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Marketing Quotas Under the Agricultural Adjustment Act of 1938

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MARKETING QUOTAS UNDER THE AGRICULTURAL ADJUSTMENT ACT OF 1938

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I. INTRODUCTION

The Agricultural Adjustment Act of 1938[1] is of wide-reaching regulatory significance. Farm acreage allotments and marketing quotas are authorized by the statute with respect to tobacco, cotton, wheat, peanuts, and rice, and acreage allotments—but not marketing quotas—are authorized with respect to corn.[2] The program, according to the declaratory statement of policy in the act, is for a variety of purposes, *e. g.*, to "assist in the marketing of agricultural commodities for domestic consumption and export" and to regulate interstate and foreign commerce in those agricultural commodities in order to provide an orderly, adequate, and balanced flow in commerce.[3]

Congress has "power to measure and balance conflicting economic interests,"[4] and it has been held that the wisdom of federal legislation, the need for the legislation, and the effectiveness of the legislation are questions for Congress, not the courts.[5] In the brief description

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The views expressed herein are not intended to be inconsistent with the official views of the United States Department of Agriculture, but nothing herein is to be construed as expressing any official view of the Department.

[1] 52 STAT. 31 (1938), as amended, 7 U.S.C. §§ 1281-1407 (1952 and Supp. IV, 1956).

[2] 7 U.S.C. §§ 1328-1329 (1952 and Supp. IV, 1956). The farm marketing quota provisions applicable to corn were repealed by the Act of August 28, 1954, c. 1041, 68 STAT. 902. Acreage allotments established under the Agricultural Adjustment Act of 1938 are also of important significance in the price support program and the soil bank program. Price support for a commodity for which such an allotment is established is required to be made available only to a "cooperator," *i.e.*, a producer who complies with the acreage allotment for the farm on which the commodity is produced. Benefits under the soil bank program cannot be extended to a farm unless there is compliance on the farm with all such allotments. 7 U.S.C. §§ 1421-1450, 1801-1837 (1952 and Supp. IV, 1956).

[3] 7 U.S.C. § 1282 (1952).

[4] Niagara Falls Power Co. v. FPC, 137 F.2d 787, 796 (2d Cir.), *cert. denied*, 320 U.S. 792 (1943).

[5] Northern Securities Co. v. United States, 193 U.S. 197, 350 (1904); Arizona v. California, 283 U.S. 423, 455-457 (1931); American Power Co. v. SEC, 329 U.S. 90, 106-107 (1946); Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 606, n. 1 (1950). "The conflicts of economic interest between the regulated and those who advantage by it are wisely left under our system to resolution by the

in this article, with respect to the regulatory measure, reference is made only to questions or issues which are within the jurisdiction of the courts.

II. Constitutionality of the Marketing Quota System

The Agricultural Adjustment Act of 1938 is based on the commerce clause of the Constitution.[6] It is presumed that a legislative enactment is a proper exercise of the power of Congress.[7] This congressional authorization for farm marketing quotas is notable, however, for the specificity of the findings of fact by Congress relative to commerce in the commodities which are subjected to marketing quotas. For example, Congress found that the "marketing of tobacco constitutes one of the great basic industries of the United States with ramifying activities which directly affect interstate and foreign commerce at every point, and stable conditions therein are necessary to the general welfare."[8] Specifically, Congress found that:

> Tobacco produced for market is sold on a Nation-wide market and, with its products, moves almost wholly in interstate and foreign commerce from the producer to the ultimate consumer. The farmers producing such commodity are subject in their operations to uncontrollable natural causes, are widely scattered throughout the Nation . . . and are not so situated as to be able to organize effectively, as can labor and industry through unions and corporations enjoying Government protection and sanction. For these reasons among others, the farmers are unable without Federal assistance to control effectively the orderly marketing of such commodity with the result that abnormally excessive supplies thereof are produced and dumped indiscriminately on the Nation-wide market.[9]

Congress under its more flexible and responsible legislative process. Such conflicts rarely lend themselves to judicial determination. And with the wisdom, workability, or fairness, of the plan of regulation we have nothing to do." Wickard v. Filburn, 317 U.S. 111, 129 (1942). If a statute is not prohibited by the Constitution "and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretentions to such a power." McCulloch v. Maryland, 17 U.S. (4 Wheat.) 159, 207 (1819).

[6] 7 U.S.C. § 1282 (1952).

[7] Norman v. B. & O. R. Co., 294 U.S. 240, 311 (1935); Clark v. Paul Gray, Inc., 306 U.S. 583, 594 (1939).

[8] 7 U.S.C. § 1311(a) (1952).

[9] *Ibid.*

It was further found by Congress, with respect to tobacco, that the disorderly marketing of abnormally excessive supplies of tobacco affects, burdens, and obstructs interstate and foreign commerce by (1) materially affecting the volume of tobacco in interstate and foreign commerce, (2) disrupting the orderly marketing of tobacco in interstate and foreign commerce, (3) reducing the price for tobacco with consequent injury and destruction of interstate and foreign commerce in tobacco, and (4) causing a disparity between the prices for tobacco in interstate and foreign commerce and industrial products therein, with a consequent diminution of the volume of interstate and foreign commerce in industrial products.[10] The ultimate finding was made by Congress that the regulatory provisions of the act are "necessary and appropriate in order to promote, foster, and maintain an orderly flow of such supply [of tobacco] in interstate and foreign commerce."[11] Numerous and specific findings with respect to commerce in wheat, cotton, rice, peanuts, and corn were also made by Congress, and the ultimate finding was made, with respect to each of these commodities, that the regulatory plan is necessary in order to maintain a proper flow of commerce.[12]

The statutory methods for establishing marketing quotas for tobacco, marketing quotas for wheat, and marketing quotas for cotton have been reviewed *in extenso* by the appellate courts and have been held valid as an exercise of the power of Congress to regulate commerce.[13] A marketing quota system has been characterized as a "familiar device" in the regulation of commerce,[14] and marketing quotas have been upheld under other statutes with respect to sugar, oranges, grapefruit, and walnuts.[15] These programs, based on the commerce clause of the Constitution, are free from the determinative

[10] 7 U.S.C. § 1311(b) (1952).

[11] *Id.* § 1311(c).

[12] *Id.* § § 1321, 1331, 1341, 1351, 1357.

