Act	113
<i>The Act provides limitations on Interstate Commerce Committee authority over cooperative trucking.</i>	113

Antitrust and Trade Regulation

Sherman Act

26 Stat. 209 (1890), as amended

Editor's Note:

The Sherman Act makes it illegal to enter into contracts and combination in restraint of trade (§1) and to monopolize or attempt to monopolize interstate commerce (§ 2).

§ 1. Trusts, etc., in restraint of trade illegal; penalty (15 U.S.C. § 1)

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

§ 2. Monopolizing trade a felony; penalty (15 U.S.C. § 2)

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

Federal Trade Commission Act

38 Stat. 717 (1914), as amended

Editor's Note:

The Act gives the Federal Trade Commission the authority to investigate and prosecute persons who engage in unfair methods of competition and deceptive acts.

§ 5. Unfair methods of competition unlawful; prevention by Commission (15 U.S.C. § 45)

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of Title 49, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. § 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. § 227(b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

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(b) Proceeding by Commission; modifying and setting aside orders

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint.

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§ 6. Additional powers of Commission (15 U.S.C. § 46)

The Commission shall also have power –

(a) Investigation of persons, partnerships, or corporations

To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce, and its relation to other persons, partnerships, and corporations.

(b) Reports of persons, partnerships, and corporations

To require, by general or special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons, partnerships, and corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

§ 12. Dissemination of false advertisements (15 U.S.C. § 52)

(a) Unlawfulness

It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement--

(1) By United States mails, or in or having an effect upon commerce, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices, services, or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce, of food, drugs, devices, services, or cosmetics.

(b) Unfair or deceptive act or practice

The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in or affecting commerce within the meaning of section 45 of this title.

§ 20 Civil investigative demands (U.S.C. § 57b-1)

(a) Definitions

For purposes of this section:

(1) The terms “civil investigative demand” and “demand” mean any demand issued by the Commission under subsection (c)(1) of this section.

(2) The term “Commission investigation” means any inquiry conducted by a Commission investigator for the purpose of ascertaining whether any person is or has been engaged in any unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title) or in any antitrust violations.

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(c) Issuance of demand; contents; service; verified return; sworn certificate; answers; taking of oral testimony

(1) Whenever the Commission has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), or to antitrust violations, the Commission may, before the institution of any proceedings under this subchapter, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to submit such tangible things, to file written reports or answers to questions, to give oral testimony concerning documentary material or other information, or to furnish any combination of such material, answers, or testimony.

(2) Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

Clayton Act

38 Stat. 730 (1914), as amended

Editor's Note:

The Clayton Act makes certain specific trade practices illegal, authorizes triple damages in litigation, requires pre-notification of certain acquisitions; and includes a limited exemption for nonstock cooperatives (§6).

§ 3. Sale, etc., on agreement not to use goods of competitor (15 U.S.C. § 14)

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

§ 4. Suits by persons injured (15 U.S.C. § 15)

(a) Amount of recovery; prejudgment interest

Except as provided in subsection (b) of this section, any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether such person or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

§ 4A. Suits by United States; amount of recovery; prejudgment interest (15 U.S.C. § 15a)

Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by it sustained and the cost of suit. The court may award under this section, pursuant to a motion by the United States promptly made, simple interest on actual damages for the period beginning on the date of service of the pleading of the United States setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. . . .

§ 4B. Limitation of actions (15 U.S.C. § 15b)

Any action to enforce any cause of action under section 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

§ 4C. Actions by State attorneys general (15 U.S.C. § 15c)

(a) Parens patriae; monetary relief; damages; prejudgment interest

(1) Any attorney general of a State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States having jurisdiction of the defendant, to secure monetary relief as provided in this section for injury sustained by such natural persons to their property by reason of any violation of sections 1 to 7 of this title. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief (A) which duplicates amounts which have been awarded for the same injury, or (B) which is properly allocable to (i) natural persons who have excluded their claims pursuant to subsection (b)(2) of this section, and (ii) any business entity.

(2) The court shall award the State as monetary relief threefold the total damage sustained as described in paragraph (1) of this subsection, and the cost of suit, including a reasonable attorney's fee. The court may award under this paragraph, pursuant to a motion by such State promptly made, simple interest on the total damage for the period beginning on the date of service of such State's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this paragraph for any period is just in the circumstances, the court shall consider only--

(A) whether such State or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(B) whether, in the course of the action involved, such State or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(C) whether such State or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

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§ 6. Antitrust laws not applicable to labor organizations (15 U.S.C. § 17)

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

§ 7. Acquisition by one corporation of stock of another (15 U.S.C. § 18)

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

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Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Power Commission, Surface Transportation Board, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79j of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Board, or Secretary.

§ 17A. Premerger notification and waiting period (15 U.S.C. § 18a)

(a) Filing

Except as exempted pursuant to subsection (c) of this section, no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) of this section and the waiting period described in subsection (b)(1) of this section has expired, if

(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce; and

(2) as a result of such acquisition, the acquiring person would hold an aggregate total amount of the voting securities and assets of the acquired person--

(A) in excess of \$200,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 19(a)(5) of this title to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003); or

(B)(i) in excess of \$50,000,000 (as so adjusted and published) but not in excess of \$200,000,000 (as so adjusted and published); and

(ii)(I) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more;

(II) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more; or

(III) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 (as so adjusted and published) or more are being acquired by any person with total assets or annual net sales of \$10,000,000 (as so adjusted and published) or more.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d) of this section.

(b) Waiting period; publication; voting securities

(1) The waiting period required under subsection (a) of this section shall--

(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the "Assistant Attorney General") of--

(i) the completed notification required under subsection (a) of this section, or

(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance, from both persons, or, in the case of a tender offer, the acquiring person; and

(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2) of this section.

(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.

(3) As used in this section--

(A) The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

(c) Exempt transactions

The following classes of transactions are exempt from the requirements of this section--

- (1)** acquisitions of goods or realty transferred in the ordinary course of business;
- (2)** acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;
- (3)** acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;
- (4)** transfers to or from a Federal agency or a State or political subdivision thereof;
- (5)** transactions specifically exempted from the antitrust laws by Federal statute;

(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

(7) transactions which require agency approval under section 1467a(e) of title 12, section 1828(c) of title 12, or 1842 of Title 12, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of Title 12; and (B) does not require agency approval under section 1842 of Title 12;

(8) transactions which require agency approval under section 1843 of title 12 or section 1464 of Title 12, if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of Title 12; and (B) does not require agency approval under section 1843 of Title 12;

(9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;

(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B) of this section.

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§ 14. Liability of directors and agents of corporation (15 U.S.C. § 24)

Whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

Capper-Volstead Act

42 Stat. 388 (1922)

Editor's Note:

The Capper-Volstead Act gives farmers a limited exemption from the antitrust laws for marketing activities, and directs the Secretary of Agriculture to prevent abuses of the limited exemption.

§ 1. Authorization of associations; powers (7 U.S.C. § 291)

Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

§ 2. Monopolizing or restraining trade and unduly enhancing prices prohibited; remedy and procedure (7 U.S.C. § 292)

If the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Agriculture may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Agriculture shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Agriculture and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business, or on any attorney authorized to appear in such proceedings for such association, and such service shall be binding upon such association, the officers, and members thereof.

Cooperative Marketing Act of 1926

44 Stat. 802 (1926)

Editor's Note:

This Act authorizes a unit within USDA to assist cooperatives and permits exchanges of information among farmers.

§ 1. "Agricultural products" defined (7 U.S.C. § 451)

When used in this chapter the term "agricultural products" means agricultural, horticultural, viticultural, and dairy products, livestock and the products thereof, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed or manufactured products thereof, transported or intended to be transported in interstate and/or foreign commerce.

§ 2. Supervision of division of cooperative marketing (7 U.S.C. § 452)

The division of cooperative marketing shall be under the direction and supervision of the Secretary of Agriculture.

§ 3. Authority and duties of division (7 U.S.C. § 453)

(a) The division shall render service to associations of producers of agricultural products, and federations and subsidiaries thereof, engaged in the cooperative marketing of agricultural products, including processing, warehousing, manufacturing, storage, the cooperative purchasing of farm supplies, credit, financing, insurance, and other cooperative activities.

(b) The division is authorized--

(1) To acquire, analyze, and disseminate economic, statistical, and historical information regarding the progress, organization, and business methods of cooperative associations in the United States and foreign countries.

(2) To conduct studies of the economic, legal, financial, social, and other phases of cooperation, and publish the results thereof. Such studies shall include the analyses of the organization, operation, financial and merchandising problems of cooperative associations.

(3) To make surveys and analyses if deemed advisable of the accounts and business practices of representative cooperative associations upon their request; to report to the association so surveyed the results thereof; and with the consent of the association so surveyed to publish summaries of the results of such surveys, together with similar facts, for the guidance of cooperative associations and for the purpose of assisting cooperative associations in developing methods of business and market analysis.

(4) To confer and advise with committees or groups of producers, if deemed advisable, that may be desirous of forming a cooperative association and to make an economic survey and analysis of the facts surrounding the production and marketing of the agricultural product or products which the association, if formed, would handle or market.

(5) To acquire from all available sources information concerning crop prospects, supply, demand, current receipts, exports, imports, and prices of the agricultural products handled or marketed by cooperative associations, and to employ qualified commodity marketing specialists to summarize and analyze this information and disseminate the same among cooperative associations and others.

(6) To promote the knowledge of cooperative principles and practices and to cooperate, in promoting such knowledge, with educational and marketing agencies, cooperative associations, and others.

(7) To make such special studies, in the United States and foreign countries, and to acquire and disseminate such information and findings as may be useful in the development and practice of cooperation.

§ 4. Advisers to counsel with Secretary of Agriculture; expenses and subsistence (7 U.S.C. § 454)

The Secretary of Agriculture is authorized, in his discretion, to call advisers to counsel with him and/or his representatives relative to specific problems of cooperative marketing of farm products or any other cooperative activity. Any person, other than an officer, agent, or employee of the United States, called into conference, as provided for in this section, may be paid actual transportation expenses and not to exceed \$10 per diem to cover subsistence and other expenses while in conference and en route from and to his home.

§ 5. Dissemination of crop, market, etc., information by cooperative marketing associations (7 U.S.C. § 455)

Persons engaged, as original producers of agricultural products, such as farmers, planters, ranchmen, dairymen, nut or fruit growers, acting together in associations, corporate or otherwise, in collectively processing, preparing for market, handling, and marketing in interstate and/or foreign commerce such products of persons so engaged, may acquire, exchange, interpret, and disseminate past, present, and prospective crop, market, statistical, economic, and other similar information by direct exchange between such persons, and/or such associations or federations thereof, and/or by and through a common agent created or selected by them.

Fisherman's Collective Marketing Act

48 Stat. 1213 (1934)

Editor's Note:

This law gives fishermen the same limited antitrust protection accorded farmers under Capper-Volstead.

§ 1. Fishing industry; associations authorized; "aquatic products" defined; marketing agencies; requirements (15 U.S.C. § 521)

Persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged.

The term "aquatic products" includes all commercial products of aquatic life in both fresh and salt water, as carried on in the several States, the District of Columbia, the several Territories of the United States, the insular possessions, or other places under the jurisdiction of the United States.

Such associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes: Provided, however, That such associations are operated for the mutual benefit of the members thereof, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

and in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

§ 2. Monopolies or restraints of trade; service of complaint by Secretary of Commerce; hearing; order to cease and desist; jurisdiction of district court (15 U.S.C. § 522)

If the Secretary of Commerce shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Commerce may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Commerce shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Commerce shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceedings, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Commerce and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein, the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court shall, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer, or agent thereof, engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association and such service shall be binding upon such association, the officers and members thereof.

Price Discrimination Act (Robinson-Patman)

49 Stat. 1526 (1936)

Editor's Note:

This Act makes it illegal to engage in unjustifiable price discrimination among purchasers; exclusion for patronage refunds.

§ 2. Discrimination in price, services, or facilities (15 U.S.C. § 13)

(a) Price; selection of customers

It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: Provided, however, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: And provided further, That nothing herein contained shall prevent persons engaged in selling goods, wares, or

merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: And provided further, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

• • •

§ 4. Cooperative association; return of net earnings or surplus (15 U.S.C. § 13b)

Nothing in this Act shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association.

Agricultural Fair Practices Act of 1967

82 Stat. 93 (1968)

Editor's Note:

This provision prohibits discrimination against a farmer because of membership in a cooperative.

§ 2. Congressional findings and declaration of policy (7 U.S.C. § 2301)

Agricultural products are produced in the United States by many individual farmers and ranchers scattered throughout the various States of the Nation. Such products in fresh or processed form move in large part in the channels of interstate and foreign commerce, and such products which do not move in these channels directly burden or affect interstate commerce. The efficient production and marketing of agricultural products by farmers and ranchers is of vital concern to their welfare and to the general economy of the Nation. Because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to join together voluntarily in cooperative organizations as authorized by law. Interference with this right is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce.

It is, therefore, declared to be the policy of Congress and the purpose of this chapter to establish standards of fair practices required of handlers in their dealings in agricultural products.

§ 3. Definitions (7 U.S.C. § 2302)

In this chapter:

(1) Agricultural products

The term “agricultural products” shall not include cotton or tobacco or their products.

(2)(2)¹ Association of producers

(A) In general

The term “association of producers” means any association of producers of agricultural products engaged in marketing, bargaining, shipping, or processing as defined in section 1141j(a) of Title 12, or in section 291 of this title.

(B) Inclusion

The term “association of producers” includes an organization whose membership is exclusively limited to agricultural producers and dedicated to promoting the common interest and general welfare of producers of agricultural products.

(3)(3)² Handler

(A) In general

The term “handler” means any person engaged in the business or practice of (i) acquiring agricultural products from producers or associations of producers for processing or sale; or (ii) grading, packaging, handling, storing, or processing agricultural products received from producers or associations of producers; or (iii) contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or (iv) acting as an agent or broker for a handler in the performance of any function or act specified in clause (i), (ii), or (iii).

(B) Exclusion

The term “handler” does not include a person, other than a packer (as defined in section 191 of this title), that provides custom feeding services for a producer.

(4) Producer

The term “producer” means a person engaged in the production of agricultural products as a farmer, planter, rancher, dairyman, fruit, vegetable, or nut grower.

¹ So in original.

² So in original.

§ 4. Prohibited practices (7 U.S.C. § 2303)

It shall be unlawful for any handler knowingly to engage or permit any employee or agent to engage in the following practices:

(a) To coerce any producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association of producers, or to refuse to deal with any producer because of the exercise of his right to join and belong to such an association; or

(b) To discriminate against any producer with respect to price, quantity, quality, or other terms of purchase, acquisition, or other handling of agricultural products because of his membership in or contract with an association of producers; or

(c) To coerce or intimidate any producer to enter into, maintain, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers or a contract with a handler; or

(d) To pay or loan money, give any thing of value, or offer any other inducement or reward to a producer for refusing to or ceasing to belong to an association of producers; or

(e) To make false reports about the finances, management, or activities of associations of producers or handlers; or

(f) To conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by this chapter.

§ 5. Disclaimer of intention to prohibit normal dealing (7 U.S.C. § 2304)

Nothing in this chapter shall prevent handlers and producers from selecting their customers and suppliers for any reason other than a producer's membership in or contract with an association of producers, nor require a handler to deal with an association of producers.

