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TARGET PRICES, DEFICIENCY PAYMENTS, AND THE AGRICULTURE AND CONSUMER PROTECTION ACT OF 1973

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I. THE PRICE SUPPORT PRINCIPLE

With the massive purchases of grain by the Soviet Union last year and the growing demand for food and fiber around the world, the whole picture of United States agriculture has changed dramatically. Shrinking supplies and large orders from Japan, Europe, and other countries have brought prices far above Government supports.

For many years farmers were not able to find buyers for all they could produce. The foreign market was limited, and there was an accumulation of surpluses. So, in various forms, we had efforts to obtain an adjustment of production. With the enactment of the Agricultural Adjustment Act of 1938, an attempt was made to adjust agricultural production of the principal crops by means of marketing quotas.[1] Under the marketing quota approach, each farmer is allotted the number of acres of the given crop, based on his past production, which he may grow and market. For any amount which he grows in excess of the allotment, he is assessed a monetary penalty. Since compliance with marketing quotas is thus "mandatory," provision is made for a referendum of farmers engaged in the production of the crop, and only if two-thirds or more of the farmers voting in the referendum approve the quotas, do quotas become effective.

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Nothing herein is to be construed as expressing any official views of the Department.

1. Marketing quota programs are still in effect for tobacco, extra long staple cotton, rice, and peanuts. 7 U.S.C. §§ 1311-14 (tobacco), § 1347 (extra long staple cotton), §§ 1351-56 rice), §§ 1357-59 (peanuts) (1971).

There was, to be sure, an earlier attempt under the Agricultural Adjustment Act of 1933, 48 Stat. 31, to adjust production by entering into contracts with farmers to reduce their acreage of specified surplus crops in return for benefit payments, financed chiefly by processing taxes on the commodity concerned. In January of 1936, however, the Supreme Court handed down a decision, *United States v. Butler*, 297 U.S. 1 (1936), which invalidated such production controls.

As a necessary incentive to farmers to cooperate in such a program of production adjustment, as well as to improve farm income, price support has been made available by the Commodity Credit Corporation, first under laws of a temporary character and then under comprehensive price support legislation enacted as the Agricultural Act of 1949.[2] To farmers who cooperated by planting within their allotments, price support loans were made at levels designed to bring a fair return to the farmer. The loans were non-recourse so that if the market price did not equal or exceed the loan rate, the farmer might deliver his crop to the government in full satisfaction of his loan.[3]

Later, "voluntary" adjustment programs were adopted. Beginning with the 1961 crop, a feed grain diversion program was initiated under which payments were made to farmers who reduced their production of corn and grain sorghums below their average acreage of cropland devoted to such feed grains in 1959 and 1960 — called their "feed grain base." Barley was made eligible for the program commencing in 1962.[4] When, in 1963, a mandatory program for wheat, involving marketing quota penalties for excess production, was not approved by the producers voting in the referendum, a voluntary program for wheat was begun under which marketing certificates, redeemable in cash by the Government, were issued to farmers on their proportionate share of the quantity of wheat used for domestic consumption, on condition that they reduce their acreages of wheat. Finally, with the passage of the Agricultural Act of 1970, marketing quotas were discontinued on cotton, and the program for that commodity, as well, was made to depend upon voluntary participation by farmers.[5]

The period that witnessed mandatory controls being removed, also saw the beginning of a process in which price support loan rates were gradually lowered to world market levels with the difference being made up in payments. This principle was inherent in the wheat certificate plan. Producers received the regular market price for their wheat, while realizing the extra return on their share of the domestic market through certificates. Beginning with the 1963 feed grain program, eighteen cents per bushel of the price support for corn (and a comparable portion of the price support

2. 7 U.S.C. § 1421 (1971).

3. Under the INT. REV. CODE of 1954, § 77, a producer may elect to treat a commodity loan as income for the year in which the loan is received; but if he exercises this election in any year, he must continue on the same basis unless the Commissioner of Internal Revenue approves a change in treatment. If the producer does not elect to treat the loan as income. the amount of the loan is income for the year in which he delivers the collateral to the Government, or the sales return is income in the year of sale, if he redeems and sells the collateral.