[13] Mulford v. Smith, 307 U.S. 38 (1939); Wickard v. Filburn, 317 U.S. 111 (1942); Troppy v. La Sara Farmers Gin Co., 113 F.2d 350 (5th Cir. 1940); Rodgers v. United States, 138 F.2d 992, 994 (6th Cir. 1943); Shafer v. United States, 229 F.2d 124, 129 (4th Cir.), *cert. denied,* 351 U.S. 931 (1956). Inasmuch as the statutory provisions are within the commerce clause of the Constitution, there is no impingement on the tenth amendment. Troppy v. La Sara Farmers Gin Co., 113 F.2d 350, 351-352 (5th Cir. 1940); Rodgers v. United States, 138 F.2d 992, 994 (6th Cir. 1943); Shafer v. United States, 229 F.2d 124, 129 (4th Cir.), *cert. denied,* 351 U.S. 931 (1956); United States v. Stangland, 242 F.2d 843, 848 (7th Cir. 1957).

[14] Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 606 (1950).

[15] Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604 (1950); Whittenburg v. United States, 100 F.2d 520 (5th Cir. 1938); Wallace v. Hudson-Duncan & Co., 98 F.2d 985, 989-994 (9th Cir. 1938); Edwards v. United States, 91 F.2d 767, 778-789 (9th Cir. 1937).

issue in *United States v. Butler*[16] which invalidated a processing tax on cotton under the Agricultural Adjustment Act of 1933.[17] The *Butler* case "expressly reserved the question of whether the regulation of agriculture was within the commerce power," and the question has been decided "in favor of the congressional power" to regulate commerce in agricultural commodities.[18]

The power of Congress to regulate commerce is not confined to the regulation of interstate commerce, but includes the power to regulate those activities intrastate which so affect interstate commerce as to make regulation of the intrastate activities appropriate to the effective regulation of interstate commerce.[19] The establishment of farm marketing quotas is manifestly a far-reaching exercise of the power of Congress to regulate commerce.[20]

The statutory plan for the establishment of farm marketing quotas does not impinge on the requirements of the due process clause of the fifth amendment to the Constitution.[21] It has been held that differences in treatment under a regulatory statute do not *per se* constitute a violation of the due process clause.[22] The fact that a particular regulation "may demonstrably be disadvantageous to certain areas or persons" is not enough to constitute an impingement on due process.[23] Specifically, it has been held that the Agricultural Adjustment Act of 1938 "is not to be refused application by the courts as arbitrary and capricious and forbidden by the Due Process Clause

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[16] 297 U.S. 1 (1936).

[17] Act of May 12, 1933, c. 25, 48 STAT. 31.

[18] Maneja v. Waialua Agricultural Co., 349 U.S. 254, 259 (1955).

[19] Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 85-87 (1824); Swift & Co. v. United States, 196 U.S. 375, 396-398 (1905); Houston & Texas Ry. v. U.S., 234 U.S. 342, 351 (1914); United States v. Wrightwood Dairy Co., 315 U.S. 110, 119 (1942); Wickard v. Filburn, 317 U.S. 111, 118-129 (1942); Connecticut Co. v. FPC, 324 U.S. 515, 533-535 (1945); Mabee v. White Plains Pub. Co., 327 U.S. 178, 181-184 (1946); Stern, *The Scope of the Phrase Interstate Commerce,* 41 A.B.A.J. 823 (1955).

[20] Wickard v. Filburn, 317 U.S. 111, 118-129 (1942). In the decision in the *Filburn* case, "as is now legendary, the court held that whether the wheat itself was destined for interstate commerce was immaterial. Rather, the point of emphasis was on the economic effect of such intrastate activity on interstate commerce." United States v. Stangland, 242 F.2d 843, 847 (7th Cir. 1957).

[21] Wickard v. Filburn, 317 U.S. 111, 129-133 (1942); Shafer v. United States, 229 F.2d 124, 129 (4th Cir.), *cert. denied,* 351 U.S. 931 (1956).

[22] Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 616-619 (1950). There is no requirement of uniformity in connection with a regulation of commerce. Currin v. Wallace, 306 U.S. 1, 14 (1939). The fifth amendment to the Constitution "does not require full and uniform exercise of the commerce power." Mabee v. White Plains Pub. Co., 327 U.S. 178, 184 (1946). See also, United States v. Stangland, 242 F.2d 843, 848 (7th Cir. 1957).

[23] Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 618 (1950). See also, Mulford v. Smith, 307 U.S. 38, 48-49 (1939).

merely because it is deemed in a particular case to work an inequitable result." [24]

A person who fails to show that he has suffered or is immediately in danger of suffering a legal injury, under the statutory provisions for farm marketing quotas, lacks adequate standing to present an issue as to constitutionality.[25] "For adjudication of constitutional issues, 'concrete legal issues, presented in actual cases, not abstractions,' are requisite." [26] It is not sufficient for a plaintiff merely to show that he "suffers in some indefinite way in common with people generally." [27]

The legislative policy to provide for farm marketing quotas is set forth in the statute, and the provisions contain adequate criteria to constitute a valid delegation of authority to the administrative agency.[28] Here, as in *Buttfield v. Stranahan*,[29] "Congress legislated on the subject as far as was reasonably practicable, and from the necessities of the case [Congress] was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute. To deny the power of Congress to delegate such a duty would, in effect, amount but to declaring that the plenary power vested in Congress" under the commerce clause could not be efficaciously exerted.

III. Establishment of Acreage Allotments and Marketing Quotas

The method for establishing acreage allotments and marketing quotas for tobacco is substantially similar to the method for establishing acreage allotments and marketing quotas for peanuts.[30] The procedure for determining allotments and quotas for wheat is generally similar to the procedure followed in making comparable determinations as to rice and cotton.[31] The explanation or enuclea-

[24] Wickard v. Filburn, 317 U.S. 111, 129-130 (1942). See also American Trucking Ass'ns v. United States, 344 U.S. 298, 322, n. 20 (1953).

[25] Lee v. Roseberry, 200 F.2d 155, 156 (6th Cir. 1952). See also, Barrows v. Jackson, 346 U.S. 249, 255 (1953).

[26] United Public Workers v. Mitchell, 330 U.S. 75, 89 (1947).

[27] Massachusetts v. Mellon, 262 U.S. 447, 488 (1923).

[28] Mulford v. Smith, 307 U.S. 38, 48-49 (1939); United States v. Stangland, 242 F.2d 843, 848 (7th Cir. 1957).

[29] 192 U.S. 470, 496 (1904).

[30] 7 U.S.C. §§ 1312-1313, 1358 (1952 and Supp. IV, 1956).

[31] *Id.* §§ 1330-1340, 1342-1345, 1347, 1352-1355. The procedure for determining corn acreage allotments is also substantially similar to the procedure applicable to wheat. *Id.* §§ 1328-1329.

tion, in this article, with respect to tobacco and wheat is illustrative of the regulatory system set forth in the statute, although various details are not within the limits of this abbreviature.