§ 6. Enforcement provisions (7 U.S.C. § 2305)

(a) Civil actions by persons aggrieved; preventive relief; attorneys' fees; security

Whenever any handler has engaged or there are reasonable grounds to believe that any handler is about to engage in any act or practice prohibited by section 2303 of this title, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved. In any action commenced pursuant hereto, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. The court may provide that no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

(b) Civil actions by Attorney General; Federal jurisdiction; complaint; preventive relief

Whenever the Secretary of Agriculture has reasonable cause to believe that any handler, or group of handlers, has engaged in any act or practice prohibited by section 2303 of this title, he may request the Attorney General to bring civil action in his behalf in the appropriate district court of the United States by filing with it a complaint (1) setting forth facts pertaining to such act or practice, and (2) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the handler, or handlers, responsible for such acts or practices. Upon receipt of such request, the Attorney General is authorized to file such complaint.

(c) Suits by persons injured; Federal jurisdiction; amount of recovery; attorneys' fees; limitation of actions

Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, any provision of section 2303 of this title may sue therefor in the appropriate district court of the United States without respect to the amount in controversy, and shall recover damages sustained. In any action commenced pursuant to this subsection, the court may allow the prevailing party a reasonable attorney's fee as a part of the costs. Any action to enforce any cause of action under this subsection shall be forever barred unless commenced within two years after the cause of action accrued.

(d) Federal jurisdiction; exhaustion of other remedies; State laws and jurisdiction unaffected

The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

The provisions of this chapter shall not be construed to change or modify existing State law nor to deprive the proper State courts of jurisdiction.

Federal Trade Commission Improvements Act of 1980

94 Stat. 393 (1980)

Editor's Note:

Section 20 of Pub. L. 96-252, reauthorized through various appropriation acts, bars Federal Trade Commission involvement in cooperative conduct protected by Capper-Volstead and in marketing order programs.

§ 20. Authorization of appropriations (15 U.S.C. § 57c note)

RESTRICTION OF COMMISSION AUTHORITY RELATING TO AGRICULTURAL COOPERATIVES

Sec. 20 of Pub. L. 96-252 The Federal Trade Commission shall not have any authority to use any funds which are authorized to be appropriated to carry out the Federal Trade Commission Act (15 U.S.C. 41 et seq.) for fiscal year 1980, 1981, or 1982, under section 24 of such Act, as amended by section 17 and as so redesignated in section 13, for the purpose of conducting any study, investigation, or prosecution of any agricultural cooperative for any conduct which, because of the provisions of the Act entitled "An Act to authorize association of producers of agricultural products", approved February 18, 1922 (7 U.S.C. 291 et seq.), commonly known as the Capper–Volstead Act, is not a violation of any Federal antitrust Act or the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) The Federal Trade Commission shall not have any authority to use any funds which are authorized to be appropriated to carry out the Federal Trade Commission Act (15 U.S.C. 41 et seq.) for fiscal year 1980, 1981, or 1982, under section 24 of such Act, as amended by section 17 and as so redesignated in section 13, for the purpose of conducting any study or investigation of any agricultural marketing orders.

Internal Revenue Code

IRC Section 56. Alternative Minimum Tax

100 Stat. 2327 (1986)

Editor's Note:

This section includes a special rule for cooperatives.

§ 56. Adjustments in computing alternative minimum taxable income (26 U.S.C. §56)

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(g) Adjustments based on adjusted current earnings.—

(1) In general.--The alternative minimum taxable income of any corporation for any taxable year shall be increased by 75 percent of the excess (if any) of—

(A) the adjusted current earnings of the corporation, over

(B) the alternative minimum taxable income (determined without regard to this subsection and the alternative tax net operating loss deduction).

(2) Allowance of negative adjustments.—

(A) In general.--The alternative minimum taxable income for any corporation of any taxable year, shall be reduced by 75 percent of the excess (if any) of—

(i) the amount referred to in subparagraph (B) of paragraph (1), over

(ii) the amount referred to in subparagraph (A) of paragraph (1).

(B) Limitation.--The reduction under subparagraph (A) for any taxable year shall not exceed the excess (if any) of—

(i) the aggregate increases in alternative minimum taxable income under paragraph (1) for prior taxable years, over

(ii) the aggregate reductions under subparagraph (A) of this paragraph for prior taxable years.

(3) Adjusted current earnings. --For purposes of this subsection, the term “adjusted current earnings” means the alternative minimum taxable income for the taxable year—

(A) determined with the adjustments provided in paragraph (4), and

(B) determined without regard to this subsection and the alternative tax net operating loss deduction

(4) Adjustments.--In determining adjusted current earnings, the following adjustments shall apply:

(A) Depreciation.—

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(B) Inclusion of items included for purposes of computing earnings and profits.—

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(C) Disallowance of items not deductible in computing earnings and profits.—

(i) In general.--A deduction shall not be allowed for any item if such item would not be deductible for any taxable year for purposes of computing earnings and profits

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(iv) Special rule for certain dividends received by certain cooperatives.-- In the case of an organization to which part I of subchapter T (relating to tax treatment of cooperatives) applies which is engaged in the marketing of agricultural or horticultural products, clause (i) shall not apply to any amount allowable as a deduction under section 245(c).

(v) Deduction for domestic production.--Clause (i) shall not apply to any amount allowable as a deduction under section 199.

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IRC Section 68A. Deductions for Dividends Received

68A. Stat. 74 (1954)

Editor's Note:

Section 68A specifies that the deduction for dividends received is not applicable to dividends from § 521 cooperatives.

§ 246. Rules applying to deductions for dividends received (26 U.S.C. § 246)

(a) Deduction not allowed for dividends from certain corporations.--

(1) In general.--The deductions allowed by sections 243 and 245 shall not apply to any dividend from a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations)

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IRC Section 199. Deduction for Domestic Production Activities

118 Stat. 1418 (2004)

Editor's Note:

This section provides a limited deduction for qualified production activities income from products that are manufactured, produced, grown or extracted in the United States, and includes special rules for cooperatives and their members.

§ 199. Income attributable to domestic production activities (26 U.S.C.A. § 199)

(a) (a)³ Allowance of deduction.--There shall be allowed as a deduction an amount equal to 9 percent of the lesser of—

(1) the qualified production activities income of the taxpayer for the taxable year, or

(2) taxable income (determined without regard to this section) for the taxable year.

(b) Deduction limited to wages paid.—

³ As in original.

(1) In general.--The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W-2 wages of the taxpayer for the taxable year.

(2) W-2 wages.--For purposes of this section—

(A) In general.--The term “W-2 wages” means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.

(B) Limitation to wages attributable to domestic production.--Such term shall not include any amount which is not properly allocable to domestic production gross receipts for purposes of subsection (c)(1).

(C) Return requirement.--Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.

• • •

(3) Acquisitions, dispositions, and short taxable years.--The Secretary shall provide for the application of this subsection in cases of a short taxable year or where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

(c) Qualified production activities income.--For purposes of this section--

(1) In general.--The term “qualified production activities income” for any taxable year means an amount equal to the excess (if any) of--

(A) the taxpayer's domestic production gross receipts for such taxable year, over

(B) the sum of--

(i) the cost of goods sold that are allocable to such receipts, and

(ii) other expenses, losses, or deductions (other than the deduction allowed under this section), which are properly allocable to such receipts.

(2) Allocation method.--The Secretary shall prescribe rules for the proper allocation of items described in paragraph (1) for purposes of determining qualified production activities income. Such rules shall provide for the proper allocation of items whether or not such items are directly allocable to domestic production gross receipts.

(3) Special rules for determining costs.--

(A) In general.--For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

(B) Exports for further manufacture.--In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

(C) Transportation costs of independent refiners.--

(i) In general.--In the case of any taxpayer who is in the trade or business of refining crude oil and who is not a major integrated oil company (as defined in section 167(h)(5)(B), determined without regard to clause (iii) thereof) for the taxable year, in computing oil related qualified production activities income under subsection (d)(9)(B), the amount allocated to domestic production gross receipts under paragraph (1)(B) for costs related to the transportation of oil shall be 25 percent of the amount properly allocable under such paragraph (determined without regard to this subparagraph).

(ii) Termination.--Clause (i) shall not apply to any taxable year beginning after December 31, 2021.

(4) Domestic production gross receipts.--

(A) In general.--The term “domestic production gross receipts” means the gross receipts of the taxpayer which are derived from--

(i) any lease, rental, license, sale, exchange, or other disposition of--

(l) qualifying production property which was manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States,

• • •

(III) electricity, natural gas, or potable water produced by the taxpayer in the United States,

• • •

(B) Exceptions.--Such term shall not include gross receipts of the taxpayer which are derived from--

(i) the sale of food and beverages prepared by the taxpayer at a retail establishment,

(ii) the transmission or distribution of electricity, natural gas, or potable water, or

(iii) the lease, rental, license, sale, exchange, or other disposition of land.

(C) Special rule for certain Government contracts.--Gross receipts derived from the manufacture or production of any property described in subparagraph (A)(i)(I) shall be treated as meeting the requirements of subparagraph (A)(i) if--

(i) such property is manufactured or produced by the taxpayer pursuant to a contract with the Federal Government, and

(ii) the Federal Acquisition Regulation requires that title or risk of loss with respect to such property be transferred to the Federal Government before the manufacture or production of such property is complete.

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(5) Qualifying production property.--The term “qualifying production property” means--

(A) tangible personal property,

(B) any computer software, and

(C) any property described in section 168(f)(4).

• • •

(7) Related persons.--

(A) In general.--The term “domestic production gross receipts” shall not include any gross receipts of the taxpayer derived from property leased, licensed, or rented by the taxpayer for use by any related person.

(B) Related person.--For purposes of subparagraph (A), a person shall be treated as related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).

(d) Definitions and special rules.--

(1) Application of section to pass-thru entities.--

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(2) Application to individuals.--In the case of an individual, subsections (a)(2) and (d)(9)(A)(iii) shall be applied by substituting “adjusted gross income” for “taxable income”. For purposes of the preceding sentence, adjusted gross income shall be determined--

(A) after application of sections 86, 135, 137, 219, 221, 222, and 469, and

(B) without regard to this section.

(3) Agricultural and horticultural cooperatives.--

(A) Deduction allowed to patrons.--Any person who receives a qualified payment from a specified agricultural or horticultural cooperative shall be allowed for the taxable year in which such payment is received a deduction under subsection (a) equal to the portion of the deduction allowed under subsection (a) to such cooperative which is--

(i) allowed with respect to the portion of the qualified production activities income to which such payment is attributable, and

(ii) identified by such cooperative in a written notice mailed to such person during the payment period described in section 1382(d).

(B) Cooperative denied deduction for portion of qualified payments.--The taxable income of a specified agricultural or horticultural cooperative shall not be reduced under section 1382 by reason of that portion of any qualified payment as does not exceed the deduction allowable under subparagraph (A) with respect to such payment.

(C) Taxable income of cooperatives determined without regard to certain deductions.--For purposes of this section, the taxable income of a specified agricultural or horticultural cooperative shall be computed without regard to any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

(D) Special rule for marketing cooperatives.--For purposes of this section, a specified agricultural or horticultural cooperative described in subparagraph (F)(ii) shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

(E) Qualified payment.--For purposes of this paragraph, the term “qualified payment” means, with respect to any person, any amount which--

(i) is described in paragraph (1) or (3) of section 1385(a),

(ii) is received by such person from a specified agricultural or horticultural cooperative, and

(iii) is attributable to qualified production activities income with respect to which a deduction is allowed to such cooperative under subsection (a).

(F) Specified agricultural or horticultural cooperative.--For purposes of this paragraph, the term “specified agricultural or horticultural cooperative” means an organization to which part I of subchapter T applies which is engaged--

(i) in the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product, or

(ii) in the marketing of agricultural or horticultural products.

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(5) Trade or business requirement.--This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

(6) Coordination with minimum tax.--For purposes of determining alternative minimum taxable income under section 55--

(A) qualified production activities income shall be determined without regard to any adjustments under sections 56 through 59, and

(B) in the case of a corporation, subsection (a)(2) shall be applied by substituting “alternative minimum taxable income” for “taxable income”.

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(9) Special rule for taxpayers with oil related qualified production activities income.--

(A) In general.--If a taxpayer has oil related qualified production activities income for any taxable year beginning after 2009, the amount otherwise allowable as a deduction under subsection (a) shall be reduced by 3 percent of the least of--

- (i)** the oil related qualified production activities income of the taxpayer for the taxable year,
- (ii)** the qualified production activities income of the taxpayer for the taxable year, or
- (iii)** taxable income (determined without regard to this section).

(B) Oil related qualified production activities income.--For purposes of this paragraph, the term “oil related qualified production activities income” means for any taxable year the qualified production activities income which is attributable to the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during such taxable year.

(C) Primary product.--For purposes of this paragraph, the term “primary product” has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal.

(10) Regulations.--The Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section, including regulations which prevent more than 1 taxpayer from being allowed a deduction under this section with respect to any activity described in subsection (c)(4)(A)(i).

IRC Section 277. Membership Organizations

83 Stat. 540 (1969), amended 90 Stat. 2697 (1976), 100 Stat. 2769 (1986)

Editor's Note:

Section 277 contains limits on certain tax options for cooperatives and other organizations.

§ 277. Deductions incurred by certain membership organizations in transactions with members (26 U.S.C. § 277)

(a) General rule.--In the case of a social club or other membership organization which is operated primarily to furnish services or goods to members and which is not exempt from taxation, deductions for the taxable year attributable to furnishing services, insurance, goods, or other items of value to members shall be allowed only to the extent of income derived during such year from members or transactions with members (including income derived during such year from institutes and trade shows which are primarily for the education of members). If for any taxable year such deductions exceed such income, the excess shall be treated as a deduction attributable to furnishing services, insurance, goods, or other items of value to members paid or incurred in the succeeding taxable year. The deductions provided by sections 243 and 245 (relating to dividends received by corporations) shall not be allowed to any organization to which this section applies for the taxable year.

(b) Exceptions.--Subsection (a) shall not apply to any organization--

- (1)** which for the taxable year is subject to taxation under subchapter H or L,
- (2)** which has made an election before October 9, 1969, under section 456(c) or which is affiliated with such an organization,
- (3)** which for each day of any taxable year is a national securities exchange subject to regulation under the Securities Exchange Act of 1934 or a contract market subject to regulation under the Commodity Exchange Act, or
- (4)** which is engaged primarily in the gathering and distribution of news to its members for publication.

IRC Section 521. Exemption of Farmers' Cooperatives From Tax

68A Stat. 176 (1954), amended 76 Stat. 1051 (1962), 100 Stat. 324 (1986)

Editor's Note:

Section 521 lists requirements farmer cooperatives must meet to be treated as "exempt" organizations and deduct dividends on stock and patronage-based distributions of nonpatronage income.

§ 521. Exemption of farmers' cooperatives from tax (26 U.S.C. § 521)

(a) Exemption from tax.--A farmers' cooperative organization described in subsection (b)(1) shall be exempt from taxation under this subtitle except as otherwise provided in part I of subchapter T (sec. 1381 and following). Notwithstanding part I of subchapter T (sec. 1381 and following), such an organization shall be considered an organization exempt from income taxes for purposes of any law which refers to organizations exempt from income taxes.

(b) Applicable rules.--

(1) Exempt farmers' cooperatives.--The farmers' cooperatives exempt from taxation to the extent provided in subsection (a) are farmers', fruit growers', or like associations organized and operated on a cooperative basis (A) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (B) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses.

(2) Organizations having capital stock.--Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association.

(3) Organizations maintaining reserve.--Exemption shall not be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(4) Transactions with nonmembers.--Exemption shall not be denied any such association which markets the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, or which purchases supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 percent of the value of all its purchases.

(5) Business for the United States.--Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this section.

(6) Netting of losses.--Exemption shall not be denied any such association because such association computes its net earnings for purposes of determining any amount available for distribution to patrons in the manner described in paragraph (1) of section 1388(j).

