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The Wool Payment Program

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THE WOOL PAYMENT PROGRAM

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I. INTRODUCTION

Price support is furnished to wool producers by means of payments. The main features of the payment program are that the producer sells his wool in the open market and receives from the Government a payment based on a percentage which is required to bring the national average price received by all wool producers in the United States up to a previously announced support price level. This percentage, which is the rate of payment, varies from year to year. The payment program¹ is established pursuant to the National Wool Act of 1954,² as amended.³

Sugar is the only other agricultural commodity with a payment program, but the rate of payment on sugar does not vary from year to year. It is fixed by statute at 80 cents per 100 pounds of sugar or liquid sugar, raw value, subject to a scale of reductions based on the quantity produced.⁴

Beginning with the 1955 marketing year, the price of wool has been supported by payments. Previously, it was supported by purchases or by loans.⁵

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¹ Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool), 24 Fed. Reg. 649, 10191 (1959); 25 Fed. Reg. 1725, 2705 (1960).

² The National Wool Act of 1954, 68 Stat. 910, as amended, 7 U.S.C. §§ 1781-87 (1958).

³ 72 Stat. 994 (1958), 7 U.S.C. §§ 1781-87 (1958).

⁴ 61 Stat. 931 (1947), 7 U.S.C. § 1134 (a) (c) (1958).

⁵ For a description of a wool loan program, see Weinfeld, *The 1954 Wool Price Support Program*, 39 MARQ. L. REV. 87 (1955).

Approximately four-fifths of the wool produced in this country is produced by the shearing of live sheep. Approximately one-fifth is produced by pulling the wool from the skins of slaughtered sheep. Production of both shorn wool and pulled wool is widely distributed over the United States. Texas, which ranks first in the production of shorn wool, accounts for only about one-fifth of the total clip of the country. Broadly speaking, the states which are the largest producers of shorn wool are Texas, the Mountain States of the Far West, the Pacific Coast States, and Ohio. The smallest producing states are, generally speaking, those on the Atlantic Coast and those on the Gulf Coast east of Texas. The bulk of the pulled wool is produced in the large slaughtering and meat-packing plants at such centers as Chicago, San Francisco, New York, and Philadelphia. A substantial portion is produced in "independent wool pulleries," which specialize in pulling wool.⁶

As a rule, growers receive somewhat more for the lambs and sheep that they sell than for their wool, and hence wool is more or less a secondary product with them. A large percentage of the growers keep only very small numbers of sheep. However, a small percentage of the growers produce lambs and wool in great quantities as their principal or entire occupation. The 1950 census of agriculture shows approximately 320,314 wool growers in this country.⁷

In recent years, production of greasy shorn wool in this country amounted to about 235 to 240 million pounds.⁸ Greasy wool is wool as it is sheared from the sheep, including grease, other impurities, and foreign matter. The number of sheep and lambs in the United States has been about 31 million head.⁹ The growers of this country supply about 1/3 of the normal apparel wool requirements of do-

⁶ THE WOOL ASSOCIATES OF THE NEW YORK COTTON EXCHANGE, *WOOL AND THE WOOL TRADE* 4-5 (2d ed. 1955).

⁷ *Ibid.*

⁸ In 1954 the production was 235,807,000 pounds; in 1955 it was 234,058,000; in 1956 it was 323,126,000; in 1957 it was 235,509,000; and in 1958 it was 240,801,000 pounds. U. S. DEP'T OF AGRICULTURE, AGRICULTURAL MARKETING SERVICE, *CUMULATIVE SUPPLEMENT FOR 1945-57 TO WOOL STATISTICS AND RELATED DATA* 7, Table 8 (Statistical Bulletin No. 142) (1958). U. S. DEP'T OF AGRICULTURE, AGRICULTURAL MARKETING SERVICE, *WOOL PRODUCTION AND VALUE* 2-3 (1959).

⁹ In 1954 there were 31,356,000 head; in 1955 there were 31,582,000; in 1956 there were 31,273,000; in 1957 the number was 30,840,000; in 1958 there were 31,337,000 head; and in 1959 the number was 32,945,000 head. U. S. DEP'T OF AGRICULTURE, AGRICULTURAL MARKETING SERVICE, *LIVESTOCK AND MEAT STATISTICS* 4, Table 5 (Statistical Bulletin No. 230) (1958). U. S. DEP'T OF AGRICULTURE, AGRICULTURAL MARKETING SERVICE, *LIVESTOCK AND POULTRY INVENTORY* (February 12, 1960).

mestic mills, leaving about 2/3 to be supplied by foreign countries.¹⁰ All carpet wool used in this country is imported.

II. THE LOAN PROGRAMS

The three loan programs, established pursuant to the Agricultural Act of 1949¹¹ and in effect in the marketing years 1952 to 1954,¹² resulted in the accumulation of large quantities of wool in government warehouses. The loans were non-recourse,¹³ and most of the wool put under a loan program was taken over by the Commodity Credit Corporation.¹⁴ At the termination of the 1954 loan program, the total stocks accumulated by the Commodity Credit Corporation amounted to about 150,000,000 pounds of greasy wool.¹⁵ This represented accumulations from the 1952, 1953, and 1954 programs.

Under these loan programs, wool was supported at 90% of parity in order to achieve the goal set by the Agricultural Act of 1949,¹⁶ *i.e.*, to encourage an annual production of approximately 360,000,000 pounds of shorn wool. Production of shorn wool increased by a negligible amount. It was over 228,000,000 pounds in 1951 and over 235,000,000 pounds in 1954.¹⁷ But, as indicated, a large part of it wound up in the ownership of the Commodity Credit Corporation and was warehoused; while mills used imported wools in a greater quantity than that stored by the Commodity Credit Corporation.¹⁸ The support prices per pound of wool, grease basis, were: 54.2¢ for

¹⁰ U. S. Dep't of Agriculture, Agricultural Marketing Service, *The Wool Situation*, pp. 10-11, 17, March 1959.

¹¹ 63 Stat. 1051.

¹² Weinfeld, *supra* note 5.

¹³ Sec. 405 of Agricultural Act of 1949, 63 Stat. 1054, 7 U.S.C. § 1425 (1958).

¹⁴ An agency and instrumentality of the United States, within the Department of Agriculture, organized pursuant to the Commodity Credit Corporation Charter Act, 62 Stat. 1070 (1949), as amended, 15 U.S.C. § 714 (1958), and used primarily to support the prices of agricultural commodities. Sec. 401 (a) of the Agricultural Act of 1949, 63 Stat. 1054 (1949), as amended, 7 U.S.C. § 1421 (a) (1958).

¹⁵ U. S. Dep't of Agriculture, Commodity Stabilization Service, *Commodity Credit Corporation Report of Financial Condition and Operations as of May 31, 1955*, Schedule 16, p. 37.

¹⁶ Ch. 792 § 201 (a), 63 Stat. 1052 (1949). "The price of wool (including mohair) shall be supported through loans, purchases, or other operations at such level, not in excess of 90 per centum nor less than 60 per centum of the parity price therefor, as the Secretary determines necessary in order to encourage an annual production of approximately three hundred sixty million pounds of shorn wool; . . ."

¹⁷ CUMULATIVE SUPPLEMENT, note 8 *supra*, Table 5, p. 4.

¹⁸ *Id.* at Table 39, p. 15; and note 15 *supra*. The wool owned by the Commodity Credit Corporation was subsequently disposed of.

the 1952 marketing year,¹⁹ 53.1¢ for the 1953,²⁰ and 53.2¢ for the 1954²¹ marketing year.