A. Tobacco Acreage Allotments and Marketing Quotas.

The procedures for determining marketing quotas and acreage allotments for all kinds of tobacco are substantially similar, and an explication as to flue-cured tobacco exemplifies, in basic respects, the administrative process applicable to all kinds of tobacco and, also, to peanuts.

The inceptive act in the administrative process, if quotas are to be effective,[32] is the proclamation by the Secretary of Agriculture, prior to December 1 of a "marketing year," [33] of the national marketing quota for flue-cured tobacco for each of the next three succeeding marketing years.[34] If a national marketing quota is proclaimed, the amount of the quota is announced annually in terms of the total quantity of tobacco which may be "marketed" [35] in order to make available during the marketing year a supply of tobacco equal to the "reserve supply level." [36] The "reserve supply level" is the "normal supply" [37] plus five per centum, which is to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions.[38] The amount of the national marketing quota may, not later than March 1, be

[32] The statute enumerates the determinants as to whether a proclamation of the national marketing quota will be made, which include, in some instances, conditions of supply and demand and approval by producers of prior marketing quotas. 7 U.S.C. § 1312(a) (Supp. IV, 1956).

[33] The marketing year for flue-cured tobacco is from July 1 through June 30 of each year. 7 U.S.C. § 1301(b)(7) (1952).

[34] 7 U.S.C. § 1312(a) (Supp. IV, 1956).

[35] Tobacco is "marketed" if it is disposed of "in raw or processed form, by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. . . ." 7 U.S.C. § 1301(b)(6)(A) (1952).

[36] 7 U.S.C. § 1312(b) (Supp. IV, 1956).

[37] The "normal supply" of tobacco is a "normal year's domestic consumption" and a "normal year's exports," plus 175 per centum of a normal year's domestic consumption and 65 per centum of a normal year's exports as an allowance for a normal carry over. 7 U.S.C. § 1301(b)(10) (B) (1952). A "normal year's domestic consumption" is the yearly average quantity of flue-cured tobacco produced in the United States that was consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in consumption. *Id.* § 1301(b)(11)(B). A "normal year's exports" is the yearly average quantity of flue-cured tobacco produced in the United States that was exported from the United States during the ten marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in exports. *Id.* § 1301(b)(12).

[38] *Id.* § 1301(b)(14)(B).

increased by not more than 20 per centum if the Secretary determines that the increase is necessary in order to meet demands or to avoid undue restrictions on marketings.[39]

A referendum of farmers engaged in the production of the crop of tobacco harvested immediately prior to the holding of the referendum is conducted within 30 days after the proclamation of the national marketing quota, and the quota becomes effective if at least two-thirds of the farmers voting in the referendum approve the quota.[40]

The national marketing quota, less an amount not in excess of five per centum of the quota for allocation to small farms and new farms,[41] is apportioned by the Secretary among the states on the basis of the "total production of tobacco in each State during the five calendar years immediately preceding the calendar year in which the quota is proclaimed (plus, in applicable years, the normal production on the acreage diverted under previous agricultural adjustment and conservation programs), with such adjustments as are determined to be necessary to make correction for abnormal conditions of production, for small farms, and for trends in production, giving due consideration to seed bed and other plant diseases during such five-year period." [42]

The state marketing quota is converted by the Secretary into a state acreage allotment on the basis of the average yield per acre of tobacco for the state during the five years preceding the year in which the national marketing quota is proclaimed, adjusted for abnormal conditions of production.[43] The state acreage allotment is then allocated, through local committees, to individual farms on the basis of past acreage of tobacco, making "due allowance" for abnormal conditions and diseases; land, labor, and equipment available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco.[44] In-

[39] 7 U.S.C. § 1312(b) (Supp. IV, 1956).

[40] *Id.* § 1312(c).

[41] The Secretary may reserve not in excess of 5 per centum of the national marketing quota to allocate to farms on which tobacco is produced for the first time in five years and to increase allotments to small farms. 7 U.S.C. § 1313(c) (1952).

[42] 7 U.S.C. § 1313(a) (1952). See also, 7 U.S.C. §§ 1824(a), 1836 (Supp. IV, 1956); Pub. L. No. 85-266, 85th Cong., 1st Sess. (Sept. 2, 1957).

[43] 7 U.S.C. § 1313(g) (Supp. IV, 1956).

[44] 7 U.S.C. § 1313(b), (g) (1952 and Supp. IV, 1956). "Beginning with the 1947 crop, it was administratively determined that the farm acreage allotments established for the previous year gave adequate weight to the various factors required to be considered in establishing farm acreage allotments if the harvested acreage was sub-

dividual farms may also receive a portion of the national allotment reserved for farms on which tobacco has not been produced during the preceding five years and for small farms.[45] An allotment "is made to the farm and not the person who owns or operates the farm and therefore runs with the land," [46] and it is necessary for the administrative committee to combine or apportion allotments whenever farms are combined or divided.[47]

The actual production of the acreage allotment established for a farm is the amount of the farm marketing quota for the farm.[48] Inasmuch as the amount of tobacco which is to be produced on the farm is not known by the administrative committee when the notice of the farm marketing quota is sent to the farmer, the farmer is notified of his farm acreage allotment and informed that his farm marketing quota is the actual production of his farm acreage allotment.[49]

B. Wheat Acreage Allotments and Marketing Quotas.

The procedures for establishing acreage allotments and marketing quotas for wheat,[50] cotton,[51] and rice[52] are substantially similar, and the following exemplification as to wheat is generally applicable to cotton and rice.

Each year the Secretary must ascertain and proclaim by not later than May 15 the national acreage allotment for the next crop of wheat.[53] The national acreage allotment is the acreage that, on the

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stantially the same as the allotted acreage. If the acreage of tobacco harvested on a farm in each of the preceding 3 years was less than 75 percent of the allotment, or if the acreage harvested exceeded the farm acreage allotment by more than 10 percent, the allotment was recomputed." Letter from the Secretary of Agriculture transmitting a Report on the Study of the Various Methods of Marketing Control which Have Been or Could Be Made Applicable to Burley Tobacco, pursuant to Public Law 96, 84th Cong., 1st Sess. 13 (Nov. 2, 1955) (Senate Committee Print, Committee on Agriculture and Forestry).

[45] 7 U.S.C. § 1313(c), (g) (1952 and Supp. IV, 1956).

[46] Lee v. Berry, 219 S.C. 346, 351, 65 S.E.2d 257, 259 (1951). See also, Mace v. Berry, 225 S.C. 160, 171, 81 S.E.2d 276, 280 (1954); Lee v. DeBerry, 219 S.C. 382, 383-388, 65 S.E.2d 775, 776-777 (1951); Rymer v. Garnett, 244 S.W.2d 439, 440 (Ky. 1951).

