

1945

## MAXIMUM PRICES WITH RESPECT TO AGRICULTURAL COMMODITIES

Robert H. Shields

*U.S. War Food Administration and U.S. Department of Agriculture*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Agriculture Law Commons](#), [Commercial Law Commons](#), and the [Military, War, and Peace Commons](#)

---

### Recommended Citation

Robert H. Shields, *MAXIMUM PRICES WITH RESPECT TO AGRICULTURAL COMMODITIES*, 43 MICH. L. REV. 643 (1945).

Available at: <https://repository.law.umich.edu/mlr/vol43/iss4/2>

This Article is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

# MICHIGAN LAW REVIEW

Vol. 43

FEBRUARY, 1945

No. 4

## MAXIMUM PRICES WITH RESPECT TO AGRICULTURAL COMMODITIES

*Robert H. Shields\**

AS WE all know, prices of agricultural commodities during this war have been directly and substantially affected by Government controls and will probably continue to be so affected in the immediate future. These controls take two forms: First, there are those relating to price floors, that is, minimum support prices with respect to agricultural commodities; and, second, there are those relating to price ceilings, that is, maximum prices with respect to agricultural commodities.

With significant changes likely to occur in the effective supply and demand situation for certain agricultural commodities after V-E Day, the problem of maintaining *support* prices for agricultural commodities until two years after the war at the levels fixed by Congress may very well be a much more difficult task than the problem of maintaining *maximum* prices for these commodities at the levels specified by Congress. On the other hand, some agricultural commodities will undoubtedly continue to be in short supply for some time after V-E Day. With respect to these commodities, the problem of maintaining maximum prices will continue to confront us. These problems of price floors and price ceilings are closely related, and factors directly affecting one are of vital importance to the other.

I recently reviewed the legal framework within which the agricultural price support programs of the Federal Government operate,<sup>1</sup> and this discussion reviews the legal framework within which maximum prices for agricultural commodities are established and maintained by the Federal Government.

In the main, the law on this subject is to be found in the Emergency Price Control Act of 1942,<sup>2</sup> the Stabilization Act of 1942,<sup>3</sup> and the

\* A.B., University of Nebraska; LL.B., Harvard University; presently, Solicitor, U.S. War Food Administration and U.S. Department of Agriculture.

<sup>1</sup> See Shields, "Federal Statutory Provisions Relating to Price Support for Agricultural Commodities," 12 UNIV. CHI. L. REV. 64 (1944).

<sup>2</sup> 56 Stat. L. 23 (1942), 50 U.S.C. (Supp. 3, 1941-1943) App. §§ 901 et seq.

<sup>3</sup> 56 Stat. L. 765 (1942), 50 U.S.C. (Supp. III, 1941-1943) App. §§ 961 et seq.

Stabilization Extension Act of 1944.<sup>4</sup> In addition to the applicable provisions of these primary laws and certain related legislation, it is also necessary, in view of the broad powers delegated by the Congress in these laws, to review certain related executive orders.<sup>5</sup>

## I

### MEANING OF "AGRICULTURAL COMMODITY"

The term "agricultural commodity" is not defined in the law although the law does include a definition of the term "commodity."<sup>6</sup> The law also draws a distinction throughout between agricultural commodities and commodities processed or manufactured in whole or substantial part from agricultural commodities.<sup>7</sup> Further, many of the standards with respect to maximum prices for agricultural commodities are stated throughout the law primarily in terms of parity or comparable prices. In view of the foregoing and the legislative history of these provisions,<sup>8</sup> an agricultural commodity has been defined by construction

<sup>4</sup> Pub. L. 383, 78th Cong., 2d sess. (June 30, 1944).

<sup>5</sup> See particularly Exec. Order No. 9250, of October 3, 1942, 7 FED. REG. 7871 (1942), as amended by Exec. Order No. 9354, of June 23, 1943, 8 FED. REG. 8693 (1943), and as amended by Exec. Order No. 9381, of September 25, 1943, 8 FED. REG. 13083 (1943); Exec. Order No. 9280, of December 5, 1942, 7 FED. REG. 10179 (1942); Exec. Order No. 9322, of March 26, 1943, 8 FED. REG. 3807 (1943), as amended by Exec. Order No. 9334, of April 19, 1943, 8 FED. REG. 5423 (1943), as amended by Exec. Order No. 9392, of October 28, 1943, 8 FED. REG. 14783 (1943); Exec. Order No. 9328, of April 8, 1943, 8 FED. REG. 4681 (1943); and Exec. Order No. 9347, of May 27, 1943, 8 FED. REG. 7207 (1943). This article does not deal with authorities for price control activities prior to the enactment of the Emergency Price Control Act of 1942, cited *supra* note 2. For such authorities, see establishment on May 29, 1940, by the President, of a Price Stabilization Division in the Advisory Commission to the Council for National Defense; Exec. Order No. 8875, of August 28, 1941, 6 FED. REG. 4483 (1941); and Ginsberg, "The Emergency Price Control Act of 1942; Basic Authority and Sanctions," 9 L. AND CONTEMP. PROB. 22 (1942).

<sup>6</sup> Section 302(c) of the Emergency Price Control Act of 1942, cited *supra* note 2, reads in part as follows:

"(c) The term 'commodity' means commodities, articles, products, and materials (except materials furnished for publication by any press association or feature service, books, magazines, motion pictures, periodicals and newspapers, other than as waste or scrap), and it also includes services rendered otherwise than as an employee in connection with the processing, distribution, storage, installation, repair, or negotiation of purchases or sales of a commodity, or in connection with the operation of any service establishment for the servicing of a commodity: . . ."

<sup>7</sup> See §§ 2(f), 3, 201(b), and 205(f) of the Emergency Price Control Act of 1942, cited *supra* note 2; § 3 of the Stabilization Act of 1942, cited *supra* note 3; and §§ 102, 103, and 201 of the Stabilization Extension Act of 1944, cited *supra* note 4.