4. Food and Agriculture Act of 1962, Pub. L. No. 87-703, 76 Stat. 605.

5. The Agriculture Act of 1970, Pub. L. No. 91-524, 84 Stat. 1378.

for grain sorghums and barley) was made available to producers in the form of payments.[6] Under the 1964 and 1965 feed grain programs, the Secretary of Agriculture was authorized to make available in the form of payments such portion of the price support as he determined desirable "to assure that the benefits of the price-support and diversion programs inure primarily to those producers who cooperate in reducing their acreages of feed grains."[7] The effect of this change was to take more of the subsidy out of the loan and provide it in the form of a payment.

The Food and Agriculture Act of 1965[8] cleared the way for completing the process by authorizing a lowering of the loan rate on feed grains with a compensating increase in payments, and by reducing the loan rate on cotton to 90 per cent of the world market price and supplementing the farmers' income by direct payments.

The move toward a market-oriented economy picked up momentum with the enactment of the Agricultural Act of 1970.[9] Loans were authorized at or near the world price level, thereby giving greater emphasis to the principle that the loan rates should be kept at levels low enough to permit market prices to influence production. To that was coupled the new "set-aside" concept. Whereas under the predecessor statutes production control was aimed at requiring or inducing the farmer to reduce a specified acreage from each of the crops in excess production, the set-aside program adopted a general diversion approach under which the farmer, after retiring an acreage of land from production was permitted to grow such crop or combination of crops on the remainder of his land as best suited his own individual operation A producer in North Dakota, for instance, who has both a wheat allotment and a feed grain base could meet his set-aside requirements and then plant all of his remaining cropland to wheat. He would be eligible for a loan on all of his wheat production. In addition, he would receive wheat certificate payments on the normal production of his domestic allotment and feed grain payments on the normal production of one-half of his feed grain base. No longer would a producer have to plant his domestic allotment to wheat or half his feed grain base to feed grains in order to be eligible for payments. The aim was to allow farmers more freedom of choice in planning their own production, thereby increasing the opportunity for greater production efficiency. Under the operation of previous programs, farmers in the Corn Belt with wheat allotments were forced to grow wheat in order to be eligible for wheat payments while other farmers in

6. *Id.*
7. Act of May 20, 1963, Pub. L. No. 88-26, § 2, 77 Stat. 44.
8. Food and Agriculture Act of 1965, Pub. L. No. 89-321, 79 Stat. 1187.
9. The Agriculture Act of 1970, Pub. L. No. 91-524, 84 Stat. 1378.

Texas with feed grain bases were forced to grow corn in order to be eligible for feed grain payments. Farm income was likely to suffer in those cases because of high production costs for those particular crops in those areas. Under the set-aside plan, more of the corn production could be centered in the Corn Belt, and more of the wheat acres in the Great Plains and the Pacific Northwest, where production costs for those crops would be lower. This, of course, was a means of making it possible for the more efficient growers to compete in world markets for the major export crops, and thereby enabling them to be less dependent on Government programs.

Returns to growers were assured by payments. The Act provided a minimum payment of 32 cents per bushel for corn (with comparable rates for the other feed grains) on the average yield of one-half the feed grain base (the 1959-1960 acreage of feed grains). For cotton, the Act provided a minimum rate of 15 cents per pound on the average yield of the farm base acreage allotment. Wheat growers were assured the difference between the average market price and the wheat parity price ($3.39 as of July 1, 1973) on that portion of the farmer's production determined to be his share of the domestic market for food uses.

But this was during a period when surpluses had accumulated and prices were depressed. Now the situation has radically changed. Farm prices are strong, there is an upsurge in world-wide demand for food, and a market exists, at least for the time being, for all of the crops that can be produced. It was against this background that the Agriculture and Consumer Protection Act of 1973 was passed.[10] "Perhaps," said Senator Talmadge, Chairman of the Senate Committee on Agriculture and Forestry, speaking of the turnaround in farm prices, "this one issue overshadows all the others insofar as discussion of farm legislation is concerned."[11]

II. AGRICULTURE AND CONSUMER PROTECTION ACT OF 1973

A. LEGISLATIVE HISTORY

Before examining the specific provisions of the Act, a brief resume of its legislative history is of interest. Soon after the 93rd Congress convened, the Senate Committee on Agriculture and Forestry began hearings on S. 517, a bill which provided for a simple extension of the Agricultural Act of 1970. In the executive sessions

10. Agriculture and Consumer Protection Act of 1973, Pub. L. No. 93-86, § 101, 87 Stat. 221. Although the Act contains important provisions dealing with a considerable number of subjects, this paper is concerned only with the new provisions for wheat, feed grains, and cotton.