[47] See *e.g.*, 7 CFR § 725.721 (Supp. 1956).

[48] 7 U.S.C. § 1313(g) (Supp. IV, 1956).

[49] Form MQ-24 (8-6-56); Form MQ-24A (10-4-57); Form MQ-24X-Tobacco (7-12-56).

[50] 7 U.S.C. § § 1330-1340 (1952 and Supp. IV, 1956).

[51] *Id.* § § 1342-1345, 1347.

[52] *Id.* § § 1352-1355.

[53] 7 U.S.C. § 1332 (Supp. IV, 1956).

basis of the national average yield for wheat, will produce an amount of wheat which, when added to the carry-over at the beginning of the marketing year and imports, will equal a normal year's domestic consumption and exports plus 30 per centum thereof, but in no case may the allotment be less than fifty-five million acres.[54] The national acreage allotment, less a reserve of not in excess of 1 per centum thereof,[55] is apportioned by the Secretary among the states "on the basis of the acreage seeded for the production of wheat during the ten calendar years immediately preceding the calendar year in which the national acreage allotment is determined (plus, in applicable years, the acreage diverted under previous agricultural adjustment and conservation programs) with adjustments for abnormal weather conditions and for trends in acreage during such period." [56]

The state acreage allotments for wheat, less a reserve of not to exceed 3 per centum thereof,[57] are apportioned by the Secretary among the counties in the states on the same basis as the apportionment of the national acreage allotment to the states except that in apportioning the state allotments to the counties, the promotion of soil conservation practices in the counties is also considered.[58] The county allotments are then apportioned, through local committees, among the farms within the counties on the basis of past acreage of wheat, tillable acres, crop-rotation practices, type of soil, and topography.[59]

Alternative criteria for determining whether a national marketing quota is to be in effect are set forth in the act. If the Secretary

[54] 7 U.S.C. § 1333 (1952). Statutory definitions of "carry-over," "national average yield," "normal year's domestic consumption," and "normal year's exports" are contained in the act. *Id.* § § 1301(b)(3)(D), 1301(b)(8), 1301(b)(11)(A), 1301(b)(12).

[55] The reserve is to make additional allotments to counties "on the basis of the relative needs of counties for additional allotment because of reclamation and other new areas coming into the production of wheat during the ten calendar years ending with the calendar year in which the national acreage allotment is proclaimed." 7 U.S.C. § 1334(a) (Supp. IV, 1956).

[56] *Ibid.* See also, 7 U.S.C. § § 1824(a), 1836 (Supp. IV, 1956); Pub. L. No. 85-266, 85th Cong., 1st Sess. (Sept. 2, 1957); Pub. L. No. 85-203, 85th Cong., 1st Sess. (Aug. 28, 1957).

[57] All of a state's allotment which is apportioned to farms on which wheat has not been planted during any of the three marketing years immediately preceding the marketing year in which the allotment is made is apportioned from a reserve not in excess of three per centum of the state's allotment. 7 U.S.C. § 1334(c) (Supp. IV, 1956).

[58] 7 U.S.C. § 1334(b) (Supp. IV, 1956).

[59] *Id.* § 1334(c). In the administration of the Agricultural Adjustment Act of 1938, the Secretary is directed to use the same local, county, and state committees of farmers as are utilized under the Soil Conservation and Domestic Allotment Act. 7 U.S.C. § 1388 (1952).

determines that (i) "the total supply of wheat for the marketing year beginning in such calendar year will exceed the normal supply for such marketing year by more than 20 per centum" or that (ii) "the total supply of wheat for the marketing year ending in such calendar year is not less than the normal supply for the marketing year so ending, and that the average farm price for wheat for three successive months of the marketing year so ending does not exceed 66 per centum of parity," the Secretary proclaims such fact, and "during the marketing year beginning July 1 of the next succeeding calendar year and continuing throughout such marketing year, a national marketing quota shall be in effect with respect to the marketing of wheat." [60]

Between the date of the proclamation of a national marketing quota for wheat and July 25 the Secretary must conduct a referendum of farmers who will be subject to the quota to determine whether they favor or oppose the quota, and if more than one-third of the farmers voting in the referendum oppose the quota, the Secretary must, prior to the effective date of the quota, suspend its operation.[61] If a national quota is not disapproved, a marketing quota for each farm is determined in accordance with the statutory criteria.[62]

The marketing quota for any farm is defined in formulaic terms, *i. e.*, the "farm marketing quota" is the "actual production of the acreage planted to wheat on the farm, less the normal production or the actual production, whichever is the smaller, of that acreage planted to wheat on the farm which is in excess of the farm acreage allotment for wheat." [63] The subtrahend in the formula, *i. e.*, the "normal production, or the actual production, whichever is the smaller," of the excess acreage is defined as the "farm marketing excess" of wheat.[64] Hence the combinative definition of "farm

[60] *Id.* § 1335(a) (Supp. IV, 1956). Wheat quotas have been in effect under the act only for the 1941-42 marketing year, a part of the 1942-43 marketing year, the 1954-55 marketing year, and the subsequent years.

[61] 7 U.S.C. § 1336 (1952).

[62] 7 U.S.C. § 1340 (Supp. IV, 1956). The farm marketing quotas are established by a County Committee in each county elected by the farmers in the county. 7 U.S.C. § 1388 (1952); 16 U.S.C. § 590h(b) (1952 and Supp. IV, 1956).

[63] 7 U.S.C. § 1340(1) (Supp. IV, 1956). The "actual production" of any number of acres of wheat on a farm is the "actual average yield of wheat for the farm times such number of acres." *Ibid.* The "normal production" of wheat is defined as the "normal yield" for the farm times the number of acres of wheat. 7 U.S.C. § 1301(b)(9) (1952). The "normal yield" for the farm is, in general, the average yield per acre of wheat, adjusted for abnormal weather conditions and for trends in yields during the ten calendar years immediately preceding the year in which such normal yield is determined. 7 U.S.C. § 1301(b)(13)(G) (Supp. IV, 1956).

