69TH CONGRESS } SENATE { DOCUMENT
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SURPLUS CONTROL ACT

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES

RETURNING

WITHOUT APPROVAL THE BILL (S. 4808) ENTITLED "AN ACT TO ESTABLISH A FEDERAL FARM BOARD TO AID IN THE ORDERLY MARKETING AND IN THE CONTROL AND DISPOSITION OF THE SURPLUS OF AGRICULTURAL COMMODITIES"

FEBRUARY 25, 1927.—Read and ordered to be printed

To the Senate:

The conditions which Senate bill 4808 is designed to remedy have been, and still are, unsatisfactory in many cases. No one can deny that the prices of many farm products have been out of line with the general price level for several years. No one could fail to want every proper step taken to assure to agriculture a just and secure place in our economic scheme. Reasonable and constructive legislation to that end would be thoroughly justified and would have the hearty support of all who have the interests of the Nation at heart. The difficulty with this particular measure is that it is not framed to aid farmers as a whole, and it is, furthermore, calculated to injure rather than promote the general public welfare.

It is axiomatic that progress is made through building on the good foundations that already exist. For many years—indeed, from before the day of modern agricultural science—balanced and diversified farming has been regarded by thoughtful farmers and scientists as the safeguard of our agriculture. The bill under consideration throws this aside as of no consequence. It says in effect that all the agricultural scientists and all the thinking farmers of the last 50 years are wrong, that what we ought to do is not to encourage diversified agriculture but instead put a premium on one-crop farming.

The measure discriminates definitely against products which make up what has been universally considered a program of safe farming. The bill upholds as ideals of American farming the men who grow cotton, corn, rice, swine, tobacco, or wheat, and nothing else. These are to be given special favors at the expense of the farmer who has toiled for years to build up a constructive farming enterprise to include a variety of crops and livestock that shall, so far as possible, be safe, and keep the soil, the farmer's chief asset, fertile and productive.

The bill singles out a few products, chiefly sectional, and proposes to raise the prices of those regardless of the fact that thousands of other farmers would be directly penalized. If this is a true farm-relief measure, why does it leave out the producers of beef cattle, sheep, dairy products, poultry products, potatoes, hay, fruit, vegetables, oats, barley, rye, flax and the other important agricultural lines? So far as the farmers as a whole are concerned, this measure is not for them. It is for certain groups of farmers in certain sections of the country. Can it be thought that such legislation could have the sanction of the rank and file of the Nation's farmers?

This measure provides specifically for the payment by the Federal board of all losses, costs, and charges of packers, millers, cotton spinners, or other processors who are operating under contract with the board. It contemplates that the packers may be commissioned by the Government to buy hogs enough to create a near scarcity in this country, slaughter the hogs, sell the pork products abroad at a loss, and have their losses, costs, and charges made good out of the pockets of farm taxpayers. The millers would be similarly commissioned to operate in wheat or corn and have their losses, costs, and charges paid by farm taxpayers.

It is roughly estimated that in this country there are 4,000 millers, over 1,000 meat-packing plants, and about 1,000 actual spinners. No one can say definitely after reading this bill whether each of these concerns would be entitled to receive a contract with the Government. Certainly no independent concern could continue in business without one. Each of the agencies holding a contract—the efficient and inefficient alike—would be reimbursed for all their losses, costs, and charges.

It seems almost incredible that the producers of hogs, corn, wheat, rice, tobacco, and cotton should be offered a scheme of legislative relief in which the only persons who are guaranteed a profit are the exporters, packers, millers, cotton spinners, and other processors.

Clearly this legislation involves governmental fixing of prices. It gives the proposed Federal board almost unlimited authority to fix prices on the designated commodities. This is price fixing, furthermore, on some of the Nation's basic foods and materials. Nothing is more certain than that such price fixing would upset the normal exchange relationships existing in the open market and that it would finally have to be extended to cover a multitude of other goods and services. Government price fixing, once started, has alike no justice and no end. It is an economic folly from which this country has every right to be spared.

This legislation proposes, in effect, that Congress shall delegate to a Federal Farm Board, nominated by farmers, the power to fix

and collect a tax, called an equalization fee, on certain products produced by those farmers. That certainly contemplates a remarkable delegation of the taxing power. The purpose of that tax, it may be repeated, is to pay the losses incurred in the disposition of the surplus products in order to raise the price on that portion of the products consumed by our own people.

This so-called equalization fee is not a tax for purposes of revenue in the accepted sense. It is a tax for the special benefit of particular groups. As a direct tax on certain of the vital necessaries of life it represents the most vicious form of taxation. Its real effect is an employment of the coercive powers of Government to the end that certain special groups of farmers and processors may profit temporarily at the expense of other farmers and of the community at large.

The chief objection to the bill is that it would not benefit the farmer. Whatever may be the temporary influence of arbitrary interference, no one can deny that in the long run prices will be governed by the law of supply and demand. To expect to increase prices and then to maintain them on a higher level by means of a plan which must of necessity increase production while decreasing consumption, is to fly in the face of an economic law as well established as any law of nature. Experience shows that high prices in any given year mean greater acreage the next year. This does not necessarily mean a larger crop the following year, because adverse weather conditions may produce a smaller crop on a larger acreage, but in the long run a constantly increasing acreage must of necessity mean a larger average crop.

Under the stimulus of high prices, the cotton acreage increased by 17,000,000 acres in the last five years. Under the proposed plan, as prices are driven up irresistibly by the artificial demand created by the purchases of the board, the millions of farmers, each acting independently, with no assurance that self-restraint on his part in the common interest will be accompanied by a like restraint on the part of millions of other individuals scattered over this immense country, will do just what anyone else would do under the circumstances, plant and grow all they can in order to take full advantage of a situation which they fear is only temporary. This was, of course, recognized by the authors of the measure; and they proposed originally to offset this tendency by means of the equalization fee to be paid by each producer. But in the present bill the equalization fee is to be paid by only part of the producers.

On the other hand, higher prices will make a decreased consumption. From 1917 to 1925 the per capita consumption of pork increased from 55 pounds to 86.3 pounds, but in the following year, when the price of pork rose by $3.60 a hundred and the price of beef rose only 40 cents a hundred, the per capita consumption of pork fell off almost 9 pounds. It is not inconceivable that the consumers would rebel at an arbitrarily high price and deliberately reduce their consumption of that particular product, especially as uncontrolled substitutes would always be available. The truth is that there is no such thing as effective partial control. To have effective control, we would have to have control of not only one food product but of all substitutes.

Increased production on the one hand, coupled with decreased domestic consumption on the other, would mean an increased exportable surplus to be dumped on the world market. This in turn would mean a constantly decreasing world price until the point was reached where the world price was sufficiently low so that, even though increased by our tariff duties, commodities would flow into this country in large quantities.

A board of 12 men are granted almost unlimited control of the agricultural industry and can not only fix the price which the producers of five commodities shall receive for their goods, but can also fix the price which the consumers of the country shall pay for these commodities. The board is expected to obtain higher prices for the American farmer by removing the surplus from the home market and dumping it abroad at a below-cost price. To do this, the board is given the authority by implication to fix the domestic price level, either by means of contracts which it may make with processors or cooperatives, or by providing for the purchase of the commodities in such quantities as will bring the prices up to the point which the board may fix.

Except as it may be restrained by fear of foreign importations, the farm board, composed of representatives of producers, is given the power to fix the prices of these necessities of life at any point it sees fit. The law fixes no standards, imposes no restrictions, and requires no regulation of any kind. There could be no appeal from the arbitrary decision of these men, who would be under constant pressure from their constituents to push prices as high as possible. To expect moderation under these circumstances is to disregard experience and credit human nature with qualities it does not possess. It is not so long since the Government was spending vast sums and through the Department of Justice exerting every effort to break up combinations that were raising the cost of living to a point conceived to be excessive. This bill, if it accomplishes its purpose, will raise the price of the specified agricultural commodities to the highest possible point and in doing so the board will operate without any restraints imposed by the antitrust laws. The granting of any such arbitrary power to a Government board is to run counter to our traditions, the philosophy of our Government, the spirit of our institutions, and all principles of equity.

The administrative difficulties involved are sufficient to wreck the plan. No matter how simple an economic conception may be, its application on a large scale in the modern world is attended by infinite complexities and difficulties. The principle underlying this bill, whether fallacious or not, is simple and easy to state; but no one has outlined in definite and detailed terms how the principle is to be carried out in practice. How can the board be expected to carry out after the enactment of the law what can not even be described prior to its passage? In the meanwhile, existing channels and methods of distribution and marketing must be seriously dislocated.

This is even more apparent when we take into consideration the problem of administering the collection of the equalization fee. The bureau states that the fee will have to be collected either from the processors or the transportation companies, and dismisses as impract-

ticable collections at the point of sale. In the case of transportation companies it points out the enormous difficulties of collecting the fee in view of the possibility of shipping commodities by unregistered vehicles. In so far as processors are concerned, it estimates the number at 6,632, without considering the number of factories engaged in the business of canning corn or manufacturing food products other than millers. Some conception of the magnitude of the task may be had when we consider that if the wheat, the corn, and the cotton crops had been under operation in the year 1925, collection would have been required from an aggregate of 16,034,466,679 units. The bureau states that it will be impossible to collect the equalization fee in full.

The bill will not succeed in providing a practical method of controlling the agricultural surplus, which lies at the heart of the whole problem. In the matter of controlling output, the farmer is at a disadvantage as compared with the manufacturer. The latter is better able to gauge his market, and in the face of falling prices can reduce production. The farmer, on the other hand, must operate over a longer period of time in producing his crops and is subject to weather conditions and disturbances in world markets which can never be known in advance. In trying to find a solution for this fundamental problem of the surplus, the present bill offers no constructive suggestion. It seeks merely to increase the prices paid by the consumer, with the inevitable result of stimulating production on the part of the farmer and decreasing consumption on the part of the public. It ignores the fact that production is curbed only by decreased, not increased, prices. In the end the equalization fee and the entire machinery provided by the bill under consideration will merely aggravate conditions which are the cause of the farmer's present distress.

