

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

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

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

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

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

(ii) be paid to the Secretary.

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

(May 12, 1933, ch. 25, title I, §8b, formerly §8(2), 48 Stat. 34; Apr. 7, 1934, ch. 103, §7, 48 Stat. 528; renumbered and amended Aug. 24, 1935, ch. 641, §4, 49 Stat. 753; June 3, 1937, ch. 296, §1, 50 Stat. 246; June 30, 1947, ch. 166, title II, §206(d), 61 Stat. 208; Pub. L. 101-220, §4, Dec. 12, 1989, 103 Stat. 1878; Pub. L. 102-237, title I, §115(1), Dec. 13, 1991, 105 Stat. 1840; Pub. L. 103-66, title I, §1109(b), Aug. 10, 1993, 107 Stat. 326.)

#### REFERENCES IN TEXT

Section 1445c-3 of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 104-127, title I, §171(b)(2)(E), Apr. 4, 1996, 110 Stat. 938.

#### CODIFICATION

The provisions appearing in subsec. (a) of this section except the first sentence, were originally enacted as part of section 8(2) of act May 12, 1933, and formerly appeared as section 608(2) of this title.

#### AMENDMENTS

1993—Subsec. (b)(1)(C). Pub. L. 103-66 added subpar. (C).

1991—Subsec. (b)(2). Pub. L. 102-237 made technical amendment to reference to section 1445c-3 of this title involving corresponding provisions of original Act.

1989—Pub. L. 101-220 designated existing provisions as subsec. (a) and added subsec. (b).

1947—Act June 30, 1947, repealed provisions providing for loans from Reconstruction Finance Corporation.

1935—Act Aug. 24, 1935, designated subsection 2 of section 8 of act May 12, 1933, as section 8b and amended first sentence generally.

1934—Act Apr. 7, 1934, empowered Secretary of Agriculture to enter into marketing agreements with individual producers.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-220, §4(c), Dec. 12, 1989, 103 Stat. 1878, provided that: "The amendment made by this section

[amending this section] shall be effective with respect to the 1990 and subsequent crops of peanuts."

#### VALIDITY OF SECTION AFFIRMED

Act June 3, 1937, affirmed and validated, and reenacted without change the provisions of this section. See note set out under section 601 of this title.

### § 608c. Orders

#### (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.

#### (2) Commodities to which applicable

Orders issued pursuant to this section shall be applicable only to (A) the following agricultural commodities and the products thereof (except canned or frozen pears, grapefruit, cherries, apples, or cranberries, the products of naval stores, and the products of honeybees), or to any regional, or market classification of any such commodity or product: Milk, fruits (including filberts, almonds, pecans and walnuts but not including apples, other than apples produced in the States of Washington, Oregon, Idaho, New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, Connecticut, Colorado, Utah, New Mexico, Illinois, and Ohio, and not including fruits for canning or freezing other than pears, olives, grapefruit, cherries, caneberries (including raspberries, blackberries, and loganberries), cranberries, and apples produced in the States named above except Washington, Oregon, and Idaho), tobacco, vegetables (not including vegetables, other than asparagus, for canning or freezing and not including potatoes for canning, freezing, or other processing), hops, honeybees and naval stores as included in

<sup>1</sup> See References in Text note below.

the Naval Stores Act [7 U.S.C. 91 et seq.] and standards established thereunder (including refined or partially refined oleoresin): *Provided*, That no order issued pursuant to this section shall be effective as to any grapefruit for canning or freezing unless the Secretary of Agriculture determines, in addition to other findings and determinations required by this chapter, that the issuance of such order is approved or favored by the processors who, during a representative period determined by the Secretary, have been engaged in canning or freezing such commodity for market and have canned or frozen for market more than 50 per centum of the total volume of such commodity canned or frozen for market during such representative period; and (B) any agricultural commodity (except honey, cotton, rice, wheat, corn, grain sorghums, oats, barley, rye, sugarcane, sugarbeets, wool, mohair, livestock, soybeans, cottonseed, flaxseed, poultry (but not excepting turkeys and not excepting poultry which produce commercial eggs), fruits and vegetables for canning or freezing, including potatoes for canning, freezing, or other processing<sup>1</sup> and apples), or any regional or market classification thereof, not subject to orders under (A) of this subdivision, but not the products (including canned or frozen commodities or products) thereof. No order issued pursuant to this section shall be effective as to cherries, apples, or cranberries for canning or freezing unless the Secretary of Agriculture determines, in addition to other required findings and determinations, that the issuance of such order is approved or favored by processors who, during a representative period determined by the Secretary, have engaged in canning or freezing such commodity for market and have frozen or canned more than 50 per centum of the total volume of the commodity to be regulated which was canned or frozen within the production area, or marketed within the marketing area, defined in such order, during such representative period. No order issued pursuant to this section shall be applicable to peanuts produced in more than one of the following production areas: the Virginia-Carolina production area, the Southeast production area, and the Southwest production area. If the Secretary determines that the declared policy of this chapter will be better achieved thereby (i) the commodities of the same general class and used wholly or in part for the same purposes may be combined and treated as a single commodity and (ii) the portion of an agricultural commodity devoted to or marketed for a particular use or combination of uses, may be treated as a separate agricultural commodity. All agricultural commodities and products covered hereby shall be deemed specified herein for the purposes of subsections (6) and (7).

**(3) Notice and hearing**

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

<sup>1</sup> So in original. Probably should be followed by a comma.

**(4) Finding and issuance of order**

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

**(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)) 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:

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

Marketing Area Subject to Order	Minimum Aggregate Dollar Amount of Such Adjust- ments Per Hundred- weight of Milk Having 3.5 Percent Milkfat
Greater Kansas City .....	1.92
Tennessee Valley .....	2.77
Nashville, Tennessee .....	2.52
Paducah, Kentucky .....	2.39
Memphis, Tennessee .....	2.77
Central Arkansas .....	2.77
Fort Smith, Arkansas .....	2.77
Southwest Plains .....	2.77
Texas Panhandle .....	2.49
Lubbock-Plainview, Texas .....	2.49
Texas .....	3.28
Greater Louisiana .....	3.28
New Orleans-Mississippi .....	3.85
Eastern Colorado .....	2.73
Western Colorado .....	2.00
Southwestern Idaho-Eastern Oregon	1.50
Great Basin .....	1.90
Lake Mead .....	1.60
Central Arizona .....	2.52
Rio Grande Valley .....	2.35
Puget Sound-Inland .....	1.85
Oregon-Washington .....	1.95

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

(B) Providing:

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

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

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk during a representative period of time.,<sup>2</sup> [(e)

omitted] and (f) a further adjustment, equitably to apportion the total value of milk purchased by any handler or by all handlers among producers on the basis of the milk components contained in their marketings of milk<sup>3</sup>

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

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

(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.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

(H) Omitted

(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

<sup>2</sup> So in original.