[64] *Id.* § 1340(1).

marketing quota" is the actual production of the acreage planted to wheat on the farm less the "farm marketing excess." [65]

The act provides for an application by the producer for a downward adjustment in his farm marketing excess if the actual production of the excess acreage is less than the normal production thereof, *i. e.*, the act provides that "where, upon the application of the producer for an adjustment of penalty or of storage, it is shown to the satisfaction of the Secretary that the actual production of the excess acreage is less than the normal production thereof, the difference between the amount of the penalty or storage as computed upon the basis of normal production and as computed upon the basis of actual production shall be returned to or allowed the producer." [66]

Also the act provides that the farm marketing excess for any crop of wheat for any farm "shall not be larger than the amount by which the actual production of such crop of wheat on the farm exceeds the normal production of the farm wheat-acreage allotment, if the producer establishes such actual production to the satisfaction of the Secretary." [67] The effect of this provision is that the farm marketing quota shall not be less than the normal production of the farm acreage allotment.[68]

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[65] For example, if the following determinations are made for a farm—

Total acreage of wheat on farm	16 acres
Farm acreage allotment	10 acres
Acreage planted to wheat in excess of allotment	6 acres
Normal yield per acre for the farm	20 bushels
Actual average yield per acre	22 bushels

the actual production of the acreage planted to wheat on the farm would be 352 bushels (22 times 16), and the farm marketing excess would be 120 bushels (20 times 6). Subtracting the farm marketing excess (120 bushels) from the actual production of the acreage planted to wheat on the farm (352 bushels) results in a farm marketing quota of 232 bushels. However, the actual production of the acreage planted to wheat on the farm is not known by the administrative committee when the farmer is notified as to his farm marketing quota and, therefore, the farmer would be notified, in this illustration, that his farm marketing excess is 120 bushels, and that the farm marketing quota for the farm is the actual production of the wheat acreage on the farm, less the farm marketing excess. Form MQ-24 (8-6-56). Also the producer is notified that he may apply for a downward adjustment in the farm marketing excess. *Ibid.*

[66] 7 U.S.C. § 1340(3) (Supp. IV, 1956).

[67] *Id.* § 1340(12).

[68] For example, if in the illustration set forth in note 65, *supra*, the actual average yield per acre is established, to the satisfaction of the Secretary, to be less than the normal yield per acre, *e.g.*, 17 bushels, the following determinations would be made for the farm—in the absence of 7 U.S.C. § 1340(12) (Supp. IV, 1956):

Total acreage of wheat on farm	16 acres
Farm acreage allotment	10 acres
Acreage planted to wheat in excess of allotment	6 acres
Normal yield per acre for the farm	20 bushels

Farm marketing quotas are not applicable to a farm on which the acreage planted to wheat is not in excess of fifteen acres.[69] The Secretary is directed, in addition, to exempt producers, who make application in accordance with the regulations, from any obligation under the act "to pay the penalty on, deliver to the Secretary, or store the farm marketing excess with respect to any farm for any crop of wheat harvested in 1958 or any subsequent year" if, *inter alia*, "the total wheat acreage on the farm does not exceed 30 acres" and "such entire crop of wheat is used on such farm for seed, human food, or feed for livestock, including poultry, owned by any such producer, or a subsequent owner or operator of the farm. . . ." [70] Also, if for any marketing year, "the acreage allotment for wheat for any State is twenty-five thousand acres or less, the Secretary . . . may designate such State as outside the commercial wheat-producing area for such marketing year. No farm marketing quota or acreage allotment with respect to wheat . . . shall be applicable in such marketing year to any farm in any State so designated; and no acreage allotment in any other State shall be increased by reason of such designation." [71]

C. *Review of a Farm Marketing Quota by a Review Committee.*

Any farmer "who is dissatisfied with his farm marketing quota may, within fifteen days after mailing to him of notice as provided in . . . [the statute], have such quota reviewed by a local review committee composed of three farmers from the same or nearby coun-

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Actual average yield per acre ..... 17 bushels
Actual production of acreage planted to wheat ..... 272 bushels (17x16)
Farm marketing excess ..... 102 bushels (17x6)
Farm marketing quota ..... 170 bushels (272-102)

However, applying the provisions of 7 U.S.C. § 1340(12) (Supp. IV, 1956), the actual production of wheat on the farm (272 bushels) exceeds the normal production of the farm wheat acreage allotment—*i.e.*, the normal yield times the acreage allotment (or 200 bushels)—by 72 bushels. Hence, the farm marketing excess cannot exceed 72 bushels and, therefore, the farm marketing quota will be 200 bushels, which is the normal production of the farm acreage allotment (20x10).

[69] 7 U.S.C. § 1340(7) (Supp. IV, 1956). In addition, farm marketing quotas are not applicable to any farm on which the normal production of the acreage seeded to wheat is less than 200 bushels. 7 U.S.C. § 1335(d) (1952).

[70] Pub. L. No. 85-203, 85th Cong., 1st Sess. (Aug. 28, 1957).

[71] 7 U.S.C. § 1335(e) (Supp. IV, 1956). The Secretary has designated as outside the commercial wheat-producing area for the 1958-59 marketing year the States of Alabama, Arizona, Connecticut, Florida, Louisiana, Maine, Massachusetts, Mississippi, Nevada, New Hampshire, Rhode Island, and Vermont. 22 FED. REG. 2906 (1957).

ties appointed by the Secretary." [72] "Unless application for review is made within such period, the original determination of the farm marketing quota shall be final." [73]

An application for review must be in writing and addressed to, and filed with, the county office manager of the Agricultural Stabilization and Conservation County Committee which issued the notice of quota. The application must contain (1) the date of application, (2) the name of the commodity, (3) the full name and address of the applicant, (4) a brief statement of each ground upon which the application is based, and (5) a statement of the amount of quota which it is claimed should have been established.[74]

A hearing pursuant to an application for review is held in the office of the county committee through which the quota sought to be reviewed was established or at such other appropriate "place" in the county or, with the consent of the applicant, outside of the county as may be designated.[75] A hearing may be adjourned to "a different place" in the county,[76] and a review committee may adjourn a hearing to the applicant's farm and receive relevant testimony at the farm.[77] Also, a review committee may inspect a farm, *e.g.*, for the purpose of determining the acres of "cropland" in the farm.[78] It has long been recognized that juries and judges may go "for a view" of lands or premises referred to in litigation,[79] and witnesses may be required to repeat their testimony "at the view." [80] *A fortiori* that procedure is available at an administrative hearing.

A hearing before a review commitee is a *de novo* proceeding to determine the proper farm marketing quota.[81] A hearing before the

[72] 7 U.S.C. § 1363 (1952). Inasmuch as the statute specifically provides for the administrative review to be before a committee, the provisions of the Administrative Procedure Act for a Hearing Examiner appointed pursuant to that act are inapplicable. 5 U.S.C. § 1006(a) (1952).

[73] 7 U.S.C. § 1363 (1952).

[74] 7 C.F.R. § 711.13 (Supp. 1956).

[75] *Id.* § 711.16.

[76] *Id.* § 711.19.