<sup>8</sup> See S. Rep. No. 931, 77th Cong., 2d sess., 1942, p. 19; S. Hearings on H.R. 5990, 77th Cong., 1st. sess., 1941, pp. 362, 377-378 (Committee on Banking and Currency); H. Hearings on H.R. 5479, 77th Cong., 1st. sess., 1941, pp. 109, 846,

as any commodity which the Department of Agriculture includes in its parity or comparable price concept.<sup>9</sup> This construction was first adopted under the Emergency Price Control Act of 1942, and subsequent legislation has recognized and confirmed its validity.<sup>10</sup>

Under this construction,<sup>11</sup> the approximately 160 commodities within the parity or comparable price concept, including wheat, corn, cotton, rice, peanuts, tobacco, wool, turkeys, hogs, fluid milk, eggs, tung nuts, oranges, raisins, apples, and hops, are, of course, agricultural commodities. On the other hand, bread, corn meal, cotton fabrics, puffed rice, roasted peanuts, cigarettes, yarn, dressed turkeys, bacon, bottled milk, dried eggs, tung oil, orange juice, packaged raisins, apple-sauce, and beer, are not agricultural commodities but are commodities processed or manufactured in whole or substantial part from agricultural commodities. Likewise, chickens are agricultural commodities, but chicken feathers are not; naval stores are agricultural commodities but forestry products, generally, are not; mohair is an agricultural commodity, but furs, generally, are not; grass and legume seeds are agricultural commodities, but garden and flower seeds are not.<sup>12</sup>

## II

### JOINT RESPONSIBILITY UNDER THE LAW

The law presently obtaining requires that maximum prices with respect to agricultural commodities shall be established and maintained jointly by the War Food Administrator and the Price Administrator. In carrying out this joint responsibility, the War Food Administrator and the Price Administrator are subject to directives on policy by the Economic Stabilization Director.<sup>13</sup> Any disagreement is to be resolved

1509 (Committee on Banking and Currency); and 88 CONG. REC., Pt. 1, pp. 44, 47, 127, 131, 229, 667, 718 (1942).

<sup>9</sup> See *Brown v. Banana Distributors of Connecticut, Inc.*, (D.C. Conn. 1943) 52 F. Supp. 804. See also § 2.12(1) of Rev. Supp. Reg. No. 1 to the General Maximum Price Regulation, 8 FED. REG. 4978 at 4981 (April, 1943).

<sup>10</sup> See the Stabilization Act of 1942, cited *supra* note 3, and the Stabilization Extension Act of 1944, cited *supra* note 4.

<sup>11</sup> This construction, of course, is for the specific purposes of the price control and stabilization legislation and is not to be considered as a general definition of agricultural commodities as such.

<sup>12</sup> If, with respect to an imported agricultural commodity, the same or similar commodity is produced in the continental United States and is within the parity or comparable price concept, the imported agricultural commodity is an agricultural commodity for price control purposes. Thus, Canadian barley and Argentine corn are agricultural commodities, while Honduran bananas and Brazilian coffee and cocoa beans are not.

<sup>13</sup> Section 201(e) of the Emergency Price Control Act of 1942, cited *supra* note 2, added by § 104(b) of the Stabilization Extension Act of 1944, cited *supra* note 4,

by the Economic Stabilization Director. The law also requires that no other action with respect to agricultural commodities, except certain enforcement action, may be taken without the prior approval of the War Food Administrator.<sup>14</sup>

The Emergency Price Control Act of 1942, approved January 30, 1942, provided that no action could be taken under that act with respect to agricultural commodities without the prior approval of the Secretary of Agriculture, except enforcement action under sections 205(a) and 205(b) of the act.<sup>15</sup> The Stabilization Act of 1942, approved October 2, 1942, vested in the President the authority to establish maximum prices and gave him power to substitute standards con-

requires that the Economic Stabilization Director publish in the FEDERAL REGISTER directives which he issues on price policy.

<sup>14</sup> Action under § 2(1) of the Emergency Price Control Act of 1942, cited supra note 2, added by § 102 of the Stabilization Extension Act of 1944, cited supra note 4, which requires notice to growers 15 days prior to the normal planting season in each producing area before growers' maximum prices are established or lowered for any agricultural commodity which is the product of annual or seasonal planting, is believed to be within the meaning of § 3(e) of the Emergency Price Control Act of 1942, as amended, cited infra note 15, and such action is not taken without the prior approval of the War Food Administrator. This section reads as follows:

"(1) Before growers' maximum prices are established or lowered for any agricultural commodity which is the product of annual or seasonal planting, the Price Administrator shall give to such growers, not less than 15 days prior to the normal planting season in each major producing area affected, notice of the maximum prices he proposes to establish therefor: *Provided*, That in no case shall this subsection require such notice to be given more than 12 months prior to the beginning of the normal marketing season in such area. This requirement may be satisfied by publication in the Federal Register, but the Administrator shall utilize appropriate means to insure general publicity to such prices in the areas affected. The requirements of this subsection shall not apply to the 1944 crop of any agricultural commodity of any major producing area in which the normal planting season occurs prior to July 31, 1944."

<sup>15</sup> Section 3(e) of the Emergency Price Control Act of 1942, cited supra note 2, originally read as follows:

"Notwithstanding any other provision of this or any other law, no action shall be taken under this Act by the Administrator or any other person with respect to any agricultural commodity without the prior approval of the Secretary of Agriculture; except that the Administrator may take such action as may be necessary under section 202 and section 205(a) and (b) to enforce compliance with any regulation, order, price schedule or other requirement with respect to an agricultural commodity which has been previously approved by the Secretary of Agriculture."