<sup>3</sup> So in original. Probably should be followed by a period.

and at a rate specified in the order, on all producer milk under the order. Producer contributions under this subparagraph<sup>4</sup> 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<sup>4</sup> 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<sup>4</sup> shall be separately accounted for and shall be used only for the purposes for which they were collected. Programs authorized by this subparagraph<sup>4</sup> 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<sup>4</sup> 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). 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,<sup>4</sup> 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 require-

ments for milk of a higher use classification or for providing a market outlet for milk of any use classification.

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

(I) owned or controlled by foreign persons; and

(II) financed by or with the use of bonds the interest on which is exempt from Federal income tax under section 103 of title 26;

shall be treated as other-source milk, and shall be allocated as milk received from producer-handlers for the purposes of classifying producer milk, under the milk marketing program established under this chapter. For the purposes of this subparagraph,<sup>4</sup> the term "foreign person" has the meaning given such term under section 3508(3) of this title.

(ii) The Secretary of Agriculture shall prescribe regulations to carry out this subparagraph.<sup>4</sup>

(iii) This subparagraph<sup>4</sup> shall not apply with respect to any dairy that began operation before May 6, 1986.

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

(M) MINIMUM MILK PRICES FOR HANDLERS.—

(i) APPLICATION OF MINIMUM PRICE REQUIREMENTS.—Notwithstanding any other provision of this section, a milk handler described in clause (ii) shall be subject to all of the minimum and uniform price requirements of a Federal milk marketing order issued pursuant to this section applicable to the county in which the plant of the handler is located, at Federal order class prices, if the handler has packaged fluid milk product route dispositions, or sales of packaged fluid milk products to other plants, in a marketing area located in a State that requires handlers to pay minimum prices for raw milk purchases.

(ii) COVERED MILK HANDLERS.—Except as provided in clause (iv), clause (i) applies to a handler of Class I milk products (including a producer-handler or producer operating as a handler) that—

(I) operates a plant that is located within the boundaries of a Federal order milk marketing area (as those boundaries are in effect as of April 11, 2006);

(II) has packaged fluid milk product route dispositions, or sales of packaged fluid milk products to other plants, in a milk marketing area located in a State that requires handlers to pay minimum prices for raw milk purchases; and

(III) is not otherwise obligated by a Federal milk marketing order, or a regulated milk pricing plan operated by a State, to pay minimum class prices for the raw milk that is used for such dispositions or sales.

(iii) Obligation to pay minimum class prices.—For purposes of clause (ii)(III), the Secretary may not consider a handler of Class I milk products to be obligated by a Federal milk marketing order to pay minimum class

<sup>4</sup> So in original. Probably should be "paragraph".

prices for raw milk unless the handler operates the plant as a fully regulated fluid milk distributing plant under a Federal milk marketing order.

(iv) Certain handlers exempted.—Clause (i) does not apply to—

(I) a handler (otherwise described in clause (ii)) that operates a nonpool plant (as defined in section 1000.8(e) of title 7, Code of Federal Regulations, as in effect on April 11, 2006);

(II) a producer-handler (otherwise described in clause (ii)) for any month during which the producer-handler has route dispositions, and sales to other plants, of packaged fluid milk products equaling less than 3,000,000 pounds of milk; or

(III) a handler (otherwise described in clause (ii)) for any month during which—

(aa) less than 25 percent of the total quantity of fluid milk products physically received at the plant of the handler (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition or is transferred in the form of packaged fluid milk products to other plants; or

(bb) less than 25 percent in aggregate of the route disposition or transfers are in a marketing area or areas located in one or more States that require handlers to pay minimum prices for raw milk purchases.

(N) EXEMPTION FOR CERTAIN MILK HANDLERS.—Notwithstanding any other provision of this section, no handler with distribution of Class I milk products in the marketing area described in Order No. 131 shall be exempt during any month from any minimum price requirement established by the Secretary under this subsection if the total distribution of Class I products during the preceding month of any such handler's own farm production exceeds 3,000,000 pounds.

(O) RULE OF CONSTRUCTION REGARDING PRODUCER-HANDLERS.—Subparagraphs (M) and (N) shall not be construed as affecting, expanding, or contracting the treatment of producer-handlers under this subsection except as provided in such subparagraphs.

#### (6) Terms—Other commodities

In the case of the agricultural commodities and the products thereof, other than milk and its products, specified in subsection (2) orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)), no others:

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

(B) Allotting, or providing methods for allotting, the amount of such commodity or product,

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

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

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

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

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

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

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

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

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

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

(H) providing<sup>6</sup> a method for fixing the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging, transportation, sale, shipment, or handling of any fresh or dried fruits, vegetables, or tree nuts: *Provided, however*, That no action taken hereunder shall conflict with the Standard Containers Act of 1916 (15 U.S.C. 251-256) and the Standard Containers Act of 1928 (15 U.S.C. 257-257i);<sup>7</sup>

(I) establishing<sup>6</sup> or providing for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of any such commodity or product, the expense of such projects to be paid from funds collected pursuant to the marketing order: *Provided*, That with respect to orders applicable to almonds, filberts (otherwise known as hazelnuts), California-grown peaches, cherries, papayas, carrots, citrus fruits, onions, Tokay grapes, pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, eggs, avocados, apples, raisins, walnuts, tomatoes, caneberries (including raspberries, blackberries, and loganberries), Florida grown<sup>8</sup> strawberries, or cranberries, such projects may provide for any form of marketing promotion including paid advertising and with respect to almonds, filberts (otherwise known as hazelnuts), raisins, walnuts, olives, Florida Indian River grapefruit, and cranberries may provide for crediting the pro rata expense assessment obligations of a handler with all or any portion of his direct expenditures for such marketing promotion including

paid advertising as may be authorized by the order and when the handling of any commodity for canning or freezing is regulated, then any such projects may also deal with the commodity or its products in canned or frozen form: *Provided further*, That the inclusion in a Federal marketing order of provisions for research and marketing promotion, including paid advertising, shall not be deemed to preclude, preempt or supersede any such provisions in any State program covering the same commodity.

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

#### (7) Terms common to all orders

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

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

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

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

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

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

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

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

No person acting as a member of an agency established pursuant to this paragraph shall be deemed to be acting in an official capacity, within the meaning of section 610(g) of this title, unless such person receives compensation for his personal services from funds of the United States. There shall be included in the membership of any agency selected to administer a marketing order applicable to grapefruit for canning or freezing one or more representatives of processors of the commodity specified in such order.