[77] Mace v. Berry, 225 S.C. 160, 81 S.E.2d 276, 280-281 (1954). The practice of conducting hearings at specified locations or other appropriate "places" is of ancient origin. See *e.g.*, Act of September 24, 1789, c. 20, 1 STAT. 73. The principle was stated in the Magna Charta that court may be held in any *certo loco*. BARRINGTON, MAGNA CHARTA 311 (2d ed. 1900).

[78] Mace v. Berry, 225 S.C. 160, 81 S.E.2d 276, 280-281 (1954).

[79] 4 WIGMORE, EVIDENCE § § 1162-1169 (3d ed. 1940); 6 *id.* § 1802; Snyder v. Massachusetts, 291 U.S. 97, 110-122 (1934); Massenberg v. United States, 19 F.2d 62, 64 (4th Cir. 1927).

[80] 6 WIGMORE, EVIDENCE § 1802 (3d ed. 1940).

[81] See 7 C.F.R. § 711.23 (Supp. 1956); United States v. Stangland, 242 F.2d 843, 846 (7th Cir. 1957).

committee is open to the public, and is "conducted in a fair and impartial manner and in such a way as to afford the applicant, members of the appropriate county and community committees, and appropriate officers and agents of the Department of Agriculture, and all persons appearing on behalf of such parties, reasonable opportunity to give and produce evidence relevant to the quota being reviewed." [82] Interested persons are permitted to present sworn testimony and documentary evidence and to "conduct such cross-examination as may be required for a full and true disclosure of the facts." [83] The applicant has the burden of proof as to all issues of fact raised by him.[84]

Inasmuch as farmers are notified of their farm marketing quotas in formulaic terms, *e.g.*, the actual production of the farm acreage allotment or the actual production on the farm less the farm marketing excess, a review of a "farm marketing quota" necessarily comprises a review of the component elements which determine the quota. The procedural regulations specifically provide that a review of a farm marketing quota shall include, *inter alia*, a review of the farm acreage allotment, farm marketing excess, or normal yield for the farm.[85] In short, a review before a review committee may encompass any matter which is "required or permitted to be considered by the county committee in the establishment of the quota sought to be reviewed," but a review committee cannot reconsider determinations made by the Secretary and a state administrative committee.[86]

A verbatim transcript of a review committee hearing is made if the applicant requests, and pays for, the transcript or if the state administrative committee provides for a verbatim transcript. Otherwise, the review committee has sufficient notes taken to enable it to make a summary of the evidence received at the hearing.[87] Following a hearing, the applicant, the members of the county and community committees, and the officers and agents of the United States Department of Agriculture may file written arguments and proposed findings of fact and conclusions of law.[88] A determination

[82] 7 C.F.R. § 711.20 (Supp. 1956).
[83] *Id.* § 711.20(e).
[84] *Ibid;* Lee v. De Berry, 219 S.C. 382, 65 S.E.2d 775, 780 (1951).
[85] 7 C.F.R. § 711.13(a) (Supp. 1956).
[86] *Id.* § 711.12; Fulford v. Forman, 245 F.2d 145 (5th Cir. 1957).
[87] 7 C.F.R. § 711.20(f) (Supp. 1956).
[88] *Id.* § 711.20(g).

is then made by the review committee, which may deny, or grant in whole or in part, the applicant's request.[89]

IV. Judicial Review of Decisions by Review Committees Relative to Marketing Quotas

If a farmer is dissatisfied with the decision of a review committee, relative to the marketing quota for his farm, he may obtain judicial review of the administrative decision.[90] The act authorizes judicial review in the United States District Court, for the district in which the farm is located, or by a proceeding "in any court of record of the State having general jurisdiction, sitting in the county or the district in which his [the plaintiff's] farm is located. . . ." [91]

A suit or proceeding for judicial review must be instituted within 15 days after the notice of the review committee's determination is mailed to the plaintiff.[92] Bond shall be given in an amount and with surety satisfactory to the court to secure the United States for the costs of the proceeding.[93] The complaint in a proceeding on judicial review is served on the review committee.[94] In the event judicial review is sought the review committee certifies and files in the court a transcript of the record, upon which the determination of the committee was made, including the findings of fact and conclusion by the committee.[95]

If judicial review is sought in a "court of record of the State having general jurisdiction, sitting in the county or the district in which his [the plaintiff's] farm is located" [96]—instead of the appropriate United States District Court in which judicial review could, in the alternative, be obtained—nonetheless "the Federal law governs in the interpretation of Federal statutes, even though the case is in a state court." [97] An act of Congress should operate uniformly throughout

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89 *Id.* § 711.23.

90 7 U.S.C. § 1365 (1952).

91 *Ibid.* It was held in Larkin v. Roseberry, 54 F. Supp. 373 (E.D. Ky. 1944), that a proceeding in a state court to review a decision by a review committee is a suit of a civil nature arising under a law of the United States so as to be removable to federal court.

92 7 U.S.C. § 1365 (1952).

93 *Ibid.*

94 *Ibid.*

95 *Ibid.*

96 *Ibid.*

97 Lee v. DeBerry, 219 S.C. 382, 388, 65 S.E.2d 775, 778 (1951). Also, the assertion of federal rights when plainly and reasonably made are not to be defeated by "springes" in local practice. Davis v. Wechsler, 263 U.S. 22, 24 (1923). Rules of

the country so that the general program will remain unimpaired.[98]

The scope of judicial review is limited to "questions of law," and "the findings of fact by the review committee, if supported by evidence shall be conclusive." [99] This is the familiar substantial evidence rule which governs judicial review under numerous federal statutes having provisions comparable to the relevant language in the Agricultural Adjustment Act of 1938.[100] Judicial review, pursuant to this act, is not a "commonplace one" in which the reviewing court is clothed with its ordinary jurisdiction, legal or equitable, but it is a special statutory proceeding in which jurisdiction extends "only to review the action of the review committee" on the basis of the evidence in the record as a whole before the committee.[101]

The courts are directed, on judicial review, "to affirm the determination of the Review Committee if its findings of fact are supported by substantial evidence," and substantial evidence means "only such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." [102] Moreover, it is not the court's function to substitute its judgment for that of the Review Committee where the Committee has applied the broad phrases in the regulations "to a specific state of facts. . . ." [103]

Application may be made to the court for leave to adduce addi-

practice and procedure "may themselves dig into 'substantive rights'" but a "federal right cannot be defeated by the forms of local practice." Brown v. Western R. of Alabama, 338 U.S. 294, 296 (1949).

[98] Reconstruction Finance Corp. v. Beaver County, 328 U.S. 204, 209 (1946); Illinois Steel Co. v. B. & O. R. Co., 320 U.S. 508, 510-511 (1944); Garrett v. Moore-McCormack Co., 317 U.S. 239, 245 (1942).