We must be careful in trying to help the farmer not to jeopardize the whole agricultural industry by subjecting it to the tyranny of bureaucratic regulation and control. That is what the present bill will do. But, aside from all this, no man can foresee what the effect on our economic life will be of disrupting the long-established and delicately adjusted channels of commerce. That it will be far-reaching is undeniable, nor is it beyond the range of possibility that the present bill, if enacted into law, will threaten the very basis of our national prosperity, through dislocation, the slowing up of industry, and the disruption of the farmer's home market, which absorbs 90 per cent of his products.

With the limited number of farm cooperatives with whom contracts may be made for surplus disposal and the fact that farm cooperatives are not likely to be engaged in meat packing, flour milling, or cotton spinning, it appears certain that the largest part of these contracts must be made between the board and the processors and other agencies. It means that the whole contract in swine, for instance, must be carried out with the meat packers; that a large part of wheat operations must be carried out with flour millers, wheat exporters, and others. It means that any establishment which has such a contract can charge what it likes to our American consumers because it can place the loss from any product unsalable at home on the farmer or the Government by dumping it abroad. In actual

working this is a complete guaranty of the profits of these concerns without restraint or limitation on profiteering against American consumers, of which the farmer himself is a very large element. It is not a guaranty to the farmer. The implications of this were pointed out in significant remarks in the minority report of the House Committee on Agriculture, which merits fuller attention than it has been given.

> "The silence of the majority report on this phase of the subject, in view of its wide circulation in the farming communities of the country, can be only because the proponents of the bill are unwilling that the farmers of the Nation shall learn that it is proposed that the equalization fee principle shall be utilized to assure to the packers what they have not been able to gain for themselves—a certain profit from every year's operation.
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> "The proponents of the bill at the hearings conceded that it could not operate as to animals except under a contract with the packers. It incidentally follows that no packer without a contract could operate with the board. The bill nowhere protects the independent packer. It does provide that there shall be no discrimination between cooperative associations. It contains no like provisions as to processors."

The bill would impose the burden of its support to a large degree upon farmers who would not benefit by it. The products embraced in the plan are only about one-third of the total American farm production. The farmers who grow these commodities are themselves large consumers of them, and every farmer consumes some of them. There are several million farmers who do not produce any of the designated products, or very little of them, and they must pay the premiums upon the products designated in the bill. In some commodities such as corn and mill feed the farmers are practically the sole consumers. It is proposed to increase the price of corn and mill feed to American farmers, and therefore the costs to the dairy and cattle feeding industries whose products are omitted from the bill. Beyond this, it means that by dumping of American feeds abroad at lower prices than those charged under this plan to the American swine, cattle, and dairy farmer, we should be directly subsidizing foreign production of pork, dairy, beef, and other animal products in competition with our own farmers in the markets of the world. We shall send cheap cotton abroad and sell high cotton at home.

The effect of this plan will be continuously to stimulate American production and to pile up increasing surpluses beyond the world demand. We are already overproducing. It has been claimed that the plan would only be used in the emergency of occasional surplus which unduly depresses the price. No such limitations are placed in the bill. But on the other hand the definition of surplus is the "surplus over domestic requirements" and as we have had such a surplus in most of the commodities covered in the bill for 50 years and will have for years to come it means continuous action. It is said that by the automatic increase of the equalization fee to meet the increasing losses on enlarged dumping of increasing surplus that there would be restraint on production. This can prove effective

only after so great an increase in production as will greatly enlarge our exports on all the commodities except cotton. With such increased surpluses dumped from the United States on to foreign markets the world prices will be broken down and with them American prices upon which the premium is based will likewise be lowered to the point of complete disaster to American farmers. It is impossible to see how this bill can work.

Several of our foreign markets have agriculture of their own to protect and they have laws in force which may be applied to dumping and we may expect reprisals from them against dumping agricultural products which will even more diminish our foreign markets.

The bill is essentially a price-fixing bill, because in practical working the board must arrive in some way at the premium price which will be demanded from the American consumer, and it must fix these prices in the contracts at which it will authorize purchases by flour millers, packers, other manufacturers, and such cooperatives as may be used, for the board must formulate a basis upon which the board will pay losses on the export of their surplus.

The present volume of exports of the commodities designated in the bill is one and one-half billion dollars per annum. A multitude of contracts involving scores of different grades and qualities and varieties of products with thousands of individuals, both for raw and manufactured materials, must be entered into—practically cost-plus contracts. The monetary volume of these contracts will be further expanded beyond even this sum because in hogs, for instance, the exports are in the main lard and bacon, while other parts of the animal are consumed at home, and thus contracting must apparently need cover all hogs, not the export surplus alone. Therefore the bill means an enormous building up of Government bureaucracy to let and inspect these billions of dollars of contracts with all their infinite variety of terms covering different goods and their different grades and qualities. In turn, all of the contracts of resales by these institutions must be examined and checked to determine the losses made.

Parallel with it another bureaucracy must be built up to collect and distribute the equalization fee. It all calls for an aggregation of bureaucracy dominating the fortunes of American farmers, intruding into their affairs and offering infinite opportunities to fraud and incapacity. It does not replace any middle men or manufacturers, it means that thousands of officials are set to watch them and the farmers to see that they do not evade the requirements. One of our difficulties to-day is the great spread between the farmer and the consumer. All these increased processors profits and this cost of bureaucracy must simply add to this spread without bringing to the farmer any return on such items. In fact, as he is a large consumer he also pays this.

While the Government is not directly buying or selling these commodities, it must under this bill let contracts for others to do so and name therein the terms upon which they shall buy and sell. No matter how disguised, this in plain terms is Government buying and selling of commodities through agents.

It is proposed that the administration of this plan shall be in the control of a board whose members are nominated to the President

by agricultural organizations for his transmission to the Senate for confirmation. That appears to be an unconstitutional limitation on the authority of the President, but, far more important than this, I do not believe that upon serious consideration the farmers of America would tolerate the precedent of a body of men chosen solely by one industry who, acting in the name of the Government, shall arrange for contracts which determine prices, secure the buying and selling of commodities, the levying of taxes on that industry, and pay losses on foreign dumping of any surplus. There is no reason why other industries—copper, coal, lumber, textiles, and others—in every occasional difficulty should not receive the same treatment by the Government. Such action would establish bureaucracy on such a scale as to dominate not only the economic life but the moral, social, and political future of our people.

The amount of the equalization fees, the method of collection and disposition of these great sums of money are to be determined by the board without any effective check or review from the Executive or Congress—a delegation of powers under which our form of Government can not continue.

No time limit is placed upon the contracts which the board may make. Such contracts might easily be for a term of years and in some commodities, as, for example, cotton at the present time, must necessarily be for a considerable period since the surplus can not be disposed of in a single year. During the continuance of any such contract, the equalization fee must continue to be levied unless the whole burden of a continuing operation is to be borne by the producers of the first crop. Consequently the suggestion often made that the scheme should be tried, and if it fails be repealed, loses all force. This suggestion is faulty in another respect, namely, that failure would be demonstrated only by the accumulation of a huge surplus in storage. The discontinuance of operations, while a vast supply remained in storage, would result in a prolonged depression of price through the surplus being fed into the markets or through fear of its sale.

While the bill authorizes an appropriation of $250,000,000, it fails to restrict the contracts of the board within that sum and nowhere denies the liability of the United States for additional sums of money. If the board had begun operating in the 1925 cotton crop when prices were around 20 cents a pound and had then attempted to hold up the price on the 1926 crop at a level which induced the picking of the whole crop, the whole $250,000,000 would have been spent and great commitments beyond that figure have been entered into. The allocation of $100,000,000 to cotton in last year's bill, plus the suggested fee of $5 a bale, would have been completely exhausted long before the 1926 crop came into the market. And, if the equalization fee should prove unconstitutional or otherwise uncollectible, the Treasury would have been committed by contracts to a liability to the extent of the whole revolving fund.

Apart from the necessity of contracting with the packers, the bill confers upon the board unlimited power as to the nature, extent, and duration of contracts with other processors. It does not even enjoin an absence of "unreasonable" discrimination between them, although it does prohibit "unreasonable" discrimination between cooperatives. The board would therefore possess an absolute power

of life and death over many legitimate business organizations, since none could compete against a processor enjoying a contract with the board protecting it against loss. The board could go unlimitedly into processing for its own account, if it so desired. No such unrestricted powers have ever been conferred upon any board.

The insurance proposal amounts to a straight Government agreement to pay to the cooperative associations any loss which they may incur in withholding commodities from the market—no matter how high the price may go in the meantime. For example, a wheat cooperative may, in a year of shortage, take wheat from a member on a day when it is selling at $2.50 a bushel. Under this bill it may decide to hold it for $3 but be insured that if the market breaks the Government will pay it the difference between $2.50 and the price at which the cooperative actually disposes of the wheat. Nothing more destructive of all orderly processes of trade could be imagined, and nothing more unfair to the nonmember of the cooperative, since his equalization fee would be used to pay the losses.

Let us see how the bill is to be put into operation. This act provides that before operations as to any one of these commodities shall begin it shall be necessary to obtain an expression from the producers of the commodity through a State convention of such producers. This applies in any State where not so many as 50 per cent of the producers of the particular commodity are members of cooperative associations or other organizations. The best estimate that can be made is that this would apply to every State in the Union. I quote from the Record with reference to this provision to show that this construction was given to it. The Congressional Record of February 11, page 3602, reads as follows:

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"Mr. McKELLAR. Immediately following that amendment I offer another amendment on behalf of the senior Senator from North Carolina (Mr. Simmons), * * *.