(7) Cross reference.--

For treatment of value-added processing involving animals, see section 1388(k).

Subchapter T: Cooperatives and Their Patrons

Editor's Note:

Subchapter T sets forth special rules for businesses operating on a cooperative basis and their patrons concerning single tax treatment of patronage refunds and per-unit retain allocations.

Part I – Tax Treatment of Cooperatives

Sec. 1381. Organizations to which part applies.

Sec. 1382. Taxable income of cooperatives.

Sec. 1383. Computation of tax where cooperative redeems nonqualified written notice of allocation or nonqualified per-unit retain certificates.

IRC Section 1381. Subchapter T Organizations

76 Stat. 1045 (1962)

§ 1381. Organizations to which part applies (26 U.S.C. § 1381)

(a) In general.--This part shall apply to--

(1) any organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax), and

(2) any corporation operating on a cooperative basis other than an organization--

(A) which is exempt from tax under this chapter,

(B) which is subject to the provisions of--

(i) part II of subchapter H (relating to mutual savings banks, etc.), or

(ii) subchapter L (relating to insurance companies), or

(C) which is engaged in furnishing electric energy, or providing telephone service, to persons in rural areas.

(b) Tax on certain farmers' cooperatives.--An organization described in subsection (a)(1) shall be subject to the taxes imposed by section 11 or 1201.

(c) Cross reference.--

For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).

IRC Section 1382. Taxable Income of Cooperatives.

76 Stat. 1046 (1962), amended 80 Stat. 1580 (1966), 83 Stat. 722 (1969), 90 Stat. 1834 (1976),
92 Stat. 483 (1978)

§ 1382. Taxable income of cooperatives (26 U.S.C. § 1382)

(a) Gross income.--Except as provided in subsection (b), the gross income of any organization to which this part applies shall be determined without any adjustment (as a reduction in gross receipts, an increase in cost of goods sold, or otherwise) by reason of any allocation or distribution to a patron out of the net earnings of such organization or by reason of any amount paid to a patron as a per-unit retain allocation (as defined in section 1388(f)).

(b) Patronage dividends and per-unit retain allocations.--In determining the taxable income of an organization to which this part applies, there shall not be taken into account amounts paid during the payment period for the taxable year--

(1) as patronage dividends (as defined in section 1388(a)), to the extent paid in money, qualified written notices of allocation (as defined in section 1388(c)), or other property (except nonqualified written notices of allocation (as defined in section 1388(d))) with respect to patronage occurring during such taxable year;

(2) in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred;

(3) as per-unit retain allocations (as defined in section 1388(f)), to the extent paid in money, qualified per-unit retain certificates (as defined in section 1388(h)), or other property (except nonqualified per-unit retain certificates, as defined in section 1388(i)) with respect to marketing occurring during such taxable year; or

(4) in money or other property (except per-unit retain certificates) in redemption of a nonqualified per-unit retain certificate which was paid as a per-unit retain allocation during the payment period for the taxable year during which the marketing occurred.

For purposes of this title, any amount not taken into account under the preceding sentence shall, in the case of an amount described in paragraph (1) or (2), be treated in the same manner as an item of gross income and as a deduction therefrom, and in the case of an amount described in paragraph (3) or (4), be treated as a deduction in arriving at gross income.

(c) Deduction for nonpatronage distributions, etc.--In determining the taxable income of an organization described in section 1381(a)(1), there shall be allowed as a deduction (in addition to other deductions allowable under this chapter)--

(1) amounts paid during the taxable year as dividends on its capital stock; and

(2) amounts paid during the payment period for the taxable year--

(A) in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation) on a patronage basis to patrons with respect to its earnings during such taxable year which are derived from business done for the United States or any of its agencies or from sources other than patronage, or

(B) in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid, during the payment period for the taxable year during which the earnings were derived, on a patronage basis to a patron with respect to earnings derived from business or sources described in subparagraph (A).

(d) Payment period for each taxable year.--For purposes of subsections (b) and (c)(2), the payment period for any taxable year is the period beginning with the first day of such taxable year and ending with the fifteenth day of the ninth month following the close of such year. For purposes of subsections (b)(1) and (c)(2)(A), a qualified check issued during the payment period shall be treated as an amount paid in money during such period if endorsed and cashed on or before the 90th day after the close of such period.

(e) Products marketed under pooling arrangements.--For purposes of subsection (b), in the case of a pooling arrangement for the marketing of products--

(1) the patronage shall (to the extent provided in regulations prescribed by the Secretary) be treated as patronage occurring during the taxable year in which the pool closes, and

(2) the marketing of products shall be treated as occurring during any of the taxable years in which the pool is open.

(f) Treatment of earnings received after patronage occurred.--If any portion of the earnings from business done with or for patrons is includible in the organization's gross income for a taxable year after the taxable year during which the patronage occurred, then for purposes of applying paragraphs (1) and (2) of subsection (b) to such portion the patronage shall, to the extent provided in regulations prescribed by the Secretary, be considered to have occurred during the taxable year of the organization during which such earnings are includible in gross income.

(g) Use of completed crop pool method of accounting.--

(1) In general.--An organization described in section 1381(a) which is engaged in pooling arrangements for the marketing of products may compute its taxable income with respect to any pool opened prior to March 1, 1978, under the completed crop pool method of accounting if--

(A) the organization has computed its taxable income under such method for the 10 taxable years ending with its first taxable year beginning after December 31, 1976, and

(B) with respect to the pool, the organization has entered into an agreement with the United States or any of its agencies which includes provisions to the effect that—

(i) the United States or such agency shall provide a loan to the organization with the products comprising the pool serving as collateral for such loan,

(ii) the organization shall use an amount equal to the proceeds of such loan to make price support advances to eligible producers (as determined by the United States or such agency), to defray costs of handling, processing, and storing such products, or to pay all or part of any administrative costs associated with the price support program,

(iii) an amount equal to the net proceeds (as determined under such agreement) from the sale or exchange of the products in the pool shall be used to repay such loan until such loan is repaid in full (or all the products in the pool are disposed of), and

(iv) the net gains (as determined under such agreement) from the sale or exchange of such products shall be distributed to eligible producers, except to the extent that the United States or such agency permits otherwise.

(2) Completed crop pool method of accounting defined.--For purposes of this subsection, the term “completed crop pool method of accounting” means a method of accounting under which gain or loss is computed separately for each crop year pool in the year in which the last of the products in the pool are disposed of.

IRC Section 1383. Computation of Tax Where Cooperative Redeems Nonqualified Written Notices of Allocation or Nonqualified Per-Unit Retain Certificates

76 Stat. 1047 (1962), amended 80 Stat. 1581 (1966)

§ 1383. Computation of tax where cooperative redeems nonqualified written notices of allocation or nonqualified per-unit retain certificates (26 U.S.C. § 1383)

(a) General rule.--If, under section 1382(b)(2) or (4), or (c)(2)(B), a deduction is allowable to an organization for the taxable year for amounts paid in redemption of nonqualified written notices of allocation or nonqualified per-unit retain certificates, then the tax imposed by this chapter on such organization for the taxable year shall be the lesser of the following:

(1) the tax for the taxable year computed with such deduction; or

(2) an amount equal to--

(A) the tax for the taxable year computed without such deduction, minus

(B) the decrease in tax under this chapter for any prior taxable year (or years) which would result solely from treating such nonqualified written notices of allocation or nonqualified per-unit retain certificates as qualified written notices of allocation or qualified per-unit retain certificates (as the case may be).

(b) Special rules.—

(1) If the decrease in tax ascertained under subsection (a)(2)(B) exceeds the tax for the taxable year (computed without the deduction described in subsection (a)) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

(2) For purposes of determining the decrease in tax under subsection (a)(2)(B), the stated dollar amount of any nonqualified written notice of allocation or nonqualified per-unit retain certificate which is to be treated under such subsection as a qualified written notice of allocation or qualified per-unit retain certificate (as the case may be) shall be the amount paid in redemption of such written notice of allocation or per-unit retain certificate which is allowable as a deduction under section 1382(b)(2) or (4), or (c)(2)(B) for the taxable year.

(3) If the tax imposed by this chapter for the taxable year is the amount determined under subsection (a)(2), then the deduction described in subsection (a) shall not be taken into account for any purpose of this subtitle other than for purposes of this section.

Subchapter T Part II – Tax Treatment by Patrons of Patronage Dividends and Per-Unit Retain Allocations

IRC Section 1385. Amounts Includible in Patron’s Gross Income.

76 Stat. 1048 (1962), amended 80 Stat. 1582 (1966)

§ 1385. Amounts includible in patron's gross income (26 U.S.C. § 1385)

(a) General rule.--Except as otherwise provided in subsection (b), each person shall include in gross income--

(1) the amount of any patronage dividend which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a),

(2) any amount, described in section 1382(c)(2)(A) (relating to certain nonpatronage distributions by tax-exempt farmers' cooperatives), which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a)(1), and

(3) the amount of any per-unit retain allocation which is paid in qualified per-unit retain certificates and which is received by him during the taxable year from an organization described in section 1381(a).

(b) Exclusion from gross income.--Under regulations prescribed by the Secretary, the amount of any patronage dividend, and any amount received on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was paid as a patronage dividend, shall not be included in gross income to the extent that such amount--

(1) is properly taken into account as an adjustment to basis of property, or

(2) is attributable to personal, living, or family items.

(c) Treatment of certain nonqualified written notices of allocation and certain nonqualified per-unit retain certificates.--

(1) Application of subsection.--This subsection shall apply to--

(A) any nonqualified written notice of allocation which--

(i) was paid as a patronage dividend, or

(ii) was paid by an organization described in section 1381(a)(1) on a patronage basis with respect to earnings derived from business or sources described in section 1382(c)(2)(A), and

(B) any nonqualified per-unit retain certificate which was paid as a per-unit retain allocation.

(2) Basis; amount of gain.--In the case of any nonqualified written notice of allocation or nonqualified per-unit retain certificate to which this subsection applies, for purposes of this chapter--

(A) the basis of such written notice of allocation or per-unit retain certificate in the hands of the patron to whom such written notice of allocation or per-unit retain certificate was paid shall be zero,

(B) the basis of such written notice of allocation or per-unit retain certificate which was acquired from a decedent shall be its basis in the hands of the decedent, and

(C) gain on the redemption, sale, or other disposition of such written notice of allocation or per-unit retain certificate by any person shall, to the extent that the stated dollar amount of such written notice of allocation or per-unit retain certificate exceeds its basis, be considered as ordinary income.

Part III – Definitions; Special Rules

IRC Section 1388. Definitions; special rules.

76 Stat. 1048 (1962), amended 80 Stat. 1582 (1966), 83 Stat. 722 (1969), 90 Stat. 1789 (1976),
92 Stat. 2830 (1978), 100 Stat. 323 (1986), 104 Stat. 1388-555 (1990), 118 Stat. 1467, 1469
(2004).

§ 1388. Definitions; special rules (26 U.S.C. § 1388)

(a) Patronage dividend.--For purposes of this subchapter, the term “patronage dividend” means an amount paid to a patron by an organization to which part I of this subchapter applies--

- (1) on the basis of quantity or value of business done with or for such patron,
- (2) under an obligation of such organization to pay such amount, which obligation existed before the organization received the amount so paid, and
- (3) which is determined by reference to the net earnings of the organization from business done with or for its patrons.

Such term does not include any amount paid to a patron to the extent that (A) such amount is out of earnings other than from business done with or for patrons, or (B) such amount is out of earnings from business done with or for other patrons to whom no amounts are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions.

For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.

(b) Written notice of allocation.--For purposes of this subchapter, the term “written notice of allocation” means any capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice, which discloses to the recipient the stated dollar amount allocated to him by the organization and the portion thereof, if any, which constitutes a patronage dividend.

(c) Qualified written notice of allocation.--

(1) Defined.--For purposes of this subchapter, the term “qualified written notice of allocation” means—

(A) a written notice of allocation which may be redeemed in cash at its stated dollar amount at any time within a period beginning on the date such written notice of allocation is paid and ending not earlier than 90 days from such date, but only if the distributee receives written notice of the right of redemption at the time he receives such written notice of allocation; and

(B) a written notice of allocation which the distributee has consented, in the manner provided in paragraph (2), to take into account at its stated dollar amount as provided in section 1385(a).

Such term does not include any written notice of allocation which is paid as part of a patronage dividend or as part of a payment described in section 1382(c)(2)(A), unless 20 percent or more of the amount of such patronage dividend, or such payment, is paid in money or by qualified check.

(2) Manner of obtaining consent.--A distributee shall consent to take a written notice of allocation into account as provided in paragraph (1)(B) only by--

(A) making such consent in writing,

(B) obtaining or retaining membership in the organization after--

(i) such organization has adopted (after October 16, 1962) a bylaw providing that membership in the organization constitutes such consent, and

(ii) he has received a written notification and copy of such bylaw,
or

(C) if neither subparagraph (A) nor (B) applies, endorsing and cashing a qualified check, paid as a part of the patronage dividend or payment of which such written notice of allocation is also a part, on or before the 90th day after the close of the payment period for the taxable year of the organization for which such patronage dividend or payment is paid.

(3) Period for which consent is effective.--

(A) General rule.--Except as provided in subparagraph (B)--

(i) a consent described in paragraph (2)(A) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined with the application of section 1382(e)) during the taxable year of the organization during which such consent is made and all subsequent taxable years of the organization; and

(ii) a consent described in paragraph (2)(B) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined without the application of section 1382(e)) after he received the notification and copy described in paragraph (2)(B)(ii).

(B) Revocation, etc.--

(i) Any consent described in paragraph (2)(A) may be revoked (in writing) by the distributee at any time. Any such revocation shall be effective with respect to patronage occurring on or after the first day of the first taxable year of the organization beginning after the revocation is filed with such organization; except that in the case of a pooling arrangement described in section 1382(e), a revocation made by a distributee shall not be effective as to any pool with respect to which the distributee has been a patron before such revocation.

(ii) Any consent described in paragraph (2)(B) shall not be effective with respect to any patronage occurring (determined without the application of section 1382(e)) after the distributee ceases to be a member of the organization or after the bylaws of the organization cease to contain the provision described in paragraph (2)(B)(i).

(4) Qualified check.--For purposes of this subchapter, the term “qualified check” means only a check (or other instrument which is redeemable in money) which is paid as a part of a patronage dividend, or as a part of a payment described in section 1382(c)(2)(A), to a distributee who has not given consent as provided in paragraph (2)(A) or (B) with respect to such patronage dividend or payment, and on which there is clearly imprinted a statement that the endorsement and cashing of the check (or other instrument) constitutes the consent of the payee to include in his gross income, as provided in the Federal income tax laws, the stated dollar amount of the written notice of allocation which is a part of the patronage dividend or payment of which such qualified check is also a part. Such term does not include any check (or other instrument) which is paid as part of a patronage dividend or payment which does not include a written notice of allocation (other than a written notice of allocation described in paragraph (1)(A)).

(d) Nonqualified written notice of allocation.--For purposes of this subchapter, the term “nonqualified written notice of allocation” means a written notice of allocation which is not described in subsection (c) or a qualified check which is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid.

(e) Determination of amount paid or received.--For purposes of this subchapter, in determining amounts paid or received--

(1) property (other than a written notice of allocation or a per-unit retain certificate) shall be taken into account at its fair market value, and

(2) a qualified written notice of allocation or qualified per-unit retain certificate shall be taken into account at its stated dollar amount.

(f) Per-unit retain allocation.--For purposes of this subchapter, the term “per-unit retain allocation” means any allocation, by an organization to which part I of this subchapter applies, to a patron with respect to products marketed for him, the amount of which is fixed without reference to the net earnings of the organization pursuant to an agreement between the organization and the patron.