[99] 7 U.S.C. § 1366 (1952). The provisions for judicial review vest "no original fact finding functions in the court." Crolley v. Tatton, No. 16554, 5th Cir. Dec. 10, 1957. "The duty and power of making findings of fact are entrusted to the Review Committee, and, if supported by substantial evidence on the record as a whole, its findings are conclusive." *Ibid.*

[100] See the Federal Trade Commission Act, which provides that the "findings of the Commission as to the facts, if supported by evidence, shall be conclusive." 15 U.S.C. § 45(c) (1952). It was said in NLRB v. Waterman S. S. Co., 309 U.S. 206, 208-209 (1940) that: "Not by accident, but in line with a general policy, Congress has deemed it wise to entrust the findings of fact to these specialized agencies. It is essential that courts regard this division of responsibility which Congress as a matter of policy has embodied in the very statute from which the Court of Appeals derived its jurisdiction to act." See also, Edison Co. v. NLRB, 305 U.S. 197, 229 (1938).

[101] Smith Land Co. v. Christensen, 148 F.2d 184, 185 (10th Cir. 1945). See also, Swift & Co. v. United States, 343 U.S. 373, 382 (1952); O'Leary v. Brown-Pacific-Maxon, 340 U.S. 504, 508 (1951); Universal Camera Corp. v. NLRB, 340 U.S. 474, 476-491 (1951).

[102] Lee v. DeBerry, 219 S.C. 382, 387, 65 S.E.2d 775, 777 (1951). See also, Burleson v. Francis, 99 S.E.2d 767, 768 (N.C. 1957); Mace v. Berry, 225 S.C. 160, 171, 81 S.E.2d 276, 280 (1954); Lee v. Berry, 219 S.C. 346, 352, 65 S.E.2d 257, 259 (1951).

[103] Lee v. DeBerry, *supra* note 102 at 780.

tional evidence, and if it is "shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the review committee, the court may direct such additional evidence to be taken before the review committee in such manner and upon such terms and conditions as to the court may seem proper," and the committee may modify its findings or determination by reason of the additional evidence so taken and then file with the court the modified findings or determination.[104] This statutory provision is consonant with the entire plan of the act for judicial review of a decision by a review committee to be made on the basis of the record before the committee.

The statutory method for reviewing the validity of a quota is exclusive. "No court of the United States or of any State shall have jurisdiction to pass upon the legal validity of any such determination [by a review committee] except in a proceeding under this part," and the jurisdiction conferred by the act to review a decision by a review committee is "exclusive." [105] Congress has power to formulate the conditions under which resort to the courts may be had.[106] It is, specifically, the purpose of the Agricultural Adjustment Act of 1938 to "forbid any method of judicial review of the administrative findings other than by a direct proceeding against the Review Committee, thereby precluding indirect methods of securing such review. . . ." [107]

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[104] 7 U.S.C. § 1366 (1952). This statutory provision is similar to the provision in the National Labor Relations Act that: "If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board . . ., the court may order such additional evidence to be taken before the Board . . . , and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed . . . ." 29 U.S.C. § 160(e) (1952). See also, NLRB v. Donnelly Co., 330 U.S. 219, 234-235 (1947); NLRB v. Fournier, 182 F.2d 621 (2d Cir. 1950); NLRB v. Tyrrell County Lumber Co., 203 F.2d 951 (4th Cir. 1953); NLRB v. West Kentucky Coal Co., 152 F.2d 198, 201 (6th Cir. 1945), *cert. denied,* 328 U.S. 866 (1946); NLRB v. May Department Stores Co., 154 F.2d 533, 540 (8th Cir.), *cert. denied,* 329 U.S. 725 (1946).

[105] 7 U.S.C. § 1367 (1952).

[106] See American Power & Light Co. v. SEC, 325 U.S. 385, 389 (1945); United States v. Ruzicka, 329 U.S. 287, 292-294 (1946).

[107] Lee v. Roseberry, 94 F. Supp. 324, 327 (E.D. Ky. 1950). See also, Miller v. United States, 242 F.2d 392, 395 (6th Cir.), *cert. denied,* 26 U.S.L. WEEK 3117 (U.S. Oct. 15, 1957) (No. 297). The basic principle is of wide application. See *e.g.,* National Lawyers Guild v. Brownell, 225 F.2d 552, 554-557 (D.C. Cir. 1955), *cert. denied,* 351 U.S. 927 (1956). In some cases, under a regulatory statute, the rule has not been invoked by either litigant, although it would have been applicable. *Compare,* United States v. Rock Royal Co-op., 307 U.S. 533 (1939) with United States v.

V. Enforcement Actions

The Agricultural Adjustment Act of 1938 provides that the "several district courts of the United States are vested with jurisdiction specifically to enforce" the provisions of the act.[108] The remedies and penalties provided for in the act are "in addition to, and not exclusive of, any of the remedies or penalties under existing law."[109] Proceedings are specifically authorized by the statute to collect the civil penalties therein provided for.[110]

An injunction may be issued to aid in the enforcement of the statute.[111] The United States "is not bound to conform with the requirements of private litigation when it seeks the aid of the courts to give effect to the policy of Congress as manifested in a statute. It is a familiar doctrine that an injunction is an appropriate means for the enforcement of an Act of Congress when it is in the public interest." [112] It has been said that courts "may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." [113]

Ruzicka, 329 U.S. 287 (1946). "Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." Webster v. Fall, 266 U.S. 507, 511 (1925).

108 7 U.S.C. § 1376 (1952).

109 *Ibid.*

110 *Ibid.*

111 Shafer v. United States, 229 F.2d 124, 128 (4th Cir.), *cert. denied,* 351 U.S. 931 (1956). The Secretary is authorized to provide for measuring farms to ascertain whether the acreage planted is in excess of the farm acreage allotment (7 U.S.C. § 1374 (1952)), and an injunction is appropriate, under certain circumstances, to aid in the enforcement of that statutory provision. Shafer v. United States, *supra.* Also, statutory provisions require reports and records by processors, warehousemen, and various other persons relative to the marketing of commodities, and the Secretary or his representatives may examine or inspect all such books, papers, and other records. Rodgers v. United States, 138 F.2d 992 (6th Cir. 1943).