"The VICE PRESIDENT. The amendment will be stated.

"The CHIEF CLERK. On page 8, line 16, after the word 'commodity,' insert the following proviso:

"*Provided*, That in any State where not as many as 50 per cent of the producers of the commodity are members of such cooperative associations or other organizations, an expression from the producers of the commodity shall be obtained through a State convention of such producers, to be called by the head of the department of agriculture of such State, under rules and regulations prescribed by him.

"Mr. REED of Missouri. Mr. President, will the rules permit an inquiry of the Senator from Tennessee at this point? Does the last amendment read fix it so that if less than a majority are in favor of the scheme it may be adopted? Is it planned to call a State convention, a minority of which may be able to accomplish the result desired?

"Mr. McKELLAR. No.

"Mr. REED of Missouri. Then what does it mean?

"Mr. McKELLAR. It means exactly what it says, that such a convention shall pass on it before it is put into operation."

Page 3605:

"Mr. McKellar. I offer an amendment on behalf of the senior Senator from North Carolina (Mr. Simmons).

"The Vice President. The clerk will state the amendment. [Amendment repeated.]

"Mr. Reed of Missouri. Mr. President, I do not desire to delay the Senate, but I ask for a record vote on these important amendments. I call for the yeas and nays.

"The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll."

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"So Mr. McKellar's amendment was agreed to."

You will note that this is a State convention of the producers and that the proponent of the amendment said that a minority could not accomplish the result. Usually when there is a convention it is composed of delegates selected by producers. This provision is for a convention of the producers themselves, and before operation as to any commodity can be put into effect there must be such convention called and held in every State where the majority of the producers of the particular commodity are not members of cooperative associations or organizations. The extent of this provision is not limited as to the amount of the commodity produced in any State. For instance, some swine is produced in almost every State; some wheat is produced in the majority of all States; some corn is produced in the majority of all States, and, regardless of the amount produced, each such State would have to hold a State convention of all the producers.

If all the producers attended the convention the expense which must be borne by them individually would be a tremendous addition to the operating cost, and if the majority of them did not attend the convention the deliberations would not represent the voice of the producers. If such relief as that contemplated by the general plan of this bill were desirable, it would be extremely unwise to hamper it with this most cumbersome and awkward provision, the compliance with which is made mandatory as a condition precedent to the operation of the law. It is impossible to see how such conventions of producers could ever be held. The bill does not say "delegates," it says "producers," the farmers themselves, and if a majority of them must meet in State convention it is entirely unworkable.

Corn is a crop that varies between 2,500,000,000 and 3,000,000,000 bushels per year, and the normal export is very small. The reason then for operating this bill on corn would not grow out of the exportable surplus, but according to the definition in section 6(c) (2) would grow out of a surplus above the requirements for orderly marketing. The marketing of corn would include marketing to a purchaser to feed to cattle and hogs, so that a situation might arise where there would be a surplus above the requirements for orderly marketing. The act then could be put into operation as to corn under all the different kinds of agreements. But the vast expense of financing the operations of these agencies in the corn market would be charged not against the entire commodity but against that part of the commodity which is used for milling or processing or that is transported by a

common carrier. This, according to statistics, amounts only to some 15 to 20 per cent of the corn produced.

That the equalization fee is not laid on the entire commodity is not apparent from a casual reading of the act. But a close study shows that section 10 provides that there shall be paid "an equalization fee upon one of the following: The transportation, processing, or sale of such unit." There is no other way to collect the fee. If that stood alone, then all the corn would be subject to the fee unless it were used by the raiser, but section 15 (1) says:

> "In the case of * * * corn, the term 'processing' means milling for market of * * * corn or the first processing in any manner for market * * * of corn not so milled, and the term 'sale' means the sale or other disposition in the United States of * * * corn for milling or other processing for market, for resale, or for delivery by a common carrier * * *."

So, unless the corn is processed or sold for milling or other processing for market or is transported by common carrier, it is not subject to the equalization fee. But the great bulk of it which is neither processed nor transported by common carrier is free from the equalization fee.

The only figures in the debates with reference to corn are some estimates based solely upon exportable surplus, which really form no basis for the present proposed plan based on desire for orderly marketing and not for controlling the small exportable surplus. While it is difficult to estimate the burden of this equalization fee, which must be borne for the entire crop by this small proportion, the simplest calculation will show that the amount per bushel necessarily would be tremendous so that the market of corn for milling and other processing and for transportation would be entirely dislocated. The provisions of the present measure with reference to an equalization fee on corn must not be confused with the other measures which have been proposed for the reason that former measures put the burden upon the entire crop, but this measure in undertaking to place the duty of collecting payments on the processor has reached this disastrous result. It is no answer to say that the corn producers would induce their advisory council and the members of the board from their land-bank districts to exclude corn from the operation of this bill because the people who do not pay an equalization fee and on whom the burden does not fall are 80 or 85 per cent of the producers of the corn.

It may be contended that since there is to be an equalization fee on swine that the feeders would be taxed, but the swine and corn are separate units and have a separate stabilization fund and under the law the fees on swine can not be turned in to the stabilization fund for corn.

In figuring the percentage of the corn crop upon which the fee would fall, while it is possible that the fee might fall on corn carried by a common carrier, it is doubtful whether any board would lay a tax on transportation where the corn was being transported to be sold to feeders. If they did, of course, the result would be that to avoid the fee in most cases the seller would not transport by a common carrier.

It is not enough to say that the right to put the equalization fee on swine would adjust the inequalities between those bearing the burden and those not bearing the burden, first, because the board might commence operating as to corn and not desire to operate or be permitted to operate as to swine. However, much of the corn would be fed to cattle and livestock other than swine, and there is no right to bring the products of livestock other than swine under the provisions of the law. With a requirement for a fee on part of the corn crop and no fee on the balance, the free movement and dealing in that commodity would be hampered to an almost unbearable extent. It would take a horde of inspectors to assure the payment of the fee on the particular corn required to bear it. A feeder of cattle who had the necessary machinery to grind or crush his corn bought from other farmers for feeding purposes would be able to market his cattle free from the cost of the equalization fee, while another feeder who purchased such ground feed would be compelled to market his cattle with the added cost of the equalization fee on the corn. This, of course, would be true as to swine; moreover, the feeder who had been compelled to purchase the ground feed would pay the fee on that, and when he sells his swine he pays an additional fee on that transaction. He pays twice.

It is provided in the law "the board shall determine in the case of any class of transactions in the commodity whether the equalization fee shall be paid upon transportation, processing, or sale." While this language is not very clear, a plan is set out by Representative Haugen, one of the coauthors of the bill, in the following language (Congressional Record, February 10, p. 3528):

> "For wheat on hand at the beginning of the operation period the board would undoubtedly have to collect on the processing. In the case of transaction during the operating period the board would pick either the sale or the transportation."

The act itself provides in section 10 (b) the board may, by regulation, require any person engaged in the transportation, processing, or acquisition by sale of a basic agricultural commodity: "(1) * * * (2) to collect an equalization fee as directed by the board and to account therefor." Thus the common carrier if on transportation, or the processor if on processing, or those who secure by sale, if on sale, collect the fee which must fall on the producer. Transportation under the act means the acceptance of a commodity by a common carrier for delivery (section 15 (5)). Regardless of just how it is collected it is the intent that it shall fall upon the producer. The farmer pays it when his product moves.

Thus the Senate report, page 23, says:

> "The fees are imposed at the point of transportation, processing, or sale, as the board may determine. Their amount will, of course, be reflected in the price to the producer. * * * The committee bill, however, requires agricultural producers to meet their own losses with their own moneys." * * *

On page 25 it adds:

> "Neither of the above effects of the fee constitutes price fixing. The producer or other person may sell for such price as he chooses. The buyer may pay such price as he wills. There is no

limitation upon the price to be fixed by the contracting parties save that the equalization fee, just as a broker's fee, will be taken into account in arriving at the price to be paid."

It is important to bear in mind that the equalization fee can only be levied upon a unit of the basic agricultural commodity. This means the actual commodity itself as defined in section 6, to wit, cotton, wheat, corn, rice, tobacco, and swine. The reference in subdivision (h) of section 6 to food products of the commodity specifically limits the application thereof to sections (d), (e), and (f) of section 6, which do not in any way relate to the equalization fee. All of the sections dealing with the equalization fee and all of the references to it clearly limit its application to the basic agricultural commodity itself, and they can not lay a fee upon flour or other products of wheat, meal, or other products of corn, meats, or other products of swine.

While there may be some conceivable way of reaching an import of any of these agricultural commodities as such there is no possible way of reaching any of the products of these commodities after they are processed. The result would be to throw all of our processors and millers who would have to buy the commodity with the cost of the equalization fee added into competition with imports from Canada or other countries who sent in any product of any of the basic agricultural commodities. Of course, the millers or other processors who happen to get desirable contracts from the board might be able to recoup that loss to a certain extent, but the milling capacity of the small mills and large mills is great enough to take care of twice the amount of milling and other processing to be done; and the mills which were not fortunate enough to get such contracts would be ruined.

It is a fundamental principle in writing a tariff law that when a duty is placed upon a raw product that a compensatory duty must be placed on the manufactured or processed product in which the raw product is used. Here is a fee placed upon the raw product without an opportunity to place a like fee upon the processed product which might be imported. Raw products dumped abroad can there be processed and reshipped here to the disaster and destruction of this whole bill.