11. 119 CONG. REC. 10,417 (daily ed. June 5, 1973).

that followed, the Committee turned to the "target price" approach. The measure was given a new number, S. 1888, and on May 23, 1973, was reported out by the Committee unanimously. Debate began in the Senate on June 5, 1973. Several amendments were adopted on the floor, one to lower the payment limitation to $20,000 per person and make it apply to the aggregate of payments received for all three commodities. As amended, the bill was passed on June 8, 1973, by a vote of 78 to 9.

The House Committee on Agriculture had begun its hearings on March 30, 1973. Using S. 1888 as a draft for the mark-up of its own bill, the House Committee on June 27, 1973, reported out H. R. 8860 by a vote of 31 to 4 with 1 member voting present. A lengthy, and at times, controversial debate in the House was conducted July 10, 11, and 12; then postponed because of inability of the members to come to a resolution; finally resumed on July 16 and eventually concluded on July 19. The members voted several times in favor of amendments that seemed to deny the bill any chance of passage. The main disagreements were over the Dickinson amendment (sponsored by Alabama Representative William L. Dickinson) to prohibit the issuance of food stamps to strikers, and the Findley amendment (sponsored by Illinois Representative Paul Findley) to lower the payment limitation from $55,000 to $20,000 with restrictive provisions designed to prevent a producer from avoiding the limitation through the lease of his land or allotment. Finally, on July 19, 1973, H. R. 8860 with the Dickinson and Findley amendments was adopted by a vote of 226 to 182. Its text was substituted for S. 1888, and the bill as amended by the House was returned to the Senate. The Senate disagreed with the amendments embodied in the House bill and requested a conference with the House in order to resolve the 111 differences in the two measures. The House agreed and a Conference Committee was appointed. After deliberating throughout the rest of the month of July, the conferees reported back to their respective Houses that while they had reached agreement on 110 of the differences between the two measures, they were unable to agree on the Dickinson amendment which would prohibit food stamp assistance to strikers. One of the items which they had agreed upon was to accept the Senate payment limitation instead of the stricter Findley amendment. By a vote of 87 to 7 a substitute amendment which included all of the 110 points as they had been agreed upon by the conferees was then adopted by the Senate. Finally, in the evening of August 3, 1973, through a shrewd parliamentary move by Representative Poage, Chairman of the House Agricultural Committee, the House was persuaded by a vote of 252 to 151 to recede from its position and concur in the Senate substitute. The bill was signed by President Nixon August 10, 1973.

The unique parliamentary strategy by which Representative Poage was able to maneuver the members of the House into accepting the Senate substitute deserves special mention. Representative Poage offered a motion considered as preferential under the practice of the House[12] to concur in the Senate substitute with an innocuous amendment. The amendment offered was innocuous so that it would be accepted without question by the House as well as the Senate through which the measure would have to clear before it could be sent to the President for final approval.[13] Under the rules of the House, if a motion had been offered simply to agree to the Senate substitute, a motion to concur in the Senate substitute with an amendment, such, as for example, the Dickinson amendment banning food stamps for strikers or the Findley amendment for stricter payment limits, would have taken precedence over the motion to agree and therefore would have permitted a vote on those issues which had divided the House members throughout the long debate.[14]

Representative Poage's motion had to be disposed of first under the rules of the House before anything else could be taken up and only if it were defeated could any other amendment be offered. The two groups standing in the aisles ready with rival motions were each adamantly opposed to the position of the other. Among the representatives most strongly in favor of the Dickinson ban on food stamps for strikers, the Southern cotton interests were dead set against the Findley tighter limits on payments which of course had the greatest effect on cotton. The Findley group, on the other hand, included large numbers of supporters of organized labor who were strongly opposed to the Dickinson ban on food stamps to strikers. Supporters of the farm bill in the two opposing camps, faced with the choice of accepting the bill as it was without the amendment of their own preference, or running the risk of opening the bill up to an amendment repugnant to themselves, or worse still, of losing the farm bill as well as the food stamp program, felt forced to vote in favor of Representative Poage's motion.