(g) Per-unit retain certificate.--For purposes of this subchapter, the term “per-unit retain certificate” means any written notice which discloses to the recipient the stated dollar amount of a per-unit retain allocation to him by the organization.

(h) Qualified per-unit retain certificate.--

(1) Defined.--For purposes of this subchapter, the term “qualified per-unit retain certificate” means any per-unit retain certificate which the distributee has agreed, in the manner provided in paragraph (2), to take into account at its stated dollar amount as provided in section 1385(a).

(2) Manner of obtaining agreement.--A distributee shall agree to take a per-unit retain certificate into account as provided in paragraph (1) only by--

(A) making such agreement in writing, or

(B) obtaining or retaining membership in the organization after--

(i) such organization has adopted (after November 13, 1966) a bylaw providing that membership in the organization constitutes such agreement, and

(ii) he has received a written notification and copy of such bylaw.

(3) Period for which agreement is effective.--

(A) General rule.--Except as provided in subparagraph (B)--

(i) an agreement described in paragraph (2)(A) shall be an agreement with respect to all products delivered by the distributee to the organization during the taxable year of the organization during which such agreement is made and all subsequent taxable years of the organization; and

(ii) an agreement described in paragraph (2)(B) shall be an agreement with respect to all products delivered by the distributee to the organization after he received the notification and copy described in paragraph (2)(B)(ii).

(B) Revocation, etc.—

(i) Any agreement described in paragraph (2)(A) may be revoked (in writing) by the distributee at any time. Any such revocation shall be effective with respect to products delivered by the distributee on or after the first day of the first taxable year of the organization beginning after the revocation is filed with the organization; except that in the case of a pooling arrangement described in section 1382(e) a revocation made by a distributee shall not be effective as to any products which were delivered to the organization by the distributee before such revocation.

(ii) Any agreement described in paragraph (2)(B) shall not be effective with respect to any products delivered after the distributee ceases to be a member of the organization or after the bylaws of the organization cease to contain the provision described in paragraph (2)(B)(i).

(i) Nonqualified per-unit retain certificate.--For purposes of this subchapter, the term “nonqualified per-unit retain certificate” means a per-unit retain certificate which is not described in subsection (h).

(j) Special rules for the netting of gains and losses by cooperatives.--For purposes of this subchapter, in the case of any organization to which part I of this subchapter applies--

(1) Optional netting of patronage gains and losses permitted.--The net earnings of such organization may, at its option, be determined by offsetting patronage losses (including any patronage loss carried to such year) which are attributable to 1 or more allocation units (whether such units are functional, divisional, departmental, geographic, or otherwise) against patronage earnings of 1 or more other such allocation units.

(2) Certain netting permitted after section 381 transactions.--If such an organization acquires the assets of another such organization in a transaction described in section 381(a), the acquiring organization may, in computing its net earnings for taxable years ending after the date of acquisition, offset losses of 1 or more allocation units of the acquiring or acquired organization against earnings of the acquired or acquiring organization, respectively, but only to the extent--

(A) such earnings are properly allocable to periods after the date of acquisition, and

(B) such earnings could have been offset by such losses if such earnings and losses had been derived from allocation units of the same organization.

(3) Notice requirements.--

(A) In general.--In the case of any organization which exercises its option under paragraph (1) for any taxable year, such organization shall, on or before the 15th day of the 9th month following the close of such taxable year, provide to its patrons a written notice which—

(i) states that the organization has offset earnings and losses from 1 or more of its allocation units and that such offset may have affected the amount which is being distributed to its patrons,

(ii) states generally the identity of the offsetting allocation units, and

(iii) states briefly what rights, if any, its patrons may have to additional financial information of such organization under terms of its charter, articles of incorporation, or bylaws, or under any provision of law.

(B) Certain information need not be provided.--An organization may exclude from the information required to be provided under clause (ii) of subparagraph (A) any detailed or specific data regarding earnings or losses of such units which such organization determines would disclose commercially sensitive information which--

(i) could result in a competitive disadvantage to such organization, or

(ii) could create a competitive advantage to the benefit of a competitor of such organization.

(C) Failure to provide sufficient notice.--If the Secretary determines that an organization failed to provide sufficient notice under this paragraph--

(i) the Secretary shall notify such organization, and

(ii) such organization shall, upon receipt of such notification, provide to its patrons a revised notice meeting the requirements of this paragraph.

Any such failure shall not affect the treatment of the organization under any provision of this subchapter or section 521.

(4) Patronage earnings or losses defined.--For purposes of this subsection, the terms "patronage earnings" and "patronage losses" means¹ earnings and losses, respectively, which are derived from business done with or for patrons of the organization.

(k) Cooperative marketing includes value-added processing involving animals.--For purposes of section 521 and this subchapter, the marketing of the products of members or other producers shall include the feeding of such products to cattle, hogs, fish, chickens, or other animals and the sale of the resulting animals or animal products.

IRC Section 3121. Federal Insurance Contributions Act

91 Stat. 1555 (1977)

Editor's Note:

This section provides a limited exemption for IRC Section 521 cooperatives.

§ 3121. Definitions (26 U.S.C. § 3121)

(a) Wages.--For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include--

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(16) remuneration paid by an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than \$100

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IRC Section 3306. Federal Unemployment Tax Act

68A Stat. 450 (1954), amended 74 Stat. 984 (1960)

Editor's Note:

Section 3306 provides a limited exemption for IRC Section 521 cooperatives.

§ 3306. Definitions (26 U.S.C. § 3306)

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(c) Employment.--For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except--

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(10)(A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than \$50

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IRC Section 4421. Taxes on Wagering

68A Stat. 528 (1954)

Editor's Note:

Section 4421 provides a limited exemption for IRC Section 521 cooperatives.

§ 4421. Definitions (26 U.S.C. § 4421)

For purposes of this chapter—

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(2) Lottery.--The term "lottery" includes the numbers game, policy, and similar types of wagering. The term does not include—

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(B) any drawing conducted by an organization exempt from tax under sections 501 and 521, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

IRC Section 5392. Bonded Wine Premises

72 Stat. 1387 (1958)

Editor's Note:

This section defines "affiliated" to include members of farm cooperatives.

§ 5392. Definitions (26 U.S.C. § 5392)

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(f) Own production.--For purposes of this subchapter the term "own production", when used with reference to wine in a bonded wine cellar, means wine produced by fermentation in the same bonded wine cellar, whether or not produced by a predecessor in interest at such bonded wine cellar. This term may also include, under regulations, wine produced by fermentation in bonded wine cellars owned or controlled by the same or affiliated persons or firms when located within the same State; the term "affiliated" shall be deemed to include any one or more bonded wine cellar proprietors associated as members of any farm cooperative, or any one or more bonded wine cellar proprietors affiliated within the meaning of section 17(a)(5) of the Federal Alcohol Administration Act, as amended (27 U.S.C. 211).

IRC Section 6044. Reporting Payments of Patronage Dividends

68A Stat. 746 (1954), amended 76 Stat. 1054 (1962), 80 Stat. 1584 (1966), 90 Stat. 1834 (1976), 96 Stat. 587, 591 (1982), 97 Stat. 369, 383 (1983), and 100 Stat. 2737 (1986), 1996 110 Stat. 1469

§ 6044. Returns regarding payments of patronage dividends (26 U.S.C. § 6044)

(a) Requirement of reporting.--

(1) In general.--Except as otherwise provided in this section, every cooperative to which part I of subchapter T of chapter 1 applies, which makes payments of amounts described in subsection (b) aggregating \$10 or more to any person during any calendar year, shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(2) Returns required by the Secretary.--Every such cooperative which makes payments of amounts described in subsection (b) aggregating less than \$10 to any person during any calendar year shall, when required by the Secretary, make a return setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(b) Amounts subject to reporting.--

(1) General rule.--Except as otherwise provided in this section, the amounts subject to reporting under subsection (a) are--

(A) the amount of any patronage dividend (as defined in section 1388(a)) which is paid in money, qualified written notices of allocation (as defined in section 1388(c)), or other property (except nonqualified written notices of allocation as defined in section 1388(d)),

(B) any amount described in section 1382(c)(2)(A) (relating to certain nonpatronage distributions) which is paid in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation) by an organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax),

(C) any amount described in section 1382(b)(2) (relating to redemption of nonqualified written notices of allocation) and, in the case of an organization described in section 1381(a)(1), any amount described in section 1382(c)(2)(B) (relating to redemption of nonqualified written notices of allocation paid with respect to earnings derived from sources other than patronage), and

(D) the amount of any per-unit retain allocation (as defined in section 1388(f)) which is paid in qualified per-unit retain certificates (as defined in section 1388(h)), and

(E) any amount described in section 1382(b)(4) (relating to redemption of nonqualified per-unit retain certificates).

(2) Exceptions.--The provisions of subsection (a) shall not apply, to the extent provided in regulations prescribed by the Secretary, to any payment--

(A) by a foreign corporation, or

(B) to a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens.

(c) Exemption for certain consumer cooperatives.--A cooperative which the Secretary determines is primarily engaged in selling at retail goods or services of a type that are generally for personal, living, or family use shall, upon application to the Secretary, be granted exemption from the reporting requirements imposed by subsection (a). Application for exemption under this subsection shall be made in accordance with regulations prescribed by the Secretary.

(d) Determination of amount paid.--For purposes of this section, in determining the amount of any payment--

(1) property (other than a qualified written notice of allocation or a qualified per-unit retain certificate) shall be taken into account at its fair market value, and

(2) a qualified written notice of allocation or a qualified per-unit retain certificate shall be taken into account at its stated dollar amount.

(e) Statements to be furnished to persons with respect to whom information is required.--

Every cooperative required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing--

- (1) the name, address, and phone number of the information contact of the cooperative required to make such return, and
- (2) the aggregate amount of payments to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished (either in person or in a statement mailing by first-class mail which includes adequate notice that the statement is enclosed) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made and shall be in such form as the Secretary may prescribe by regulations.

IRC Section 6072. Time for Filing Income Tax Returns

68A Stat. 750 (1954), amended 76 Stat. 1051 (1962)

§ 6072. Time for filing income tax returns (26 U.S.C. § 6072)

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(d) Returns of cooperative associations.--In the case of an income tax return of--

- (1) an exempt cooperative association described in section 1381(a)(1), or
- (2) an organization described in section 1381(a)(2) which is under an obligation to pay patronage dividends (as defined in section 1388(a)) in an amount equal to at least 50 percent of its net earnings from business done with or for its patrons, or which paid patronage dividends in such an amount out of the net earnings from business done with or for patrons during the most recent taxable year for which it had such net earnings,

a return made on the basis of a calendar year shall be filed on or before the 15th day of September following the close of the calendar year, and a return made on the basis of a fiscal year shall be filed on or before the 15th day of the 9th month following the close of the fiscal year.

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IRC Section 6652. Failure to File Information Returns

68A Stat. 821 (1954), amended 76 Stat. 1057 (1962), 95 Stat. 343 (1981), 96 Stat. 605 (1982), 97 Stat. 381 (1983)

§ 6652. Failure to file certain information returns, registration statements, etc. (26 U.S.C. § 6652)

(a) Returns with respect to certain payments aggregating less than \$10.--In the case of each failure to file a statement of a payment to another person required under the authority of--

(1) section 6042(a)(2) (relating to payments of dividends aggregating less than \$10), or

(2) section 6044(a)(2) (relating to payments of patronage dividends aggregating less than \$10),

on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary and in the same manner as tax) by the person failing to so file the statement, \$1 for each such statement not so filed, but the total amount imposed on the delinquent person for all such failures during the calendar year shall not exceed \$1,000.

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Agriculture

Commodity Exchange Act

102 Stat. 3625,

Editor's Note:

The Act defines "cooperative association of producers" and bars discrimination against them.

§ 1a. Definitions (7 U.S.C. § 1a)

As used in this chapter:

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(14) Cooperative association of producers

The term "cooperative association of producers" means any cooperative association, corporate, or otherwise, not less than 75 percent in good faith owned or controlled, directly or indirectly, by producers of agricultural products and otherwise complying with sections 291 and 292 of this title, including any organization acting for a group of such associations and owned or controlled by such associations, except that business done for or with the United States, or any agency thereof, shall not be considered either member or nonmember business in determining the compliance of any such association with this chapter.

§ 7. Designation of boards of trade as contract markets (7 U.S.C. § 7)

(a) Applications

A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials and records the Commission may require consistent with this chapter.

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(e) Current agricultural commodities

(1) Subject to paragraph (2) of this subsection, a contract for purchase or sale for future delivery of an agricultural commodity enumerated in section 1a(9) of this title that is available for trade on a contract market, as of December 21, 2000, may be traded only on a contract market designated under this section.

(2) In order to promote responsible economic or financial innovation and fair competition, the Commission, on application by any person, after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options on such contracts to be conducted on a derivatives transaction execution facility.

§ 10a. Cooperative associations and corporations, exclusion from board of trade; rules of board inapplicable to payment of compensation by association (7 U.S.C. § 10a)

(a) No board of trade which has been designated or registered as a contract market or a derivatives transaction execution facility exclude¹ from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade: Provided, however, That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said commission entered hereunder shall be reviewable by the court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in section 8(b) of this title, but such order shall not be stayed by the court pending review.

(b) No rule of any board of trade designated or registered as a contract market or a derivatives transaction execution facility shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member-associations for services rendered or to be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such federated cooperative association.

Cotton Standards

66 Stat. 349 (1952)

Editor's Note:

The statute authorizes USDA to use cooperatives for classing cotton.

§ 51a-1. Contracts with cooperatives furnishing classers; amount and type of payment (7 U.S.C. § 51a-1)

On and after July 5, 1952, the Secretary may contract with cooperatives furnishing classers and other facilities for classing cotton and may pay for such services an amount, some part of which may be in kind, not in excess of the value of the samples.

Packers and Stockyards Act

42 Stat. 165 (1921)

Editor's Note:

The law states that patronage refunds are not illegal rebates.

§ 207. Schedule of rates (7 U.S.C. § 207)

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(f) Suspension of operations; compliance

After the expiration of the sixty days referred to in subsection (a) of this section, no person shall carry on the business of a stockyard owner or market agency unless the rates and charges for the stockyard services furnished at the stockyard have been filed and published in accordance with this section and the orders of the Secretary made thereunder; nor charge, demand, or collect a greater or less or different compensation for such services than the rates and charges specified in the schedules filed and in effect at the time; nor refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from bona fide returning to its members, on a patronage basis, its excess earnings on their livestock, subject to such regulations as the Secretary may prescribe); nor extend to any person at such stockyard any stockyard services except such as are specified in such schedules.

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Perishable Agricultural Commodities Act

98 Stat. 165 (1984)

Editor's Note:

The Act provides an exemption from the trust for the benefit of unpaid sellers.

§ 499e. Liability to persons injured (7 U.S.C. § 499e)

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(c) Trust on commodities and sales proceeds for benefit of unpaid suppliers, sellers, or agents; preservation of trust; jurisdiction of courts

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(2) Perishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such commission merchant, dealer, or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents. Payment shall not be considered to have been made if the supplier, seller, or agent receives a payment instrument which is dishonored. The provisions of this subsection shall not apply to transactions between a cooperative association, as defined in section 1141j(a) of Title 12, and its members.

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Tobacco Statistics Act

45 Stat. 1079 (1929)

Editor's Note:

The Act authorizes the Secretary to collect data from cooperatives.