In fixing the amount of the equalization fee the board must necessarily estimate the crop, because it is their duty to estimate the probable "advances, losses, costs, and charges to be paid" and to determine the amount for each unit. Of course, they are compelled to estimate the crop in order to estimate the number of units. One of the coauthors of the bill suggests that if the law had been in operation from 1925 the equalization fee on wheat should yield $131,750,000. I mention this to show the large sums involved. If either the estimate of the crop or the size of the fund needed should be inaccurate, so that there is collected many millions more than needed, there is no way to return it to the producer. Suppose there should be estimated an exportable surplus of 200,000,000 bushels of wheat and there is a surplus of but 100,000,000, the fund would be almost twice as large as it should be, and if the amount involved should be anything like that stated by Representative Haugen the board would have fifty-five or sixty millions more than needed of the

farmers' money. There is no way to return it. Now, in the case of cotton there is provision that any excess that is accumulated for the stabilization fund shall be paid back to the producer. This is contained in section 10, subdivision (3), and section 11, subdivision (e), as follows:

> "10 (3) *In the case of cotton*, to issue to the producer a serial receipt for the commodity which shall be evidence of the participating interest of the producer in the equalization fund for the commodity. The board may in such case prepare and issue such receipts and prescribe the terms and conditions thereof. The Secretary of the Treasury, upon the request of the board, shall have such receipts prepared at the Bureau of Engraving and Printing."
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> "11 (e) When the amount in the equalization fund *for cotton* is, in the opinion of the board, in excess of the amount adequate to carry out the requirements of this act in respect of such commodity, and the collection of further equalization fees thereon is likely to maintain an excess, the board may retire in their serial order as many as practicable of the outstanding receipts evidencing a participating interest in such fund. Such retirement shall be had by the payment to the holders of such receipts of their distributive share of such excess as determined by the board. The amount of the distributive share payable in respect of any such receipt shall be an amount bearing the same ratio to the face value of such receipt as the value of the assets of the board in or attributable to the fund bear to the aggregate face value of the outstanding receipts evidencing a participating interest in such fund, as determined by the board."

But there is no place in the law which provides for a return to the producer of other products where the assessment of the fee levies an amount in excess of that necessary for the stabilization fund. There is quite a large variance from year to year of the amount of production of these different basic agricultural commodities, and it is manifestly unfair to provide that as to cotton the producer shall share in any excess collected, while as to corn, wheat, swine, rice, and tobacco no such provision exists. In all the similar bills heretofore considered by Congress it has been thought necessary to provide for the return to all producers of any amount they should pay in excess of that required, and it is illogical and indefensible to deem it necessary to still make that provision for the cotton producer and deprive the other producers of that benefit. This appears to be the rankest kind of discrimination in favor of one crop and against all the other crops in the bill.

Another difficulty will be in making proper estimates of the amount of products and the amount of the equalization fee.

It is improbable that this board could do any better in this respect than has been done by the Department of Agriculture. In spring wheat the estimates of the department have been 78,000,000 bushels too small and 90,000,000 bushels too large; in winter wheat, 126,000,000 bushels too small and 140,000,000 bushels too large; in corn, 430,000,000 bushels too small and 657,000,000 bushels too large. In

cotton the range has been 2,983,000 bales too small for 1926 and 3,286,000 bales too large for 1918. These are all recent estimates and show conclusively the impossibility of arriving at accurate conclusions. No rebates are allowed except on cotton. Any year therefore that a large corn or wheat crop is estimated which turns out to be too high too much money would be collected, and as it is not returnable it would result in so much loss to the farmer. If the crop were underestimated, the fee might not furnish a large enough sum to sustain the market on that particular commodity.

The main policy of this bill is an entire reversal of what has been heretofore thought to be sound. Instead of undertaking to secure a method of orderly marketing which will dispose of products at a profit, it proposes to dispose of them at a loss. It runs counter to the principle of conservation, which would require us to produce only what can be done at a profit, not to waste our soil and resources producing what is to be sold at a loss to us for the benefit of the foreign consumer. It runs counter to the well-considered principle that a healthy economic condition is best maintained through a free play of competition by undertaking to permit a legalized restraint of trade in these commodities and establish a species of monopoly under Government protection, supported by the unlimited power of the farm board to levy fees and enter into contracts. For many generations such practices have been denounced by law as repugnant to the public welfare. It can not be that they would now be found to be beneficial to agriculture.

This measure is so long and involved that it is impossible to discuss it without going into many tiresome details. Many other reasons exist why it ought not to be approved, but it is impossible to state them all without writing a book. The most decisive one is that it is not constitutional. This feature is discussed in an opinion of the Attorney General, herewith attached and made a part hereof, so that I shall not consider the details of that phase of my objections. Of course it includes some good features. Some of its provisions, intended to aid and strengthen cooperative marketing, have been borrowed from proposals that do represent the general trend of constructive thought on the agricultural problem. In this measure, however, these provisions are all completely subordinated to the main objective, which is to have the Government dispose of exportable surpluses at a loss and make some farmer taxpayers foot the bill. This is not a measure to help cooperative marketing. Its effect, on the contrary, is to eliminate the very conditions of advantage that now induce farmers to join together to regulate and improve their own business.

That there is a real and vital agricultural problem is keenly appreciated by all informed men. The evidence is all too convincing that agriculture has not been receiving its fair share of the national income since the war. Farmers and business men directly dependent upon agriculture have suffered and in many cases still suffer from conditions beyond their control. They are entitled to and will have every consideration at the hands of the Government.

Surely, a real farm relief measure must be just and impartial and open the way to aid for all farmers. Surely, it must not contem-

plate, as this measure inescapably does, that farmers in some regions should be penalized for the benefit of those in other regions. Surely, it must be aimed to promote the welfare of the community at large. There is no thoughtful man who does not fully appreciate how vital a prosperous agriculture is to this Nation. It must be helped and strengthened. To saddle it with unjust, unworkable schemes of governmental control is to invite disaster worse than any that has yet befallen our farmers.

It has been represented that this bill has been unanimously approved by our farmers. Several of our largest farm organizations have refused to support it, and important minorities in the members and leadership among the most important organization who are recorded as giving it indorsement have protested to me against it.

It is not to be thought that the farmers of the United States want our agricultural policy founded upon legislation as is proposed in this measure. The final judgment of American farmers always has been and will be on the constructive rather than the destructive side. What the farmers want, and what the American people as a whole will approve, is legislation which will not substitute governmental bureaucracy for individual and cooperative initiative, but will facilitate the constructive efforts of the farmers themselves in their own self-governed organizations.

Although these arguments and others have been advanced in Congress and outside, I find little attempt has been made to answer them. The pressure for this bill arises primarily from the natural and proper sympathy with the farm distress from the after-war inflation speculation and collapse. Many sincere and thoughtful people have expended a great deal of time and energy in working out this measure and are entirely honest and honorable in their advocacy of it. It is a great regret to me that I am unable to come to the conclusion that the bill would help agriculture, be of benefit to the country, and be in accord with the Constitution.

Other plans have been proposed in Congress for advancement in this recovery, which plans offer promise of sound assistance to the farmers without these unconstitutionalities, invasions of Executive authority, this contracting with packers and flour millers and other manufacturers, this overproduction with its inflation and inevitable crash, without this indirect price fixing, buying and selling, this creation of huge bureaucracies. They are, on the contrary, devoted entirely to the principle of building up farmer-controlled marketing concerns to handle their problems, including occasional surplus production, and applicable to all agriculture and not to a minor fraction. I have frequently urged such legislation. I wish again to renew my recommendation that some such plan be adopted.

I am therefore obliged to return Senate bill 4808, entitled "An act to establish a Federal farm board to aid in the orderly marketing and in the control and disposition of the surplus of agricultural commodities," without my approval.

CALVIN COOLIDGE.

THE WHITE HOUSE,
February 25, 1927.

OPINION OF ATTORNEY GENERAL

SIR: In response to your request for an opinion as to whether the act entitled "An act to establish a Federal Farm Board to aid in the orderly marketing and in the control and disposition of the surplus of agricultural commodities," called the "Surplus control act," if approved, would contravene the provisions of the Constitution of the United States, I submit herewith my conclusions.

Without going into a minute analysis of the provisions of the act, it is necessary, in order to bring out the constitutional questions presented, to state in a general way its purpose, effect, and operation, as disclosed by the terms of the act itself and the reports of congressional committees dealing with it.

The act provides for a Federal Farm Board of 12 members, to take charge of the control and disposition of surplus, over domestic requirements, of certain agricultural commodities. In section 3, the act prescribes the qualifications and terms of office of the members of this board; but it is further provided in section 2 that the appointment of the members of the board by the President shall be made from lists of eligibles submitted by nominating committees for each of the Federal land bank districts. One member is to be selected by the President from a list of three so submitted by the nominating committee of each district. Of the members of each nominating committee, four are to be chosen by farm organizations and cooperative associations at conventions, two are to be selected by the agricultural departments of the States in the district, and one is to be appointed by the Secretary of Agriculture.

The provisions of the act come into operation with respect to the control of surplus agricultural commodities, and the board is to commence operations only when such action is recommended by an advisory council, who are appointed by the board from lists submitted by State agricultural departments and by cooperative marketing associations and farm organizations, and, when that recommendation is concurred in, by a substantial number of cooperative associations and other organizations representing producers of the commodity to be dealt with. When the machinery of the act is thus set in motion, control and disposition of the surplus are to be effected by contracts made by the board with cooperative associations or their creature corporations, or, if the board is of the opinion that such associations or organizations are not capable of carrying out such agreements, then by contracts with other agencies. The contracts so made shall provide that the contracting agencies shall purchase, remove, hoard, and withhold from the market, or otherwise dispose of, the surplus of the commodities. The primary object of these operations is to stabilize; that is, to fix and then maintain the prices at which the commodities may be bought and sold in the market.