III. PAYMENT PROGRAMS UNDER THE NATIONAL WOOL ACT OF 1954

The result of the loan programs was not satisfactory, since not only was the production of wool not increased, but in the end the Government owned a large inventory of wool. Therefore, Congress adopted a totally different approach, embodied in the National Wool Act of 1954.²² Congress recognized that wool is an essential and strategic commodity which is not produced in quantities and grades in the United States to meet the domestic needs, and that the desired domestic production of wool is impaired by the depressing effects of wide fluctuations in the price of wool in the world markets. Congress declared a policy, as a measure of national security and in promotion of the general economic welfare, to encourage the annual domestic production of approximately 300,000,000 pounds of shorn wool, grease basis, at prices fair to both producers and consumers in a manner which will have the least adverse effect on foreign trade.²³ Thus, the basis for supporting the price of wool is that there is a shortage of domestically produced wool while other agricultural commodities, with minor exceptions, are supported on the basis that they are in surplus in the United States.²⁴

Pursuant to the new approach, wool was to find its price level in the market on the basis of supply and demand. The mills could thus buy United States produced wool in competition with imported wools and other fibers. The Secretary of Agriculture, acting through the Commodity Credit Corporation, undertook to make payments to producers of wool. The Act directed the Secretary of Agriculture, through the Commodity Credit Corporation, to "support the prices of wool and mohair, respectively, to the producers thereof by means of loans, purchases, payments, or other operations."²⁵ Though the other methods of price support were available, the payment program was the one that the Secretary chose to employ. The original Act

¹⁹ 1952 Wool Price Support Program, § 672.226, 17 Fed. Reg. 3261, 3262 (1952).

²⁰ 1953 Wool Price Support Program, § 672.376, 18 Fed. Reg. 2169 (1953).

²¹ 1954 Wool Price Support Program, § 472.476, 19 Fed. Reg. 2843, 2844 (1954).

²² Note 2 *supra*.

²³ Sec. 702, 68 Stat. 910 (1954), 7 U.S.C. § 1781 (1958).

²⁴ There is also a shortage of domestically produced sugar, and there is a payment program on this commodity. See note 4 *supra*.

²⁵ Sec. 703, 68 Stat. 910 (1954), as amended, 7 U.S.C. § 1782 (1958).

limited this support to wool and mohair marketed during the period beginning April 1, 1955, and ending March 31, 1959. It was, however, the intention of Congress to continue price support thereafter on the basis of experience acquired during the operation of the Act.²⁶ In 1958, the Act was extended for three additional years to cover marketings up to March 31, 1962.²⁷

The statute requires the support price for shorn wool to be at such an incentive level as the Secretary, after consultation with producer representatives, and after taking into consideration prices paid and other cost conditions affecting sheep production, determines to be necessary in order to encourage an annual production of approximately 300,000,000 pounds of shorn wool, grease basis. The support price for shorn wool must not exceed 110 percent of the parity price.²⁸ The Secretary is required, to the extent practicable, to announce the support price levels for wool and mohair sufficiently in advance of each marketing year as will permit producers to plan their production for such marketing year.²⁹

If payments are utilized as a means of price support, the payments are to be such as the Secretary determines to be sufficient, when added to the national average price received by producers, to give producers a national average return for the commodity equal to the support price level for the commodity.³⁰ Payments to a producer need not be made if the Secretary determines that the amount of the payment to the producer or to all producers is too small to justify

²⁶ H. R. REP. No. 1927, 83d Cong., 2d Sess. 22 (1954).

²⁷ Note 3 *supra*.

²⁸ Note 25 *supra*. There is this further provision: "If the support price so determined does not exceed 90 per centum of the parity price for shorn wool, the support price for shorn wool shall be at such level, not in excess of 90 per centum nor less than 60 per centum of the parity price therefor, as the Secretary determines necessary in order to encourage an annual production of approximately three hundred and sixty million pounds of shorn wool." This provision was offered by Senator Young on April 27, 1954, as an amendment to S. 2911, a predecessor bill which was ultimately incorporated in H. R. 9680, which became the Agricultural Act of 1954. Senator Young explained the amendment as designed to reinstate the requirements of price support between 60 and 90 percent of parity "after a production of 300 million pounds had been reached and until production reached 360 million pounds." Senator Aiken who was the Chairman of the Senate Committee on Agriculture and Forestry and had introduced S. 2911, stated: "It is my understanding that it [the amendment] simply provides that at such time as price support at 90 percent of parity or above is no longer required to achieve the immediate objective of 300 million pounds of shorn wool, price support will continue at the same levels as those provided by the act of 1949." 100 CONG. REC. 5570 (1954). For the provision of the Agricultural Act of 1949, see note 16 *supra*.

²⁹ Note 25 *supra*. For details of production and marketing of shorn wool, see Weinfeld, note 5 *supra*, at 88-94.

³⁰ For the limitation on payments based on duties collected on wool and wool manufactures, see XI PAYMENTS AND LIMITATIONS, *infra*.

the cost of making such payments.³¹ Because of the cost of preparing a draft in payment of a claim, as well as preparing schedules, certifications, and other office work in connection with such action, it has been determined that an amount less than \$3 would not justify the cost of making a payment, and therefore if a producer's payment would amount to less than \$3, he receives none.³²

The amounts, terms, and conditions of the price support operations and the extent to which such operations are carried out are to be determined or approved by the Secretary. The facts constituting the basis for any operation, payment, or amount thereof when officially determined in conformity with applicable regulations prescribed by the Secretary are final and conclusive and are not reviewable by any other officer or agency of the Government.³³

Prior to the 1958 amendment of the National Wool Act of 1954, the Department of Agriculture published separate wool program regulations for each marketing year. For the first two, *i.e.*, the 1955³⁴ and the 1956³⁵ marketing years, separate regulations were issued for shorn wool and for pulled wool. The 1957³⁶ and 1958³⁷ regulations combined the provisions about shorn wool and unshorn lambs (pulled wool) payments but there was still a separate regulation for each marketing year. The current regulation³⁸ combines the provisions about shorn wool and unshorn lambs (pulled wool) payments and covers all three marketing years, 1959-1961, to which the National Wool Act of 1954 was extended by the 1958 amendment.³⁹

IV. SALES OF SHORN WOOL

The Department of Agriculture announced a level of price support for shorn wool at 62 cents per pound, grease basis, in the 1955 and

³¹ 68 Stat. 911 (1954), as amended, 7 U.S.C. § 1783 (1958).

³² 24 Fed. Reg. 655 (1959).

³³ Sec. 706., 68 Stat. 912 (1954), 7 U.S.C. § 1785 (1958).

³⁴ 1955 Incentive Payment Program for Shorn Wool, 20 Fed. Reg. 2011 (1955); 1955 Payment Program for Lambs and Yearlings (Pulled Wool), 20 Fed. Reg. 3419, 5741 (1955).

³⁵ 1956 Incentive Payment Program for Shorn Wool, 21 Fed. Reg. 1877, 1879 (1956); 1956 Payment Program for Unshorn Lambs (Pulled Wool), 21 Fed. Reg. 1883 (1956).

³⁶ 1957 Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool), 22 Fed. Reg. 593 (1957).

³⁷ 1958 Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool), 22 Fed. Reg. 10719 (1957).

³⁸ Note 1 *supra*.

³⁹ Note 3 *supra*.

in each subsequent marketing year to date.^{39a} A marketing year is a twelve-month period beginning April 1 of each calendar year.⁴⁰ The announcements were made in September or October in order to enable producers to plan their operations for the next marketing year. The support price for shorn wool is frequently referred to in the administration of the program as "the incentive price." Section 703 of the National Wool Act provides that the support price shall be at an "incentive level", aimed at producing approximately 300,000,000 pounds of shorn wool. Support prices for pulled wool and mohair are not to be established at incentive levels, *i.e.*, to increase the production of pulled wool or mohair but merely in relation to the support prices for shorn wool. The level of the support price for pulled wool is to be such as to maintain normal marketing practices for pulled wool, *i.e.*, primarily not to encourage unusual shearing of lambs in order to obtain a payment on the sale of shorn wool; the level of the support price for mohair is to be such as to maintain approximately the same percentage of parity for mohair as for shorn wool.⁴¹

Though the support price for shorn wool is fixed long before the beginning of the marketing year, the rate of payment to each producer cannot be determined until after the end of such marketing year, because the national average price received by all producers in the course of the marketing year enters into the computation. To compute the rate of payment, this national average price is compared with the support price previously announced, and the difference between them is expressed as a percentage of the national average price. This percentage becomes the rate of payment and is applied to the net sales proceeds which each producer obtained when he sold his wool during the marketing year.⁴² For example, the national average price received by producers for shorn wool marketed during the 1955 marketing year was 42.8 cents a pound, grease basis, which was 19.2 cents below the incentive price of 62 cents. This difference

^{39a} 1955 Incentive Payment Program for Shorn Wool, 20 Fed. Reg. § 472.601 at 2011 (1955); 1956 Payment Program for Shorn Wool, 21 Fed. Reg. § 472.702 at 1879 (1956); 1957 Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool), 22 Fed. Reg. § 472.802 at 593 (1957); 1958 Payment Program for Shorn Wool and Unshorn lambs (Pulled Wool), 22 Fed. Reg. § 472.902 at 10719, 10721 (1957); Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool), 24 Fed. Reg. § 472.1002 at 649-650, 10192 (1959).