§ 501. Collection and publication; facts required; deteriorated tobacco (7 U.S.C. § 501)

The Secretary of Agriculture is authorized and directed to collect and publish statistics of the quantity of leaf tobacco in all forms in the United States and Puerto Rico, owned by or in the possession of dealers, manufacturers, quasi-manufacturers, growers' cooperative associations, warehousemen, brokers, holders, or owners, other than the original growers of tobacco.

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Agricultural Marketing Agreement Act of 1937

48 Stat. 34 (1933), amended 49 Stat. 753 (1935), reenacted 50 Stat. 246 (1937), as amended

Editor's Note:

The Act sets up the Federal market order system.

§ 608b. Marketing agreements; exemption from anti-trust laws; inspection requirements for handlers not subject to agreements (7 U.S.C. § 608b)

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

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§ 608c. Orders (7 U.S.C. § 608c)

(1) Issuance by Secretary

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

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(5) Terms--Milk and its products

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

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers. Throughout the 2-year period beginning on the effective date of this sentence (and subsequent to such 2-year period unless modified by amendment to the order involved), the minimum aggregate amount of the adjustments, under clauses (1) and (2) of the preceding sentence, to prices for milk of the highest use classification under orders that are in effect under this section on December 23, 1985, shall be as follows:

(Editor's Note: statute lists marketing areas and aggregate dollar amounts for milk with 3.5 percent milkfat.)

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(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection, for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of sections 291 and 292 of this title, engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all of its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection for such milk.

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(I) Establishing or providing for the establishment of research and development projects, and advertising (excluding brand advertising), sales promotion, educational, and other programs designed to improve or promote the domestic marketing and consumption of milk and its products, to be financed by producers in a manner and at a rate specified in the order, on all producer milk under the order. Producer contributions under this subparagraph 4 may be deducted from funds due producers in computing total pool value or otherwise computing total funds due producers and such deductions shall be in addition to the adjustments authorized by paragraph (B) of this subsection. Provision may be made in the order to exempt, or allow suitable adjustments or credits in connection with, milk on which a mandatory checkoff for advertising or marketing research is required under the authority of any State law. Such funds shall be paid to an agency organized by milk producers and producers' cooperative associations in such form and with such methods of operation as shall be specified in the order. Such agency may expend such funds for any of the purposes authorized by this subparagraph 4 and may designate, employ, and allocate funds to persons and organizations engaged in such programs which meet the standards and qualifications specified in the order. All funds collected under this subparagraph 4 shall be separately accounted for and shall be used only for the purposes for which they were collected. Programs authorized by this

subparagraph 4 may be either local or national in scope, or both, as provided in the order, but shall not be international. Order provisions under this subparagraph 4 shall not become effective in any marketing order unless such provisions are approved by producers separately from other order provisions, in the same manner provided for the approval of marketing orders, and may be terminated separately whenever the Secretary makes a determination with respect to such provisions as is provided for the termination of an order in subsection (16)(B) of this section. Disapproval or termination of such order provisions shall not be considered disapproval of the order or of other terms of the order. Notwithstanding any other provision of this chapter, any producer against whose marketings any assessment is withheld or collected under the authority of this subparagraph, 4 and who is not in favor of supporting the research and promotion programs, as provided for herein, shall have the right to demand and receive a refund of such assessment pursuant to the terms and conditions specified in the order.

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

- (i)** providing facilities to furnish additional supplies of milk needed by handlers and to handle and dispose of milk supplies in excess of quantities needed by handlers;
- (ii)** handling on specific days quantities of milk that exceed the quantities needed by handlers; and
- (iii)** transporting milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification or for providing a market outlet for milk of any use classification.

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(8) Orders with marketing agreement

Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement,

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(9) Orders with or without marketing agreement

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

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

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

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

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

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(12) Cooperative association representation

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

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(16) Termination of orders and marketing agreements

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

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

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(17) Provisions applicable to amendments

(A) Applicability to amendments

The provisions of this section and section 608d of this title applicable to orders shall be applicable to amendments to orders.

(B) Supplemental rules of practice

(i) In general

Not later than 60 days after the date of enactment of this subparagraph, the Secretary shall issue, using informal rulemaking, supplemental rules of practice to define guidelines and timeframes for the rulemaking process relating to amendments to orders.

(ii) Issues

At a minimum, the supplemental rules of practice shall establish—

- (I) proposal submission requirements;
- (II) pre-hearing information session specifications;
- (III) written testimony and data request requirements;
- (IV) public participation timeframes; and
- (V) electronic document submission standards.

(iii) Effective date

The supplemental rules of practice shall take effect not later than 120 days after the date of enactment of this subparagraph, as determined by the Secretary.

(C) Hearing time frames

(i) In general

Not more than 30 days after the receipt of a proposal for an amendment hearing regarding a milk marketing order, the Secretary shall—

- (I) issue a notice providing an action plan and expected timeframes for completion of the hearing not more than 120 days after the date of the issuance of the notice;
- (II) (aa) issue a request for additional information to be used by the Secretary in making a determination regarding the proposal; and

(bb) if the additional information is not provided to the Secretary within the timeframe requested by the Secretary, issue a denial of the request; or
- (III) issue a denial of the request.

(ii) Requirement

A post-hearing brief may be filed under this paragraph not later than 60 days after the date of an amendment hearing regarding a milk marketing order.

(iii) Recommended decisions

A recommended decision on a proposed amendment to an order shall be issued not later than 90 days after the deadline for the submission of post-hearing briefs.

(iv) Final decisions

A final decision on a proposed amendment to an order shall be issued not later than 60 days after the deadline for submission of comments and exceptions to the recommended decision issued under clause (iii).

(D) Industry assessments

If the Secretary determines it is necessary to improve or expedite rulemaking under this subsection, the Secretary may impose an assessment on the affected industry to supplement appropriated funds for the procurement of service providers, such as court reporters.

(E) Use of informal rulemaking

The Secretary may use rulemaking under section 553 of Title 5 to amend orders, other than provisions of orders that directly affect milk prices.

(F) Avoiding duplication

The Secretary shall not be required to hold a hearing on any amendment proposed to be made to a milk marketing order in response to an application for a hearing on the proposed amendment if—

(i) the application requesting the hearing is received by the Secretary not later than 90 days after the date on which the Secretary has announced the decision on a previously proposed amendment to that order; and

(ii) the 2 proposed amendments are essentially the same, as determined by the Secretary.

(G) Monthly feed and fuel costs for make allowances

As part of any hearing to adjust make allowances under marketing orders commencing prior to September 30, 2012, the Secretary shall—

(i) determine the average monthly prices of feed and fuel incurred by dairy producers in the relevant marketing area;

(ii) consider the most recent monthly feed and fuel price data available; and

(iii) consider those prices in determining whether or not to adjust make allowances.

(18) Milk prices

The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain the parity prices of such commodities. The prices which it is declared to be the policy of Congress to establish in section 602 of this title shall, for the purposes of such agreement, order, or amendment, be adjusted to reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 608b of this title or this section, as the case may be, that the parity prices of such commodities are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, make adjustments in such prices.

(19) Producer referendum

For the purpose of ascertaining whether the issuance of an order is approved or favored by producers or processors, as required under the applicable provisions of this chapter, the Secretary may conduct a referendum among producers or processors and in the case of an order other than an amendatory order shall do so. The requirements of approval or favor under any such provision shall be held to be complied with if, of the total number of producers or processors, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. The terms and conditions of the proposed order shall be described by the Secretary in the ballot used in the conduct of the referendum. The nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto. Nothing in this subsection shall be construed as limiting representation by cooperative associations as provided in subsection (12) of this section. For the purpose of ascertaining whether the issuance of an order applicable to pears for canning or freezing is approved or favored by producers as required under the applicable provisions of this chapter, the Secretary shall conduct a referendum among producers in each State in which pears for canning or freezing are proposed to be included within the provisions of such marketing order and the requirements of approval or favor under any such provisions applicable to pears for canning or freezing shall be held to be complied with if, of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of 66 2/3 per centum except that in the event that pear producers in any State fail to approve or favor the issuance of any such marketing order, it shall not be made effective in such State.

§ 610. Administration (7 U.S.C. § 610)

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(b) State and local committees or associations of producers; handlers' share of expenses of authority or agency

(1) The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this chapter, State and local committees, or associations of producers, and to permit cooperative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of payments authorized to be made under section 608 of this title. The Secretary, in the administration of this chapter, shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress, and as will tend to promote efficient methods of marketing and distribution.

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

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

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

§ 671. Arbitration of disputes concerning milk (7 U.S.C. § 671)

(a) Application

The Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, upon written application of any cooperative association, incorporated or otherwise, which is in good faith owned or controlled by producers or organizations thereof, of milk or its products, and which is bona fide engaged in collective processing or preparing for market or handling or marketing (in the current of interstate or foreign commerce, as defined by section 610(j) of this title), milk or its products, may mediate and, with the consent of all parties, shall arbitrate if the Secretary has reason to believe that the declared policy of the Agricultural Adjustment Act [7 U.S.C. § 601 et seq.], as amended, would be effectuated thereby, bona fide disputes, between such associations and the purchasers or handlers or processors or distributors of milk or its products, as to terms and conditions of the sale of milk or its products. The power to arbitrate under this section shall apply only to such subjects of the term or condition in dispute as could be regulated under the provisions of the Agricultural Adjustment Act, as amended, relating to orders for milk and its products.

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Rural Electrification Act

49 Stat. 1365 (1936), amended 63 Stat. 948 (1949), 85 Stat. 34 (1971)

Editor's Note:

The Act authorizes loans by REA to rural electric and telephone cooperatives.

§ 904. Loans for electrical plants and transmission lines (7 U.S.C. § 904)

The Secretary is authorized and empowered, from the sums hereinbefore authorized, to make loans for rural electrification to persons, corporations, States, Territories, and subdivisions and agencies thereof, municipalities, peoples' utility districts and cooperative, nonprofit, or limited-dividend associations, organized under the laws of any State or Territory of the United States, for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems for the furnishing and improving of electric service to persons in rural areas, including by assisting electric borrowers to implement demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems, and loans, from funds available under section 903 of this title, to cooperative associations and municipalities for the purpose of enabling said cooperative associations, and municipalities to the extent that such indebtedness was incurred with respect to electric transmission and distribution lines or systems or portions thereof serving persons in rural areas, to discharge or refinance long-term debts owed by them to the Tennessee Valley Authority on account of loans made or credit extended under the terms of the Tennessee Valley Authority Act of 1933, as amended [16 U.S.C. § 831 et seq.]: Provided, That the Secretary, in making such loans, shall give preference to States, Territories, and subdivisions and agencies thereof, municipalities, peoples' utility districts, and cooperative, nonprofit, or limited-dividend associations, the projects of which comply with the requirements of this chapter.

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§ 922. Loans for rural telephone service (7 U.S.C. § 922)

From such sums as are from time to time made available by the Congress to the Secretary for such purpose, pursuant to section 903 of this title, the Secretary is authorized and empowered to make loans to persons now providing or who may hereafter provide telephone service in rural areas, to public bodies now providing telephone service in rural areas and to cooperative, nonprofit, limited dividend, or mutual associations. Except as otherwise provided by this subchapter, such loans shall be made under the same terms and conditions as are provided in section 904 of this title, for the purpose of financing the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems to furnish and improve telephone service in rural areas: *Provided, however,* That the Secretary, in making such loans, shall give preference to persons providing telephone service in rural areas, to public bodies now providing telephone service in rural areas, and to cooperative, nonprofit, limited dividend, or mutual associations.

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Federal Crop Insurance Act

52 Stat. 73 (1938), amended 94 Stat. 1313 (1980)

Editor's Note:

The statute authorizes Federal Crop Insurance Corporation to utilize cooperatives.

§ 1507 Personnel of Corporation (7 U.S.C. § 1507)

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(c). Use of associations of producers

In the administration of this subchapter, the Board shall, to the maximum extent possible, **(1)** establish or use committees or associations of producers and make payments to them to cover the administrative and program expenses, as determined by the Board, incurred by them in cooperating in carrying out this subchapter

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(e) Utilization of producer cooperative associations

In carrying out the provisions of this subchapter the Board may, in its discretion, utilize producer-owned and producer-controlled cooperative associations.

Consolidated Farm and Rural Development Act

86 Stat. 663 (1972) as amended by 87 Stat. 241 (1973); 91 Stat. 1021 (1977); Pub.L. 95-334, 92 Stat. 424 (1978); 94 Stat. 1187 (1980); 94 Stat. 1871 (1980); 100 Stat. 923 (1986); 101 Stat. 1330-28 (1987); 104 Stat. 4013, 4022, 4034, 4051, 4052 (1990); 105 Stat. 1879, 1880 (1991); 106 Stat. 4137 (1992); 106 Stat. 4144 (1992); 110 Stat. 1093, 1107, 1112, 1125, 1138 (1996); 110 Stat. 1600 (1996); 116 Stat. 355, 358, 359 (2002); 122 Stat. 1164 to 1169 (2008); 122 Stat. 1664, 1925 to 1931 (2008); Pub.L. 113-79, 128 Stat. 843, 844, 845 (2014); 128 Stat. 2017 (2014)

Editor's Note:

The law provides a program of grants and technical assistance for rural and cooperative development.

§ 1932. Assistance for rural entities (7 U.S.C.A. § 1932)

(a) Loans to private business enterprises

(1) Definitions

In this subsection:

(A) Aquaculture

The term “aquaculture” means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of creating or augmenting publicly owned and regulated stocks of fish.

(B) Solar energy

The term “solar energy” means energy derived from sources (other than fossil fuels) and technologies included in the Federal Nonnuclear Energy Research and Development Act of 1974, as amended [42 U.S.C.A. § 5901 et seq.].

(2) Loan purposes

The Secretary may make and insure loans to public, private, or cooperative organizations organized for profit or nonprofit and private investment funds that invest primarily in cooperative organizations, to Indian tribes on Federal and State reservations or other federally recognized Indian tribal groups, or to individuals for the purposes of—

(A) improving, developing, or financing business, industry, and employment (including through the financing of working capital) and improving the economic and environmental climate in rural communities, including pollution abatement and control;

(B) the conservation, development, and use of water for aquaculture purposes in rural areas;

(C) reducing the reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems and other renewable energy systems (including wind energy systems and anaerobic digestors for the purpose of energy generation), including the modification of existing systems, in rural areas; and

(D) to facilitate economic opportunity for industries undergoing adjustment from terminated Federal agricultural price and income support programs or increased competition from foreign trade.

(3) Loan guarantees

Loans described in paragraph (2), when originated, held, and serviced by other lenders, may be guaranteed by the Secretary under this section without regard to paragraphs (1) and (4) of section 1983 of this title.

(4) Maximum amount of principal

No loan may be made, insured, or guaranteed under this subsection that exceeds \$25,000,000 in principal amount.

(b) Solid waste management grants

(1) In general

The Secretary may make grants to nonprofit organizations for the provision of regional technical assistance to local and regional governments and related agencies for the purpose of reducing or eliminating pollution of water resources and improving the planning and management of solid waste disposal facilities. Grants made under this paragraph for the provision of technical assistance shall be made for 100 percent of the cost of such assistance.

(2) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection \$10,000,000 for each of fiscal years 2014 through 2018.

(c) Rural business development grants

(1) In general

The Secretary may make grants under this subsection to eligible entities described in paragraph (2) in rural areas that primarily serve rural areas for purposes described in paragraph (3).

(2) Eligible entities

The Secretary may make grants under this subsection to—

- (A)** governmental entities;
- (B)** Indian tribes; and
- (C)** nonprofit entities.