112 Shafer v. United States, 229 F.2d 124, 128 (4th Cir.), *cert. denied,* 351 U.S. 931 (1956).

113 Virginian Ry. v. Federation, 300 U.S. 515, 552 (1937). See also, Porter v. Warner Co., 328 U.S. 395, 398 (1946). In a proceeding under the Fair Labor Standards Act, it was said that "good administration of the statute is in the public interest and that will be promoted by taking timely steps when necessary to prevent violations either when they are about to occur or prevent their continuance after they have begun. The trial court is not bound by the strict requirements of traditional equity as developed in private litigation but in deciding whether or not to grant an injunction in this type of case should also consider whether the injunction is reasonably required as an aid in the administration of the statute, to the end that the Congressional purpose underlying its enactment shall not be thwarted." Walling v. Brooklyn Braid Co., 152 F.2d 938, 940-941 (2d Cir. 1945). In the event a court can give relief, there is no ground for withholding relief on the speculation that relief could be obtained in some other method. American Life Ins. Co. v. Stewart, 300 U.S. 203, 214 (1937); Davis v. Wakelee, 156 U.S. 680, 688 (1895).

The Secretary of Agriculture is not a necessary party to an enforcement action.[114] It is sufficient that suit is brought in the name of the United States.[115]

Civil penalties are applicable to the marketing of any commodity in excess of the marketing quota for a farm.[116] For example, the penalty for marketing excess tobacco is 75 per centum of the average market price for such kind of tobacco for the immediately preceding marketing year.[117] The penalty on the farm marketing excess of wheat is 45 per centum of the parity price per bushel of wheat as of May 1 of the calendar year in which the crop is harvested.[118] In addition, if any producer falsely identifies or fails to account for the disposition of his crop of tobacco or peanuts, an amount of the commodity "equal to the normal yield of the number of acres harvested in excess of the farm acreage allotment shall be deemed to have been marketed in excess of the marketing quota for the farm, and the penalty in respect thereof shall be paid and remitted by the producer." [119]

The civil penalties applicable to excess production differ "from an ordinary penalty which is imposed in connection with the commission of an unlawful act." [120] Inasmuch as an action to collect penalties is "clearly" civil rather than criminal, the government is required only to "prove its case by a preponderance of the evidence rather than beyond a reasonable doubt;" [121] and the summary judgment procedure in Rule 56 of the Federal Rules of Civil Procedure is available in civil penalty actions.[122]

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114 Shafer v. United States, 229 F.2d 124, 130 (4th Cir.), *cert. denied*, 351 U.S. 931 (1956).

115 *Ibid.* When a government official must authorize suit to be brought, it is presumed that a United States Attorney, "being a sworn officer of the United States, does his duty, including the performance of all that was necessary to make what he does legal with the requisite direction from the duly constituted authorizing official." McKay v. Rogers, 82 F.2d 795, 798 (10th Cir. 1936).

116 7 U.S.C. §§ 1314(a), 1340(2), 1346, 1356, 1359 (1952 and Supp. IV, 1956).

117 7 U.S.C. § 1314(a) (Supp. IV, 1956); Golding v. United States, 219 F.2d 109 (4th Cir. 1955).

118 7 U.S.C. § 1340(2) (Supp. IV, 1956). The applicable penalty rates in each year are computed in accordance with the statutory formula and published in the Federal Register. See *e.g.*, 22 FED. REG. 3751 (1957).

119 7 U.S.C. §§ 1314(a), 1359(a) (Supp. IV, 1956). The statutory phrase "shall be deemed" is used as a rule of substantive law fixing the rate of penalty and not as a rebuttable presumption of fact. Bowers v. United States, 226 F.2d 424, 425-429 (5th Cir. 1955). See also, Gardner v. United States, 239 F.2d 234 (5th Cir. 1956).

120 Usher v. United States, 146 F.2d 369, 371 (4th Cir. 1944).

121 *Ibid.*

122 Miller v. United States, 242 F.2d 392, 393-394 (6th Cir.), *cert. denied*, 26 U.S.L. WEEK 3117 (U.S. Oct. 15, 1957) (No. 297); United States v. Stangland, 242 F.2d 843, 846-847 (7th Cir. 1957).

"The purpose of Congress in requiring payment of penalties into the Federal Treasury for marketing above the allotted amount was not to raise revenue for the Government's financial advantage but to deter farmers from planting and marketing more than their quotas." [123] It was held that the government does not, prior to the entry of a judgment,[124] suffer "money damages or loss . . . to be compensated for by interest" in the event that a producer fails to pay a civil penalty,[125] but subsequently the act was amended to provide for interest on penalties for cotton, rice, and peanuts.[126]

VI. Conclusion

The courts have upheld the basic validity and enforceability of the statutory plan for farm marketing quotas. It was said in *Miller v. United States*,[127] that "in light of these decisions"—upholding the constitutional validity of the quota system—the remedy, if any, available to those who are opposed to regulation, is "legislative rather than judicial."

The administrative undertaking in the establishment of farm marketing quotas, for the agricultural commodities referred to in the statute, is manifestly of far-flung character. Thousands of review proceedings have been instituted since the enactment of the statute in 1938. There were approximately 6,000 review proceedings involving quotas for the 1954 crops, and approximately 14,000 review proceedings with respect to quotas for the 1955 crops.[128] It is to be expected that, in the administration of this program which is applicable in a wide variety of situations, numerous issues will continue to arise with respect to the establishment of farm marketing quotas.

The legislation has been reconsidered from time to time by Congress, and various amendatory measures have been made effective.[129] "Legislation introducing a new system is at best empirical, and not

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123 Rodgers v. United States, 332 U.S. 371, 374 (1947).

124 *Id.* at 372-373.

125 *Id.* at 374.

126 7 U.S.C. §§ 1346(c), 1356(c), 1359(d) (1952 and Supp. IV, 1956).

127 242 F.2d 392, 395 (6th Cir.), *cert. denied*, 26 U.S.L. Week 3117 (U.S. Oct. 15, 1957) (No. 297).

128 *Hearings Before the Subcommittee of the House Committee on Appropriations*, 84th Cong., 1st Sess. 1618 (1956), Dep't of Agriculture Appropriations for 1956; *Hearings Before the Subcommittee of the House Committee on Appropriations*, 84th Cong., 2d Sess. 1238 (1957), Dep't of Agriculture Appropriations for 1957.

129 See *e.g.*, 7 U.S.C. §§ 1313(g), 1340, 1344, 1352 (Supp. IV, 1956).

infrequently administration [of the statute] reveals gaps or inadequacies of one sort or another that may call for amendatory legislation." [130] The Supreme Court has said that the "empiric process of legislation" is revealed "at its fairest" by "frequent reconsideration, intensive study of the consequences of what has been done, readjustment to changing conditions, and safeguarding the future on the basis of responsible forecasts." [131]

[130] Addison v. Holly Hill Co., 322 U.S. 607, 617 (1944).
[131] East New York Bank v. Hahn, 326 U.S. 230, 234-235 (1945).