⁴⁰ 68 Stat. 912 (1954), 7 U.S.C. § 1786 (1958).

⁴¹ 68 Stat. 910 (1954), as amended, 7 U.S.C. § 1782 (1958).

⁴² 6 C. F. R. § 472.905 (Supp. 1958).

amounted to 44.9 percent of the national average price, and thus payments under the shorn wool program for the 1955 marketing year amounted to 44.9 percent of the net sales proceeds which each producer received for his shorn wool marketed during that marketing year.⁴³ Similarly computed, the payments for the 1956 marketing year were at the rate of 40 percent⁴⁴ and for the 1957 marketing year at the rate of 15.5 percent.⁴⁵ For the 1958 marketing year the rate was 70.3 percent.^{45a}

The payment which a producer receives does not equal the difference between what he obtained in the free market for his shorn wool and the price of 62 cents per pound. The Department of Agriculture does not guarantee to a producer 62 cents a pound for his shorn wool. It gives him a percentage of the price he has received in the free market, based on the difference between the national average price received by all producers for their wool and the price of 62 cents, with the result that the more he receives in the free market the higher his payment. He is thus encouraged to produce the best possible wool and sell it at the best possible price.

As to the number of producers receiving shorn wool payments, a computation was made for the 1956 marketing year indicating that 287,229 producers received such payments.⁴⁶ In other years, the numbers were probably similar, except when producers refrained from selling as, for instance, in the 1957 marketing year because of low prices in the latter part of that year.

As to the size of payments on shorn wool, figures compiled for the 1956 marketing year indicate⁴⁷ that 6,426 producers received payments of \$1,000 or over, making a total of \$22,891,000. Among these, one producer received over \$61,000; two received a total of \$109,900; and, at the other end of this range, 2,926 producers received payments of \$1,000 to \$1,999, or a total of \$4,128,775. Payments between \$100 and \$1,000, totaling about \$13,000,000, were received by over

⁴³ Announcement of Payment Rates for Shorn Wool and Lambs and Yearlings Marketed During the 1955 Marketing Year and Notice of No Payments on Mohair, 21 Fed. Reg. 4530 (1956).

⁴⁴ Amendment 3 to 1956 Incentive Payment Program for Shorn Wool, 22 Fed. Reg. 4493 (1957).

⁴⁵ Amendment 1 to 1957 Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool), 23 Fed. Reg. § 472.805 (b) at 4611 (1958).

^{45a} Amendment 1 to 1958 Program for Shorn Wool and Unshorn Lambs (Pulled Wool), 24 Fed. Reg. § 472.905 (b) at 5215 (1959), § 472.905(b) inserted by Sec. 1.

⁴⁶ 104 CONG. REC. 14956 (1958).

⁴⁷ *Ibid.*

51,000 producers, and payments of less than \$100 each, totaling close to \$8,000,000, were received by about 229,000 producers.⁴⁸ These figures included so-called deductions for promotion.⁴⁹

Net Proceeds on Sales of Shorn Wool

The rate of payment is applied to the *net* sales proceeds obtained by the producer for his shorn wool. To obtain the net sales proceeds, marketing expenses are deducted from the gross sales proceeds. Price support is furnished to a producer at his local shipping point, *i.e.*, the point at which the producer delivers his wool to a common carrier for further transportation or, if his wool is not delivered to a common carrier, the point at which he delivers it to his marketing agency or to a purchaser.⁵⁰ If the gross sales proceeds he receives include, for instance, costs of transportation from the local shipping point to a market elsewhere, those transportation costs are deducted from the gross sales proceeds. For the purpose of the program, the producer is expected to deliver his wool, packed in bags, to his local shipping point and pay the storage expenses until the wool is marketed. Consequently, expenses of a producer in furnishing wool bags, storing wool, and transporting wool to his local shipping point are not considered marketing charges. Similarly, deductions by a marketing agency for interest on advances made to a producer or for association dues are not considered marketing charges and they are included in the net sales proceeds.⁵¹ Payments are made on shorn wool *marketed*. Marketing is not merely selling, *i.e.*, passing title to the wool or making a contract to sell. Marketing includes passing of title, delivery, and knowledge of every factor, like number of pounds and price per pound, needed to determine the total purchase price payable by the buyer.⁵²

⁴⁸ As to total payments for the 1956 marketing year, see note 113 *infra*.

⁴⁹ See XII DEDUCTIONS FOR PROMOTION, *infra*.

⁵⁰ 24 Fed. Reg. 657 (1959).

⁵¹ 24 Fed. Reg. 651 (1959).

⁵² *Ibid.* "Marketing shall be deemed to have taken place in a marketing year if, pursuant to a sale or contract to sell, the last of the following three events in the process of marketing was completed in that marketing year: (1) Title passed to the buyer; (2) the wool was delivered to the buyer (physically or through documents which transfer control to the buyer); and (3) the last of the factors (price per pound, weight, etc.) needed to determine the total purchase price payable by the buyer became available. The factors are considered available when they are known to the applicant's marketing agency if he markets through a marketing agency, or they are known to the applicant if he markets directly. Any one of the three events previously mentioned may be the last event completed."

At times, when a producer delivers his wool to a marketing agency the latter guarantees a minimum sales price. If the marketing agency later sells the wool for a lower price or with the producer's consent takes over the wool at the guaranteed minimum sales price,⁵³ that guaranteed price is considered the sales proceeds of the wool. Frequently, an advance is made to the producer as a part of the transaction by which a minimum sales price is guaranteed by his marketing agency. The transaction is then called a "guaranteed advance." Usually, the amount of the advance equals the guaranteed minimum sales price.

V. PAYMENTS ON UNSHORN LAMBS—PULLED WOOL

The National Wool Act provides that support prices for pulled wool shall be established at such a level, in relationship to the support price for shorn wool, as the Secretary determines will maintain normal marketing practices for pulled wool.⁵⁴ Literally interpreted, the statute would require supporting the price of pulled wool in the hands of pulleries and large slaughtering establishments, because strictly speaking they are the ones that produce pulled wool. Under the previous wool price support programs, support was furnished to such firms. With reference to the payment program, however, a discussion on the floor of the Senate indicated that Congress intended to authorize the Secretary to make pulled wool payments not only to the firms which actually produced pulled wool, but also to the producers of lambs who sell the animals with the wool on them.⁵⁵ Large payments

⁵³ § 472.1004 (c), 24 Fed. Reg. 651 (1959) and § 472.1008 (a) (6), 24 Fed. Reg. 652 (1959).

⁵⁴ 68 Stat. 910 (1954) as amended, 7 U.S.C. § 1782 (1958).

⁵⁵ 100 CONG. REC. 13692 (1954) :

MR. BARRETT. It is my understanding, Mr. President, that it was the intention of the committee to leave to the determination of the Secretary of Agriculture the matter of the payments on pulled wool. It is fair to assume that, with respect to shorn wool and mohair, the producer, as is the case under previous loan and purchase programs, would be the owner of the sheep or goats at the time of shearing. With reference to pulled wool, the original producer markets his wool as a part of the live animal. That presents a new problem.

I understand that the Committee on Agriculture and Forestry intended by the bill to permit the Secretary to continue to treat the wool puller as the producer, or he may, if he finds it more practicable, make payments to a prior producer who marketed the live animals with the wool thereon. The amount of payment in such instances could be determined on a calculated basis, or on such other basis as the Secretary would deem practicable, without reference to the subsequent pulling of the wool.

I should like to ask the distinguished chairman of the committee if that is his

to the pullers would have furnished no assurance that the payments would be reflected in higher prices to the producers. Therefore, in the light of this legislative history, the Commodity Credit Corporation in the first year of operation under the National Wool Act of 1954 made pulled wool payments to producers of lambs who sold the lambs for slaughter. Making payments when the lamb went to slaughter prevented making more than one payment on the same lamb by the Government.