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12. JEFFERSON'S MANUAL AND RULES OF THE HOUSE OF REPRESENTATIVES OF THE NINETY-THIRD CONGRESS § 528 (1973).

13. The language chosen for this purpose was:

> The Secretary of Agriculture is directed to implement policies under this Act which are designed to encourage American farmers to produce to their full capabilities during periods of short supply to assure American consumers with an adequate supply of food and fiber at fair and reasonable prices.

Agriculture and Consumer Protection Act of 1973, Pub. L. No. 93-86 § 815(d), added by paragraph (27) of section 1 of the Act, 87 Stat. 240.

14. JEFFERSON'S MANUAL AND RULES OF THE HOUSE OF REPRESENTATIVES OF THE NINETY-THIRD CONGRESS § 528 (1973).

B. THE TARGET PRICE PRINCIPLE

The significant new feature of the Act is the "target price" concept. As the brief summary of the legislative history indicated, the Senate Committee had begun hearings on a proposal for a simple extension of the set-aside program under the Agricultural Act of 1970. A major drawback of the Agricultural Act of 1970, however, was that it guaranteed a minimum payment even when market prices are high. Senator Young pointed out that:

> Under the present program, if the average farm wheat price remains as high as it is now, and the new wheat crop in the Southwestern States is selling at nearly $3 a bushel, the Government would still have to pay farmers. If the total production for this year's crop were the same as last year's, the payment to farmers will amount to approximately $540 million.[15]

The "target price" concept was adopted as a solution to this problem. First suggested for wheat by Senator Young, the author of a great many farm proposals over the last quarter of a century,[16] the concept was adopted for feed grains and cotton as well.

No longer would the Government guarantee a minimum payment at a time when market prices are high, as was the case under the Agricultural Act of 1970. Instead, a target or guaranteed price is established for each of the commodities, wheat, feed grains, and cotton, which is deemed to be a fair market price to the farmer. As long as the market price for the commodity remains at or above the established price, farmers will receive no government payment. Any government payments that are made will be in the amount needed to make up the difference between the average market price and the so-called target price. The underlying rationale expressed by the proponents of the measure was that the government each year should estimate the anticipated needs of the nation and manage the production adjustment program in such a way as to achieve the target prices. If the government's estimates are not correct, or the government overstimulates production, the farmer's income should be protected to the extent of the guaranteed price, rather than asking the farmer to bear the risks of government prediction alone.[17]

The target price principle itself was never in serious controversy. It was approved by the Senate Committee unanimously. The target

15. 119 CONG. REC. 10,421 (daily ed. June 5, 1973).
16. S. REP. No. 173, 93d Cong., 1st Sess. 23 (1973); 119 CONG. REC. 10,418, 20, 24 (daily ed. June 6, 1973).
17. *See* 119 CONG. REC. 10,418, 23, 25, 37, 39 (daily ed. June 5, 1973) (statements of Senators Talmadge, Curtis, Bellmon, Humphrey, and Dole).

price approach was also used by the House Committee in the markup of its bill. The Administration, too, indicated its acceptance of the concept.[18]

The most important political discussion centered on the levels at which the target prices should be established. The Senate set target prices of $2.28 per bushel for wheat, $1.53 per bushel for corn, and 43 cents per pound for cotton. These prices were equal to 70 per cent of the parity price for the respective commodities as of May 1, 1973. A major objection voiced by the Administration to target prices at this level was the probable impact on budget outlays.[19] If the government were to be faced with declining market prices and, therefore, larger payments, it would be forced to decide whether to restrict production or sustain increased budgetary outlays. The prospects of a costly program would bring pressure to raise loan rates and to manage the production adjustment program in such a way as to keep market prices from dropping substantially below the target levels. This would tend to restrict supply and therefore run counter to the main thrust of the bill, which is to expand production. In a nationwide television address on June 13, 1973, President Nixon insisted that the Congress "put high production ahead of high prices so that farm prosperity will not be at the cost of high prices. If the Congress sends me a farm bill, or any other bill, that I consider inflationary, I shall veto such a bill."[20]

In the end, the House Committee on Agriculture adopted, and the House and Senate accepted, target prices of $2.05 per bushel for wheat, $1.38 per bushel for corn, and 38 cents per pound for cotton.