This section was amended by § 103(a) of the Stabilization Extension Act of 1944, cited supra note 4, to provide that the Secretary of Agriculture's approval was not necessary for action under § 205 of the act. Previously doubt had existed as to the necessity of the Secretary's approval of action under § 205(e) of the act, providing for treble damage actions, or under § 205(f) of the act, providing for license enforcement proceedings. In this connection, it should be noted that § 205(f)(1) of the act provides that ". . . no license may be required of any farmer as a condition of selling any agricultural commodity produced by him. . . ."

tained in that act for the standards contained in the Emergency Price Control Act of 1942 with respect to the establishment and maintenance of maximum prices on agricultural commodities. The Stabilization Act of 1942, however, did not give the President the authority to suspend the approval power of the Secretary of Agriculture.<sup>16</sup> As a matter of fact, on October 3, 1942, the day after the passage of the Stabilization Act of 1942, the President, in the general stabilization order issued pursuant to that act,<sup>17</sup> provided that the Secretary and the Price Administrator should jointly have the power to establish, maintain, or adjust maximum prices with respect to agricultural commodities. The President also provided in that order that the Economic Stabilization Director, whose office was established by it, should have the power and authority to settle any disagreement between the Secretary of Agriculture and the Price Administrator and that those officials should, in their joint action, be subject to the policy directives of the director. Six months later, on March 26, 1943, these powers, functions, and duties of the Secretary of Agriculture were transferred to the War Food Administrator by the Executive Order establishing the War Food Administration and by related orders.<sup>18</sup> The establishment of the Office of War Mobilization on May 27, 1943, made no change in the assignments of responsibility with respect to maximum prices,<sup>19</sup> nor did the enactment of the Stabilization Extension Act of 1944 on June 30, 1944, affect these responsibilities.

### III

#### STANDARDS FOR ESTABLISHMENT OF PRICE LEVELS

With respect to the general levels at which maximum prices may be established, the law presently obtaining requires that prices with respect to agricultural as well as all other commodities shall, in general, be stabilized, so far as practicable, on the basis of the price levels which existed on September 15, 1942.<sup>20</sup> The law also provides, however, that

<sup>16</sup> Section 2 of the Stabilization Act of 1942, cited *supra* note 3, reads as follows: "The President may, from time to time, promulgate such regulations as may be necessary and proper to carry out any of the provisions of this Act; and may exercise any power or authority conferred upon him by this Act through such department, agency, or officer as he shall direct. The President may suspend the provisions of sections 3(a) and 3(c), and clause (1) of section 302(c), of the Emergency Price Control Act of 1942 to the extent that such sections are inconsistent with the provisions of this Act, but he may not under the authority of this Act suspend any other law or part thereof."

<sup>17</sup> Exec. Order No. 9250, cited *supra* note 5.

<sup>18</sup> Exec. Order No. 9322, cited *supra* note 5. See also Exec. Order No. 9328, cited *supra* note 5, and Exec. Order No. 9334, cited *supra* note 5.

<sup>19</sup> Exec. Order No. 9347, cited *supra* note 5.

<sup>20</sup> Section 1 of the Stabilization Act of 1942, cited *supra* note 3. See also provi-

in no event shall a maximum price be established or maintained with respect to any agricultural commodity which does not reflect to the producers thereof the highest of (1) the parity or comparable price for the commodity, (2) the highest price received by producers for such commodity between January 1 and September 15, 1942,<sup>21</sup> or (3) with respect to milk, the minimum producer price in an order promulgated pursuant to the Agricultural Marketing Agreement Act of 1937, as amended.<sup>22</sup> Provision is also made in the law for adjustments for grade, location, and seasonal differentials.<sup>23</sup> If a maximum price is being established for an agricultural commodity for which the market was inactive during the latter half of the January 1-September 15, 1942, period, the price for that period, as determined by the War Food Administrator, must be in line with prices of other agricultural commodities during that period produced for the same general use.<sup>24</sup> All prices and adjustments referred to are prices and adjustments as determined and published by the War Food Administrator.<sup>25</sup> In accordance with

sions of § 2(a) of the Emergency Price Control Act of 1942, cited supra note 2, technically applicable to agricultural as well as all other commodities, which provide that all maximum prices be generally fair and equitable, effectuate the purposes of the act, and, insofar as practicable, be established with reference to the prices prevailing between October 1 and 15, 1941. See note 28, infra.

<sup>21</sup> Section 3 of the Stabilization Act of 1942, cited supra note 3.

<sup>22</sup> Section 3(d) of the Emergency Price Control Act of 1942, cited supra note 2.

<sup>23</sup> Section 3 of the Stabilization Act of 1942, cited supra note 3. Such differentials, however, are subject to administrative determination and adjustment from time to time and are not calculated according to a specified formula as parity prices are. In general, in establishing such differentials, consideration is given to recent or normal differentials as between grades, locations, and seasons, to administrative feasibility, and, on occasion, to the desire to achieve certain results relating to the production or distribution of the commodity concerned. Such differentials as are used must, of course, yield the specified average price for the commodity considered as a whole and, if the War Food Administrator so desires, may be specifically determined and published by him.

<sup>24</sup> Section 3 of the Stabilization Act of 1942, cited supra note 3.