The underlying assumption for making wool payments to a producer of lambs is that he produces wool, and breeders as well as feeders of a lamb participate in the production of the wool. Under such a program, payments are made to the seller of the lambs in an amount roughly comparable to the amount he would obtain if he were to shear the lamb, sell the wool, and apply for a payment on such sale. The rate of payment, per hundredweight of live lamb, is determined each year, depending on the rate of payment on shorn wool. The rate of payment on lambs is based on the average weight of wool (5 pounds) per hundredweight of animal, multiplied by 80% of the difference between the national average price received by producers for shorn wool during a particular marketing year and the announced incentive price for that year.⁵⁶ The value of wool on lambs has been set for payment purposes at 80% of shorn wool value because wool on lambs is on the average coarser in grade and shorter in staple length than is the average of the total shorn wool production.⁵⁷

The 1955 program for making payments on the sale of lambs to slaughterers for slaughter proved too cumbersome because, in order

understanding of the intention of the committee in writing this proposed legislation.

MR. AIKEN. Mr. President, I will say to the Senator from Wyoming that that is my understanding of the intention of the committee in writing the proposed legislation. While the Secretary could continue to treat the puller of the wool as the producer, nevertheless, he may also, if he finds it more practicable—and in the opinion of many of us he would find it more practicable—make the payments to the actual raiser of the sheep. He would, in certain circumstances be permitted to make payments to the processor or the puller. Nevertheless, payments directly to the grower of the sheep or the lamb would be permissible if the Secretary found it more practicable.

MR. BARRETT. That was my understanding.

MR. AIKEN. The understanding of the Senator from Wyoming is correct.

⁵⁶ 1955 Pulled Wool Program, *supra* note 34, § 472.652 at 3419 and 5743; 1956 Pulled Wool Program, *supra* note 35, § 472.752 at 1883; 1957 Pulled Wool Program, *supra* note 36, § 472.811 at 595; 1958 Pulled Wool Program, *supra* note 37, § 472.921 at 10723; Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool), § 472.1021, 24 Fed. Reg. 653 (1959).

⁵⁷ Dep't of Agriculture Press Release No. 3779-57, Dec. 23, 1957.

to establish that the animals were so sold and to prevent duplication of payments, the Government required certifications by the slaughterers or their agents that the animals had been purchased by them for slaughter. Lambs are bought and sold in many ways—in stockyards regulated under the Packers and Stockyards Act and outside of such stockyards. The animals frequently pass through various kinds of dealers and commission men before they reach the slaughterer. The required certifications became too complicated, and a shift was made to a simpler method. Beginning with the 1956 program⁵⁸ and continuing under the 1957⁵⁹ and 1958⁶⁰ programs, pulled wool payments have been made to producers who sell lambs which have never been shorn, irrespective of the purpose for which they are sold. This also applies to the current program which will govern payments in the marketing years 1959, 1960, and 1961.⁶¹ Such payments are referred to as “unshorn lambs (pulled wool) payments”.

On the question of the relationship between sales of lambs, irrespective of the purpose of the sale, and production of pulled wool, about 75 percent of each year's crop of lambs are sold for slaughter, which results in pulled wool, while about 25 percent are used for replacement in breeding herds. Experts assume, although there is no statistical evidence available on this point, that the greater part of the animals used for replacement stays with the herds where the animals were bred, and only a small part, about 10 percent, is sold as replacements for other herds. As to the 15 percent which stay with the herds, there is no problem because these animals are not sold and therefore no unshorn lamb payment is ever made on them. As to the 10 percent, even though no pulled wool may result from the sale of these unshorn animals, in due course these animals are shorn, and the shorn wool is sold. Pulled wool payments, which are made or may be made on sales of unshorn lambs, are deducted from the payments due on the sale of the wool subsequently shorn from such lambs. Thus, the payment on the sale of these animals may be considered an anticipated shorn wool payment, and the Government does not make two payments on account of the same wool.

⁵⁸ 1956 Payment Program for Unshorn Lambs (Pulled Wool), 21 Fed. Reg. § 472.752 at 1883 (1956).

⁵⁹ *Supra* note 36, § 472.811 at 595.

⁶⁰ *Supra* note 37, § 472.921 at 10723.

⁶¹ Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool), 24 Fed. Reg. § 472.1021 at 653 (1959).

The rate of payment on lambs sold for slaughter with the wool on during the 1955 marketing year was 77 cents per hundredweight of live animals,⁶² 71 cents per hundredweight during the 1956 marketing year,⁶³ 33 cents per hundredweight during the 1957 marketing year,⁶⁴ and \$1.02 per hundredweight during the 1958 marketing year.^{64a}

VI. REPORTING PURCHASED LAMBS

When a breeder sells an unshorn lamb which he raised, he receives a payment based on multiplying the number of hundredweight of lamb by the rate of payment. When a feeder purchases an unshorn lamb, feeds it, and thereafter sells it unshorn, he also receives a payment, but since he has not contributed to the full growth of the wool on the animal but only to a part of the growth, the payment is based on the liveweight of the animal he sells less the liveweight which the animal had when he purchased it. Every seller of unshorn lambs who applies for a payment is required to report whether or not he purchased the lambs and, if he did, the liveweight of the animals when he purchased them.⁶⁵ He obtains a payment only on the difference between the liveweight he sells and the liveweight he bought, and the payment is computed at the rate established for the marketing year for which he makes the application.⁶⁶

Many feeders of lambs conduct their business in such a way that when a lot of lambs is sold the feeder knows when and from whom he purchased it. Such a feeder is in position, as required by the program, to report the date of the purchase as well as the liveweight of the lambs when he purchased them and thus furnish a basis for the computation of the payment due him. This method of reporting, which is based on comparing the liveweight of a lot of lambs sold with the liveweight of the very lot of lambs when it was purchased, is referred to in the regulation as reporting on an "actual basis".⁶⁷

Similarly, when an owner of lambs shears them for the first time

⁶² Announcement of Payment Rates, *supra* note 43.

⁶³ Amendment 3, 1956 Payment Program for Unshorn Lambs (Pulled Wool), 22 Fed. Reg. 4493 (1957), § 472.752 (b) inserted by Sec. 4.

⁶⁴ Amendment 1, 1957 Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool), 23 Fed. Reg. 4611 (1958), § 472.811 inserted by Sec. 2.

^{64a} *Supra* note 45a, § 472.931 (b) inserted by Sec. 2.

⁶⁵ *Supra* note 61, § 472.1026 at 654.

⁶⁶ *Supra* note 61, § 472.1023 at 653.

⁶⁷ *Supra* note 61, § 472.1026 (a) at 654.

and sells the wool, knowing that the wool was removed from lambs in a particular lot which he had purchased unshorn, he reports the number and liveweight of those lambs which he had purchased unshorn. This is also reporting on an "actual basis".⁶⁸ A deduction is then made from what the applicant earned by the sale of the shorn wool, equal to the amount which the person that sold the unshorn lambs to the applicant is entitled to obtain under the unshorn lambs (pulled wool) program on the basis of his sale of the unshorn lambs to the applicant.

In some sheep and lamb operations, the lots of lambs purchased are commingled. The operator is not in position to state when or from whom he purchased a particular lot or what the liveweight of the lambs in the lot was when he purchased them. It is, however, necessary for the Government to obtain reports as to the liveweight of purchased lambs, in order to avoid duplication of payments on account of the same wool when it is sold while it is on the lamb's back and when it is sold after having been shorn. Therefore, such sellers of lambs as well as of wool are required to report on a "first in, first out basis".⁶⁹ Since payments on unshorn lambs began to be made for the 1956 marketing year, an applicant for a payment on the first sale of unshorn lambs made after that date, was required to report a number of unshorn lambs purchased on or after April 1, 1956, equal to the number of unshorn lambs he sold. For instance, if he purchased 5,000 unshorn lambs in the 1956 marketing year and sold 1,000 unshorn lambs in that year, he was required to report, in his application based on the sale of the 1,000 lambs, the first 1,000 lambs he had purchased and their liveweight when purchased. He was paid on the difference between the liveweight of the 1,000 animals sold and the liveweight of the reported 1,000 animals. Similarly, when in the 1956 marketing year he sold wool removed in a first shearing of lambs and applied for a payment, he had to report a number of unshorn lambs purchased on or after April 1, 1956, equal to the number of animals from which his wool had been sheared. A deduction was made on account of the animals so reported. The amount deducted was equal to the amount which would be due under the unshorn lambs (pulled wool) program if an application were made for payment on the sale of the reported animals. The same rule was applied in the years following the 1956 marketing year.