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

#### (8) Orders with marketing agreement

Except as provided in subsection (9) of this section, no order issued pursuant to this section

<sup>5</sup> So in original. Probably should be "clause".

<sup>6</sup> So in original. Probably should be capitalized.

<sup>7</sup> So in original. Probably should be a period.

<sup>8</sup> So in original. Probably should be "Florida-grown".

shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 608b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: *Provided*, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

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

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

**(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 en-

gaged 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.

**(10) Manner of regulation and applicability**

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

**(11) Regional application**

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

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the

Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

(D) In the case of milk and its products, no county or other political subdivision of the State of Nevada shall be within the marketing area definition of any order issued under this section.

#### **(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.

#### **(13) Retailer and producer exemption**

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

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

#### **(14) Violation of order**

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

(B) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order may be assessed a civil penalty by the Secretary not exceeding \$1,000 for each such violation. Each day during which such violation continues shall be deemed a separate violation, except that if the Secretary finds that a petition pursuant to para-

graph (15) was filed and prosecuted by the handler in good faith and not for delay, no civil penalty may be assessed under this paragraph for such violations as occurred between the date on which the handler's petition was filed with the Secretary, and the date on which notice of the Secretary's ruling thereon was given to the handler in accordance with regulations prescribed pursuant to paragraph (15). The Secretary may issue an order assessing a civil penalty under this paragraph only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable in the district courts of the United States in any district in which the handler subject to the order is an inhabitant, or has the handler's principal place of business. The validity of such order may not be reviewed in an action to collect such civil penalty.

#### **(15) Petition by handler and review**

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

(B) The District Courts of the United States in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 608a(6) of this title. Any proceedings brought pursuant to section 608a(6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

#### **(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.

(B) The Secretary shall terminate any marketing agreement entered into under section 608b of this title, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: *Provided*, That such majority have, during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

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

#### **(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 timeframes**

##### **(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 66⅔ 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.

(May 12, 1933, ch. 25, title I, §8c, as added Aug. 24, 1935, ch. 641, §5, 49 Stat. 753; amended June 25, 1936, ch. 804, 49 Stat. 1921; June 3, 1937, ch. 296, §§1, 2(d)–(f), 50 Stat. 246, 247; June 3, 1937, ch. 296, §2(k), (l), as added Aug. 5, 1937, ch. 567, 50 Stat. 563; Apr. 13, 1938, ch. 143, §§1, 2, 52 Stat. 215; May 31, 1939, ch. 157, 53 Stat. 793; Feb. 10, 1942, ch. 52, §§2, 3, 56 Stat. 85; 1947 Reorg. Plan No. 1, §102, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; Aug. 1, 1947, ch. 425, §§2, 4, 61 Stat. 707, 710; July 3, 1948, ch. 827, title III, §302(b), (c), 62 Stat. 1258; June 29, 1949, ch. 273, 63 Stat. 282; Aug. 28, 1954, ch. 1041, title IV, §401(b)–(d), 68 Stat. 906, 907; Pub. L. 87–128, title I, §141(3), (4), Aug. 8, 1961, 75 Stat. 304, 305; Pub. L. 87–703, title IV, §403, Sept. 27, 1962, 76 Stat. 632; Pub. L. 89–321, title I, §§101, 102, Nov. 3, 1965, 79 Stat. 1187; Pub. L. 89–330, §1(b), Nov. 8, 1965, 79 Stat. 1270; Pub. L. 91–196, §1, Feb. 20, 1970, 84 Stat. 14; Pub. L. 91–292, §1(2), June 25, 1970, 84 Stat. 333; Pub. L. 91–341, July 18, 1970, 84 Stat. 438; Pub. L. 91–363, July 31, 1970, 84 Stat. 687; Pub. L. 91–384, Aug. 18, 1970, 84 Stat. 827; Pub. L. 91–522, Nov. 25, 1970, 84 Stat. 1357; Pub. L. 91–524, title II, §201(a), Nov. 30, 1970, 84 Stat. 1359; Pub. L. 91–670, title I, §101, title II, §201, Jan. 11, 1971, 84 Stat. 2040, 2041; Pub. L. 92–120, Aug. 13, 1971, 85 Stat. 340; Pub. L. 92–233, Feb. 15, 1972, 86 Stat. 39; Pub. L. 92–466, Oct. 6, 1972, 86 Stat. 780; Pub. L. 91–524, title II, §201(f), Nov. 30, 1970, as added Pub. L. 93–86, §1(2)(B), Aug. 10, 1973, 87 Stat. 222; Pub. L. 93–230, Dec. 29, 1973, 87 Stat. 945; Pub. L. 95–279, title IV, §401(a), May 15, 1978, 92 Stat. 242; Pub. L. 96–494, title I, §101, Dec. 3, 1980, 94 Stat. 2570; Pub. L. 97–98, title I, §101(a), Dec. 22, 1981, 95 Stat. 1218; Pub. L. 98–171, §1, Nov. 29, 1983, 97 Stat. 1117; Pub. L. 98–180, title III, §304, Nov. 29, 1983, 97 Stat. 1151; Pub. L. 99–198, title I, §§131(a), 133, title XVI, §§1661(a), 1662(a), Dec. 23, 1985, 99 Stat. 1372, 1373, 1630, 1631;

Pub. L. 100-203, title I, §1501, Dec. 22, 1987, 101 Stat. 1330-27; Pub. L. 100-418, title IV, §§4601, 4602, Aug. 23, 1988, 102 Stat. 1407; Pub. L. 101-624, title I, §§112, 113, title XIII, §1306, Nov. 28, 1990, 104 Stat. 3380, 3561; Pub. L. 102-237, title I, §115(2), Dec. 13, 1991, 105 Stat. 1840; Pub. L. 102-553, §2, Oct. 28, 1992, 106 Stat. 4141; Pub. L. 106-78, title VII, §§757(a), 760, Oct. 22, 1999, 113 Stat. 1171, 1173; Pub. L. 107-76, title VII, §765, Nov. 28, 2001, 115 Stat. 743; Pub. L. 107-171, title X, §10601(a), May 13, 2002, 116 Stat. 511; Pub. L. 108-379, §1, Oct. 30, 2004, 118 Stat. 2209; Pub. L. 109-215, §2(a), (b), Apr. 11, 2006, 120 Stat. 328, 329; Pub. L. 110-234, title I, §1504, May 22, 2008, 122 Stat. 993; Pub. L. 110-246, §4(a), title I, §1504, June 18, 2008, 122 Stat. 1664, 1721.)

## REFERENCES IN TEXT

The Naval Stores Act, referred to in subsec. (2)(A), is act Mar. 3, 1923, ch. 217, 42 Stat. 1435, as amended, which is classified generally to chapter 4 (§91 et seq.) of this title. For complete classification of this Act to the Code, see section 91 of this title and Tables.