<sup>25</sup> Section 3 of the Stabilization Act of 1942, cited supra note 3 and Executive Orders mentioned supra at note 18. In this connection, see the proviso contained in the Office of Price Administration item in the Second Deficiency Appropriation Act, 1944, Pub. L. 375, 78th Cong., 2d sess. (June 28, 1944), which reads as follows:

*“Provided further,* That no part of this appropriation shall be used to enforce any maximum price or prices on any agricultural commodity or any commodity processed or manufactured in whole or substantial part from any agricultural commodity, including milk and its products and livestock, unless and until (1) the Secretary of Agriculture has determined and published for such agricultural commodity the prices specified in section 3(a) of the Emergency Price Control Act of 1942, as amended by Public Law Numbered 729, approved October 2, 1942, as amended: (2) in the case of a comparable price for such agricultural commodity, the Secretary of Agriculture has held public hearings and determined and published such comparable price in the manner prescribed by section 3(b) of said Act, as amended; and (3) the Secretary of Agriculture has determined after investigation and proclaimed that the maximum price or prices so

the President's "Hold the Line Order,"<sup>26</sup> maximum prices with respect to agricultural commodities may not, except as they are subject to one or more of the four mandatory statutory adjustment provisions later discussed, be established or maintained above the minimum statutory levels just described.<sup>27</sup>

The general levels at which maximum prices with respect to agricultural commodities could be established were originally expressed in the Emergency Price Control Act of 1942 at prices prevailing between October 1 and October 15, 1941, insofar as practicable.<sup>28</sup> This act further provided that in no event should a maximum price be established or maintained with respect to any agricultural commodity which did not reflect to the producers thereof the highest of the following prices, (1) 110 per centum of the parity or comparable price, adjusted for grade, location, and seasonal differentials, (2) the market price prevailing on October 1, 1941, (3) the market price prevailing on Decem-

established on any such agricultural commodity, including milk and its products and livestock, will reflect to the producer of such agricultural commodity a price in conformity with section 3(c) of said Act, as amended: *Provided further*, That such maximum price or prices shall conform in all respects to the provisions of section 3 of Public Law Numbered 729 approved October 2, 1942, as amended: . . . .” The War Food Administrator’s approval of a maximum price regulation constitutes his proclamation required under the above language. See also Office of Price Administration items contained in the First Supplemental National Defense Appropriation Act, 1943, 56 Stat. L. 704 (1942), and the National War Agencies Appropriation Act, 1944, 57 Stat. L. 522 (1943).

<sup>26</sup> Exec. Order No. 9328, cited supra note 5.

<sup>27</sup> The Economic Stabilization Director may, in his discretion, make additional adjustments, pursuant to § 1 of the Stabilization Act of 1942, cited supra note 3, to the extent that he finds necessary (1) to aid in the effective prosecution of the war, or (2) to correct gross inequities. See Exec. Order No. 9328, cited supra note 5. In this connection, see also the mandate contained in § 201(b) of the Stabilization Extension Act of 1944, cited supra note 4, amending § 3 of the Stabilization Act of 1942, cited supra note 3. The mandate reads as follows:

“The President, acting through any department, agency, or office of the Government, shall take all lawful action to assure that the farm producer of any of the basic agricultural commodities (cotton, corn, wheat, rice, tobacco, and peanuts) and of any agricultural commodity with respect to which a public announcement has been made under section 4(a) of the Act entitled ‘An Act to extend the life and increase the credit resources of the Commodity Credit Corporation and for other purposes,’ approved July 1, 1941, as amended (relating to supporting the prices of nonbasic agricultural commodities), receives not less than the higher of the two prices specified in clauses (1) and (2) of this section (the latter price as adjusted for gross inequity).”

<sup>28</sup> Section 2(a) of the Emergency Price Control Act of 1942, cited supra note 2. If, in the case of any commodity, there are no prevailing prices between October 1 and 15, 1941, or the prevailing prices between such dates are not generally representative because of abnormal or seasonal market conditions or other cause, then consideration is to be given to the prices prevailing during the nearest two-week period in which, in the judgment of the Price Administrator, the prices for such commodity are generally representative. See note 20 supra.



ber 15, 1941, (4) the average price for such commodity during the period July 1, 1919, to June 30, 1929,<sup>29</sup> or (5) in the case of milk, the minimum producer price fixed in an order promulgated pursuant to the Agricultural Marketing Agreement Act of 1937, as amended.<sup>30</sup> The prices and adjustments referred to were prices and adjustments as determined by the Secretary of Agriculture.<sup>31</sup> The law currently obtaining, which specifies the levels at which maximum prices for agricultural commodities shall be established and maintained and the minimum price standards applicable thereto, was contained in the Stabilization Act of 1942, and this law still obtains. The special provision referred to in the Emergency Price Control Act of 1942 relating to milk also continues in effect.

### A. Parity

As just indicated, the first of the applicable minimum standards with respect to the establishment of maximum prices for agricultural commodities is expressed in terms of parity or comparable prices as determined and published by the War Food Administrator.<sup>32</sup> Parity price is, in brief, a price which will give to an agricultural commodity a purchasing power in terms of articles ordinarily purchased by farmers, approximately equivalent to its purchasing power in a particular base period.<sup>33</sup> If, after investigation and public hearing, the War Food

<sup>29</sup> Section 3(a) of the Emergency Price Control Act of 1942, cited supra note 2.

<sup>30</sup> Section 3(d) of the Emergency Price Control Act of 1942, cited supra note 2.

<sup>31</sup> Section 3(a) and (b) of the Emergency Price Control Act of 1942, cited supra note 2.

<sup>32</sup> Section 3(b) of the Emergency Price Control Act of 1942, cited supra note 2, and Executive Orders mentioned supra at note 18.

<sup>33</sup> Section 301(a)(1) of the Agricultural Adjustment Act of 1938, as amended, 52 Stat. L. 38 (1938), 54 Stat. L. 1209 (1940), 7 U.S.C. (1940) § 1301 is as follows:

"Parity," as applied to prices for any agricultural commodity, shall be that price for the commodity which will give to the commodity a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of such commodity in the base period; and, in the case of all commodities for which the base period is the period August 1909 to July 1914, which will also reflect current interest payments per acre on farm indebtedness secured by real estate, tax payments per acre on farm real estate, and freight rates, as contrasted with such interest payments, tax payments, and freight rates during the base period. The base period in case of all agricultural commodities except tobacco shall be the period August 1909 to July 1914. In the case of all kinds of tobacco except Burley and flue-cured such base period shall be the period August 1919 to July 1929, and, in the case of Burley and flue-cured tobacco, shall be the period August 1934 to July 1939; except that the August 1919-July 1929 base period shall be used in allocating any funds appropriated prior to September 1, 1940."