⁶⁸ *Supra* note 61, § 472.1010 (a) at 652.

⁶⁹ *Supra* note 61, § 472.1010 (b) at 652, § 472.1026 (b) at 654.

In this way, by reporting the unshorn lambs purchased on or after April 1, 1956, in successive shorn wool and unshorn lambs applications filed in the 1956 and subsequent marketing years, the applicant may reach a point at which all lambs purchased unshorn on or after April 1, 1956, will have been reported. At such a time he will cease reporting, and thereafter he will obtain his payments on the liveweight of the unshorn lambs sold or on the weight of shorn wool sold, without any deductions on account of lambs he purchased unshorn on or after April 1, 1956. As long, however, as he has not yet reported all the lambs purchased on or after April 1, 1956, the unreported balance has to be reported on applications filed in successive marketing years.

A qualification should be added. An applicant who purchased unshorn lambs on or after April 1, 1956, need not report them if he never applies for a payment, for the 1956 or a subsequent marketing year, on his sale of those animals or on his sale of the first wool shorn from them.⁷⁰ In other words, if it is certain that the Government has not made and will not make a payment to him on account of his selling the animals or the wool shorn from them, he need not report the animals, because there is no possibility in those situations of the Government making a duplicate payment on the same wool. Thus, the applicant need not report lambs purchased unshorn which died before he sheared them, without his having removed any wool from them, or if, though he has a right to apply on account of his sale of the animal or of the wool shorn from it, he chooses not to apply.

This method of reporting purchased animals is in accordance with the current regulations and was also used in the regulations for the 1956 and following marketing years.

VII. OTHER REQUIREMENTS OF THE WOOL PAYMENT PROGRAM

Payments are made on the sales proceeds of shorn wool and the liveweight of unshorn lambs sold. Proof of the quantities of shorn wool and of the liveweight has to be furnished, with the application for payment, in form of sales documents like accounts of sale and bills of sale, signed by the purchaser or the applicant's marketing agency.⁷¹ An applicant must be a producer of the wool or of the unshorn lambs he sells. A producer of wool is defined as a producer, feeder, or pasturer of sheep or lambs who shears his animals, and a

⁷⁰ *Supra* note 61, § 472.1010(b) (1) at 653, § 472.1026 (b) (1) at 654.

⁷¹ *Supra* note 61, §§ 472.1008, 472.1024 and 472.1025 at 651-654.

producer of unshorn lambs is defined as a breeder, feeder, or pasturer of lambs. A producer may also be a person who furnishes labor in connection with caretaking, lamb production, or feeding and by agreement with the owner of the sheep becomes entitled to share in the ownership of the lambs or the wool, or to share in the sales proceeds of the lambs or the wool.⁷² The wool must have been shorn in the continental United States, its territories or possessions on or after January 1, 1955,⁷³ and must have been marketed in a specified marketing year, that is, a marketing year as to which the Department of Agriculture has announced that marketings of shorn wool and unshorn lambs by a producer during that year would entitle him to a payment under the program.⁷⁴

The wool as well as the sheep and lambs from which it was shorn must have been owned by the producer at the time of shearing, and the sheep and lambs must have been owned by him for not less than 30 days at any time prior to his filing the application for payment on shorn wool.⁷⁵ The applicant for a payment on the sale of unshorn lambs must have owned the lambs for 30 days or more.⁷⁶ This 30-day requirement is designed, in both situations, to eliminate fly-by-night speculators, on the assumption that if an owner of lambs keeps them at least 30 days, he may be considered to be in the business of raising lambs and producing wool. Of course, the 30-day ownership requirement does not apply to a producer who furnishes labor only. When such a producer applies for a payment it is required that the owners, that is, those who owned the sheep or lambs from which the wool was shorn or owned the unshorn lambs for at least 30 days, also join in the application.⁷⁷ Apart from ownership in the shorn wool, the producer must have beneficial interest in the wool from the time the wool was shorn up to the time of its sale.⁷⁸ Though the current

⁷² *Supra* note 61, § 472.1003 (a) at 650, § 472.1022 (b) at 653, § 472.1063 (i) at 658.

⁷³ National Wool Act of 1954, § 704, 68 Stat. 911 (1954), 7 U.S.C. § 1783 (1958).
 "... any wool or mohair produced prior to January 1, 1955, shall not be the subject of payments. . . ."

⁷⁴ *Supra* note 61, § 472.1063 (1) at 658.

⁷⁵ *Supra* note 61, § 472.1003 (c) at 651.

⁷⁶ *Supra* note 61, § 472.1022 (b) at 653.

⁷⁷ *Supra* note 61, § 472.1044 (b) at 655.

⁷⁸ *Supra* note 61, § 472.1003(d) at 651:

A producer has beneficial interest in wool (1) when he owns it without any other person being entitled to the wool or its proceeds and without his having authorized any other person to sell or otherwise dispose of the wool; (2) when the producer has authorized another person to sell or otherwise dispose of the wool, even transferring legal title to such other person, but the

regulation⁷⁹ covers three marketing years, 1959, 1960, and 1961, separate applications will be filed each year and payments will be made by separate drafts, on account of shorn wool and on account of unshorn lambs. Upon a joint application, the Commodity Credit Corporation issues one draft, made to the order of all the applicants, and it is up to them to divide the proceeds of the draft in accordance with their respective interests.⁸⁰

Slaughterers

Slaughterers who feed sheep and lambs produce wool like other feeders. Therefore, a slaughterer who owned an animal for at least 30 days is entitled to a payment if he shears the wool and sells it. This, however, applies only to a commercial slaughterer, that is, a person who slaughters for sale as distinguished from a person who slaughters for home consumption.⁸¹ A slaughterer may also obtain an unshorn lamb (pulled wool) payment, but since he does not sell unshorn lambs the program provides that in place of a sales document indicating the sale of the unshorn lambs, he has to produce a scale ticket. This ticket must indicate that it covers unshorn lambs which moved to slaughter and shows the information normally appearing on scale tickets issued by stockyards.⁸²

VIII. APPEALS

Provision has been made for a series of administrative appeals. A dissatisfied applicant may appeal from the action of the Agricultural Stabilization and Conservation (ASC) county office to the ASC county committee, then to the ASC State committee, and finally to the Director, Livestock and Dairy Division, Commodity Stabilization Service, U. S. Department of Agriculture. A determination by the Director, on such an appeal, as to a question of fact is deemed final

producer continues to be entitled to the proceeds from such sale or other disposal of the wool; or (3) when the producer is entitled to a share of the wool or of the proceeds thereof pursuant to an agreement described in the exception in paragraph (c) of this section though he does not own the animals from which the wool was shorn. If the producer has such beneficial interest, the fact that the wool may be mortgaged or subject to another lien does not change his position as having a beneficial interest.

⁷⁹ *Supra* note 61.

⁸⁰ *Supra* note 61, § 472.1044 (c) at 655.

⁸¹ *Supra* note 61, § 472.1063 (k) at 658.

⁸² *Supra* note 61, § 472.1025 (b) at 654. The information normally appearing on scale tickets issued by stockyards includes the date, number of head and classification, weight, scale ticket number, if any, place of weighing, and name of weigher.

and conclusive unless it is found by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessarily to imply bad faith, or it is not supported by substantial evidence.⁸³ This provision as to finality of findings of fact is based on the power of the Secretary to establish terms and conditions of the price support operations⁸⁴ and his "power to fill up the details" of the legislative scheme by virtue of a delegation from Congress.⁸⁵ The language of the provision follows the language of the statute which deals with judicial review of government contracts.⁸⁶ Thus, the regulation gives the same finality to findings of fact in a dispute under the wool program that is given by statute to findings of fact made pursuant to government contracts which provide that administrative findings of fact shall be final and conclusive. The statute dealing with judicial review of government contracts is not only the source of the language for the provision in the regulation about finality of findings of fact but is also an additional basis for the power to give finality to these findings. Since the application for a payment pursuant to the regulation, followed by approval and payment, creates a contract

⁸³ *Supra* note 61, § 472.1056 at 656.

⁸⁴ National Wool Act 1954, § 706, 68 Stat. 912, 7 U.S.C. § 1785 (1958).