Of particular concern to the Administration also was an "escalator" clause which would have raised the target levels after 1974.[21] Under the bill as passed by the Senate, the target prices would have been adjusted annually to reflect any changes in the prices paid by farmers for production items, interest, taxes, and farm wage rates. The House Committee retained the escalation feature but in an effort to meet the Administration's objection modified it so that any increase that would otherwise be made in the guaranteed price to reflect a change in production costs for farmers will be offset by any increases in the productivity which farmers may experience.[22] This effort having failed to gain the approval of the Administration, the Senate and House conferees as a final con-

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18. *See Hearings on General Farm Program Before House Comm. on Agriculture,* 93d Cong., 1st Sess. ser. 93-K, at 408 (1973) (testimony of Assistant Secretary Brunthaver).

19. *See* H.R. REP. No. 337, 93d Cong., 1st Sess. 58-61 (1973) (letters to the House Committee on Agriculture from the Cost of Living Council and Secretary Butz).

20. 9 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 765, 68 (June 18, 1973).

21. *See* H.R. REP. No. 337, 93d Cong., 1st Sess. 61-62 (1973) (letter from Secretary Butz to the House Committee on Agriculture).

22. 119 CONG. REC. 5833 (daily ed. July 10, 1973) (remarks of Representative Sisk).

cession agreed to make the escalator clause applicable only to the target levels for the last two years, 1976 and 1977, of the four-year program.[23]

In a statement issued upon signing the bill into law, President Nixon described the bill as "a realistic compromise between the Congress and the Administration."[24]

C. DEFICIENCY PAYMENTS

If national average prices received by farmers fall short of the target price, the difference will be paid by the Government in the form of direct payments.[25] If the market price is above the target price, no payment will be made.

Wheat payments, if there are any, will be made on the basis of the average yield of the acreage allotment for the farm. With market prices at the same level as in previous years, therefore, the payment per bushel would be at a lower rate than under the domestic certificate plan. Such payment, however, will be made on the entire amount which the Secretary determines is needed domestically and for export, rather than only on the domestic portion.[26] Feed grain payments, if there are any, would be made on the basis of the average yield of the farm acreage allotment (the farmer's share of the quantity the Secretary determines is needed domestically and for export) rather than as previously on one-half the feed grain base (the acreage devoted to feed grains in 1959 and 1960).[27] Cotton payments, if there are any, will continue

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23 As finally enacted, the target price for wheat is:

> $2.05 per bushel in the case of the 1974 and 1975 crops, $2.05 per bushel adjusted to reflect any change during the calendar year 1975 in the index prices paid by farmers for production items, interest, taxes, and wage rates in the case of the 1976 crop, and the established price for the 1976 crop adjusted to reflect any change during the calendar year 1976 in such index in the case of 1977 crop, ...: *Provided,* That any increase that would otherwise be made in the established price to reflect a change in the index of prices paid by farmers shall be adjusted to reflect any change in (i) the national average yield per acre of wheat for the three calendar years preceding the year for which the determination is made, over (ii) the national average yield per acre of wheat for the three calendar years preceding the year previous to the one for which the determination is made.

Agriculture and Consumer Protection Act of 1973, Pub. L. No. 93-86, § 107(c)(2), 87 Stat. 225. An escalation clause in identical language is also included for feed grains and cotton.

Thus, assuming the July 1 index of prices paid by farmers (an official statistic published monthly by the Department of Agriculture) for the current year is 525 and that the July 1 index for the preceding year was 500, the current year index would be 105 percent of the one in effect in the preceding year. Assuming the average wheat yield for the three calendar years preceding the current one is 33.7 bushels per acre and the three year average previous to that is 33.0 bushels per acre, the average for the current year would be 102 percent of the one for the preceding year. The yield change would be subtracted from the production cost change to determine a net adjustment of 3 percent. The adjusted established price for wheat would then be 103 percent of $2.05 or $2.11 per bushel.