See §§ 2 and 8e of the Agricultural Adjustment Act (1933), 48 Stat. L. 32 (1933), 49 Stat. L. 750 (1935), 49 Stat. L. 762 (1935), 49 Stat. L. 782 (1935), 50 Stat. L. 247 (1937), 7 U.S.C. (1940) §§ 602, 608e. See also PARITY PRICES: WHAT THEY ARE AND HOW THEY ARE CALCULATED, *passim*, publication of the Bu-

Administrator finds that the production and consumption of an agricultural commodity other than a basic commodity (wheat, corn, cotton, tobacco, rice, and peanuts for nuts<sup>84</sup>) has so changed in extent or character since the parity base period as to result in a price out of line with parity prices for basic commodities, then the War Food Administrator determines and publishes a comparable price for such agricultural commodity which would be in line with parity prices for the basic agricultural commodities. Comparable prices, which, under the law, as indicated, may be determined and published only after investigation and public hearing,<sup>85</sup> have been established for soybeans, peanuts for oil, dry field peas, oranges, grapefruit, grapes (other than raisins), peppermint oil, spearmint oil, tung nuts, dates, avocados, lima beans for processing, beets for processing, almonds, filberts, seedling pecans, and improved pecans.<sup>86</sup>

#### B. *Highest Price Received by Producers between Stated Dates*

The second applicable minimum standard with respect to the establishment of maximum prices for agricultural commodities is stated in terms of the highest price received by producers for a commodity between January 1 and September 15, 1942.<sup>87</sup> The prices referred to in

reau of Agricultural Economics of June 30, 1942. With respect to cotton, § 3 of the Stabilization Act of 1942, cited supra note 3, amended by § 201(b) of the Stabilization Extension Act of 1944, cited supra note 4, provides that the method that is now used for the purposes of the Commodity Credit Corporation loans for determining the parity price or its equivalent for seven-eighths inch Middling cotton at the average location used in fixing the base loan rate for cotton shall also be used for determining the parity price or its equivalent for seven-eighths inch Middling cotton at such average location for the purposes of determining parity in connection with establishing maximum prices.

<sup>84</sup> Peanuts, as used in § 3(b) of the Emergency Price Control Act of 1942, cited supra note 2, means peanuts for nuts. This view is based upon the legislative history of this act and of other agricultural legislation *in pari materia* dealing with peanuts. See, e.g., 87 CONG. REC., Pt. 9, pp. 9915, 9950 (1941).

<sup>85</sup> Section 3(b) of the Emergency Price Control Act of 1942, cited supra note 2. In this connection, see § 4(a) of the Act of July 1, § 713a-8(a) (Supp. III), which, without requiring an investigation or public hearing, provides for the determination and use of comparable prices, in lieu of parity prices, in connection with price supports on agricultural commodities. Comparable prices for soybeans, peanuts for oil, and dry field peas have been established pursuant to this provision.

<sup>86</sup> In connection with the establishment of comparable prices generally, see Monthly Price Report of the Bureau of Agricultural Economics, AGRICULTURAL PRICES 26-29, September 29, 1942, and announcement of U.S. Department of Agriculture with respect thereto, of September 23, 1942.

<sup>87</sup> Farm prices are calculated and published monthly in AGRICULTURAL PRICES, a publication of the Bureau of Agricultural Economics, U.S. Department of Agriculture. For highest prices received by producers between January 1 and September 15, 1942,

this standard have been construed to mean the highest average prices received by farmers during that period. This construction of the law rests largely upon the legislative history<sup>38</sup> which indicates that the kind of prices referred to by the statute was, in the main, the kind of producer prices collected and published by the Bureau of Agricultural Economics of the Department of Agriculture.<sup>39</sup>

### C. *Special Standard for Prices of Milk*

The third minimum standard is applicable only to the establishment and maintenance of maximum prices with respect to milk in those marketing areas where the minimum prices to be paid by handlers to the producers of milk are prescribed by an order of the War Food Administrator pursuant to the Agricultural Marketing Agreement Act of 1937, as amended.<sup>40</sup> This additional minimum price standard with respect to milk stems from section 3(d) of the Emergency Price Control Act of 1942 which provides that nothing in that act shall be construed to modify, repeal, supersede, or affect the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, or to invalidate any marketing agreement, license, or order, or any provision thereof or amendment thereto heretofore or hereafter made or issued under the provisions of that act. The Agricultural Marketing Agreement Act of 1937, as amended, provides, in the case of milk, that the War Food Administrator may, after notice and public hearing, promulgate an order fixing minimum prices, which handlers shall pay to producers of milk, at levels, insofar as practicable, which will reflect the prices and the available supplies of feed, other economic factors which affect market supply and demand for milk and its products, and be in the public interest, even though such prices may exceed parity.<sup>41</sup>

and parity prices as of June 15, 1944, as determined and published by the War Food Administration, see AGRICULTURAL PRICES 19-24 (June 29, 1944).

<sup>38</sup> See S. Hearings on S. J. Res. 161, 77th Cong., 2d sess., 1942, pp. 44, 45, 155, 210, 217 (Committee on Banking and Currency); 88 CONG. REC., Pt. 6, pp. 7204, 7217, 7234, 7413, 7481, 7517 (1942); see also H. Hearings on H.R. 4376, 78th Cong., 2d sess., 1944, p. 1827 (Committee on Banking and Currency); and 90 CONG. REC., No. 106, p. 5756 (June 9, 1944).

<sup>39</sup> See note 37 *supra*.

<sup>40</sup> 50 Stat. L. 246 (1937), 7 U.S.C. (1940) §§ 601 et seq.