At the disposition of the board is placed a stabilization fund for each commodity, to be created by the imposition of what is called an equalization fee on certain sales, transportation, or processing of the commodity in question. A revolving fund is provided from public funds, from which advances may be made to the stabilization fund,

and which advances, it is contemplated, would be repaid if the stabilization fund is sufficient therefor.

The act contemplates that contracts made by the board shall provide that losses and expenses incurred by the selected agencies in their operations in dealing in a commodity shall be made good to the agencies out of the stabilization fund, and that profits resulting from the operations in the commodity shall be paid into the stabilization fund.

The purpose and effect of the statute is to fix the prices at which certain agricultural commodities may be bought and sold in the domestic market and to prevent the depression of prices of such commodities in the United States to the level of prices in the world markets which results from the existence of a surplus in excess of domestic requirements. This is the purpose declared in the reports of congressional committees, and it is derived from the plain terms of the act itself. The control, purchase, hoarding, withholding, sale, or other disposition of the surplus commodities are only means to an end, which is, first, to determine upon a price for the commodity to be established in the domestic markets and then to maintain that price. All operations by or under the direction of the board would be aimless unless the board first establishes its objective, viz, the price which it believes should prevail in the domestic markets. Having made the decision as to price, the board would then conduct its operations to bring the market price to the level so determined upon and there maintain it. This is to be done by acquisition of sufficient of the commodity and withdrawal of it from the ordinary channels of trade to establish a partial corner.

When that result is brought about by manipulating a market through its control of the surplus, and the purchase or sale of the commodity controlled, the price determined upon would be maintained. The contracts to be made by the board of agencies would undoubtedly give the board full control over such matters. In other words, in legal effect, by necessary implication this act directs the board so established to determine what the market price shall be for the purchase and sale in domestic markets of the agricultural commodity dealt with, and then, having made that determination, to make it effective and operative by using the financial resources at the board's disposal. The legal effect of the act, aside from the delegation of legislative authority hereafter mentioned, is the same as if Congress itself had named the price and then established agencies to conduct operations in the commodity to carry out its determination.

This analysis of the act does not impute to Congress a motive or purpose not disclosed on the face of the statute. On the contrary, both from the committee reports and the terms of the act, it is obvious that the statute was intended to so operate, and that unless it does so operate it will fail of its purpose.

1. One provision of the act which is plainly in violation of the Constitution is that which limits the President in his appointments of members of the board to select in each district one man from a list of three submitted by a nominating committee.

Among the executive powers conferred and duties imposed upon the President by the Constitution is the one that the President shall

nominate and by and with the advice of the Senate appoint all officers. This provision of the Constitution not only confers upon the President a power, but imposes upon him a duty to exercise his judgment in the selection of appointments of higher officers. It contemplates that his appointments shall be made by and with the advice and consent of the Senate, and not by and with the advice and consent of any other person or official. It is one thing to prescribe qualifications for appointment to an office and an entirely different thing to provide that some agency other than the President shall participate in the executive act of selection of the individual appointee.

To provide that certain committees or individuals who are not even officers of the United States shall designate a limited list from which the President is required to select the appointees is not in any proper sense prescribing qualifications, but is authorizing these outside agencies to participate with the President in the executive act of appointment. There are a few instances in our legislative history where acts have been passed and approved which placed some such restrictions on the presidential power of appointment, but the question here considered does not seem to have been made an issue, and, taken as a whole, these instances do not constitute a practical construction of the Constitution of any considerable weight or which should be accepted as controlling the plain provisions of that instrument.

The principles announced by the Supreme Court in the case of Lois P. Myers, administratrix, *v.* The United States, decided October 25, 1926, although stated in relation to removal instead of appointment, leave no room to doubt that this provision of the act is unconstitutional and void.

2. There is also the question whether in this act is found any unconstitutional delegation of legislative authority. It has been generally understood that there is no delegation of legislative authority where a controlling rule is fixed by the legislative body, and the power delegated is a power to apply that rule to some specific facts or to determine facts on which the legislative action depends.

From practical necessity, resulting from the complicated activities of the Federal Government, the courts have applied this rule in the most liberal way in sustaining acts of Congress against the objection that legislative authority has been delegated, but the rule still remains and is to be applied in a plain case.

> Wichita, etc., Co. *v.* Public Util. Comm., 260 U. S. 48; Field *v.* Clark, 143 U. S. 649; United States *v.* Grimaud, 220, U. S. 506; Union Bridge Co. *v.* United States, 204 U. S. 364; Butterfield *v.* Stranahan, 192 U. S. 470; Mahler *v.* Eby, 264 U. S. 32.

If this act is to be considered as a regulation of interstate commerce, then Congress has delegated to private associations and corporations the power to determine whether the regulation shall be put into effect, or, at least, has required their concurrence to its being placed in operation.

If, as pointed out above, the primary duty of the board is to determine the price at which certain agricultural commodities shall be bought and sold in the domestic markets, then to the board has

been given the legislative power to determine that price in its entire discretion, without any rule or formula to guide its judgment prescribed by Congress, such as a provision that the price determined on as the objective of operations shall be based on cost of production, or reasonableness, or anything of that kind. The power of the board to determine the price is absolute and the discretion unlimited.

With respect to what is called the equalization fee, there is a provision that in fixing its amount the board shall have due regard for its estimate of probable losses in conducting operations. Accepting this provision as a requirement that the board shall base the decision on its estimate, it may be observed that the estimate is not a finding as to existing facts, but a prediction of future prices to prevail in the markets where the surplus is to be disposed of. But assuming that some legislative rule has been stated to guide the board in fixing the amount of the fee, there is left to the board the absolute discretion, unregulated by any rule or principle, to say whether the fee shall be imposed on the sale, the manufacture, or the transportation.

Notwithstanding the length to which the courts have gone in sustaining legislation against the claim that it involves the delegation of legislative authority, I am unable to believe that in an act which provides, in substance, that, through governmental agencies, prices of certain farm products shall be determined upon, established, and maintained, Congress may lawfully delegate to Federal officers, acting concurrently with private agencies, the unlimited discretion to decide whether the price-fixing operation shall be commenced; may lawfully delegate the complete discretion without any prescribed rule to determine what the price shall be; or may lawfully delegate the power to determine on whom shall be directly placed the burden of collecting the charge to provide the fund to conduct operations.

3. I come now to consider what, in my opinion, is a broader and more fundamental constitutional objection to this act.

The Federal Government is a government of limited powers. It has only such powers as have been expressly given to it by the Constitution or are implied as incidental to the powers as expressed. The only provision of the Constitution relied on to supply the power for this legislation is the one which gives Congress power to regulate commerce with foreign nations and among the several States. A painstaking search has not disclosed to me anything in our constitutional history or in the decisions of the Supreme Court of the United States to justify the belief that the power of the Federal Government to regulate commerce includes the power to establish and maintain or take steps to establish and maintain the price at which merchandise may be bought and sold in interstate commerce, with the necessary consequence of fixing the price at which the commodity in question shall be bought and sold in every place in the land, whether in or out of interstate commerce.

It is suggested that the tariff acts and the laws regulating immigration and other legislation have an effect on domestic prices of merchandise and labor. In such legislation the effect on prices is the incidental result of the exercise of admitted powers. Here, the fixing, establishment, and maintenance of prices of merchandise is not the incidental result of the exercise of an admitted power, but the question is whether there is a direct power to fix and maintain prices

of articles in interstate commerce, and whether that constitutes a regulation of commerce within the meaning of the commerce clause.

In general, legislation under the commerce power has been directed at carrying out the primary purpose of the commerce clause, which was to prevent undue discriminations against or burdens or restraints on interstate commerce, and most of the decisions of the Supreme Court under the commerce clause deal with such legislation. In this act are found expressions taken from such decisions, respecting the prevention of discrimination against or burdens or restraints upon or suppression of commerce, but the things intended to be brought about by this act are the very things that Congress and the courts have heretofore declared to be burdens and restraints on commerce. This act, instead of preventing, creates burdens and restraints on commerce, as those terms have heretofore been understood.

Since heretofore Congress has never enacted legislation based on the assumed existence of a power to fix prices of merchandise sold in interstate commerce, no case identical with this may be found.

In Wilson *v.* New, 243 U. S. 332, decided in 1917, the Supreme Court had under consideration the validity of the so-called Adamson law, which was an act of Congress to fix the wages of employees of railroads operated as instrumentalities of interstate commerce. The power of Congress in that case to interfere with freedom of contract respecting the price at which labor should be performed was sustained, but only on the ground that the railroads were essential instrumentalities of interstate commerce and that it was essential to their continued operation in a period of national emergency and to prevent the complete cessation and obstruction of interstate commerce that a dispute between the carriers and their employees respecting wages should be settled by legislation.

Later, in Wolff Company *v.* Industrial Court, 262 U. S. 544, it was said:

> "It is not too much to say that the ruling in Wilson *v.* New went to the border line, although it concerned an interstate commerce carrier in the presence of a nation-wide emergency and the possibility of great disaster."
>
> (See Adkins *v.* Children's Hospital, 261 U. S. 525.)

If, notwithstanding the admitted power of Congress to regulate common carriers who have devoted their property to the public use as instrumentalities of interstate commerce, a decision sustaining the legislative fixing of wages of railway employees went to the verge, it is obvious that legislation under the supposed authority of the commerce clause, the direct and primary purpose of which is to establish the prices at which farm products should be bought and sold throughout the land, could not be sustained.