For the effective date of this sentence, referred to in subsec. (5)(A), see section 131(b) of Pub. L. 99-198, set out as an Effective Date of 1985 Amendment note below.

The Standard Containers Act of 1916 and the Standard Containers Act of 1928, referred to in subsec. (6)(H), are act Aug. 31, 1916, ch. 426, 39 Stat. 673, as amended, and act May 21, 1928, ch. 664, 45 Stat. 685, as amended, respectively, and were repealed by Pub. L. 90-628, §1(a), (b), Oct. 22, 1968, 82 Stat. 1320.

The date of enactment of this subparagraph, referred to in subsec. (17)(B)(i), (iii), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

## CODIFICATION

Subsec. 5(B)(e), which permitted a provision for the accumulation and disbursement of a fund to encourage seasonal adjustments in the production of milk to be included in an order, was omitted as terminated. See Effective and Termination Dates of 1981 Amendment note set out below.

Subsec. (5)(H), which permitted marketing orders applicable to milk and its products to be limited in application to milk used for manufacturing, was omitted as terminated. See Termination of 1965 Amendment note set out below.

Phrase “, with the approval of the President,” following “Secretary of Agriculture” in introductory provisions of subsec. (9) of this section, was omitted on the authority of section 102 of 1947 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees, which abolished the function of the President with respect to approving determinations of the Secretary of Agriculture in connection with agricultural marketing orders under this section.

The words “(including the district court of the United States for the District of Columbia)” in subsec. (15)(B) following “The District Courts of the United States” have been deleted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure which states that “There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district.”, and section 88 of said Title 28 which states in part that “The District of Columbia constitutes one judicial district.”

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

## AMENDMENTS

2008—Subsec. (17). Pub. L. 110-246, §1504, added subsec. (17) and struck out former subsec. (17). Prior to amendment, text read as follows: “The provisions of this sec-

tion, section 608d of this title, applicable to orders shall be applicable to amendments to orders: *Provided*, That notice of a hearing upon a proposed amendment to any order issued pursuant to this section, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.”

2006—Subsec. (5)(M) to (O). Pub. L. 109-215, §2(a), added pars. (M) to (O).

Subsec. (11). Pub. L. 109-215, §2(b)(1), which directed striking out last sentence in subpar. (C), was executed by striking out concluding provisions “The price of milk paid by a handler at a plant operating in Clark County, Nevada shall not be subject to any order issued under this section.” which followed subpar. (C) to reflect the probable intent of Congress.

Subsec. (11)(D). Pub. L. 109-215, §2(b)(2), added par. (D).

2004—Subsec. (7)(C). Pub. L. 108-379, in concluding provisions, struck out “or pears” after “grapefruit” and “: *Provided*, That in a marketing order applicable to pears for canning or freezing the representation of processors and producers on such agency shall be equal” before period at end.

2002—Subsec. (2)(A). Pub. L. 107-171, §10601(a)(1), inserted “caneberries (including raspberries, blackberries, and loganberries),” after “other than pears, olives, grapefruit, cherries,”.

Subsec. (6)(I). Pub. L. 107-171, §10601(a)(2), substituted “tomatoes, caneberries (including raspberries, blackberries, and loganberries),” for “tomatoes,” in first proviso.

2001—Subsec. (1). Pub. L. 107-76, which directed insertion of “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.” at end of penultimate sentence of section 8c(1) of the Agricultural Marketing Agreement Act of 1937, was executed to this section, which is section 8c(1) of the Agricultural Adjustment Act, to reflect the probable intent of Congress.

1999—Subsec. (6)(I). Pub. L. 106-78, §757(a)(2), substituted “Florida Indian River grapefruit, and cranberries” for “and Florida Indian River grapefruit” in first proviso.

Pub. L. 106-78, §757(a)(1), which directed substitution of “, Florida grown strawberries, or cranberries” for “or Florida grown strawberries” in first proviso, was executed by making the substitution for “or Florida-grown strawberries” to reflect the probable intent of Congress.

Subsec. (11). Pub. L. 106-78, §760, inserted at end “The price of milk paid by a handler at a plant operating in Clark County, Nevada shall not be subject to any order issued under this section.”

1992—Subsec. (1). Pub. L. 102-553 inserted at end “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 shall establish time frames for each office and agency within the Department of Agriculture to consider the committee recommendations.”

1991—Subsec. (5)(B). Pub. L. 102-237 substituted “, and” for “and,” before cl. (f).

1990—Subsec. (5)(B)(f). Pub. L. 101-624, §112, added cl. (f).

Subsec. (5)(L). Pub. L. 101-624, §113, added par. (L).

Subsec. (14)(A). Pub. L. 101-624, §1306(1), struck out “(other than a provision calling for payment of a pro rata share of expenses)” before “shall, on conviction” and substituted “, If” for “: *Provided*, That if”.

Subsec. (14)(B). Pub. L. 101-624, §1306(2), struck out “(other than a provision calling for payment of a pro rata share of expenses)” before “may be assessed”.

1988—Subsec. (5)(K). Pub. L. 100-418, § 4601, added par. (K).

Subsec. (6)(I). Pub. L. 100-418, § 4602, substituted “tomatoes, or Florida-grown strawberries,” for “or tomatoes” in first proviso.

1987—Subsec. (14). Pub. L. 100-203 designated existing provisions as par. (A) and added par. (B).

1985—Subsec. (5)(A). Pub. L. 99-198, § 131(a), inserted provisions, with accompanying table, establishing the minimum aggregate amounts of the adjustments under cls. (1) and (2) to prices for milk of the highest use classification under orders in effect on Dec. 23, 1985, and requiring that such prices be adjusted for the locations at which delivery of such milk is made to such handlers.

Subsec. (5)(J). Pub. L. 99-198, § 133, added par. (J).

Subsec. (14). Pub. L. 99-198, § 1661(a), substituted “\$5,000” for “\$500”.

Subsec. (16)(A). Pub. L. 99-198, § 1662(a)(1), designated existing provisions of par. (A) as cl. (i), substituted “Except as provided in clause (ii), the Secretary” for “The Secretary”, and added cl. (ii).

Subsec. (16)(C). Pub. L. 99-198, § 1662(a)(2), substituted “Except as otherwise provided in this subsection with respect to the termination of an order issued under this section, the termination” for “The termination”.

1983—Subsec. (2)(B). Pub. L. 98-180, § 304(1), substituted “poultry (but not excepting turkeys and not excepting poultry which produce commercial eggs),” for “poultry (but not excepting turkeys), eggs (but not excepting turkey hatching eggs),”.

Subsec. (6)(I). Pub. L. 98-180, § 304(2), inserted “eggs,” after “pecans,” in first proviso.