(3) Eligible purposes for grants

Eligible entities that receive grants under this subsection may use the grant funds for—

- (A)** business opportunity projects that--
 - (i)** identify and analyze business opportunities;
 - (ii)** identify, train, and provide technical assistance to existing or prospective rural entrepreneurs and managers;
 - (iii)** assist in the establishment of new rural businesses and the maintenance of existing businesses, including through business support centers;
 - (iv)** conduct regional, community, and local economic development planning and coordination, and leadership development; and
 - (v)** establish centers for training, technology, and trade that will provide training to rural businesses in the use of interactive communications technologies to develop international trade opportunities and markets;

And

- (B)** projects that support the development of business enterprises that finance or facilitate—
 - (i)** the development of small and emerging private business enterprise;
 - (ii)** the establishment, expansion, and operation of rural distance learning networks;
 - (iii)** the development of rural learning programs that provide educational instruction or job training instruction related to potential employment or job advancement to adult students; and

(iv) the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities.

(4) Authorization of appropriations

(A) In general

There is authorized to be appropriated to the Secretary to carry out this subsection \$65,000,000 for each of fiscal years 2014 through 2018, to remain available until expended.

(B) Allocation

Of the funds made available under subparagraph (A) for a fiscal year, not more than 10 percent shall be used for the purposes described in paragraph (3)(A).

(d) Joint loans or grants for private business enterprises; restrictions; system of certification for expeditious processing of requests for assistance; prior approval of grant or loan; equity investment as condition for loan commitment; issuance of certificates of beneficial ownership of notes

(1) The Secretary may participate in joint financing to facilitate development of private business enterprises in rural areas with the Economic Development Administration, the Small Business Administration, and the Department of Housing and Urban Development and other Federal and State agencies and with private and quasi-public financial institutions, through joint loans to applicants eligible under subsection (a) of this section for the purpose of improving, developing, or financing business, industry, and employment and improving the economic and environmental climate in rural areas or through joint grants to applicants eligible under subsection (c) of this section for such purposes, including in the case of loans or grants the development, construction, or acquisition of land, buildings, plants, equipment, access streets and roads, parking areas, utility extensions, necessary water supply and waste disposal facilities, refining, service and fees.

(2) No financial or other assistance shall be extended under any provision of this section, except for cases in which such assistance does not exceed \$1,000,000 or for cases in which direct employment will not be increased by more than fifty employees, that is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant, but this limitation shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the

operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

(3) No financial or other assistance shall be extended under any provision of this section, except for cases in which such assistance does not exceed \$1,000,000 or for cases in which direct employment will not be increased by more than fifty employees, which is calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

(4) No financial or other assistance shall be extended under any provision of this section, except for cases in which such assistance does not exceed \$1,000,000 or for cases in which direct employment will not be increased by more than fifty employees, if the Secretary of Labor certifies within 30 days after the matter has been submitted to him by the Secretary of Agriculture that the provisions of paragraphs (2) and (3) of this subsection have not been complied with. The Secretary of Labor shall, in cooperation with the Secretary of Agriculture, develop a system of certification which will insure the expeditious processing of requests for assistance under this section.

(5) No grant or loan authorized to be made under this chapter shall require or be subject to the prior approval of any officer, employee, or agency of any State.

(6) No loan commitment issued under this section shall be conditioned upon the applicant investing in excess of 10 per centum in the business or industrial enterprise for which purpose the loan is to be made unless the Secretary determines there are special circumstances which necessitate an equity investment by the applicant greater than 10 per centum.

(7) No provision of law shall prohibit issuance by the Secretary of certificates evidencing beneficial ownership in a block of notes insured or guaranteed under this chapter or Title V of the Housing Act of 1949 [42 U.S.C.A. § 1471 et seq.]; any sale by the Secretary of such certificates shall be treated as a sale of assets for the purposes of chapter 11 of Title 31. Any security representing beneficial ownership in a block of notes guaranteed or insured under this chapter or Title V of the Housing Act of 1949 issued by a private entity shall be exempt from laws administered by the Securities and Exchange Commission, except sections 77q, 77v, and 77x of Title 15; however, the Secretary shall require (i) that the issuer place such notes in the custody of an institution chartered by a Federal or State agency to act as trustee and (ii) that the issuer provide such periodic reports of sales as the Secretary deems necessary.

(e) Rural cooperative development grants

(1) Definitions

In this subsection:

(A) Nonprofit institution

The term “nonprofit institution” means any organization or institution, including an accredited institution of higher education, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(B) United States

The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the other territories and possessions of the United States.

(2) Grants

The Secretary shall make grants effective October 1, 1996, under this subsection to nonprofit institutions for the purpose of enabling the institutions to establish and operate centers for rural cooperative development.

(3) Goals

The goals of a center funded under this subsection shall be to facilitate the creation of jobs in rural areas through the development of new rural cooperatives, value added processing, and rural businesses.

(4) Application

Any nonprofit institution seeking a grant under paragraph (2) shall submit to the Secretary an application containing a plan for the establishment and operation by the institution of a center or centers for cooperative development. The Secretary may approve the application if the plan contains the following:

(A) A provision that substantiates that the center will effectively serve rural areas in the United States.

(B) A provision that the primary objective of the center will be to improve the economic condition of rural areas through cooperative development.

(C) A description of the activities that the center will carry out to accomplish the objective. The activities may include the following:

(i) Programs for applied research and feasibility studies that may be useful to individuals, cooperatives, small businesses, and other similar entities in rural areas served by the center.

(ii) Programs for the collection, interpretation, and dissemination of information that may be useful to individuals, cooperatives, small businesses, and other similar entities in rural areas served by the center.

(iii) Programs providing training and instruction for individuals, cooperatives, small businesses, and other similar entities in rural areas served by the center.

(iv) Programs providing loans and grants to individuals, cooperatives, small businesses, and other similar entities in rural areas served by the center.

(v) Programs providing technical assistance, research services, and advisory services to individuals, cooperatives, small businesses, and other similar entities in rural areas served by the center.

(vi) Programs providing for the coordination of services and sharing of information among the center¹.

(D) A description of the contributions that the activities are likely to make to the improvement of the economic conditions of the rural areas for which the center will provide services.

(E) Provisions that the center, in carrying out the activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal Government, and State and local governments.

(F) Provisions that the center will take all practicable steps to develop continuing sources of financial support for the center, particularly from sources in the private sector.

(G) Provisions for—

(i) monitoring and evaluating the activities by the nonprofit institution operating the center; and

(ii) accounting for money received by the institution under this section.

(5) Awarding grants

Grants made under paragraph (2) shall be made on a competitive basis. In making grants under paragraph (2), the Secretary shall give preference to grant applications providing for the establishment of centers for rural cooperative development that—

(A) demonstrate a proven track record in carrying out activities to promote and assist the development of cooperatively and mutually owned businesses;

(B) demonstrate previous expertise in providing technical assistance in rural areas to promote and assist the development of cooperatively and mutually owned businesses;

(C) demonstrate the ability to assist in the retention of businesses, facilitate the establishment of cooperatives and new cooperative approaches, and generate employment opportunities that will improve the economic conditions of rural areas;

(D) commit to providing technical assistance and other services to underserved and economically distressed areas in rural areas of the United States;

(E) demonstrate a commitment to—

(i) networking with and sharing the results of the efforts of the center with other cooperative development centers and other organizations involved in rural economic development efforts; and

(ii) developing multiorganization and multistate approaches to addressing the economic development and cooperative needs of rural areas;
and

(F) commit to providing a 25 percent matching contribution with private funds and in-kind contributions, except that the Secretary shall not require non-Federal financial support in an amount that is greater than 5 percent in the case of a 1994 institution (as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note; Public Law 103-382)).

(6) Grant period

(A) In general

A grant awarded to a center that has received no prior funding under this subsection shall be made for a period of 1 year.

(B) Multiyear grants

If the Secretary determines it to be in the best interest of the program, the Secretary shall award grants for a period of more than 1 year, but not more than 3 years, to a center that has successfully met the parameters described in paragraph (5), as determined by the Secretary.

(7) Authority to extend grant period

The Secretary may extend for 1 additional 12-month period the period in which a grantee may use a grant made under this subsection.

(8) Technical assistance to prevent excessive unemployment or underemployment

In carrying out this subsection, the Secretary may provide technical assistance to alleviate or prevent conditions of excessive unemployment, underemployment, outmigration, or low employment growth in economically distressed rural areas that the Secretary determines have a substantial need for the assistance. The assistance may include planning and feasibility studies, management and operational assistance, and studies evaluating the need for development potential of projects that increase employment and improve economic growth in the areas.

(9) Grants to defray administrative costs

The Secretary may make grants to defray not to exceed 75 percent of the costs incurred by organizations and public bodies to carry out projects for which grants or loans are made under this subsection. For purposes of determining the non-Federal share of the costs, the Secretary shall consider contributions in cash and in kind, fairly evaluated, including premises, equipment, and services.

(10) Cooperative research program

The Secretary shall enter into a cooperative research agreement with 1 or more qualified academic institutions in each fiscal year to conduct research on the effects of all types of cooperatives on the national economy.

(11) Addressing needs of minority communities

(A) Definition of socially disadvantaged group

In this paragraph, the term “socially disadvantaged group” has the meaning given the term in section 2003(e) of this title.

(B) Reservation of funds

(i) In general

If the total amount appropriated under paragraph (12) for a fiscal year exceeds \$7,500,000, the Secretary shall reserve an amount equal to 20 percent of the total amount appropriated for grants for cooperative development centers, individual cooperatives, or groups of cooperatives-

(I) that serve socially disadvantaged groups; and

(II) a majority of the boards of directors or governing boards of which are comprised of individuals who are members of socially disadvantaged groups.

(ii) Insufficient applications

To the extent there are insufficient applications to carry out clause (i), the Secretary shall use the funds as otherwise authorized by this subsection.

(12) Interagency working group

Not later than 90 days after February 7, 2014, the Secretary shall coordinate and chair an interagency working group to foster cooperative development and ensure coordination with Federal agencies and national and local cooperative organizations that have cooperative programs and interests.

(13) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection \$40,000,000 for each of fiscal years 2014 through 2018.

(f) Grants to broadcasting systems

(1) “Statewide” defined

In this subsection, the term “statewide” means having a coverage area of not less than 90 percent of the population of a State and not less than 80 percent of the rural land area of the State (as determined by the Secretary).

(2) Grants

The Secretary may make grants to statewide private nonprofit public television systems, whose coverage area is predominately rural, for the purpose of demonstrating the effectiveness of such systems in providing information on agriculture and other issues of importance to farmers and other rural residents. Grants available under this paragraph may be used for capital equipment expenditures, start-up and program costs, and other costs necessary to the operation of such demonstrations.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection \$5,000,000 for each of fiscal years 2008 through 2012.

(g) Business and industry direct and guaranteed loans

(1) Definition of business and industry loan

In this subsection, the term “business and industry loan” means a business and industry direct or guaranteed loan that is made or guaranteed by the Secretary under subsection (a)(2)(A) of this section, including guarantees described in paragraph (3)(A)(ii).

(2) Loan guarantees for the purchase of cooperative stock

(A) In general

The Secretary may guarantee a business and industry loan to individual farmers or ranchers for the purpose of purchasing capital stock of a farmer or rancher cooperative established for the purpose of processing an agricultural commodity.

(B) Processing contracts during initial period

A cooperative described in subparagraph (A) for which a farmer or rancher receives a guarantee to purchase stock under subparagraph (A) may contract for services to process agricultural commodities, or otherwise process value-added agricultural products, during the 5-year period beginning on the date of the startup of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative.

(C) Financial information

Financial information required by the Secretary from a farmer or rancher as a condition of making a business and industry loan guarantee under this paragraph shall be provided in the manner generally required by commercial agricultural lenders in the area.

(3) Loans to cooperatives

(A) Eligibility

(i) In general

The Secretary may make or guarantee a business and industry loan to a cooperative organization that is headquartered in a metropolitan area if the loan is used for a project or venture described in subsection (a) of this section that is located in a rural area or a loan guarantee that meets the requirements of paragraph (6).

(ii) Equity

The Secretary may guarantee a loan made for the purchase of preferred stock or similar equity issued by a cooperative organization or a fund that invests primarily in cooperative organizations, if the guarantee significantly benefits 1 or more entities eligible for assistance for the purposes described in subsection (a)(1), as determined by the Secretary.

(B) Refinancing

A cooperative organization that is eligible for a business and industry loan shall be eligible to refinance an existing business and industry loan with a lender if—

(i) the cooperative organization—

(I) is current and performing with respect to the existing loan; and

(II) is not, and has not been, in payment default, or the collateral of which has not been converted, with respect to the existing loan; and

(ii) there is adequate security or full collateral for the refinanced loan.

(4) Loan appraisals

The Secretary may require that any appraisal made in connection with a business and industry loan be conducted by a specialized appraiser that uses standards that are similar to standards used for similar purposes in the private sector, as determined by the Secretary.

(5) Fees

The Secretary may assess a 1-time fee for any guaranteed business and industry loan in an amount that does not exceed 2 percent of the guaranteed principal portion of the loan.

(6) Loan guarantees in nonrural areas

(A) In general

The Secretary may guarantee a business and industry loan to a cooperative organization for a facility that is not located in a rural area if—

(i) the primary purpose of the loan guarantee is for a facility to provide value-added processing for agricultural producers that are located within 80 miles of the facility;

(ii) the applicant demonstrates to the Secretary that the primary benefit of the loan guarantee will be to provide employment for residents of a rural area; and

(iii) the total amount of business and industry loans guaranteed for a fiscal year under this paragraph does not exceed 10 percent of the business and industry loans guaranteed for the fiscal year under subsection (a)(2)(A) of this section.

(B) Principal amounts

The principal amount of a business and industry loan guaranteed under this paragraph may not exceed \$25,000,000.

(7) Intangible assets

(A) In general

In determining whether a cooperative organization is eligible for a guaranteed business and industry loan, the Secretary may consider the market value of a properly appraised brand name, patent, or trademark of the cooperative.

(B) Accounts receivable

In the discretion of the Secretary, if the Secretary determines that the action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government, the Secretary may take accounts receivable as security for the obligations entered into in connection with loans and a borrower may use accounts receivable as collateral to secure a loan made or guaranteed under this subsection.

(8) Limitations on loan guarantees for cooperative organizations

(A) Principal amount

(i) In general

Subject to clause (ii), the principal amount of a business and industry loan made to a cooperative organization and guaranteed under this subsection shall not exceed \$40,000,000.

(ii) Use

To be eligible for a guarantee under this subsection for a business and industry loan made to a cooperative organization, the principal amount of the any such loan in excess of \$25,000,000 shall be used to carry out a project that—

(I)(aa) is in a rural area; and

(bb) provides for the value-added processing of agricultural commodities; or

(II) significantly benefits 1 or more entities eligible for assistance for the purposes described in subsection (a)(1), as determined by the Secretary.

(B) Applications

If a cooperative organization submits an application for a guarantee under this subsection of a business and industry loan with a principal amount that is in excess of \$25,000,000, the Secretary—

(i) shall review and, if appropriate, approve the application; and

(ii) may not delegate the approval authority.

(C) Maximum amount

The total amount of business and industry loans made to cooperative organizations and guaranteed for a fiscal year under this subsection with principal amounts that are in excess of \$25,000,000 may not exceed 10 percent of the business and industry loans guaranteed for the fiscal year under subsection (a)(2)(A) of this section.

(9) Locally or regionally produced agricultural food products

(A) Definitions

In this paragraph:

(i) Locally or regionally produced agricultural food product

The term “locally or regionally produced agricultural food product” means any agricultural food product that is raised, produced, and distributed in—

(I) the locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or

(II) the State in which the product is produced.