[T]he amounts, terms, and conditions of the price support operations and the extent to which such operations are carried out shall be determined or approved by the Secretary of Agriculture. . . . Determinations by the Secretary under this title shall be final and conclusive. The facts constituting the basis for any operation, payment, or amount thereof when officially determined in conformity with applicable regulations prescribed by the Secretary shall be final and conclusive and shall not be reviewable by any other officer or agency of the Government.

The last quoted sentence is also contained in the Soil Bank Act, § 121, 70 Stat. 197 (1956), 7 U.S.C. § 1809 (1958), and was construed to require a federal court to dismiss a complaint for lack of jurisdiction. The plaintiff in that suit maintained that his landlord had evicted him for the purpose of depriving him of a share of the payment under the acreage reserve program, but the state ASC committee determined that the landlord had not violated the program. *Schexneyder v. United States*, Civil No. 6819, W. D. La., March 28, 1959.

⁸⁵ *United States v. Shreveport Grain & Elevator Co.*, 287 U. S. 77, 85 (1932); *United States v. Grimaud*, 220 U. S. 506 (1911).

⁸⁶ 68 Stat. 81 (1954), 41 U.S.C. §§ 321-22 (1958).

Limitation on pleading contract-provisions relating to finality; standards of review—No provision of any contract entered into by the United States, relating to the finality or conclusiveness of any decision of the head of any department or agency or his duly authorized representative or board in a dispute involving a question arising under such contract, shall be pleaded in any suit now filed or to be filed as limiting judicial review of any such decision to cases where fraud by such official or his said representative or board is alleged: *Provided, however*, That any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence.

Contract-provisions making decisions final on questions of law—No Government contract shall contain a provision making final on a question of law the decision of any administrative official, representative, or board.

which embodies the terms of the regulation, the statute seems directly applicable.

There is also a provision as to the burden of proof in case of litigation in a court:

If, after making a payment, CCC upon investigation determines that available evidence does not sustain the applicant's right to the payment or any part thereof, the amount of the payment not so sustained shall immediately become due and repayable to CCC, and CCC may, without limitation upon any of the Government's rights in the matter, deduct such amount from any other payment due the applicant. If the applicant's right to such amount becomes involved in a lawsuit between the Government and him or his assignee, he, or his assignees, shall have the burden of proving in the lawsuit that he was entitled to the amount. . . .⁸⁷

The need for this provision arises from the way this program operates. Payments to applicants are made on the basis of documentary evidence as to only some of the requirements of the program, primarily on the basis of documents showing that the applicant has marketed wool or unshorn lambs. As to most other requirements, payment is made on the basis of the applicant's certifications that he has complied with the requirements. This speeds up the making of payments and makes the administration less expensive. Thus, the applicant certifies that the wool was shorn in the United States, its territories, or possessions; that it was shorn on or after January 1, 1955; that at the time of shearing he owned the wool as well as the sheep or lambs from which it was shorn and he owned the sheep or lambs for not less than 30 days; that he had beneficial interest in the wool from the time the wool was shorn; and as to several other such requirements.

At times, after payments have been made, the Government checks on whether these requirements have in fact been met. It may then appear that the applicant failed or may have failed to meet some of the requirements and, without a fraudulent intent or fraudulently, applied for and received a payment to which he was not entitled. One way of recovering the amount of such payment may be to set off the amount against another payment due to the applicant for a subsequent marketing year. The applicant is notified of CCC's claim and of the setoff and may appeal from the action of the ASC county office all

⁸⁷ *Supra* note 61, § 472.1047 a: 655.

the way to the Director, Livestock and Dairy Division. On such appeals, he normally claims that he was entitled to the payment in dispute and has the burden of proving that he was so entitled.

If he should be unsuccessful on these appeals and should sue in court, he would very likely sue for the full payment to which he became entitled in the subsequent marketing year rather than in the year as to which the dispute arose, and the Government would normally plead setoff. Under the usual rule as to the burden of proof, a party who pleads setoff has the burden of proof on that issue.⁸⁸ Thus, the Government might have the burden of proving many things, knowledge of which is almost exclusively in the possession of the applicant. Since the original payment was made largely on the strength of the applicant's certifications, since he normally has the evidence as to these matters or has better access to sources of information than the Government has, it seems fair that in a lawsuit involving the validity of the original payment, the applicant should have the burden of proving that he was entitled to the payment rather than that the Government should have the burden of proving that he was not entitled. Of course, the reference here is to the burden of proof, that is, the risk of non-persuasion rather than to the burden of going forward with evidence.⁸⁹

Where the burden of proof should be placed is a question of policy and fairness, based on experience in the different situations.⁹⁰ Pursuant to the National Wool Act of 1954, as amended, terms and conditions of the price support operations are to be determined by the Secretary of Agriculture,⁹¹ and the rule as to the burden of proof is one of those terms and conditions. It is one of the "details" in the legislative scheme to be filled in by the Secretary, and it is also one of the terms of the contract arising from the submission of an application and approval and payment by the Government. In a somewhat comparable situation, the Supreme Court placed the burden of proof as to the issue of setoff or counterclaim on the plaintiff railroad company rather than on the defendant United States, which had pleaded the setoff or counterclaim.⁹²

⁸⁸ 47 AM. JUR. *Setoff and Counterclaim* § 103 (1943).

⁸⁹ 20 AM. JUR. *Evidence* § 132 (1939); 9 WIGMORE, *EVIDENCE* § 2485 (i) (3d ed. 1940).

⁹⁰ WIGMORE, *supra* note 89, § 2486; Annot. 23 A. L. R. 2d. 1243, 1252 (1952).

⁹¹ National Wool Act 1954, § 706, *supra* note 84.

⁹² *United States v. New York, New Haven & Hartford Railroad Co.*, 355 U. S. 253 (1957).

Even when a setoff is not involved but the United States sues to recover a wool payment on the ground that it was made in reliance on a false certification under the circumstances previously described, fairness would require that the burden of proof be on the applicant. Also, in view of the annually recurring payments to the applicant, based to a very substantial extent on his certifications only, such a suit may be looked upon like an action for an accounting. The regulation requires the applicant to keep books, records, and accounts showing his purchases of lambs on or after April 1, 1956, as well as his marketing of wool or lambs and to maintain these records and make them available to the Commodity Credit Corporation for three years,⁹³ but no method for keeping the records is prescribed. This is done to avoid imposing controls on the producer's way of doing business, but the result is that those records may be incomplete and unclear. When in a suit of this kind, the applicant is called upon to justify his certification and other bases for his claim, he is like a person submitting an account, and such a person generally has the burden of proving the correctness of the account.⁹⁴

IX. PARITY AND MARKET PRICES

Since the 1955 marketing year, which was the first year of operation under the National Wool Act of 1954, the incentive price has been uniformly 62 cents per pound of shorn wool, grease basis, but it constituted various percentages of parity prices of shorn wool in these various marketing years. When this incentive price was determined for the 1955 and 1956 marketing years, it constituted approximately 106% of the parity prices at the time of such determinations. Similarly, at the time of the determination for the 1957 marketing year, the incentive price was approximately 101% of parity; it was 95% for 1958, 88% for 1959 and 86% of parity for the 1960 marketing year. The statutory ceiling of 110% of parity⁹⁵ was not reached.

The percentages of parity became smaller each year, because the parity prices increased each year. This in turn was due primarily to the wool payments received by producers in the calendar year 1956 and later, which were reflected in the adjusted base price for

⁹³ 24 Fed. Reg. § 472.1058 at 657, 10191 (1959).

⁹⁴ 1 C. J. S. *Accounting* § 39 at 679 (1936).

⁹⁵ The National Wool Act of 1954, 68 Stat. 910, as amended, 7 U.S.C. § 1782 (1958).

shorn wool, since a parity price is computed by multiplying the adjusted base price by a certain index.⁹⁶ The payments were reflected in the adjusted base price because one of the factors determining the adjusted base price is the average of prices received by farmers for shorn wool during each of the ten preceding marketing years. As this moving ten-year period took in years in which wool payments were made pursuant to the National Wool Act of 1954, the average of prices received by farmers during the ten-year period, *i.e.*, the adjusted base price, increased, and so did the parity prices.