<sup>41</sup> Although this third standard discussed in the text is expressed only in terms of milk, the provision of § 3(d) of the Emergency Price Control Act of 1942, cited *supra* note 2, from which the third standard is derived, is applicable to any agricultural commodity which is the subject of a marketing agreement or order under the Agricultural Marketing Agreement Act of 1937, cited *supra* note 40. The purpose of the Agricultural Marketing Agreement Act of 1937 with respect to all agricultural commodities is the attainment of parity at as rapid a rate as is in the public interest. Parity is also one of the minimum price standards applicable to the establishment of maximum

## IV

## PRICE ADJUSTMENTS TO ACCOMPLISH SPECIFIC PURPOSES

The law presently obtaining makes four provisions for the mandatory adjustment of maximum prices which would otherwise be established and maintained with respect to agricultural commodities. The law provides for adjustments: (1) to reflect increased labor or other costs to producers incurred since January 1, 1941, (2) to correct gross inequities, (3) to increase production for war purposes, and (4) with respect to fresh fruits or vegetables, to make appropriate allowances for substantial reduction in merchantable crop yields, unusual increases in costs of production, and other factors which result from hazards occurring in connection with the production and marketing of such commodities. The first three of these provisions were contained in the Stabilization Act of 1942,<sup>42</sup> and the fourth provision is found in the Stabilization Extension Act of 1944.<sup>43</sup> There is a general provision contained in the Emergency Price Control Act of 1942 for the adjustment of maximum prices based upon such relevant factors as the Price Administrator determines to be of general applicability, including speculative fluctuations, increases and decreases in cost of production, distribution, and transportation, and general increases and decreases in profits earned by sellers of the commodity or commodities, during and subsequent to the year ending October 1, 1941.<sup>44</sup>

*A. To Reflect Increased Costs*

The provision requiring that a maximum price with respect to an agricultural commodity shall be adjusted to reflect increased costs since January 1, 1941, to the producers of such agricultural commodity,

prices for all agricultural commodities under maximum price legislation. Consequently, as a practical matter, it is not believed necessary to refer to the general applicability of the parity provision of the Agricultural Marketing Agreement Act of 1937 to agricultural commodities for price control purposes. In the case of milk, however, as has been pointed out, there are special provisions of the Agricultural Marketing Agreement Act of 1937 which permit the establishment of minimum producers' prices at levels which will reflect the prices and the available supplies of feed, other economic factors which affect market supply and demand for milk and its products, and be in the public interest, even though such prices may exceed parity. It should also be noted that, in those few instances, where a comparable price lower than parity is established for a commodity other than milk under the Emergency Price Control Act of 1942, after notice and public hearing—a parity price for the commodity being out of line with parity for the basic agricultural commodities—it is in the public interest that the applicable minimum price standard be expressed in terms of the comparable price.

<sup>42</sup> Section 3 of the Stabilization Act of 1942, cited *supra* note 3.

<sup>43</sup> Section 103(b) of the Stabilization Extension Act of 1944, cited *supra* note 4.

<sup>44</sup> Section 2(a) of the Emergency Price Control Act of 1942, cited *supra* note 2.

adequate weighting being given to farm labor,<sup>45</sup> has been construed by the Economic Stabilization Director to mean that if the maximum price for an agricultural commodity, which otherwise meets the applicable minimum price standards, is not high enough to reflect (1) the parity price as of January 1, 1941, and (2) the average farm price for the two years or seasons 1940-1941, both increased by the amount by which cash costs of production, including hired farm labor but not including the estimated value of the labor of the farm operator and his family, have increased since January 1, 1941, adjustments may be necessary in such maximum price. If such maximum price is high enough to reflect only one of these two prices as increased, such maximum price may or may not require further adjustment depending upon the action with respect thereto by the Economic Stabilization Director.<sup>46</sup> For example, in the case of wool, the applicable minimum price standard requires a maximum price regulation which would reflect not less than 41 cents per pound and such a maximum price was established. While this maximum price is greater than the January 1941 parity price adjusted for

<sup>45</sup> This adjustment implements that part of § 3 of the Stabilization Act of 1942, cited *supra* note 3, which reads as follows:

*“Provided further, That modifications shall be made in maximum prices established for any agricultural commodity and for commodities processed or manufactured in whole or substantial part from any agricultural commodity, under regulations to be prescribed by the President, . . . or where by reason of increased labor or other costs to the producers of such agricultural commodity incurred since January 1, 1941, the maximum prices so established will not reflect such increased costs; . . . Provided further, That in fixing price maximums for agricultural commodities and for commodities processed or manufactured in whole or substantial part from any agricultural commodity, as provided for by this Act, adequate weighting shall be given to farm labor.”*

<sup>46</sup> This formula is set forth in a directive of the Economic Stabilization Director to the War Food Administrator and the Price Administrator dated January 21, 1944, as modified by the Economic Stabilization Director on April 3, 1944, and as explained by letter from the War Food Administrator to the Economic Stabilization Director dated April 14, 1944, and the reply thereto by the Economic Stabilization Director, dated April 15, 1944. The terms of the Directive have been restated for administrative use as follows:

*“Prices necessary to cover increases in costs are calculated by (1) estimating the percentage which cash costs and depreciation as of January 1941 were of the average prices for the 2 years or seasons, 1940 and 1941, (2) applying this cash-cost percentage to the average price of each commodity for 1940 and 1941 to obtain an indication of cash costs per unit, (3) estimating the increase in cash costs to July 1, 1944, by applying an index of cash costs (calculated from the base January 1941 = 100) to the indicated cash costs per unit as of January 1941, and then (4) adding the indicated dollar-and-cents increases in cash costs for each commodity to both the parity price for January 1941 and the average prices received by producers for the 2 years or seasons 1940 and 1941. This gives two estimates and both must be cleared by any existing or proposed price regulation unless it is referred to the Director of the Office of Economic Stabilization, but in no event will the Director approve a price which does not at least clear the lower estimate or standard.”*

increases in costs since January 1, 1941, of 35.5 cents per pound, it is less than the 1940-41 season average price adjusted for increases in costs since January 1, 1941, of 44.4 cents per pound.<sup>47</sup>