(ii) Underserved community

The term “underserved community” means a community (including an urban or rural community and an Indian tribal community) that has, as determined by the Secretary—

(I) limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer-to-consumer direct markets; and

(II) a high rate of hunger or food insecurity or a high poverty rate.

(B) Loan and loan guarantee program

(i) In general

The Secretary shall make or guarantee loans to individuals, cooperatives, cooperative organizations, businesses, and other entities to establish and facilitate enterprises that process, distribute, aggregate, store, and market locally or regionally produced agricultural food products to support community development and farm and ranch income.

(ii) Requirement

The recipient of a loan or loan guarantee under clause (i) shall include in an appropriate agreement with retail and institutional facilities to which the recipient sells locally or regionally produced agricultural food products a requirement to inform consumers of the retail or institutional facilities that the consumers are purchasing or consuming locally or regionally produced agricultural food products.

(iii) Priority

In making or guaranteeing a loan under clause (i), the Secretary shall give priority to projects that have components benefitting underserved communities.

(iv) Reservation of funds

(I) In general

For each of fiscal years 2008 through 2018, the Secretary shall reserve not less than 5 percent of the funds made available to carry out this subsection to carry out this subparagraph.

(II) Availability of funds

Funds reserved under subclause (I) for a fiscal year shall be reserved until April 1 of the fiscal year.

(h) Loan guarantees for certain loans

The Secretary may guarantee loans made under subsection (a) of this section to finance the issuance of bonds for the projects described in section 1926(a)(24) of this title.

(i) Appropriate technology transfer for rural areas program—

(1) Definition of national nonprofit agricultural assistance institution

In this subsection, the term “national nonprofit agricultural assistance institution” means an organization that—

(A) is described in section 501(c)(3) of Title 26 and exempt from taxation under 26 U.S.C. 501(a) of that title;

(B) has staff and offices in multiple regions of the United States;

(C) has experience and expertise in operating national agriculture technical assistance programs;

(D) expands markets for the agricultural commodities produced by producers through the use of practices that enhance the environment, natural resource base, and quality of life; and

(E) improves the economic viability of agricultural operations.

(2) Establishment

The Secretary shall establish a national appropriate technology transfer for rural areas program to assist agricultural producers that are seeking information to—

(A) reduce input costs;

(B) conserve energy resources;

(C) diversify operations through new energy crops and energy generation facilities; and

(D) expand markets for agricultural commodities produced by the producers by using practices that enhance the environment, natural resource base, and quality of life.

(3) Implementation

(A) In general

The Secretary shall carry out the program under this subsection by making a grant to, or offering to enter into a cooperative agreement with, a national nonprofit agricultural assistance institution.

(B) Grant amount

A grant made, or cooperative agreement entered into, under subparagraph (A) shall provide 100 percent of the cost of providing information described in paragraph (2).

(4) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection \$5,000,000 for each of fiscal years 2008 through 2018.

(j) Rural economic area partnership zones

Effective beginning on the date of enactment of this subsection through September 30, 2018, the Secretary shall carry out those rural economic area partnership zones administratively in effect on the date of enactment of this subsection in accordance with the terms and conditions contained in the memorandums of agreement entered into by the Secretary for the rural economic area partnership zones, except as otherwise provided in this subsection.

Dairy Research and Promotion

97 Stat. 1141 (1983)

Editor's Note:

The law provides voting rules for members of cooperatives.

§ 4508. Cooperative association representation (7 U.S.C. § 4508)

Whenever, under the provisions of this subchapter, the Secretary is required to determine the approval or disapproval of producers, the Secretary shall consider the approval or disapproval by any cooperative association of producers, engaged in a bona fide manner in marketing milk or the products thereof, as the approval or disapproval of the producers who are members of or under contract with such cooperative association of producers. If a cooperative association of producers elects to vote on behalf of its members, such cooperative association shall provide each producer, on whose behalf the cooperative association is expressing approval or disapproval, a description of the question presented in the referendum together with a statement of the manner in which the cooperative association intends to cast its vote on behalf of the membership. Such information shall inform the producer of procedures to follow to cast an individual ballot should the producer so choose within the period of time established by the Secretary for casting ballots. Such notification shall be made at least thirty days prior to the referendum and shall include an official ballot. The ballots shall be tabulated by the Secretary and the vote of the cooperative association shall be adjusted to reflect such individual votes.

Act to Prevent Discrimination Against Farmers' Cooperative Associations By Boards of Trade

44 Stat. 1424 (1927)

Editor's Note:

The Act provides a cause of action to sue in Federal Court when a representative of a cooperative is excluded from membership in an agricultural board of trade.

§ 432. Boards of trade dealing in agricultural products; exclusion of representatives of cooperative associations prohibited (15 U.S.C. § 432)

No board of trade whose members are engaged in the business of buying or selling agricultural products or receiving the same for sale on consignment in interstate commerce shall exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association, corporate or otherwise, composed substantially of producers of agricultural products, or any such

representative of any organization acting for a group of such associations, if such association or organization has adequate financial responsibility and complies or agrees to comply with such terms and conditions as are or may be imposed lawfully on other members of such board: Provided, That no rule of a board of trade shall forbid or be construed to forbid the return on a patronage basis by such cooperative association or organization to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

§ 433. Remedies of cooperative association excluded from representation (15 U.S.C. § 433)

Any such cooperative association or any such organization whose duly authorized representative is excluded from such membership and privileges by any board of trade referred to in section 432 of this title may sue in the United States District Court in whose jurisdiction such board of trade is operated or maintained for a mandatory injunction compelling such board of trade to admit such duly authorized representative to such membership and privileges and for any damages sustained, and such court shall have jurisdiction to issue such an injunction and to award such incidental damages as it may deem appropriate.

Commodity Credit Corporation Charter Act

62 Stat. 1073 (1948)

Editor's Note:

The law allows the CCC to use cooperative associations.

§ 714j. Utilization of associations and trade facilities (15 U.S.C. § 714j)

The Corporation may, in the conduct of its business, utilize on a contract or fee basis, committees or associations of producers, producer-owned and producer-controlled cooperative associations, and trade facilities.

Soil Conservation Act

52 Stat. 32 (1938)

Editor's Note:

The law states that the USDA Secretary shall provide technical assistance and incentives to encourage cooperatives to engage in conservation efforts.

§ 590h. Payments and grants of aid (15 U.S.C. § 590h)

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(b) Conservation and environmental assistance

(1) Environmental quality incentives program

The Secretary shall provide technical assistance, cost-share payments, and incentive payments to operators through the environmental quality incentives program in accordance with chapter 4 of subtitle D of title XII of the Food Security Act of 1985 [16 U.S.C. § 3839aa et seq.].

• • •

(5) State, county, and area committees

• • •

(F) Mandatory duties of Secretary

In carrying out this section, the Secretary shall--

(i) insofar as practicable, protect the interests of tenants and sharecroppers;

(ii) accord such encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in Federal laws and as will tend to promote efficient methods of marketing and distribution;

(iii) in every practicable manner, protect the interests of small producers; and

(iv) in every practical way, encourage and provide for soil-conserving and soil-rebuilding practices.

Finance

Federal Reserve Act

42 Stat. 1480 (1923)

Editor's Note:

The Act provides that notes issued by a cooperative are deemed issued for an agricultural purpose.

§ 351. Obligations of cooperative marketing association as issued or drawn for agricultural purposes (12 U.S.C. § 351)

Notes, drafts, bills of exchange, or acceptances issued or drawn by cooperative marketing associations composed of producers of agricultural products shall be deemed to have been issued or drawn for an agricultural purpose, within the meaning of sections 348 and 349 to 352 of this title, if the proceeds thereof have been or are to be advanced by such association to any members thereof for an agricultural purpose, or have been or are to be used by such association in making payments to any members thereof on account of agricultural products delivered by such members to the association, or if such proceeds have been or are to be used by such association to meet expenditures incurred or to be incurred by the association in connection with the grading, processing, packing, preparation for market, or marketing of any agricultural product handled by such association for any of its members: Provided, That the express enumeration in this section of certain classes of paper of cooperative marketing associations as eligible for rediscount shall not be construed as rendering ineligible any other class of paper of such associations which is now eligible for rediscount.

Agricultural Marketing Act

46 Stat. 11 (1929), amended 48 Stat. 226 (1933), 49 Stat. 317 (1935)

Editor's Note:

The Act defines "cooperative association" and encourages Farm Credit Administration support of cooperatives.

§ 1141. Declaration of policy; effective merchandising of agricultural commodities; speculation; cooperative marketing; surpluses; administration of chapter (12 U.S.C. § 1141)

(a) It is declared to be the policy of Congress to promote the effective merchandising of agricultural commodities in interstate and foreign commerce so that the industry of agriculture will be placed on a basis of economic equality with other industries, and to that end to protect, control, and stabilize the currents of interstate and foreign commerce in the marketing of agricultural commodities and their food products--

. . .

(3) by encouraging the organization of producers into effective associations or corporations under their own control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system of producer-owned and producer-controlled cooperative associations and other agencies.

. . . .

§ 1141c. Special powers of administration (12 U.S.C. § 1141c)

The administration is authorized and directed--

(1) to promote education in the principles and practices of cooperative marketing of agricultural commodities and food products thereof.

(2) to encourage the organization, improvement in methods, and development of effective cooperative associations.

(3) to keep advised from any available sources and make reports as to crop prices, experiences, prospects, supply, and demand, at home and abroad.

§ 1141d. Revolving fund (12 U.S.C.A. § 1141d)

There is authorized to be appropriated the sum of \$500,000,000 which shall be made available by the Congress as soon as practicable after the approval of this chapter and shall constitute a revolving fund to be administered by the administration as provided in this chapter. Any and all funds derived from the sale, lease, operation, or other disposition of any property, real or personal, acquired by the United States on account of or as a result of any loan made pursuant to the provisions of this chapter, shall be covered into and become a part of said revolving fund. Effective June 25, 1962, the sum authorized to be appropriated for the aforesaid revolving fund is reduced from \$500,000,000 to \$150,000,000 and any amount in said fund in excess of \$150,000,000 (including any amount thereof used to purchase capital stock in the central and regional banks for cooperatives) shall be credited to miscellaneous receipts of the Treasury.

§ 1141e. Loans to cooperative associations (12 U.S.C. § 1141e)

(a) Upon application by any cooperative association the administration is authorized to make loans to it from the revolving fund to assist in--

(1) the effective merchandising of agricultural commodities and food products thereof and the financing of its operations;

(2) the construction or acquisition by purchase or lease, or refinancing the cost of such construction or acquisition, of physical facilities.

(b) No loan shall be made to any cooperative association unless, in the judgment of the administration, the loan is in furtherance of the policy declared in section 1141 of this title, and the cooperative association applying for the loan has an organization and management, and business policies, of such character as to insure the reasonable safety of the loan and the furtherance of such policy.

(c) Loans for the construction or acquisition by purchase or lease of physical facilities, or for refinancing the cost of such construction or acquisition,¹ shall be subject to the following conditions:

(1) No loan shall be made in an amount in excess of 60 per centum of the appraised value of the security therefor.

(2) No loan for the purchase or lease of such facilities shall be made unless the Governor of the Farm Credit Administration finds that the purchase price or rent to be paid is reasonable.

(d) Loans for the construction or purchase of physical facilities, together with interest on the loans, shall be repaid upon an amortization plan over a period not in excess of twenty years.

§ 1141f. Miscellaneous loan provisions (12 U.S.C. § 1141f)

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(b) Payments of principal or interest upon any such loan or advance shall be covered into the revolving fund.

(c) Loans to any cooperative association or stabilization corporation shall be made upon the terms specified in this chapter and upon such other terms not inconsistent therewith and upon such security as the administration deems necessary.

(d) No loan or insurance agreement shall be made by the administration if in its judgment the agreement is likely to increase unduly the production of any agricultural commodity of which there is commonly produced a surplus in excess of the annual marketing requirements.

§ 1141j. Miscellaneous provisions (12 U.S.C. § 1141j)

(a) “Cooperative association” defined

As used in this chapter, the term “cooperative association” means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services: Provided, however, That such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third. That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.

• • •

(c) Confidential information; disclosure prohibited

It shall be unlawful (1) for any cooperative association, stabilization corporation, clearing-house association, or commodity committee, or (2) for any director, officer, employee, or member or person acting on behalf of any such association, corporation, or committee, to which or to whom information has been imparted in confidence by the administration, to disclose such information in violation of any regulation of the administration. Any such association, corporation, or committee, or director, officer, employee, or member thereof, violating this subdivision, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

• • •

(f) “Agricultural commodity” defined

As used in this chapter, the term “agricultural commodity” includes, in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in section 92 of Title 7

Farm Credit Act of 1971

85 Stat. 583 (1971), amended 89 Stat. 1060 (1975), 94 Stat. 3437 (1980), 100 Stat. 1877 (1986)

Editor’s Note:

The Act authorizes the farmer-owned cooperative Farm Credit System.

§ 2001. Congressional declaration of policy and objectives (12 U.S.C. § 2001)

(a) It is declared to be the policy of the Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.

• • •

(c) It is declared to be the policy of Congress that the credit needs of farmers, ranchers, and their cooperatives are best served if the institutions of the Farm Credit System provide equitable and competitive interest rates to eligible borrowers, taking into consideration the creditworthiness and access to alternative sources of credit for borrowers, the cost of funds, including any costs of defeasance under section 2159(b) of this title, the operating costs of the institution, including the costs of any loan loss amortization under section 2254(b) of this title, the cost of servicing loans, the need to retain earnings to protect borrowers' stock, and the volume of net new borrowing. Further, it is declared to be the policy of Congress that Farm Credit System institutions take action in accordance with the Farm Credit Act Amendments of 1986 in such manner that borrowers from the institutions derive the greatest benefit practicable from that Act: Provided, that in no case is any borrower to be charged a rate of interest that is below competitive market rates for similar loans made by private lenders to borrowers of equivalent creditworthiness and access to alternative credit.

§ 2124. Stock of banks for cooperatives (12 U.S.C. § 2124)

(a) Amount

The capital stock of each bank for cooperatives shall be in such amount as its board determines is required for the purpose of providing adequate capital to permit the bank to meet the credit needs of borrowers from the bank and such amounts may be increased or decreased from time to time in accordance with such needs.

(b) Value

The capital stock of each bank shall be divided into shares of par value of \$100 each and may be of such classes as the board may determine. Such stock may be issued in fractional shares.

(c) Eligible holders of voting stock

Voting stock may be issued or transferred to and held only by (i) cooperative associations eligible to borrow from the banks¹ (ii) other categories of persons and entities described in sections 2128 and 2129 of this title eligible to borrow from the bank, as determined by the bank's board of directors; and (iii) other banks for cooperatives, and shall not be otherwise transferred, pledged, or hypothecated except as consented to by the issuing bank under regulations of the Farm Credit Administration.

(d) Entitlement to vote

Each holder of one or more shares of voting stock which is eligible to borrow from a bank for cooperatives shall be entitled only to one vote and only in the affairs of the bank in the district in which its principal office is located unless otherwise authorized under regulations issued by the Farm Credit Administration, except that if such holder has not been a borrower from the bank in which it holds such stock within a period of two years next preceding the date fixed by the Farm Credit Administration prior to the commencement of voting, it shall not be entitled to vote.

(e) Nonvoting investment stock

Nonvoting investment stock may be issued in such series and in such amounts as may be determined by the board and may be exchanged for voting stock or sold or transferred to any person subject to the approval of the issuing bank.

(f) Participation certificates

Participation certificates may be issued to parties to whom voting stock may not be issued.