24. 9 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 976 (Aug. 13, 1973).

25. The average market price is determined on the basis of the first five months of the marketing year for wheat and feed grains and on the basis of the calendar year which includes the first five months of the marketing year for cotton.

26. Agriculture and Consumer Protection Act of 1973, Pub.L. No. 93-86, § 101(9), 87 Stat. 225.

27. *Id.* § 101(18), 87 Stat. 230.

to be made on the basis of the average yield of the base acreage allotment for the farm (the farmer's share of the quantity determined by the Secretary primarily as needed for domestic consumption and exports).[28]

D. DISASTER PAYMENTS

A little noticed section of the Act which may turn out to be of more than minor significance is the addition to each of the commodity programs, wheat, feed grains, and cotton, of a provision for payments to a farmer who because of drought, flood, or other natural disaster, or condition beyond his control is prevented from planting a portion of his allotment, or suffers a loss after he has planted a crop.[29] In the case of each commodity, the Act provides that if the producer is prevented from planting any portion of his allotment because of such a disaster or condition, the rate of payment on that portion of the allotment shall be the deficiency payment, or one-third of the target price, whichever is higher. If the producer plants a crop but harvests less than two-thirds of the average yield of his allotment as a result of such disaster or condition, the rate of payment for the loss in production shall also be the deficiency payment or one-third of the target price, whichever is higher. Of particular significance is the fact that in the case of loss of production through such a disaster, a payment equal to one-third of the target price is to be paid to the producer even though the market price may not be substantially below the target price, or indeed even if the market price should exceed the target price. The payment thus becomes a form of crop insurance.

Neither the witnesses who testified in committee nor the Senators and Representatives who took the floor during the debate discussed this provision. Nor do the committee reports shed any light on the need for such payments or explain in detail how the measure is to operate. Apparently no questions were raised as to how these payments would be related to crop insurance provided under the Federal Crop Insurance Act[30] or by private companies.

During any year in which there should be deficiency payments in substantial amounts, the provision will merely result in somewhat higher deficiency payments for that portion of the producer's crop which he is prevented from planting or harvesting because of the disaster. But during any year in which no deficiency payments, or deficiency payments in only negligible amounts, are paid, the importance of the provision becomes apparent. Knowledge as to

28. *Id.* § 101(20), 87 Stat. 233.
29. *Id.* § 101(8) (wheat), (18) (grains), (20) (cotton), 87 Stat. 225, 231, 234.
30. 7 U.S.C. § 1501 (1971).

the precise manner in which it is to operate will obviously have to await the formulation and issuance of detailed regulations.

E. PROCESSOR CERTIFICATES DISCONTINUED

Under the certificate program for wheat, processors were required to purchase certificates from the government at 75 cents per bushel for each bushel of wheat processed. The cost of the certificates was passed on to the consumer of wheat products in the form of higher prices.[31] The proceeds from the sale of the certificates were used to finance in part the expense of the payments to farmers. In order to take some of the pressure off the present cost of flour, the new Act terminated this requirement effective July 1, 1973.[32] The cost of any deficiency payments under the new legislation will be borne entirely out of general tax receipts.

F. PAYMENT LIMITATION

The issue on the farm bill which produced, perhaps, the sharpest political debate was the continuing battle over the payment limitation.[33] The depth of feeling over this issue was evident throughout the debate in the House. From the moment that a portion of the income assistance began to be uncoupled from the loan and made as a direct payment, it was easy to make the prediction that sooner or later payments would be limited and that the limits would be progressively lowered.[34] With the enactment of the Agricultural Act of 1970, the amount of payments which any person could receive under each of the wheat, feed grains, and cotton programs was limited to $55,000. The bill, S. 1888, as reported by the Senate Committee continued the $55,000 payment limitation for each of the three commodities but excluded from its application any part of the payment which is determined by the Secretary to represent compensation for production adjustment or for public access for recreation, leaving it to apply only to that part of the payment which represents income assistance. On the floor of the Senate, the limitation was reduced to $20,000 and made to apply to the aggregate amount of payments received under the program for all three commodities. The House Committee on Agriculture recom-

31. 7 U.S.C. § 1379(e) (1971).