Pub. L. 98-171 inserted, in first proviso, “filberts (otherwise known as hazelnuts),” after “almonds,” in two places.

1981—Subsec. (5)(B). Pub. L. 97-98, § 101(a)(1), temporarily added cls. (d) and (e) and struck out former cl. (d) which read as follows: “a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk during a representative period of time.” See Effective and Termination Dates of 1981 Amendment note below.

Subsec. (17). Pub. L. 97-98, § 101(a)(2), temporarily struck out period at end and added second proviso related to provisions governing procedures when one-third or more of producers apply in writing for a hearing on a proposed amendment of an order, prohibiting any construction of subsec. (12) in a way which might permit cooperatives to act for their members in applying for hearings, and excusing the Secretary from the requirement of having to call a hearing on proposed amendments to an order in response to an application for such a hearing when the application for such a hearing is received by the Secretary within ninety days after the date on which the Secretary has announced his decision on a previously proposed amendment to such order and the two proposed amendments are essentially the same. See Effective and Termination Dates of 1981 Amendment note below. A substantially identical amendment was temporarily made by Pub. L. 91-524, § 201(f)(1), as added by Pub. L. 93-86, see 1970 Amendment note and Termination of 1970 Amendment note below.

Subsec. (18). Pub. L. 97-98, § 101(a)(3), temporarily inserted “to meet current needs and further to assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs” after “pure and wholesome milk”. See Effective and Termination Dates of 1981 Amendment note below. An identical amendment was temporarily made by Pub. L. 91-524, § 201(f)(2), as added by Pub. L. 93-86, see 1970 Amendment note and Termination of 1970 Amendment note below.

1980—Subsec. (6)(I). Pub. L. 96-494 inserted, in first proviso, “walnuts,” before “or tomatoes” and “walnuts, olives,” before “and Florida Indian River grapefruit”.

1978—Subsec. (6)(I). Pub. L. 95-279 inserted, in first proviso, “raisins,” after “apples,” and “, raisins,” after “with respect to almonds”.

1973—Subsec. (6)(I). Pub. L. 93-230 inserted “and Florida Indian River grapefruit” after “with respect to almonds” in first proviso.

Subsec. (17). Pub. L. 93-86 added Pub. L. 91-524, § 201(f)(1). See 1970 Amendment note below.

Subsec. (18). Pub. L. 93-86 added Pub. L. 91-524, § 201(f)(2). See 1970 Amendment note below.

1972—Subsec. (2)(A). Pub. L. 92-466, § 1(1), inserted “pears,” after “canned or frozen” the first time appearing and before “olives,”.

Pub. L. 92-233, § 1(1), inserted “and not including potatoes for canning, freezing, or other processing” after “vegetables (not including vegetables, other than asparagus, for canning or freezing)”. The amendment served to make permanent the temporary exemption first inserted by Pub. L. 91-196, § 1(1). See 1970 Amendment note and Effective Date of 1970 Amendment note below.

Subsec. (2)(B). Pub. L. 92-233, § 1(2), inserted “including potatoes for canning, freezing, or other processing” after “fruits and vegetables for canning or freezing,”. The amendment served to make permanent the temporary exemption first inserted by Pub. L. 91-196, § 1(2). See 1970 Amendment note and Effective Date of 1970 Amendment note below.

Subsec. (6)(I). Pub. L. 92-466, § 1(2), in first proviso, struck out “fresh” before “pears” and inserted at end “and when the handling of any commodity for canning or freezing is regulated, then any such projects may also deal with the commodity or its products in canned or frozen form”.

Subsec. (6)(J). Pub. L. 92-466, § 1(5), added par. (J).

Subsec. (7)(C). Pub. L. 92-466, § 1(3), inserted “or pears” after “a marketing order applicable to grapefruit”, struck out period at end, and inserted “: *Provided*, That in a marketing order applicable to pears for canning or freezing the representation of processors and producers on such agency shall be equal.”

Subsec. (19). Pub. L. 92-466, § 1(4), inserted provision respecting producer or processor referendum for approving order applicable to pears for canning or freezing.

1971—Subsec. (5)(I). Pub. L. 91-670, § 101, added par. (I).

Subsec. (6)(I). Pub. L. 92-120 inserted “California-grown peaches,” after “applicable to almonds,” in first proviso.

Pub. L. 91-670, § 201, substituted “apples, or tomatoes” for “or apples” in first proviso.

1970—Subsec. (2)(A). Pub. L. 91-341 substituted “Connecticut, Colorado, Utah, New Mexico, Illinois, and Ohio” for “and Connecticut”.

Pub. L. 91-196, § 1(1), temporarily inserted “and not including potatoes for canning, freezing, or other processing” after “vegetables (not including vegetables, other than asparagus, for canning or freezing)”. See Effective Date of 1970 Amendment note below.

Subsec. (2)(B). Pub. L. 91-196, § 1(2), temporarily inserted “including potatoes for canning, freezing, or other processing,” after “fruits and vegetables for canning or freezing,”. See Effective Date of 1970 Amendment note below.

Subsec. (5)(B). Pub. L. 91-524, § 201(a), temporarily added cls. (d) to (f) and struck out former cl. (d) and concluding provisions. See Termination of 1970 Amendment note below.

Subsec. (6)(I). Pub. L. 91-522 inserted “almonds,” before “cherries” in first proviso, inserted at end of first proviso “and with respect to almonds may provide for crediting the pro rata expense assessment obligations of a handler with all or any portion of his direct expenditures for such marketing promotion including paid advertising as may be authorized by the order”, and amended second proviso generally.

Pub. L. 91-384 inserted “papayas,” after “applicable to cherries,” in first proviso.

Pub. L. 91-363 substituted “avocados, or apples” for “or avocados” in first proviso.

Pub. L. 91-292 which directed the insertion of “production research,” after “Establishing or providing for

the establishment of", was executed by making the insertion after "establishing or providing for the establishment of" to reflect the probable intent of Congress, inserted "or efficient production" after "consumption", and struck out period at end and inserted "": *Provided further*, That the inclusion in a Federal marketing order of provisions for research shall not be deemed to preclude, preempt or supersede research provisions in any State program covering the same commodity."

Subsec. (17). Pub. L. 91-524, §201(f)(1), as added by Pub. L. 93-86, temporarily struck out period at end and added second proviso related to provisions governing procedures when one-third or more of producers apply in writing for a hearing on a proposed amendment of an order, prohibiting any construction of subsec. (12) in a way which might permit cooperatives to act for their members in applying for hearings, and excusing the Secretary from the requirement of having to call a hearing on proposed amendments to an order in response to an application for such a hearing when the application for such a hearing is received by the Secretary within ninety days after the date on which the Secretary has announced his decision on a previously proposed amendment to such order and the two proposed amendments are essentially the same. See Termination of 1970 Amendment note below.