Market prices of wool in the United States are determined largely by world supply and demand and not by conditions in the United States alone. The average price received by producers in the United States was 53.2¢ in the 1954 marketing year, 42.6¢ in 1955, 44.2¢ in 1956, 53.4¢ in 1957, and 36.4¢ in the 1958 marketing year.⁹⁷

X. ASSIGNMENTS

Generally, claims against the federal government are not assignable as a matter of course, as commercial claims are. Assignments are permitted only in specified circumstances.⁹⁸ Similarly, claims to wool payments may be assigned only under circumstances provided by the wool payment regulation.⁹⁹ Assignability of claims under this program is important to the producers, not only because the claims are economic assets like other claims on which financing may be obtained, but also because many months, and at times more than a year, must necessarily elapse before the producer obtains payment on his claim. The rate of payment depends on the national average price received by producers all over the United States in the course of a marketing year, and this price can be computed only after the end of the marketing year, *i.e.*, after March 31. This computation as well as the computation of the amounts owing each of the close to 300,000 applicants makes it impossible to pay these claims until some time in the summer following the end of the marketing year in which the producer marketed his wool or lambs.

An assignment of a shorn wool payment may only be given as

⁹⁶ 52 Stat. 38 (1938), 7 U.S.C. § 1301 (a) (1) (A) (1958); Weinfeld, *The 1954 Wool Price Support Program*, 39 MARQ. L. REV. 87, 97 (1955).

⁹⁷ U. S. Department of Agriculture, Agricultural Marketing Service, *Wool Production and Value*, 1956, release of February 26, 1959, p. 1; 24 Fed. Reg. § 472.905 (b), at 5215 (1959).

⁹⁸ 54 Stat. 1029 (1940), as amended, 31 U.S.C. § 203 (1958).

⁹⁹ 24 Fed. Reg. § 472.1057 at 657, 10191 (1959).

security for cash advanced or to be advanced by a financing agency or a marketing agency on sheep, lambs, or wool. A financing agency means any bank, trust company, or federal lending agency, and the term also includes any other financing institution which customarily makes loans or advances to finance production of sheep, lambs, or wool.¹⁰⁰ A marketing agency, with reference to shorn wool, means a person or firm that sells a producer's wool for his account.¹⁰¹ An assignment of a payment on unshorn lambs may only be given as security for cash advanced or to be advanced by a financing agency on sheep, lambs, or wool.

When a producer makes an assignment to a financing agency, his assignment must cover all payments earned by him on the sale of shorn wool or unshorn lambs, as the case may be, during the marketing year for which the assignment is given. On the other hand, when he makes an assignment to a marketing agency, such an assignment may cover all incentive payments earned by the producer in connection with all wool marketed by the agency for his account during the marketing year for which the assignment is given, but it may not cover payments earned by the producer in connection with marketing his wool directly or through other agencies during that marketing year. The reason for this provision is that a producer may wish to market different quantities of wool through different marketing agencies in a particular marketing year, and he is permitted to assign to each marketing agency the payments he obtains on the wool marketed by that agency.

Since a mortgage on sheep does not cover wool payments, financing agencies may need assignments as additional security, and this is also true of marketing agencies which may increase their advances to producers on the strength of assignments received.

After an assignment has been accepted by the ASC county office, the Commodity Credit Corporation will pay in accordance with the assignment unless the parties thereto cancel it or the assignee releases the assignment, *i.e.*, writes the ASC county office that payment be made to the producer and not to the assignee.¹⁰²

Provision is made for assignments to marketing agencies which market the producer's wool but not to marketing agencies which

¹⁰⁰ 24 Fed. Reg. § 472.1063 at 657, 10191 (1959).

¹⁰¹ *Ibid.*

¹⁰² 24 Fed. Reg. § 472.1057 (b) at 657, 10191 (1959).

market his unshorn lambs, because in the latter situations the role of marketing agencies is not significant.¹⁰³

XI. PAYMENTS AND LIMITATIONS

It is provided in the National Wool Act of 1954, as amended, that the total of all payments made under the act, ". . . shall not at any time exceed an amount equal to 70 per centum of the accumulated totals, as of the same date, of the gross receipts from duties collected on or after January 1, 1953, on all articles subject to duty under schedule 11 of the Tariff Act of 1930, as amended. . . ." ¹⁰⁴ These articles subject to duty are wool and wool manufactures. The limitation to 70 percent of the gross receipts from duties, that is, from *all* duties on these articles is provided for in the Agricultural Act of 1958 which amended the National Wool Act of 1954.¹⁰⁵ Before this amendment, the payments were limited to 70 percent of the gross

¹⁰³ Some statistics as to assignments may be of interest. All the figures in this note, whether they deal with assignments or payments, refer to 13 Western States, where most of the United States wool is produced: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. Under the 1956 shorn wool program, 4,789 assignments were accepted by ASC county offices in those states and the assigned claims were paid, for a total of \$3,046,564.30. This number of assignments constituted 6.6% of the number of all payments made in the 13 states under this program, and the amount represented 10.3% of all amounts paid under this program in those states. Under the 1957 shorn wool program, 1,507 assignments were accepted and claims paid, for a total of \$357,605.34. The number of assignments constituted 2.7% of the number of all payments made under this program, and the amount represented 4.8% of all amounts paid under this program in those states. The number of assignments accepted by the ASC county offices was greater than those figures indicate because many assignments, though accepted by these offices, were later cancelled or released, and payments were made to the assignors. With this in mind, the number of assignments accepted under the 1956 shorn wool program was 5,843, under the 1957 shorn wool program 3,674, and under the 1958 shorn wool program 8,431, through October 1958. DEPT OF AGRICULTURE, REPORT BY LIVESTOCK AND DAIRY DIVISION, COMMODITY STABILIZATION SERVICE (1958).

As to unshorn lambs (pulled wool), under the 1956 unshorn lambs program 510 assignments were accepted in the 13 states and the assigned claims paid, for a total of \$226,268.48. This number of assignments constituted 1.2% of the number of all payments made under this program in those states, and the amount represented 4.7% of all amounts paid under this program. Under the 1957 unshorn lambs program, 404 assignments were accepted and the assigned claims paid, for a total of \$67,683.42. This number of assignments constituted 1.04% of all payments made under this program in the 13 states, and the amount paid pursuant to these assignments represented 3.6% of all payments under the program in those states. The total number of assignments accepted by the ASC county offices was higher, but, as indicated previously, some were cancelled or released. Under the 1956 unshorn lambs program 548 assignments were accepted, under the 1957 unshorn lambs program 431, and under the 1958 program 106 assignments were accepted, through October 1958, by ASC county offices in the 13 States. DEPT OF AGRICULTURE, REPORT BY LIVESTOCK AND DAIRY DIVISION, COMMODITY STABILIZATION SERVICE (1959).

¹⁰⁴ 68 Stat. 911 (1954), as amended, 7 U.S.C. § 1783 (1958).

¹⁰⁵ 72 Stat. 994, 7 U.S.C. §§ 1781-1787 (1958).

receipts from "specific duties".¹⁰⁶ The phrase "specific duties", when used with reference to importation of wool and wool manufactures, refers to duties expressed as a number of cents per pound of wool. There are other duties, called *ad valorem*, which are expressed as percentages and are applied to the value of the imports.¹⁰⁷ The amendment in the Agricultural Act of 1958 substantially increased the total of possible payments.¹⁰⁸

Different from the question of permissible total payments to producers, is the question of reimbursing Commodity Credit Corporation for the payments it has made to producers. The Secretary of Agriculture is directed by the statute¹⁰⁹ to use the Commodity Credit Corporation as a means to support the price of wool and mohair. For the purpose of reimbursing the Commodity Credit Corporation for the payments made, the statute¹¹⁰ appropriates for each fiscal year an amount equal to the expenditures made by the Corporation during the preceding fiscal year and to any amounts expended in prior fiscal years not previously reimbursed. There is a limitation, however, that the amounts so appropriated shall not exceed 70 percent of the receipts from duties collected on wool and wool manufactures in the calendar year preceding the beginning of each such fiscal year, *i.e.*, preceding the beginning of the fiscal year for which the appropriation is made. For instance, the appropriation for the fiscal year 1960 (July 1, 1959, to June 30, 1960) is for an amount equal to the total expenditures made by the Commodity Credit Corporation during the fiscal year 1959 (July 1, 1958, to June 30, 1959) plus any amount expended

¹⁰⁶ The limitation was ". . . to 70 per centum of the accumulated totals, as of the same date, of the gross receipts from specific duties (whether or not such specific duties are parts of compound rates) collected on and after January 1, 1953, on all articles subject to duty under schedule 11 of the Tariff Act of 1930, as amended . . ." The other 30% was appropriated for so-called section 32 programs. 49 Stat. 774 (1935), as amended, 7 U.S.C. 612 (c) (1958).