The act does not, of course, interfere with freedom of contract respecting the purchase and sale of commodities by prohibiting people from buying and selling at more or less than the established market price if it can be supposed that they would do so, but as a practical matter it would prescribe more effectively the price to be paid than would an act which, fixing the price, attempted to make it effective by imposing penalties for not regulating it rather than by bringing into play inexorable economic laws.

An elaborate discussion of the various decisions of the Supreme Court of the United States dealing with the power to regulate interstate commerce and with the due process clause would unduly extend this opinion, but the following decisions may be referred to, from which to derive the applicable principles:

McCulloch *v.* Maryland, 4 Wheat. 316.
Hammer *v.* Dagenhart, 247 U. S. 251.
Stafford *v.* Wallace, 258 U. S. 495.
Hill *v.* Wallace, 259 U. S. 44.
Chicago B'd. of Trade *v.* Olsen, 262 U. S. 1.

4. There are some further features of the act which require consideration.

It is said that the so-called equalization fee is not a tax but in the nature of a charge for services rendered. With respect to cotton the act contemplates that whatever remains in the stabilization fund for that commodity at the end of operations may be returned to the producers. This lends support to the claim that the equalization fee for cotton is not a tax because its proceeds never enter the Public Treasury. With respect to all other commodities, the act contains no provision for ever returning to the producers anything remaining unexpended at the termination of operations. This gives foundation for the claim that the proceeds of the equalization fee are public funds.

The law contemplates that the collection of the equalization fee shall cease when the operation ceases. If it is found when operations end that the equalization fee fixed has been too low to produce enough to meet the losses, the losses will be borne out of public funds raised by taxation, constituting the revolving fund, by loans from it to the deficient stabilization fund, which must remain unpaid. But it is not important to decide whether this charge is a tax or is not. If it be not a tax, then its imposition and collection would violate the provision of the Federal Constitution prohibiting the taking of property without due process of law. Treating the equalization fee as not a tax, it is obvious that what is attempted by this act is to enable certain agencies under Government direction and supervision to engage in the business of buying, selling, hoarding, and otherwise disposing of agricultural products for the purpose of restraining commerce, of interfering with its free course, and of imposing upon commerce what have heretofore been considered burdens, restrictions, and restraints.

The theory of the act is that giving producers permission to organize combinations in restraint of trade is ineffective to enable them to combine and fix prices, because all producers who do not contribute to the enterprise realize a gain without bearing any of the expense; and the purpose of the act is to force all producers, directly or indirectly, to make a contribution, not in the nature of a tax, toward the losses and expense suffered in operations for the common benefit. Compelling some citizens to participate in business operations by requiring them to contribute to the loss and expense thereof is, in my opinion, in violation of the provisions of the fifth amendment and a taking of property without due process of law.

Parkersburg *v.* Brown, 106 U. S. 487.

On the other hand, if it be a tax, then its proceeds constitute public funds in the Treasury, with the result that the Public Treasury would bear the losses and expenses and take the profits, if any, of the business of buying, storing, and selling of agricultural commodity, with the result that the United States would be engaging on its own account in buying and selling, an activity which is hardly to be supported as a regulation of interstate commerce.

Because the equalization fee is not called a tax, does not purport to be imposed as a tax, is not exacted on any provided basis of equality, is not to be paid into the Treasury of the United States, is to be imposed and collected or not at the will and favor of interested cooperative associations, corporations, individuals, and an administrative board without congressional chart or compass directing as to the time when it shall be imposed, the time it shall remain in effect, the amount of it or upon whom it shall be levied, I think it can not be sustained under the taxing power of the Constitution.

The decision in Dayton-Goose Creek R. R. Co. *v.* United States, 263 U. S. 456, relied upon to support the validity of the provision for the equalization fee is inapplicable. The court there considered what is known as the recapture of earnings provision in the transportation act of 1920, and sustained a law providing for the recapture by the United States of a part of the net return of carriers engaged in interstate commerce in excess of a reasonable rate of return. The court there proceeded on the theory that because Congress had power to limit the charges for service by carriers engaged in interstate commerce to a reasonable figure, it could withhold or recapture the amount received by them in excess of the reasonable rate. To make that case and this one parallel, it would be necessary to assume that Congress has the same power to limit the price for the sale of merchandise to a reasonable figure and recapture the amount realized by the vendor in excess, an assumption which is plainly unfounded.

I have considered these questions with realization of the grave responsibility involved in passing on the validity of acts of Congress and with appreciation of the rule that the courts will indulge in every presumption to support the validity of legislation and that no act of Congress will be declared invalid unless plainly so, but nevertheless I feel constrained to advise you that the act in question, if approved, would, in its most essential provisions, violate the Constitution of the United States, in that it takes from the President the constitutional Executive power and duty of making appointments to fill the offices created by it and by legislation confers that power upon others; in that Congress delegates its constitutional power of legislation to private cooperative associations and corporations, and individuals acting collectively, and the board created by the statute; in that it contravenes the provisions of the Constitution against the taking of property without due process of law.

Respectfully,

JNO. G. SARGENT,
Attorney General.

The PRESIDENT,
The White House.

[S. 4808. Sixty-ninth Congress of the United States of America; at the second session, begun and held at the city of Washington on Monday, the sixth day of December, one thousand nine hundred and twenty-six]

An act to establish a Federal Farm Board to aid in the orderly marketing and in the control and disposition of the surplus of agricultural commodities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

DECLARATION OF POLICY

SECTION 1. It is hereby declared to be the policy of Congress to promote the orderly marketing of basic agricultural commodities in interstate and foreign commerce and to that end to provide for the control and disposition of surpluses of such commodities, to enable producers of such commodities to stabilize their markets against undue and excessive fluctuations, to preserve advantageous domestic markets for such commodities, to minimize speculation and waste in marketing such commodities, and to encourage the organization of producers of such commodities into cooperative marketing associations.

FEDERAL FARM BOARD

SEC. 2. (a) A Federal Farm Board is hereby created which shall consist of the Secretary of Agriculture, who shall be a member ex officio, and twelve members, one from each of the twelve Federal Land Bank districts, appointed by the President of the United States, by and with the advice and consent of the Senate, from lists of eligibles submitted by the nominating committee for the district, as hereinafter in this section provided.

(b) There is hereby established a nominating committee in each of the twelve Federal Land Bank districts, to consist of seven members. Four of the members of the nominating committee in each district shall be elected by the bona fide farm organizations and cooperative associations in such district at a convention of such organizations and associations, to be held at the office of the Federal Land Bank in such district, or at such other place, in the city where such Federal Land Bank is located, to which the convention may adjourn. Two of the members of the nominating committee in each district shall be elected by a majority vote of the heads of the agricultural departments of the several States of each Federal Land Bank district, at a meeting to be held in the same city and at the same time of the meeting of the convention of the bona fide farm organizations and cooperative associations in each district. One of the members of the nominating committee in each district shall be appointed by the Secretary of Agriculture.

(c) The Secretary of Agriculture shall, within thirty days after the approval of this Act and biennially thereafter, with the advice of such farm organizations and cooperative associations as he considers to be representative of agriculture in any district, (1) fix the date on which a convention in such district shall be held, (2) designate the farm organizations and cooperative associations in the district eligible to participate in such convention, and (3) designate the number of representatives and the number of votes to which each such organization or association in the district shall be entitled. The date fixed for the first convention in each district shall be not later than forty-five days after the approval of this Act, and the date fixed for subsequent conventions in the district shall be, as nearly as practicable, two years after the preceding convention. The Secretary of Agriculture shall mail, at least fifteen days prior to the date on which a convention is to be held, to each organization and association eligible to participate in such convention, notice of the date and place of such convention. The Secretary of Agriculture shall prescribe uniform regulations for the procedure at the conventions and for the proper certification of election of the members of each nominating committee.

(d) The term of office of each member of a nominating committee first elected or appointed shall expire two years from the date of his election or appointment, and the term of office of a successor shall expire two years from the date of the expiration of the term for which his predecessor was elected or appointed. Any member of a nominating committee in office at the expiration of the term for which he was elected or appointed, may continue in office until his successor takes office.

(e) The members of each nominating committee shall serve without salary but may be paid by the Federal Farm Board a per diem compensation not

exceeding $20 for attending meetings of the committee. Each member shall be paid by the board his necessary traveling expenses to and from the meetings of the nominating committee and his actual expenses while engaged upon the business of the committee.

(f) Each nominating committee shall, as soon as practicable after the approval of this Act, meet, organize, select a chairman, secretary, and such other officers as it deems necessary, and submit to the President a list of three individuals from its district eligible for appointment to the board.

(g) Whenever a vacancy occurs in the board, or whenever in the opinion of the chairman of the board a vacancy will soon occur, in the office of a member from any Federal Land Bank district, the chairman of the board shall notify the nominating committee in such district. The nominating committee shall, as soon as practicable thereafter, meet and submit to the President a list of three individuals from such district, eligible for appointment to the board.

QUALIFICATIONS AND TERMS OF BOARD MEMBERS

SEC. 3. (a) The terms of office of the appointed members of the board first taking office after the approval of this Act shall expire, as designated by the President at the time of nomination, four at the end of the second year, four at the end of the fourth year, and four at the end of the sixth year, after the date of the approval of this Act. A successor to an appointed member of the board shall be appointed in the same manner as the original appointed members, and shall have a term of office expiring six years from the date of the expiration of the term for which his predecessor was appointed.

(b) Any person appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term.

(c) Any member of the board in office at the expiration of the term for which he was appointed, may continue in office until his successor takes office.

(d) Vacancies in the board shall not impair the powers of the remaining members to execute the functions of the board, and a majority of the appointed members in office shall constitute a quorum for the transaction of the business of the board.