Subsec. (18). Pub. L. 91-524, §201(f)(2), as added by Pub. L. 93-86, temporarily inserted "to meet current needs and further to assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs" after "pure and wholesome milk". See Termination of 1970 Amendment note below.

1965—Subsec. (5)(B). Pub. L. 89-321, §101, temporarily added cl. (d) and concluding provisions and struck out former cl. (d). See Termination of 1965 Amendments note below.

Subsec. (5)(H). Pub. L. 89-321, §102(a), temporarily added par. (H). See Termination of 1965 Amendments note below.

Subsec. (6)(I). Pub. L. 89-330 inserted " , carrots, citrus fruits, onions, Tokay grapes, fresh pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, or avocados" after "applicable to cherries" in proviso.

Subsec. (18). Pub. L. 89-321, §102(b), temporarily inserted "or, in the case of orders applying only to manufacturing milk, the production area" after "marketing area" in two places. See Termination of 1965 Amendments note below.

1962—Subsec. (6)(I). Pub. L. 87-703 struck out period at end and inserted "": *Provided*, That with respect to orders applicable to cherries such projects may provide for any form of marketing promotion including paid advertising."

1961—Subsec. (2). Pub. L. 87-128, §141(3), designated provisions after "applicable only to" as par. (A), inserted "cherries, apples, or cranberries," after "grapefruit," the first time appearing, substituted "Idaho, New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, and Connecticut, and not including fruits for canning or freezing other than olives, grapefruit, cherries, cranberries, and apples produced in the States named above except Washington, Oregon, and Idaho)" for "and Idaho," and not including fruits, other than olives and grapefruit, for canning or freezing)", struck out "soybeans," before "hops, honeybees", and added par. (B).

Subsec. (19). Pub. L. 87-128, §141(4), amended text generally.

1954—Subsec. (2). Act Aug. 28, 1954, §401(b), amended text generally.

Subsec. (6). Act Aug. 28, 1954, §401(c), added introductory provisions and struck out former introductory provisions and added pars. (H) and (I).

Subsec. (7)(C). Act Aug. 28, 1954, §401(d), inserted at end "There shall be included in the membership of any agency selected to administer a marketing order appli-

cable to grapefruit for canning or freezing one or more representatives of processors of the commodity specified in such order."

1949—Subsecs. (2), (6). Act June 29, 1949, inserted "filberts, almonds," before "pecans and walnuts" in subsec. (2) and in introductory provisions of subsec. (6).

1948—Subsec. (17). Act July 3, 1948, §302(c), struck out "and section 608e of this title".

Subsec. (18). Act July 3, 1948, §302(b), amended text generally.

1947—Subsec. (2). Act Aug. 1, 1947, §4, inserted "or freezing" after "canning" in two places.

Subsec. (6). Act Aug. 1, 1947, §2, amended text generally.

1942—Subsec. (6). Act Feb. 10, 1942, substituted "hops and their products," for "hops," in introductory provisions and added par. (F).

1939—Subsecs. (2), (6). Act May 31, 1939, made technical amendment to Act June 3, 1937, §2, by adding a subsection (m) designation at the end thereof and amended this section by inserting " , other than apples produced in the States of Washington, Oregon, and Idaho," after "apples" in subsec. (2) and in introductory provisions of subsec. (6).

1938—Subsec. (2). Act Apr. 13, 1938, §1, inserted " , hops," after "soybeans".

Subsec. (6). Act Apr. 13, 1938, §2, inserted " , hops," after "soybeans and their products" in introductory provisions.

1937—Act June 3, 1937, §1, affirmed, validated, and reenacted provisions of section. See Validity of Section Affirmed note below.

Subsec. (2). Act Aug. 5, 1937, amended act June 3, 1937, by adding thereto subsec. (k), which in turn directed the insertion of "and the products of honeybees" after "except the products of naval stores", which was executed by making the insertion after "except products of naval stores", to reflect the probable intent of Congress and inserted " , honeybees" after "soybeans".

Subsec. (5)(B)(d). Act June 3, 1937, §2(d), substituted "marketings of milk" for "production of milk".

Subsec. (6). Act Aug. 5, 1937, amended act June 3, 1937, by adding subsec. (l), which in turn amended subsec. (6) by inserting "honeybees," after "soybeans and their products," in introductory provisions.

Subsec. (6)(B). Act June 3, 1937, §2(e), struck out "produced or" before "sold by such producers" and substituted "quantities available for sale by" for "production or sales of".

Subsecs. (18), (19). Act June 3, 1937, §2(f), added subsecs. (18) and (19).

1936—Subsec. (15)(B). Act June 25, 1936, provided that the Supreme Court of the District of Columbia should thereafter be known as the "district court of the United States for the District of Columbia". See Codification note above.

1935—Section added to the Agricultural Adjustment Act by act Aug. 24, 1935, which also struck out former section 608(3) of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-215, §2(d), Apr. 11, 2006, 120 Stat. 330, provided that: "The amendments made by this section [amending this section] take effect on the first day of the first month beginning more than 15 days after the date of the enactment of this Act [Apr. 11, 2006]. To accomplish the expedited implementation of these amendments, effective on the date of the enactment of this Act, the Secretary of Agriculture shall include in the pool distributing plant provisions of each Federal milk marketing order issued under subparagraph (B) of section 8c(5) of the Agriculture Adjustment Act (7

U.S.C. 608c(5)), reenacted with amendments by the Agriculture [Agricultural] Marketing Agreement Act of 1937, a provision that a handler described in subparagraph (M) of such section, as added by subsection (a) of this section, will be fully regulated by the order in which the handler's distributing plant is located. These amendments shall not be subject to a referendum under section 8c(19) of such Act (7 U.S.C. 608c(19))."

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-78, title VII, §760, Oct. 22, 1999, 113 Stat. 1173, provided that the amendment made by section 760 is effective Oct. 1, 1999.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendments by sections 112 and 113 of Pub. L. 101-624 effective beginning with 1991 crop of an agricultural commodity, with provision for prior crops, see section 1171 of Pub. L. 101-624, set out as a note under section 1421 of this title.

#### EFFECTIVE DATES OF 1985 AMENDMENT

Pub. L. 99-198, title I, §131(b), Dec. 23, 1985, 99 Stat. 1373, provided that: "The amendment made by this section [amending this section] shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act [Dec. 23, 1985]."

Pub. L. 99-198, title I, §133, Dec. 23, 1985, 99 Stat. 1373, provided that the amendment made by that section is effective Jan. 1, 1986.