32. *See* 119 CONG. REC. 5823, 31 (daily ed. July 10, 1973) (statements of Poage and Foley).

33. No attempt is made to compare this controversy with the controversy over the side issue of whether food stamp assistance to strikers should be prohibited.

34. *See, e.g.,* the debate in the House on the Food and Agriculture Act of 1965, particularly the statement of Representative Whitten:

> I first want to commend my colleague from Mississippi and also want to point out that we have found out in times past that once these bills [referring to bills for payments] are passed, the limitations come naturally. We have been together on this year after year and getting by the skin of our teeth in the past.

111 CONG. REC. 20,917 (1965).

mended to the House a limitation of $37,500 for each of the three commodities, but this was overturned on the floor of the House by an amendment which lowered the limitation to $20,000, made it apply to the aggregate amount of payments received for all three commodities, and included, as well, restrictive provisions relating to the lease and sale of cotton allotments which were designed to prevent producers from being able to re-arrange their farming operations and thereby avoid the payment limitation. It was the addition of the restrictive provisions relating to the lease and sale of cotton allotments, by which farmers have in the past been able to change their farming interests and operate within the payment limitation, that made it unacceptable to the cotton interests. The Senate and House conferees adopted the Senate version which limits the payments that a person shall be entitled to receive for one or more of the three commodities to $20,000, but excludes from the operation of such limitation any part of any payment which is determined by the Secretary to represent compensation for production adjustment or public access for recreation.[35] The Act directs the Secretary of Agriculture to issue regulations defining the term "person" and prescribing such rules as he determines necessary to assure a fair and reasonable application of such limitation. Under a provision identical in language, the Secretary has issued regulations applying the existing $55,000 limitation. These regulations prescribe the rules to be used in determining, for example, whether a husband and wife shall be treated as one person or two, whether a minor child may be considered as a separate person from his parents, and under what circumstances a stockholder may be considered as a separate person from the corporation in which he owns stock.[36]

G. LOAN LEVELS

The Act continues the policy of keeping loans at levels below the expected market prices, in order to put greater reliance on the marketplace and enable producers to be less dependent on government programs. Minimum loan levels are provided at $1.37 per bushel for wheat, $1.10 per bushel for corn (with comparable rates for the other feed grains), and 90 per cent of the average world prices for cotton.[37] Loans at these levels, though they are expected to be well below market prices, still serve two purposes. They provide the farmer an opportunity to obtain cash at harvest time (when

35. The conferees made a relatively minor amendment reverting to an earlier definition of corporate "persons", which the Department of Agriculture had subsequently revised.
36. 7 C.F.R. § 795.
37. Agriculture and Consumer Protection Act of 1973, Pub. L. No. 93-86, § 101(8) (wheat), (18) (feed grains), (20) (cotton), 87 Stat. 225, 230, 233.

market prices tend to be low) and to hold his crops for later sale when market prices will give him a better return. In addition, since the loan may be satisfied in full by letting the government take over the collateral, the loan provides a floor below which market prices cannot drop.

H. PRODUCTION ADJUSTMENT

If the present high demand for agricultural products should prove to be short-lived, or if surpluses should start to build up for any other reason, the Act carries forward as standby authority, with only slight changes, the set-aside provisions of the Agricultural Act of 1970. Accordingly, the Secretary could require farmers, as a condition of eligibility for deficiency payments, to retire a part of their land from production if he determines that the supply of commodities would otherwise be excessive. The amount of the set-aside would be determined by the Secretary, and a farmer, in order to be eligible for payments or loans, would be required to set aside a portion of his cropland. After meeting the set-aside requirement, a producer would then be free to plant anything on his remaining cropland.[38] The allotments would be used to determine a producer's payment and his diversion requirement but would not restrict him in planting individual crops.

38. This is subject, of course, to specific acreage restrictions that might be in effect for peanuts, rice, tobacco, extra long staple cotton, and sugar.