§ 2127. Guaranty fund subscriptions in lieu of stock (12 U.S.C. § 2127)

If any cooperative association is not authorized under the laws of the State in which it is organized to take and hold stock in a bank for cooperatives, the bank shall, in lieu of any requirement for stock purchase, require the association to pay into or have on deposit in a guaranty fund, or the bank may retain out of the amount of the loan and credit to the guaranty fund account of the borrower, a sum equal to the amount of stock which the association would otherwise be required to own. Each reference to stock of the banks for cooperatives in this chapter shall include such guaranty fund equivalents. The holder of the guaranty fund equivalent and the bank shall each be entitled to the same rights and obligations with respect thereto as the rights and obligations associated with the class or classes of stock involved.

§ 2128. Loans, commitments, and technical and financial assistance (12 U.S.C. § 2128)

(a) Authorities

The banks for cooperatives are authorized to make loans and commitments to eligible cooperative associations and to extend to them other technical and financial assistance at any time (whether or not they have a loan from the bank outstanding), including but not limited to discounting notes and other obligations, guarantees, currency exchange necessary to service individual transactions that may be financed under subsection (b) of this section, collateral custody, or participation with other banks for cooperatives and commercial banks or other financial institutions in loans to eligible cooperatives, under such terms and conditions as may be determined to be feasible by the board of directors of each bank for cooperatives under regulations of the Farm Credit Administration. Such regulations may include provisions for avoiding duplication between the Central Bank and district banks for cooperatives. Each bank may own and lease, or lease with option to purchase, to stockholders eligible to borrow from the bank equipment needed in the operations of the stockholder and may make or participate in loans or commitments and extend other technical and financial assistance to other domestic parties for the acquisition of equipment and facilities to be leased to such stockholders for use in their operations in the United States.

(b) Additional authorities

(1) A bank for cooperatives is authorized to make or participate in loans and commitments to, and to extend other technical and financial assistance to a domestic or foreign party with respect to its transactions with an association that is a voting stockholder of the bank for the import of agricultural commodities or products thereof, agricultural supplies, or aquatic products through purchases, sales or exchanges, if the bank for cooperatives determines, under regulations of the Farm Credit Administration, that the voting stockholder will benefit substantially as a result of such loan, commitment, or assistance.

(2)(A) A bank for cooperatives may make or participate in loans and commitments to, and extend other technical and financial assistance to—

(i) any domestic or foreign party for the export, including (where applicable) the cost of freight, of agricultural commodities or products thereof, agricultural supplies, or aquatic products from the United States under policies and procedures established by the bank to ensure that the commodities, products, or supplies are originally sourced, where reasonably available, from one or more eligible cooperative associations described in section 2129(a) of this title on a priority basis, except that if the total amount of the balances outstanding on loans made by a bank under this clause that—

(I) are made to finance the export of commodities, products, or supplies that are not originally sourced from a cooperative, and

(II) are not guaranteed or insured, in an amount equal to at least 95 percent of the amount loaned, by a department, agency, bureau, board, commission, or establishment of the United States or a corporation wholly-owned directly or indirectly by the United States,

exceeds an amount that is equal to 50 percent of the bank's capital, then a sufficient interest in the loans shall be sold by the bank for cooperatives to commercial banks and other non-System lenders to reduce the total amount of such outstanding balances to an amount not greater than an amount equal to 50 percent of the bank's capital; and

(ii) except as provided in subparagraph (B), any domestic or foreign party in which an eligible cooperative association described in section 2129(a) of this title (including, for the purpose of facilitating its domestic business operations only, a cooperative or other entity described in section 2129(b)(1)(A) of this title) has an ownership interest, for the purpose of facilitating the domestic or foreign business operations of the association, except that if the ownership interest by an eligible cooperative association, or associations, is less than 50 percent, the financing shall be limited to the percentage held in the party by the association or associations.

(B) A bank for cooperatives shall not use the authority provided in subparagraph (A)(ii) to provide financial assistance to a party for the purpose of financing the relocation of a plant or facility from the United States to another country.

(3) A bank for cooperatives is authorized to provide such services as may be customary and normal in maintaining relationships with domestic or foreign entities to facilitate the activities specified in paragraphs (1) and (2), consistent with this chapter.

(4) Definition of agricultural supply

In this subsection, the term “agricultural supply” includes—

(A) a farm supply; and

(B)(i) agriculture-related processing equipment;

(ii) agriculture-related machinery; and

(iii) other capital goods related to the storage or handling of agricultural commodities or products.

(c) Applicable policies

Loans, commitments, and assistance authorized by subsection (b) of this section shall be extended in accordance with policies adopted by the board of directors of the bank under regulations of the Farm Credit Administration.

(d) Regulatory limitations

The regulations of the Farm Credit Administration implementing subsection (b) of this section and other provisions of this subchapter relating to the authority under subsection (b) of this section may not confer upon the banks for cooperatives powers and authorities greater than those specified in this subchapter. The Farm Credit Administration shall, during the formulation of such regulations, closely consult on a continuing basis with the Board of Governors of the Federal Reserve System to insure that such regulations conform to national banking policies, objectives, and limitations.

(e) Speculative futures transactions

Notwithstanding any other provision of this subchapter, the banks for cooperatives shall not make or participate in loans or commitments for the purpose of financing speculative futures transactions by eligible borrowers in foreign currencies.

(f) Installation, expansion, or improvement of water and waste disposal facilities

The banks for cooperatives may, for the purpose of installing, maintaining, expanding, improving, or operating water and waste disposal facilities in rural areas, make and participate in loans and commitments and extending other technical and financial assistance to—

(1) cooperatives formed specifically for the purpose of establishing or operating such facilities; and

(2) public and quasi-public agencies and bodies, and other public and private entities that, under authority of State or local law, establish or operate such facilities.

For purposes of this subsection, the term “rural area” means all territory of a State that is not within the outer boundary of any city or town having a population of more than 20,000 based on the latest decennial census of the United States.

§ 2129. Eligibility (12 U.S.C. § 2129)

(a) Any association of farmers, producers or harvesters of aquatic products, or any federation of such associations, which is operated on a cooperative basis, and has the powers for processing, preparing for market, handling, or marketing farm or aquatic products; or for purchasing, testing, grading, processing, distributing, or furnishing farm or aquatic supplies or furnishing farm or aquatic business services or services to eligible cooperatives and conforms to either of the two following requirements:

(1) no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(2) does not pay dividends on stock or membership capital in excess of such per centum per annum as may be approved under regulations of the Farm Credit Administration; and in any case

(3) does not deal in farm products or aquatic products, or products processed therefrom, farm or aquatic supplies, farm or aquatic business services, or services to eligible cooperatives with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members, excluding from the total of member and nonmember business transactions with the United States or any agency or instrumentality thereof or services or supplies furnished as a public utility; and

(4) a percentage of the voting control of the association not less than 80 per centum (60 per centum (A) in the case of rural electric, telephone, public utility, and service cooperatives; (B) in the case of local farm supply cooperatives that have historically served needs of the community that would not adequately be served by other suppliers and have experienced a reduction in the percentage of farmer membership due to changed circumstances beyond their control such as, but not limited to, urbanization of the community; and (C) in the case of local farm supply cooperatives that provide or will provide needed services to a community and that are or will be in competition with a cooperative specified in paragraph (B)) or, with respect to any type of association or cooperative, such higher percentage as established by the bank board, is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein;

shall be eligible to borrow from a bank for cooperatives. Any such association that has received a loan from a bank for cooperatives shall, without regard to the requirements of paragraphs (1) through (4), continue to be eligible for so long as more than 50 percent (or such higher percentage as is established by the bank board) of the voting control of the association is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations.

(b) Notwithstanding any other provision of this section:

(1) The following entities shall also be eligible to borrow from a bank for cooperatives:

(A) Cooperatives and other entities that have received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration, or a loan or loan commitment from the Rural Telephone Bank, or that are eligible under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) for a loan, loan commitment, or loan guarantee from the Administration or the Bank (or a successor of the Administration or the Bank), and subsidiaries of such cooperatives or other entities.

(B) Any legal entity that (i) holds more than 50 percent of the voting control of an association or other entity that is eligible to borrow from a bank for cooperatives under subsection (a) of this section or subparagraph (A) of this paragraph, and (ii) borrows for the purpose of making funds available to that association or entity, and makes funds available to that association or entity under the same terms and conditions that the funds are borrowed from a bank for cooperatives.

(C) Any cooperative or other entity described in subsection (b) or (f) of section 2128 of this title.

(D) Any creditworthy private entity that satisfies the requirements for a service cooperative under paragraphs (1), (2), and (4), or under the last sentence, of subsection (a) of this section and subsidiaries of the entity, if the entity is organized to benefit agriculture in furtherance of the welfare of its farmer-members and is operated on a not-for-profit basis.

(2) Notwithstanding the provisions of section 2130 of this title, the board of directors of a bank for cooperatives may determine that, with respect to a loan to any borrower eligible to borrow from a bank under paragraph (1)(A) that is fully guaranteed by the United States, no stock purchase requirement shall apply, other than the requirement that a borrower eligible to own voting stock shall purchase one share of such stock.

(3) Each association and other entity eligible to borrow from a bank for cooperatives under this subsection, for purposes of section 2128(a) of this title, shall be treated as an eligible cooperative association and a stockholder eligible to borrow from the bank.

(4) Nothing in this subsection shall be construed to adversely affect the eligibility, as it existed on January 6, 1988, of cooperatives and other entities for any other credit assistance under Federal law.

Securities Act of 1933

48 Stat. 76 (1933), amended 84 Stat. 1434 (1970)

Editor's Note:

The statute exempts securities issued by IRC Section 521 cooperatives are from registration.

§ 77c. Classes of securities under this subchapter (15 U.S.C. § 77c)

(a) Exempted securities

Except as hereinafter expressly provided, the provisions of this subchapter shall not apply to any of the following classes of securities:

• • •

(5) Any security issued (A) by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution; or (B) by (i) a farmer's cooperative organization exempt from tax under section 521 of Title 26, (ii) a corporation described in section 501(c)(16) of Title 26 and exempt from tax under section 501(a) of Title 26, or (iii) a corporation described in section 501(c)(2) of Title 26 which is exempt from tax under section 501(a) of Title 26 and is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in clause (i) or (ii);

• • • •

Securities Exchange Act of 1934

As amended 78 Stat. 567 (1964), 15 U.S.C. 78

Editor's Note:

The Act exempts farmer cooperative securities from most trading restrictions.

§ 78l. Registration requirements for securities (15 U.S.C. § 78l)

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(g) Registration of securities by issuer; exemptions

(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall

• • •

register such security by filing with the Commission a registration statement

• • •

(2) The provisions of this subsection shall not apply in respect of—

• • •

(C) any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution.

• • •

(E) any security of an issuer which is a “cooperative association” as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, [12 U.S.C. 1141 et seq.], or a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

(F) any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit, but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and no dividends are payable to the holder of the security.

Transportation

Agricultural Adjustment Act of 1938

52 Stat. 36 (1938)

Editor's Note:

The Act authorizes the Agriculture Secretary to assist farmer cooperatives before the Surface Transportation Board.

§ 1291. Adjustments in freight rates (7 U.S.C. § 1291)

(a) Complaints by Secretary of Agriculture; notice of hearings

The Secretary of Agriculture is authorized to make complaint to the Surface Transportation Board with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same before the Board. Before hearing or disposing of any complaint (filed by any person other than the Secretary) with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, the Board shall cause the Secretary to be notified, and, upon application by the Secretary, shall permit the Secretary to appear and be heard.

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(d) Cooperation with complaining farm associations

The Secretary is authorized to cooperate with and assist cooperative associations of farmers making complaint to the Surface Transportation Board with respect to rates, charges, tariffs, and practices relating to the transportation of farm products.

Interstate Commerce Act

49 Stat. 545 (1935), as amended 54 Stat. 921 (1940), 56 Stat. 285 (1942), 92 Stat. 1364 (1978), 94 Stat. 814 (1980), 96 Stat. 2442 (1983), and 109 Stat. 863 (1995)

Editor's Note:

The Act provides limitations on Interstate Commerce Committee authority over cooperative trucking.

§ 13506. Miscellaneous motor carrier transportation exemptions (49 U.S.C. § 13506)

(a) In general.--Neither the Secretary nor the Board has jurisdiction under this part over--

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(5) a motor vehicle controlled and operated by a cooperative association (as defined by section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a))) or by a federation of cooperative associations if the federation has no greater power or purposes than a cooperative association, except that if the cooperative association or federation provides transportation for compensation between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State--

(A) for a nonmember that is not a farmer, cooperative association, federation, or the United States Government, the transportation (except for transportation otherwise exempt under this subchapter)--

(i) shall be limited to transportation incidental to the primary transportation operation of the cooperative association or federation and necessary for its effective performance; and

(ii) may not exceed in each fiscal year 25 percent of the total transportation of the cooperative association or federation between those places, measured by tonnage; and

(B) the transportation for all nonmembers may not exceed in each fiscal year, measured by tonnage, the total transportation between those places for the cooperative association or federation and its members during that fiscal year;

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§ 13508. Limited authority over cooperative associations (49 U.S.C. § 13508)

(a) In general.--Notwithstanding section 13506(a)(5), any cooperative association (as defined by section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a))) or a federation of cooperative associations shall prepare and maintain such records relating to transportation provided by such association or federation, in such form as the Secretary or the Board may require by regulation to carry out the provisions of such section 13506(a)(5). The Secretary or the Board, or an employee designated by the Secretary or the Board, may on demand and display of proper credentials--

(1) inspect and examine the lands, buildings, and equipment of such association or federation; and

(2) inspect and copy any record of such association or federation.

(b) Reports.--Notwithstanding section 13506(a)(5), the Secretary or the Board may require a cooperative association or federation of cooperative associations described in subsection (a) of this section to file reports with the Secretary or the Board containing answers to questions about transportation provided by such association or federation.

(c) Enforcement.--The Secretary or the Board may bring a civil action to enforce subsections (a) and (b) of this section or a regulation or order of the Secretary or the Board issued under this section, when violated by a cooperative association or federation of cooperative associations described in subsection (a).

(d) Reporting penalties.--

(1) In general.--A person required to make a report to the Secretary or the Board, answer a question, or maintain a record under this section, or an officer, agent, or employee of that person, that--

(A) does not make the report;

(B) does not specifically, completely, and truthfully answer the question; or

(C) does not maintain the record in the form and manner prescribed under this section;

is liable to the United States for a civil penalty of not more than \$500 for each violation and for not more than \$250 for each additional day the violation continues.

(2) Venue.--Trial in a civil action under paragraph (1) shall be in the judicial district in which--

(A) the cooperative association or federation of cooperative associations has its principal office;

(B) the violation occurred; or

(C) the offender is found.

Process in the action may be served in the judicial district of which the offender is an inhabitant or in which the offender may be found.

(e) Evasion penalties.--A person, or an officer, employee, or agent of that person, that by any means knowingly and willfully tries to evade compliance with the provisions of this section shall be fined at least \$200 but not more than \$500 for the first violation and at least \$250 but not more than \$2,000 for a subsequent violation.

(f) Recordkeeping penalties.--A person required to make a report, answer a question, or maintain a record under this section, or an officer, agent, or employee of that person, that--

(1) willfully does not make that report;

(2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date that the question is required to be answered;

(3) willfully does not maintain that record in the form and manner prescribed;

(4) knowingly and willfully falsifies, destroys, mutilates, or changes that report or record;

(5) knowingly and willfully files a false report or record under this section;

(6) knowingly and willfully makes a false or incomplete entry in that record about a business-related fact or transaction; or

(7) knowingly and willfully maintains a record in violation of a regulation or order issued under this section;

shall be fined not more than \$5,000.

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Cooperative Information Report 66
Rural Business-Cooperative Service
United States Department of Agriculture