¹⁰⁷ The phrase "compound rates" referred to rates which included both specific and *ad valorem* duties, note 106 *supra*.

¹⁰⁸ 104 CONG. REC. 18204, exhibit B (1958).

¹⁰⁹ 68 Stat. 910 (1954), 7 U.S.C. § 1782 (1958).

¹¹⁰ 68 Stat. 911 (1954), as amended, 7 U.S.C. § 1784, (1958) :

For the purpose of reimbursing the Commodity Credit Corporation for any expenditures made by it in connection with payments to producers under this title, there is hereby appropriated for each fiscal year beginning with the fiscal year ending June 30, 1956, an amount equal to the total of expenditures made by the Corporation during the preceding fiscal year and to any amounts expended in prior fiscal years not previously reimbursed: *Provided, however*, That such amounts appropriated for any fiscal year shall not exceed 70 per centum of the gross receipts from duties collected during the period January 1 to December 31, both inclusive, preceding the beginning of each such fiscal year on all articles subject to duty under schedule 11 of the Tariff Act of 1930, as amended. . . .

previously and not previously reimbursed, but the amount thus appropriated for the fiscal year 1960 does not exceed 70 percent of the gross receipts from duties collected during the calendar year 1958. Prior to the amendment by the Agricultural Act of 1958,¹¹¹ the appropriation was limited to 70 percent of "specific duties", as in case of the limitation on the total payments to producers.

The payments made to producers pursuant to the National Wool Act of 1954 (apart from deductions for promotion discussed in the next section) amounted to about \$54,000,000 for the 1955 marketing year,¹¹² about \$48,000,000 for the 1956 marketing year,¹¹³ and about \$13,000,000 for the 1957 marketing year.¹¹⁴

XII. DEDUCTIONS FOR PROMOTION

Pursuant to the National Wool Act of 1954, as amended, the Secretary of Agriculture is authorized to enter into agreements for the purpose of conducting advertising and sales promotion programs for wool, mohair, sheep or goats, or products thereof.¹¹⁵ The Secretary has entered into such an agreement with the American Sheep Producers Council, Inc.,¹¹⁶ a non-profit membership corporation, organized under the laws of Illinois and having its principal office in Denver, Colorado. It is composed of organizations whose members engage in the production or marketing of lambs or wool. The agree-

¹¹¹ 72 Stat. 994, 7 U.S.C. §§ 1781-87 (1958).

¹¹² Under the shorn wool program the amounts paid totaled \$50,013,051 and under the program for lambs and yearlings \$7,601,194. The total was \$57,614,245. The deductions for promotion were \$3,092,095 leaving a balance paid to producers of \$54,522,150. DEP'T OF AGRICULTURE, REPORT BY LIVESTOCK AND DAIRY DIVISION, COMMODITY STABILIZATION SERVICE (1958).

¹¹³ The amounts paid under the 1956 shorn wool program were \$44,041,689 and under the unshorn lambs program \$7,873,459. The total was \$51,915,148. The deductions for promotion were \$3,024,467, leaving a balance paid to producers in the amount of \$48,890,681. DEP'T OF AGRICULTURE, REPORT BY LIVESTOCK AND DAIRY DIVISION, COMMODITY STABILIZATION SERVICE (1958).

¹¹⁴ The amounts paid under the 1957 program on account of shorn wool were \$12,437,602 and on account of unshorn lambs \$3,431,688. The total was \$15,869,290. The deductions for promotion were \$2,004,543, leaving a balance paid to producers in the amount of \$13,864,747. DEP'T OF AGRICULTURE, REPORT BY LIVESTOCK AND DAIRY DIVISION, COMMODITY STABILIZATION SERVICE (1958).

¹¹⁵ Sec. 708, 68 Stat. 912 (1954), 7 U.S.C. § 1787 (1958) :

The Secretary of Agriculture is authorized to enter into agreements with, or to approve agreements entered into between, marketing cooperatives, trade associations, or others engaged or whose members are engaged in the handling of wool, mohair, sheep, or goats or the products thereof for the purpose of developing and conducting on a National, State, or regional basis advertising and sales promotion programs for wool, mohair, sheep or goats or the products thereof. . . .

¹¹⁶ 20 Fed. Reg. 4453 (1955).

ment was approved by a referendum of wool producers in 1955.¹¹⁷ Over 71 percent of the producers voting in the referendum favored the agreement, and those voting in favor owned close to 72 percent of the sheep owned by all the voting producers.¹¹⁸

Pursuant to the agreement and as indicated on the voters' ballots, the Secretary has been deducting one cent a pound, grease basis, on shorn wool and five cents per hundredweight of lambs sold, from the payments due producers each marketing year, and has been turning over these amounts to the Council. Under the 1955 program, these promotion deductions amounted to \$3,092,095, under the 1956 program to \$3,024,467, and under the 1957 program to \$2,004,543.¹¹⁹ The funds so obtained were utilized to advertise lamb as well as wool, because a producer of wool is also a producer of lamb and the profitability of his business depends on the proceeds from both sources.

In view of the amendment of the National Wool Act of 1954 by the Agricultural Act of 1958,¹²⁰ a referendum of producers was again held in 1959,¹²¹ on a proposed agreement with the American Sheep Producers Council relating to the payments for the marketing years 1959, 1960, and 1961. Of the producers voting, 68.9% favored the agreement, and those voting in favor owned 81.1% of the sheep owned by the voting producers. On the basis of this vote the Secretary again entered into an agreement with the Council, providing for deductions from payments for the marketing years 1959, 1960, and 1961, and for the continuation of an advertising and sales promotion program.¹²²

XIII. MOHAIR

Mohair is sheared from Angora goats as wool is sheared from sheep. The National Wool Act of 1954, as amended, requires that the price of mohair be supported at such a level, in relationship to the support price for shorn wool, as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair

¹¹⁷ Notice of Referendum Among Producers and Procedure for Conduct of Such Referendum, 20 Fed. Reg. 4452, 4976 (1955).

¹¹⁸ Determination of Producers' Approval on Referendum, 20 Fed. Reg. 6752 (1955).

¹¹⁹ See notes 112, 113, and 114 *supra*.

¹²⁰ Notes 2 and 3 *supra*.

¹²¹ Notice of Referendum Among Producers and Procedure for Conduct of Such Referendum, 24 Fed. Reg. 5312 (1959).

¹²² Determination of Producers' Approval on Referendum, 24 Fed. Reg. 8807 (1959).

as for shorn wool.¹²³ Pursuant to these provisions, the support price for mohair was determined to be 70 cents in all the six marketing years following the enactment of the National Wool Act of 1954, *i.e.*, the marketing years 1955-1960.¹²⁴ During all these years, average market prices were above the support price level, and therefore there was no need to make payments.

Detailed regulations were issued only for the 1955 and 1958 marketing years. For the other years, it was announced that such regulations would be issued if it became necessary to make payments.¹²⁵ The detailed regulations which were issued were very similar to those dealing with shorn wool, except that there were no deductions for the purchase of goats like the deductions for the purchase of unshorn lambs on or after April 1, 1956,¹²⁶ since no payments were provided for on the sale of goats.

¹²³ Sec. 703, 68 Stat. 910 (1954), as amended, 7 U.S.C. § 1782 (1958), . . . "The deviation of mohair support prices shall not be calculated so as to cause it to rise or fall more than 15 per centum above or below the comparable percentage of parity at which shorn wool is supported. . . ."

¹²⁴ 1955 Payment Program for Mohair, 20 Fed. Reg. § 468.22 at 2043 (1955); 1956 Payment Program for Mohair, 21 Fed. Reg. § 468.51, at 2611 (1956); 1957 Payment Program for Mohair, 22 Fed. Reg. § 468.61 at 2568 (1957); 1958 Payment Program for Mohair, 23 Fed. Reg. § 468.102, at 2723 (1958); 1959 Payment Program for Mohair, 24 Fed. Reg. § 468.151, at 2293 (1959); 160 Payment Program for Mohair, 24 Fed. Reg. § 468.161 (b), at 10191 (1959).

¹²⁵ *Ibid.*

¹²⁶ See VI REPORTING PURCHASED LAMBS, *infra*.