### B. *To Correct Gross Inequities*

The provision requiring that a maximum price with respect to an agricultural commodity shall be adjusted for gross inequities is, under directive from the Economic Stabilization Director, applied by him to each case on its merits.<sup>48</sup> Such an adjustment cannot operate to reduce a price below the applicable parity or comparable price standard but may be made without regard to the second applicable minimum price standard, i.e., the highest price received by producers between January 1 and September 15, 1942. For example, in July 1944, when maximum prices were established for cantaloupes, parity for cantaloupes was \$1.66 per crate while the highest price received by producers between January 1 and September 15, 1942, was \$3.18 per crate. The maximum price was established, however, at \$1.71 per crate, in accordance with the directive of the Economic Stabilization Director, on April 13, 1944, declaring the \$3.18 per crate price to be a gross inequity.<sup>49</sup>

### C. *To Increase Production for War Purposes*

The provision requiring that a maximum price with respect to an agricultural commodity shall be adjusted when necessary to increase production for war purposes is applied by the War Food Administrator and the Price Administrator in their joint consideration of any maximum price being established. If such an adjustment will result in an increase in the cost of living within the meaning of the President's "Hold the Line Order,"<sup>50</sup> however, it may be made only by the Economic Stabilization Director.<sup>51</sup> For example, because of the necessity for increasing production to meet the shortage of fats and oils for war purposes, the maximum price with respect to the 1943 crop of soybeans was set above the legal minimum level and farmers received \$1.83 per bushel, although the comparable price for soybeans averaged only \$1.61 per bushel and the highest price between January 1 and September 15, 1942, was \$1.74 per bushel.<sup>52</sup>

<sup>47</sup> See MPR 106, issued February 28, 1942, 7 FED. REG. 1648 (1942).

<sup>48</sup> This procedure is set forth in the directive of the Economic Stabilization Director to the War Food Administrator and the Price Administrator, dated January 21, 1944.

<sup>49</sup> See statement of considerations issued in connection with Amendment 36 to MPR 426, OPA Food Desk Book 1 at page 6937.

<sup>50</sup> Exec. Order No. 9328, cited supra note 5.

<sup>51</sup> *Ibid.*

<sup>52</sup> See statement of considerations issued in connection with MPR 515—Soybeans of the 1943 Crop—OPA Food Desk Book 3 at pages 72, 831.

*D. To Meet Problems Concerning Fresh Fruits and Vegetables*

The provision requiring that a maximum price with respect to any fresh fruit or vegetable shall be adjusted in order to make appropriate allowances for (1) substantial reductions in merchantable crop yields, (2) unusual increases in costs of production, and (3) other factors which result from hazards occurring in connection with the production and marketing of such commodity is applied, in accordance with policy directives of the Economic Stabilization Director, by the War Food Administrator and the Price Administrator in their joint consideration of any maximum price. For example, effective November 1, 1944, in the case of snap beans, the existing maximum price was increased from \$3.25 per bushel, f.o.b. Pompano, Florida, to \$4.80 per bushel, same basis, in order to make appropriate allowance for reduction in the yield of snap beans resulting from the hurricane in the latter part of October.<sup>53</sup> Again, in the case of cucumbers, where the loss in Florida occasioned by the hurricane was about 80 percent of the prospective production, the maximum price for cucumbers of \$3.40 per bushel, f.o.b. Wachula, Florida, was wholly suspended for November and December.<sup>54</sup>

V

PRICE ROLE OF GOVERNMENTAL PAYMENTS AND SUBSIDIES

In determining whether a maximum price which is to be established or is being maintained with respect to an agricultural commodity meets the applicable minimum price standard as adjusted, appropriate deductions for governmental payments and subsidies may be made from such standard.<sup>55</sup> Governmental payments include conditional payments made to producers of sugar beets and sugar cane pursuant to the Sugar Act of 1937, as amended,<sup>56</sup> parity payments made to producers of basic agricultural commodities pursuant to the Agricultural Adjustment Act of 1938, as amended,<sup>57</sup> and crop adjustment payments made to producers of basic and some other agricultural commodities under the agricul-

<sup>53</sup> Amendment 67 to MPR 426—Fresh Fruits and Vegetables for Table Use, Sales Except at Retail, issued October 31, 1944, 9 FED. REG. 13067 (1944).

<sup>54</sup> The ceiling was removed on field cucumbers by amendment 66 to MPR 426—Fresh Fruits and Vegetables for Table Use, Sales Except at Retail, issued October 28, 1944, 9 FED. REG. 12973 (1944). See statement of considerations issued in connection therewith, OPA Food Desk Book 1 at page 6952.

<sup>55</sup> Paragraph 2, Title IV, and paragraph 2, Title V, Exec. Order No. 9250, cited *supra* note 5.

<sup>56</sup> Title III, 50 Stat. L. 909 (1937), 54 Stat. L. 571 (1940), 54 Stat. L. 1092 (1940), 55 Stat. L. 872 (1941), 7 U.S.C. (1940) § 1131 and Supp. III, 1941-1943 at § 1131, as extended by Pub. L. 345, 78th Cong., 2d. sess. (June 20, 1944).

<sup>57</sup> Title III, 52 Stat. L. 45 (1938), 7 U.S.C. (1940) § 1303.

tural conservation programs carried out pursuant to the Soil Conservation and Domestic Allotment Act, as amended.<sup>58</sup> Governmental subsidies include payments made directly or indirectly to or for the benefit of producers of agricultural commodities when necessary to insure maximum production and distribution, or to maintain ceiling prices,<sup>59</sup> such as dairy feed payments and payments to manufacturers of peanut butter made by the Commodity Credit Corporation, and payments to slaughterers of meat made by the Reconstruction Finance Corporation.