Pub. L. 99-198, title XVI, §1661(b), Dec. 23, 1985, 99 Stat. 1630, provided that: "The amendment made by subsection (a) [amending this section] shall not apply with respect to any violation described in section 8c(14) of the Agricultural Adjustment Act [subsec. (14) of this section] occurring before the date of the enactment of this Act [Dec. 23, 1985]."

#### EFFECTIVE AND TERMINATION DATES OF 1981 AMENDMENT

Pub. L. 97-98, title I, §101(b), Dec. 22, 1981, 95 Stat. 1219, as amended by Pub. L. 99-198, title I, §132, Dec. 23, 1985, 99 Stat. 1373; Pub. L. 101-624, title I, §108, Nov. 28, 1990, 104 Stat. 3380; Pub. L. 103-66, title I, §1105(b), Aug. 10, 1993, 107 Stat. 317, provided that: "The provisions of subsection (a) [amending this section] shall become effective January 1, 1982, and shall terminate December 31, 1996."

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-279, title IV, §401(a), May 15, 1978, 92 Stat. 242, provided that the amendment made by that section is effective Oct. 1, 1978.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-196, §2, Feb. 20, 1970, 84 Stat. 14, provided that: "The amendments made by this Act [amending this section] shall be effective only during the period beginning with the date of enactment of this Act [Feb. 20, 1970] and ending two years after such date." The limited effective period beginning Feb. 20, 1970, and ending two years after such date for the amendments made by Pub. L. 91-196 was removed as a result of the enactment of Pub. L. 92-233, Feb. 15, 1972, 86 Stat. 39, which made amendments to the section substantively identical to those made by Pub. L. 91-196 but without a time limit on such amendments of the type which had limited the duration of such earlier Pub. L. 91-196 amendments.

#### TERMINATION OF 1970 AMENDMENT; SAVINGS PROVISION

Pub. L. 91-524, title II, §201(e), Nov. 30, 1970, 84 Stat. 1361, as amended by Pub. L. 93-86, §1(2)(A), Aug. 10, 1973, 87 Stat. 222; Pub. L. 95-113, title II, §201, Sept. 29, 1977, 91 Stat. 919, provided that: "The provisions of this section [amending this section] shall not be effective after December 31, 1981, except with respect to orders provid-

ing for class I base plans issued prior to such date, but in no event shall any order so issued extend or be effective beyond December 31, 1984."

#### TERMINATION OF 1965 AMENDMENT; REVERSION OF STATUS OF PRODUCER HANDLERS OF MILK TO PRE-AMENDMENT STATUS

Pub. L. 89-321, title I, §§103, 104, Nov. 3, 1965, 79 Stat. 1188, as amended by Pub. L. 90-559, §1(3), Oct. 11, 1968, 82 Stat. 996, provided that:

"SEC. 103. The provisions of this title [amending this section] shall not be effective after December 31, 1970.

"SEC. 104. The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, shall be the same subsequent to the adoption of the amendments made by this title [amending this section] as it was prior thereto."

#### EFFECTIVE DATE OF 1948 AMENDMENT

Amendment by act July 3, 1948, effective Jan. 1, 1950, see section 303 of act July 3, 1948, set out as a note under section 1301 of this title.

#### SHORT TITLE

Pub. L. 89-321, §1, Nov. 3, 1965, 79 Stat. 1187, provided: "That this Act [enacting sections 1305, 1306, 1316, 1344b, 1379, 1446a-1, and 1838 of this title, amending this section and sections 1301, 1314b, 1332, 1333, 1334, 1335, 1339, 1339a, 1339c, 1340, 1346, 1348, 1350, 1353, 1374, 1379b, 1379c, 1379d, 1379e, 1379g, 1379i, 1423, 1427, 1428, 1444, 1445a, and 1782 of this title and section 590p of Title 16, Conservation, repealing sections 1801 to 1816, 1821 to 1824, 1831, and 1832 to 1837 of this title, enacting provisions set out as notes under this section and sections 1282, 1301, 1332, 1334, 1339, 1350, 1359, 1379b, 1379c, 1379d, 1379i, 1428, 1441, and 1445a of this title and section 590p of Title 16, and amending provisions set out as notes under sections 1339, 1379c, and 1427 of this title] may be cited as the 'Food and Agriculture Act of 1965'."

#### EXPEDITED MARKETING ORDER FOR HASS AVOCADOS FOR GRADES AND STANDARDS AND OTHER PURPOSES

Pub. L. 110-234, title X, §10108, May 22, 2008, 122 Stat. 1338, and Pub. L. 110-246, §4(a), title X, §10108, June 18, 2008, 122 Stat. 1664, 2099, provided that:

"(a) IN GENERAL.—The Secretary [of Agriculture] shall initiate procedures under the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, to determine whether it would be appropriate to establish a Federal marketing order for Hass avocados relating to grades and standards and for other purposes under that Act.

"(b) EXPEDITED PROCEDURES.—

"(1) PROPOSAL FOR AN ORDER.—An organization of domestic avocado producers in existence on the date of enactment of this Act [June 18, 2008] may request the issuance of, and submit to the Secretary a proposal for, an order described in subsection (a).

"(2) PUBLICATION OF PROPOSAL.—Not later than 60 days after the date on which the Secretary receives a proposed order under paragraph (1), the Secretary shall initiate procedures described in subsection (a) to determine whether the proposed order should proceed.

"(c) EFFECTIVE DATE.—Any order issued under this section shall become effective not later than 15 months after the date on which the Secretary initiates procedures under the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937."

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of this title.]

#### RECORDS AND FACILITY REQUIREMENTS

Pub. L. 109-215, §2(c), Apr. 11, 2006, 120 Stat. 330, provided that: "Notwithstanding any other provision of

this section [amending this section and enacting provisions set out as notes under this section and section 601 of this title], or the amendments made by this section, a milk handler (including a producer-handler or a producer operating as a handler) that is subject to regulation under this section or an amendment made by this section shall comply with the requirements of section 1000.27 of title 7, Code of Federal Regulations, or a successor regulation, relating to handler responsibility for records or facilities.”

#### MINNESOTA-WISCONSIN PRICE SERIES REFORM

Pub. L. 101-624, title I, §103, Nov. 28, 1990, 104 Stat. 3379, required the Secretary of Agriculture to consider alternative pricing formula recommendations as they related to the Minnesota-Wisconsin price series used to determine the minimum prices paid under milk marketing orders, to hold a national hearing on proposed replacements of that price series, and to report to Congress on issuance of a final decision on the hearing proposals.

#### HEARINGS ON FEDERAL MILK MARKETING ORDERS

Pub. L. 101-624, title I, §104, Nov. 28, 1990, 104 Stat. 3379, required the Secretary of Agriculture to conclude national hearings on possible changes in the pricing provisions of Federal milk marketing orders by Mar. 29, 1990, and to effect any system-wide changes in the Federal orders setting minimum prices that milk processors must pay for Grade A milk received from producers, by Jan. 1, 1992.