(e) Each of the appointed members of the board shall be a citizen of the United States, shall not actively engage in any other business, vocation, or employment than that of serving as a member of the board, and shall receive a salary of $10,000 a year, together with necessary traveling expenses and expenses incurred for subsistence or per diem allowance in lieu thereof, within the limitations prescribed by law, while away from the principal office of the board on business required by this Act, or if assigned to any other office established by the board, then while away from such office on business required by this Act.

GENERAL POWERS

SEC. 4. The board—

(a) Shall annually designate an appointed member to act as chairman of the board.

(b) Shall maintain its principal office in the District of Columbia, and such other offices in the United States as it deems necessary.

(c) Shall have an official seal which shall be judicially noticed.

(d) Shall make an annual report to Congress.

(e) May make such regulations as are necessary to execute the functions vested in it by this Act.

(f) May (1) appoint and fix the salaries of a secretary and such experts and, in accordance with the Classification Act of 1923 and subject to the provisions of the civil service laws, such other officers and employees, and (2) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding) as may be necessary for the execution of the functions vested in the board.

SPECIAL POWERS AND DUTIES

SEC. 5. (a) The board shall meet at the call of the chairman, or of the Secretary of Agriculture, or of a majority of its members.

(b) The board shall keep advised, from any available sources, of crop prices, prospects, supply and demand, at home and abroad, with especial attention to

the existence or the probability of the existence of a surplus of any agricultural commodity or any of its food products.

(c) The board shall advise cooperative associations, farm organizations, and producers in the adjustment of production and distribution, in order that they may secure the maximum benefits under this Act.

CONTROL AND DISPOSITION OF SURPLUS

SEC. 6. (a) For the purposes of this Act, cotton, wheat, corn, rice, tobacco, and swine shall be known and are referred to as "basic agricultural commodities", except that the board may, in its discretion, treat as a separate basic agricultural commodity one or more of such classes or types of tobacco as are designated in the classification of the Department of Agriculture.

(b) Whenever the board finds that the conditions of production and marketing of any other agricultural commodity are such that the provisions of this Act applicable to a basic agricultural commodity should be made applicable to such other agricultural commodity, the board shall submit its report thereon to Congress.

(c) Whenever the board finds, first, that there is or may be during the ensuing year either (1) a surplus above the domestic requirements for wheat, corn, rice, tobacco, or swine, or (2) a surplus above the requirements for the orderly marketing of cotton, or of wheat, corn, rice, tobacco, or swine; and, second, that both the advisory council hereinafter created for the commodity and a substantial number of cooperative associations or other organizations representing the producers of the commodity favor the full cooperation of the board in the stabilization of the commodity, then the board shall publicly declare its findings and commence, upon a date to be fixed by the board and published in such declaration, the operations in such commodity authorized by this Act: *Provided*, That in any State where not as many as 50 per centum of the producers of the commodity are members of such cooperative associations or other organizations, an expression from the producers of the commodity shall be obtained through a State convention of such producers, to be called by the head of the department of agriculture of such State, under rules and regulations prescribed by him. Such operations shall continue until terminated by the board. Any decision by the board relating to the commencement or termination of such operations shall require the affirmative vote of a majority of the appointed members in office, and the board shall not commence or terminate operations in any basic agricultural commodity unless members of the board representing Federal Land Bank districts which in the aggregate produced during the preceding crop year, according to the estimates of the Department of Agriculture, more than 50 per centum of such commodity, vote in favor thereof and until the board shall become satisfied that a majority of the producers of such commodity favor such action.

(d) During the continuance of such operations in any basic agricultural commodity, the board is authorized to enter into agreements, for the purpose of carrying out the policy declared in section 1, with any cooperative association engaged in handling the basic agricultural commodity, or with a corporation created by one or more of such cooperative associations, or with processors of the basic agricultural commodity.

(e) Such agreements may provide for (1) removing or disposing of any surplus of the basic agricultural commodity, (2) withholding such surplus, (3) insuring such commodity against undue and excessive fluctuations in market conditions, and (4) financing the purchase, storage, or sale or other disposition of the commodity. The moneys in the stabilization fund of the basic agricultural commodity shall be available for carrying out such agreements. In the case of any agreement in respect of the removal or disposal of the surplus of a basic agricultural commodity, the agreement shall provide both for the payment from the stabilization fund for the commodity of the amount of losses, costs, and charges, arising out of the purchase, storage, or sale or other disposition of the commodity or out of contracts therefor, and for the payment into the stabilization fund for the commodity of profits (after deducting all costs and charges provided for in the agreement) arising out of such purchase, storage, or sale or other disposition, or contracts therefor. In the case of agreements insuring such commodity against undue and excessive fluctuations in market conditions, the board may insure any cooperative marketing association against decline in the market price for the commodity

at the time of sale by the association, from the market price for such commodity at the time of delivery to the association.

(f) If the board is of the opinion that there is no such cooperative association or associations, or corporation created by one or more cooperative associations, capable of carrying out any such agreement, the board may enter into such agreements with other agencies.

(g) If the board is of the opinion that there are two or more cooperative associations capable of carrying out any such agreement, the board in entering into such agreement shall not discriminate unreasonably against any such association in favor of any other such association.

(h) During any period in which the board is engaged under this Act in operations in any basic agricultural commodity other than cotton, or tobacco, the provisions of subdivisions (d), (e), and (f) of this section shall have the same application in respect of the food products of the commodity as they have in respect of the commodity.

COMMODITY ADVISORY COUNCILS

SEC. 7. (a) The board is hereby authorized and directed to create for each basic agricultural commodity an advisory council of seven members fairly representative of the producers of such commodity. Members of each commodity advisory council shall be selected annually by the board from lists submitted by the heads of the agricultural departments of the several States within the Federal Land Bank district and from lists submitted by cooperative marketing associations and farm organizations determined by the board to be representative of the producers of such commodity. Members of each commodity advisory council shall serve without salary but may be paid by the board a per diem compensation not exceeding $20 for attending meetings of the council and for time devoted to other business of the council and authorized by the board. Each council member shall be paid by the board his necessary traveling expenses to and from meetings of the council and his expenses incurred for subsistence, or per diem allowance in lieu thereof, within the limitations prescribed by law, while engaged upon the business of the council. Each commodity advisory council shall be designated by the name of the commodity it represents, as, for example, "The Cotton Advisory Council."

(b) Each commodity advisory council shall meet as soon as practicable after its selection at a time and place designated by the board and select a chairman. The board may designate a secretary of the council, subject to the approval of the council.

(c) Each commodity advisory council shall meet thereafter at least twice in each year at a time and place designated by the board, or upon a call duly signed by a majority of its members at a time and place designated therein.

(d) Each commodity advisory council shall have power, by itself or through its officers, (1) to confer directly with the board, or to make oral or written representations concerning matters within the jurisdiction of the board, (2) to call for information from the board and to make representations to the board in respect of the commodity represented by the council in regard to the time and manner of operations by the board, the amount and methods of collection of the equalization fee, and all matters pertaining to the interest of the producers of the commodity, and, (3) to cooperate with the board in advising producers and cooperative associations and farm organizations in the adjustment of production in order to secure the maximum benefits under this Act.

EQUALIZATION FEE

SEC. 8. In order that each marketed unit of a basic agricultural commodity may contribute ratably its equitable share to the stabilization fund hereinafter established for such commodity; in order to prevent any unjust discrimination against, any direct burden or undue restraint upon, and any suppression of commerce with foreign nations in basic agricultural commodities in favor of interstate or intrastate commerce in such commodities; and in order to stabilize and regulate the current of foreign and interstate commerce in such commodities—there shall be apportioned and paid as a regulation of such commerce an equalization fee as hereinafter provided.

AMOUNT EQUALIZATION FEE

SEC. 9. Prior to the commencement of operations in respect of any basic agricultural commodity, and thereafter from time to time, the board shall estimate the probable advances, losses, costs, and charges to be paid in respect of the operations in such commodity. Having due regard to such estimates, the board shall from time to time determine and publish the amount for each unit of weight, measure, or value designated by it, to be collected upon such unit of such basic agricultural commodity during the operations in such commodity. Such amount is hereinafter referred to as the "equalization fee." At the time of determining and publishing an equalization fee the board shall specify the period during which it shall remain in effect, and the place and manner of its payment and collection.

PAYMENT AND COLLECTION OF EQUALIZATION FEE

SEC. 10. (a) Under such regulations as the board may prescribe there shall be paid, during operations in a basic agricultural commodity and in respect of each unit of such commodity, an equalization fee upon one of the following: The transportation, processing, or sale of such unit. No more than one equalization fee shall be collected in respect of any unit. The board shall determine in the case of any class of transactions in the commodity, whether the equalization fee shall be upon transportation, processing, or sale.

(b) The board may by regulation require any person engaged in the transportation, processing, or acquisition by sale of a basic agricultural commodity—

(1) To file returns under oath and to report, in respect of his transportation, processing, or acquisition of such commodity, the amount of equalization fees payable thereon and such other facts as may be necessary for their payment or collection.

(2) To collect the equalization fee as directed by the board, and to account therefor.

(3) In the case of cotton, to issue to the producer a serial receipt for the commodity which shall be evidence of the participating interest of the producer in the equalization fund for the commodity. The board may in such case prepare and issue such receipts and prescribe the terms and conditions thereof. The Secretary of the Treasury, upon the request of the board, shall have such receipts prepared at the Bureau of Engraving and Printing.

(c) Every person who, in violation of the regulations prescribed by the board, fails to collect or account for any equalization fee shall be liable for its amount and to a penalty equal to one-half its amount. Such amount and penalty may be recovered together in a civil suit brought by the board in the name of the United States.