Without recounting the extended discussion and debate both in and out of the Congress with respect to the validity of the view that deductions for governmental payments and subsidies could be made from the applicable minimum price standard with respect to a maximum price for an agricultural commodity, suffice it to say that the administrative view, first formally expressed in an opinion of the Attorney General of the United States dealing with the maximum price with respect to canned tomato juice,<sup>60</sup> that such deductions can be made, began with an early interpretation to that effect in connection with the maximum price established with respect to sugar in February 1942 under the Emergency Price Control Act of 1942.<sup>61</sup> In view of the fact that this administrative view prevailed at the time the Congress enacted the Stabilization Act of 1942, and also failed to include a provision in that act which would have prevented the holding of this view,<sup>62</sup> the administrative position was formalized by the President in his general stabilization order.<sup>63</sup> The Stabilization Extension Act of 1944 did not change

<sup>58</sup> 49 Stat. L. 1149 (1936), 50 Stat. L. 329 (1937), Title I, 52 Stat. L. 31, 33, 34, 35 (1938), 52 Stat. L. 204, 205 (1938), 53 Stat. L. 573 (1939), 54 Stat. L. 216 (1940), 54 Stat. L. 727 (1940), 55 Stat. L. 257 (1941), 55 Stat. L. 860 (1941), 56 Stat. L. 53 (1942), 56 Stat. L. 761 (1942), 16 U.S.C. (Supp. III, 1941-1943) § 590h.

<sup>59</sup> Paragraph 2, Title V, Exec. Order No. 9250, cited supra note 5.

<sup>60</sup> 40 Op. Atty. Gen. No. 61, dated August 13, 1942.

<sup>61</sup> Revised Price Schedule No. 16 and Revised Price Schedule No. 60, originally issued August 13, 1941, 6 FED. REG. 4063 (1941) and December 20, 1941, 6 FED. REG. 6651 (1941), respectively, under pre-statutory price control, see note 5 supra, reissued February 21, 1942, 7 FED. REG. 1239 (1942) and February 21, 1942, 7 FED. REG. 1320 (1942), respectively, under the Emergency Price Control Act of 1942, cited supra note 2. The price established for refined sugar under those regulations was 3.50 cents per pound. During hearings on the Emergency Price Control Act of 1942, cited supra note 2, and in debate, sponsors of the legislation disclosed that the price did reflect parity to producers of sugar if the conditional payments made under the Sugar Act of 1937, as amended, cited supra note 56, were taken into consideration. See H. Hearings on H. R. 5479, 77th Cong., 1st sess., 1941, pp. 509, 515, 2134, 2140, 2142 (Committee on Banking and Currency). See also, with respect to the parity base for sugar, 88 CONG. REC. 699 (1942).

<sup>62</sup> 88 CONG. REC., Pt. 6, pp. 7280, 7385 (1942).

<sup>63</sup> Paragraph 2, Title IV, Exec. Order No. 9250, cited supra note 5.



the law obtaining with respect to this matter, but it did include a provision prohibiting the payment of governmental subsidies after June 30, 1945, unless funds are specifically appropriated for the purpose.<sup>64</sup>

## VI

### PRODUCTS OF AGRICULTURAL COMMODITIES

All these major provisions of law relating to the establishment of maximum prices with respect to agricultural commodities would, as a practical matter, have been ineffective without the comparable provisions which the Congress made applicable to maximum prices with respect to commodities processed or manufactured in whole or substantial part from agricultural commodities. The law requires and has always required that maximum prices established, maintained, or adjusted with respect to commodities processed or manufactured in whole or substantial part from agricultural commodities be such as to reflect to the producers of the agricultural commodity concerned prices at a level at least as high as the minimum price standard applicable to such agricultural commodity.<sup>65</sup> Thus, for example, maximum prices established with respect to all of the products processed or manufactured in whole or substantial part from any given agricultural commodity must when taken together reflect the highest minimum price standard applicable to such agricultural commodity, except in the case of cotton for which there is a special requirement that the maximum price established and maintained with respect to each major item made in whole or major part from cotton or cotton yarn must reflect the highest minimum price standard applicable to cotton.<sup>66</sup>

<sup>64</sup> Section 2(e) of the Emergency Price Control Act of 1942, cited *supra* note 2, amended by § 102 of the Stabilization Extension Act of 1944, cited *supra* note 4. On two different occasions, the Congress passed bills, S. 660, 78th Cong., 1st sess. (1943), 89 CONG. REC., Pt. 2, pp. 2439, 2527 (1943) and H.R. 2869, 78th Cong., 1st sess. (1943), 89 CONG. REC., Pt. 2, pp. 6822, 6866 (1943), both vetoed by the President, which would have prevented the deduction of Government payments and subsidies in determining whether maximum price regulations with respect to agricultural commodities met the applicable minimum standard. For veto messages on S. 660 and H. R. 2869, see 89 CONG. REC., Pt. 2, p. 2828 (1943) (S. Doc. 23) and 89 CONG. REC., Pt. 2, p. 7051 (1943) (H. Doc. 249), respectively.

<sup>65</sup> Section 3(c) of the Emergency Price Control Act of 1942, cited *supra* note 2; § 3 of the Stabilization Act of 1942, cited *supra* note 3; § 201(b) of the Stabilization Extension Act of 1944, cited *supra* note 4. In addition § 3 of the Stabilization Act of 1942 requires “. . . that in the fixing of maximum prices on products resulting from the processing of agricultural commodities, including livestock, a generally fair and equitable margin shall be allowed for such processing. . . .”

<sup>66</sup> Section 201(b) of the Stabilization Extension Act of 1944, cited *supra* note 4.