#### STATUS OF PRODUCER HANDLERS

Pub. L. 101-624, title I, §115, Nov. 28, 1990, 104 Stat. 3381, provided that: “The legal status of producer handlers of milk under the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, shall be the same after the amendments made by this title [enacting section 1446e of this title and amending this section and sections 1446a and 4553 of this title, section 713a-14 of Title 15, Commerce and Trade, and provisions set out as notes under this section and section 1731 of this title] take effect as it was before the effective date of the amendments [see Effective Date of 1990 Amendment note set out under section 1421 of this title].”

#### MULTIPLE COMPONENT PRICING STUDY

Pub. L. 101-624, title I, §116, Nov. 28, 1990, 104 Stat. 3381, required the Secretary of Agriculture to initiate a study to determine whether, and to what extent, milk-fat is being produced in the United States in excess of commercial market needs as a result of any provision of law, regulation, or order that affects the manner in which producers receive payment for milk on the basis of the milk components contained in their marketings of milk under any Federal or State milk pricing program, to report to Congress on the study not later than 180 days after Nov. 28, 1990, and to announce a hearing on multiple component pricing provisions in individual Federal milk marketing orders issued under this section.

#### MARKETWIDE SERVICE PAYMENTS

Pub. L. 99-260, §9, Mar. 20, 1986, 100 Stat. 51, provided that:

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

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

#### TERMINATION OF MARKETING ORDERS

Pub. L. 99-198, title XVI, §1662(b), Dec. 23, 1985, 99 Stat. 1631, provided that: “The Secretary of Agriculture may not terminate any marketing order under section 8c(16) of the of the [so in original] Agricultural Adjustment Act (7 U.S.C. 608c(16)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, if such termination becomes effective before January 16, 1986.”

#### REPORT TO HOUSES OF CONGRESS REGARDING IMPLEMENTATION OF PROVISIONS RELATING TO HANDLING OF COMMODITIES

Pub. L. 95-279, title IV, §401(b), May 15, 1978, 92 Stat. 243, provided that, within a period of 60 days following the second anniversary of the implementation of section 401 of Pub. L. 95-279, the Secretary of Agriculture was to submit to Congress a report describing how section 401 was implemented.

#### RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1985 AMENDMENT STATUS

Pub. L. 99-198, title I, §134, Dec. 23, 1985, 99 Stat. 1373, provided that: “The legal status of producer handlers of milk under the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, shall be the same after the amendments made by this title [probably means this subtitle, subtitle C (§§131-134) of title I of Pub. L. 99-198, amending subsec. (5) of this section and provisions set out as a note above] take effect as it was before the effective date of such amendments.”

#### RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1981 AMENDMENT STATUS

Pub. L. 97-98, title I, §102, Dec. 22, 1981, 95 Stat. 1219, provided that: “The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 [this chapter] shall be the same subsequent to the adoption of the amendment made by the Agriculture and Food Act of 1981 [see Tables] as it was prior thereto.”

#### RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1977 AMENDMENT STATUS

Pub. L. 95-113, title II, §202, Sept. 29, 1977, 91 Stat. 919, provided that: “The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act [see Short Title note set out under section 601 of this title], as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended [act June 3, 1937, ch. 296, 50 Stat. 246, set out as a note under section 601 of this title] shall be the same subsequent to the adoption of the amendment made by the Food and Agriculture Act of 1977 [see Short Title of 1977 Amendment note set out under section 1281 of this title] as it was prior thereto.”

#### RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1973 AMENDMENT STATUS

Pub. L. 91-524, title II, §206, as added by Pub. L. 93-86, §1(6), Aug. 10, 1973, 87 Stat. 224; amended Pub. L. 93-125, §1(a)(iii), Oct. 18, 1973, 87 Stat. 450, provided that: “The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, shall be the same subsequent to the adoption of the amendments made by the Agriculture and Consumer Protection Act of 1973 [Pub. L. 93-86, amending this section and sections 1446, 1446a, and 4553 of this title] as it was prior thereto.”

#### RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1970 AMENDMENT STATUS

Pub. L. 91-524, title II, §201(b), Nov. 30, 1970, 84 Stat. 1361, provided that the legal status of producer handlers of milk under the Agricultural Adjustment Act shall be

the same subsequent to the adoption of the amendments made by Pub. L. 91-524 as it was prior thereto. For termination of this provision, see Termination of 1970 Amendment note above.

**RATIFICATION, LEGALIZATION, CONFIRMATION, AND EXTENSION OF CLASS I BASE PLAN PROVISIONS IN MARKETING ORDERS ISSUED PRIOR TO NOV. 30, 1970**

Pub. L. 91-524, title II, §201(c), Nov. 30, 1970, 84 Stat. 1361, validated and expressly ratified, legalized, and confirmed class I base plan provisions of marketing orders previously issued by the Secretary of Agriculture. For termination of this provision, see Termination of 1970 Amendment note above.

**REAFFIRMATION OF SUBSEC. (5)(G) OF THIS SECTION**

Pub. L. 91-524, title II, §201(d), Nov. 30, 1970, 84 Stat. 1361, clarified Congressional intent that subsection (5)(G) be fully reaffirmed and in no way altered, rescinded, or amended. For termination of this provision, see Termination of 1970 Amendment note above.

**VALIDITY OF SECTION AFFIRMED**

Act June 3, 1937, ch. 296, §1, 50 Stat. 246, affirmed and validated, and reenacted without change the provisions of this section, except for the amendments to subsections (5)(B)(d) and (6)(B) by section 2 of the act, and the addition of subsections (18) and (19) by said section 2. See Validity of Certain Sections Affirmed note set out under section 601 of this title.

**§ 608c-1. Repealed. June 29, 1945, ch. 196, 59 Stat. 263**

Section, acts Apr. 13, 1938, ch. 143, §3, 52 Stat. 215; May 26, 1939, ch. 150, 53 Stat. 782; Feb. 10, 1942, ch. 52, §1, 56 Stat. 85, related to orders applicable to hops. Section was not a part of the Agricultural Adjustment Act of 1933.

**§ 608d. Books and records**

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

(2) Notwithstanding the provisions of section 607 of this title, all information furnished to or acquired by the Secretary of Agriculture pursu-

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

**(3) COLLECTION OF CRANBERRY INVENTORY DATA.—**

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

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

(C) CONFIDENTIALITY.—Paragraph (2) shall apply to information provided under this paragraph.

(D) VIOLATIONS.—Any person who violates this paragraph shall be subject to the pen-