STABILIZATION FUNDS

SEC. 11. (a) In accordance with regulations prescribed by the board, there shall be established a stabilization fund for each basic agricultural commodity. Such funds shall be administered by and exclusively under the control of the board, and the board shall have the exclusive power of expending the moneys in any such fund. There shall be deposited to the credit of the stabilization fund for a basic agricultural commodity, advances from the revolving fund hereinafter established, premiums paid for insurance under section 12, and the equalization fees and profits in connection with operations by the board in the basic agricultural commodity or its food products.

(b) The board, in anticipation of the collection of the equalization fees and the payment of premiums for insurance under section 12, and in order promptly to make the payments required by any agreement under section 6 or by the insurance contracts under section 12 and to pay salaries and expenses of experts, may in their discretion advance to the stabilization fund for any basic agricultural commodity, out of the revolving fund hereinafter established, such amounts as may be necessary.

(c) The deposits to the credit of the stabilization fund shall be made in a public depositary of the United States. All general laws relating to the embezzlement, conversion, or to the improper handling, retention, use, or disposal of public moneys of the United States, shall apply to equalization fees collected by any person and to profits payable to the credit of a stabilization fund,

whether or not such fees or profits have been credited to the appropriate stabilization fund, as well as to moneys deposited to the credit of the fund or withdrawn therefrom but in the custody of any officer or employee of the United States.

(d) There shall be disbursed from the stabilization fund for any basic agricultural commodity only (1) the payments required to be made by any agreement under section 6 or by an insurance contract under section 12, (2) the salaries and expenses of such experts as the board determines should be payable from such fund, and (3) repayments to the revolving fund of any amounts advanced in respect of the agricultural commodity from the revolving fund to the stabilization fund and remaining unpaid, together with interest on such amounts at the rate of 4 per centum per annum.

(e) When the amount in the equalization fund for cotton is, in the opinion of the board, in excess of the amount adequate to carry out the requirements of this Act in respect of such commodity, and the collection of further equalization fees thereon is likely to maintain an excess, the board may retire in their serial order as many as practicable of the outstanding receipts evidencing a participating interest in such fund. Such retirement shall be had by the payment to the holders of such receipts of their distributive share of such excess as determined by the board. The amount of the distributive share payable in respect of any such receipt shall be an amount bearing the same ratio to the face value of such receipt as the value of the assets of the board in or attributable to the fund bear to the aggregate face value of the outstanding receipts evidencing a participating interest in such fund, as determined by the board.

LOANS AND INSURANCE

SEC. 12. (a) The board is authorized, upon such terms and conditions and in accordance with such regulations as it may prescribe, to make loans out of the revolving fund to any cooperative association engaged in the purchase, storage, or sale or other disposition of any agricultural commodity (whether or not a basic agricultural commodity) for the purpose of assisting such cooperative association in controlling the surplus of such commodity in excess of the requirements for orderly marketing.

(b) For the purpose of developing continuity of cooperative services, including unified terminal marketing facilities and equipment, the board is authorized, upon such terms and conditions and in accordance with such regulations as it may prescribe, to make loans out of the revolving fund to any cooperative association engaged in the purchase, storage, sale, or other disposition, or processing of any agricultural commodity, (1) for the purpose of assisting any such association in the acquisition, by purchase, construction, or otherwise, of facilities to be used in the storage, processing, or sale of such agricultural commodity, or (2) for the purpose of furnishing funds to such associations for necessary expenditures in federating, consolidating, or merging cooperative associations, or (3) for the purpose of furnishing to any such association funds to be used by it as capital for any agricultural credit corporation eligible for receiving rediscounts from an intermediate credit bank. In making any such loan the board may provide for the payment of such charge, to be determined by the board from time to time, upon each unit of the commodity handled by the association, as will within a period of not more than twenty years repay the amount of such loan, together with interest thereon. The aggregate amounts loaned under this subdivision and remaining unpaid shall not exceed at any one time the sum of $25,000,000.

(c) Any loan under subdivision (a) or (b) shall bear interest at the rate of 4 per centum per annum.

(d) The board may at any time enter into a contract with any cooperative marketing association engaged in marketing any basic agricultural commodity, insuring such association for periods of twelve months against decline in the market price for such commodity at the time of sale by the association from the market price for such commodity at the time of delivery to the association. For such insurance the association shall pay such premium, to be determined by the board, upon each unit of the basic agricultural commodity reported by the association for coverage under the insurance contract, as will cover the risks of the insurance.

EXAMINATIONS OF BOOKS AND ACCOUNTS OF BOARD

SEC. 13. Expenditures by the board for loans and advances from the revolving fund and expenditures by the board from the appropriation under subdivision (b) of section 16 shall be allowed and paid upon the presentation of itemized vouchers therefor, approved by the chairman of the board. Expenditures by the board, including loans and advances, from the stabilization funds shall be made by the authorized officers or agents of the board upon receipts of itemized vouchers therefor, approved by such officers as the board may designate. Vouchers so made for expenditures from the revolving fund or any stabilization fund shall be final and conclusive upon all officers of the Government; except that all financial transactions of the board (including the payments required by any agreement under section 6 or by the insurance contracts under section 12) shall, subject to the above limitation, be examined by the General Accounting Office, at such times and in such manner as the Comptroller General of the United States may by regulation prescribe. Such examination in respect of expenditures from the revolving fund or from any stabilization fund shall be for the sole purpose of making a report to the Congress and to the board of expenditures and contracts in violation of law, together with such recommendations as the Comptroller General deems advisable concerning the receipt, disbursement, and application of the funds administered by the board.

COOPERATION WITH EXECUTIVE DEPARTMENTS

SEC. 14. (a) It shall be the duty of any governmental establishment in the executive branch of the Government, upon request by the board, or upon Executive order, to cooperate with and render assistance to the board in carrying out any of the provisions of this Act and the regulations of the board. The board shall, in cooperation with any such governmental establishment, avail itself of the services and facilities of such governmental establishment in order to avoid preventable expense or duplication of effort.

(b) The President may by Executive order direct any such governmental establishment to furnish the board with such information and data pertaining to the functions of the board as may be contained in the records of such governmental establishment. The order of the President may provide such limitations as to the use of the information and data as he deems desirable.

(c) The board may cooperate with any State or Territory, or department, agency, or political subdivision thereof, or with any person.

DEFINITIONS

SEC. 15. (a) As used in this section and in section 10 (relating to the equalization fees)—

(1) In the case of wheat, rice, or corn, the term "processing" means milling for market of wheat, rice, or corn or the first processing in any manner for market (other than cleaning or drying) of wheat, rice, or corn not so milled, and the term "sale" means a sale or other disposition in the United States of wheat, rice, or corn for milling or other processing for market, for resale, or for delivery by a common carrier—occurring after the beginning of operations by the board in respect of wheat, rice, or corn.

(2) In the case of cotton, the term "processing" means spinning, milling, or any manufacturing of cotton other than ginning; the term "sale" means a sale or other disposition in the United States of cotton for spinning, milling, or any manufacturing other than ginning, or for delivery outside the United States; and the term "transportation" means the acceptance of cotton by a common carrier for delivery to any person for spinning, milling, or any manufacturing of cotton other than ginning, or for delivery outside the United States; occurring after the beginning of operations by the board in respect of cotton.

(3) In the case of swine, the term "processing" means slaughter for market by a purchaser of swine and the term "sale" means a sale or other disposition in the United States of swine destined for slaughter for market without intervening holding for feeding (other than feeding in transit) or fattening—occurring after the beginning of operations by the board in respect of swine.

(4) In the case of tobacco, the term "sale" means a sale or other disposition to any dealer in leaf tobacco or to any registered manufacturer of the products of tobacco.

(5) The term "transportation" means the acceptance of a commodity by a common carrier for delivery.

(6) The term "sale" does not include a transfer to a cooperative association for the purpose of sale or other disposition by such association on account of the transferor; nor a transfer of title in pursuance of a contract entered into before, and at a specified price determined before, the commencement of operations in respect of the basic agricultural commodity. In case of the transfer of title in pursuance of a contract entered into after the commencement of operations in respect of the basic agricultural commodity, but entered into at a time when, and at a specified price determined at a time during which, a particular equalization fee is in effect, then the equalization fee applicable in respect of such transfer of title shall be the equalization fee in effect at the time when such specified price was determined.

(a) As used in this Act—

(1) The term "person" means individual, partnership, corporation, or association.

(2) The term "United States," when used in a geographical sense, means continental United States.

(3) The term "cooperative association" means an association of persons engaged in the production of agricultural products, as farmers, planters, ranchers, dairymen, or nut or fruit growers, organized to carry out any purpose specified in section 1 of the Act entitled "An Act to authorize association of producers of agricultural products," approved February 18, 1922, if such association is qualified under such Act.

(4) The term "tobacco" means leaf tobacco, stemmed or unstemmed.

REVOLVING FUND AND APPROPRIATION

SEC. 16. (a) There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $250,000,000, which shall be administered by the board and used as a revolving fund, in accordance with the provisions of this Act. The Secretary of the Treasury shall deposit in the revolving fund such amounts, within the appropriations therefor, as the board from time to time deems necessary.

(b) For expenses in the administration of the functions vested in the board by this Act, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $500,000, to be available to the board for such expenses (including salaries and expenses of the members, officers, and employees of the board and the per diem compensation and expenses of members of the commodity advisory councils and the nominating committees) incurred prior to July 1, 1928.

SEPARABILITY OF PROVISIONS

SEC. 17. If any provision of this Act is declared unconstitutional or the applicability thereof to any person, circumstance, commodity, or class of transactions in respect of any commodity, is held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons, circumstances, commodities, and classes of transactions shall not be affected thereby.

SHORT TITLE

SEC. 18. This Act may be cited as the "Surplus Control Act."

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