

1506(n)(1)(A), has a maximum civil penalty of \$10,000.

(8) *All USDA Agencies.* Civil penalty for work hours and safety violations, codified at 40 U.S.C. 328, has a maximum of \$11 per day of violation.

[62 FR 40925, July 31, 1997; 62 FR 42857, Aug. 8, 1997]

PART 4 [RESERVED]

PART 5—DETERMINATION OF PARITY PRICES

Sec.

- 5.1 Parity index and index of prices received by farmers.
- 5.2 Marketing season average price data.
- 5.3 Selection of calendar year price data.
- 5.4 Commodities for which parity prices shall be calculated.
- 5.5 Publication of season average, calendar year, and parity price data.
- 5.6 Revision of the parity price of a commodity.

AUTHORITY: 7 U.S.C. 1301, 1375.

EDITORIAL NOTE: Nomenclature changes to part 5 appear at 62 FR 8361, Feb. 25, 1997.

§ 5.1 Parity index and index of prices received by farmers.

(a) The parity index and related indices for the purpose of calculating parity prices after May 1, 1976, according to the formula contained in section 301(a) of the Agricultural Adjustment Act of 1938, as amended by the Agricultural Acts of 1948, 1949, 1954, and 1956 (hereinafter referred to as section 301(a)) shall be the index of prices paid by farmers, interest, taxes, and farm wage rates, as revised May 1976 and published in the May 28, 1976, and subsequent issues of the monthly report, "Agricultural Prices." The publication of these indices by the National Agricultural Statistics Service in the monthly report, "Agricultural Prices", shall be continued.

(b) The measure of the general level of prices received by farmers as provided for in section 301(a)(1)(B)(ii) after January 1, 1959, shall be the index of prices received by farmers as revised January 1959 and published in the January 30, 1959, and subsequent issues of "Agricultural Prices". The simple average of the 120 monthly indices included in the preceding 10 calendar

years plus an adjustment to take account of the effect on the index of any adjustment made on average prices of individual commodities as hereinafter specified shall be used in the calculation of the adjusted base prices. Parity prices heretofore published for periods prior to January 1, 1959 shall not be revised.

(c) The term *milkfat* as used in these regulations is synonymous with the term *butterfat*, and when any statute requires calculation of the parity price of butterfat, the parity price of milkfat shall be the parity price of butterfat.

[24 FR 697, Jan. 31, 1959, as amended by Amdt. 6, 24 FR 9778, Dec. 5, 1959; Amdt. 29, 41 FR 22333, June 3, 1976]

§ 5.2 Marketing season average price data.

It is hereby found that it is impractical to use averages of prices received by farmers on a calendar year basis for the following agricultural commodities for the purpose of calculating adjusted base prices and, therefore, marketing season average prices will be used. An allowance for any supplemental payment resulting from price support operations shall be included in the determination of the adjusted base prices. For cigar binder tobacco, types 51-52, for each of the marketing seasons beginning in the years 1949 through 1958, 37.9 cents per pound shall be used in lieu of the average of prices received by farmers for such tobacco during each such marketing season.

BASIC COMMODITIES

Extra long staple cotton; peanuts; rice, and the following types of tobacco: Flue-cured, types 11-14; Virginia fire-cured, type 21; Kentucky-Tennessee fire-cured, types 22-23; burley, type 31; dark air-cured, types 35-36; sun-cured, type 37; Pennsylvania seedleaf, type 41; cigar filler and binder, types 42-44 and 53-55; Puerto Rican filler, type 46 (price refers to year of harvest); and cigar binder, types 51-52.

DESIGNATED NONBASIC COMMODITIES

Tung nuts; honey, wholesale extracted.

WOOL AND MOHAIR

Wool and mohair.

§5.3

OTHER NONBASIC COMMODITIES

CITRUS FRUIT

Grapefruit; lemons; limes; oranges; tangerines; and Temples.

DECIDUOUS AND OTHER FRUIT

Apples for processing; apricots for fresh consumption; apricots for processing (except dried); dried apricots; avocados; blackberries; boysenberries; gooseberries; loganberries; black raspberries; red raspberries; youngberries; tart cherries; sweet cherries; cranberries; dates; grapes, raisins, dried; all grapes excluding raisins, dried; nectarines for fresh consumption, nectarines for processing; olives for processing (except crushed for oil); olives, crushed for oil; olives for canning; papayas (Hawaii), for fresh consumption; peaches for fresh consumption; clingstone peaches for processing (except dried); freestone peaches for processing (except dried); dried peaches; pears for fresh consumption; pears for processing (except dried); dried pears; plums (California), for fresh consumption; plus (California), for processing; dried prunes (California); prunes and plums (excluding California), for processing (except dried); strawberries for fresh consumption; and strawberries for processing.

SEED CROPS

Alfalfa, bentgrass, crimson clover, Chewings fescue, red fescue, tall fescue, Marion Kentucky bluegrass, Ladino clover, lespedeza, orchard grass, red clover, timothy, and hairy vetch.

SUGAR CROPS

Sugar beets and sugarcane for sugar.

TREE NUTS

Almonds; filberts; pecans, all; and walnuts.

VEGETABLES FOR FRESH MARKET

Artichokes, asparagus, snap beans, broccoli, cabbage, cantaloupe, carrots, cauliflower, celery, sweet corn, cucumbers, eggplant, escarole, garlic, honeydew melons, lettuce, onions, green peppers, spinach, tomatoes, and watermelons.

VEGETABLES FOR PROCESSING

Asparagus, lima beans, snap beans, beets, cabbage, sweet corn, cucumbers, green peas, spinach, and tomatoes.

OTHER COMMODITIES

Beeswax; cottonseed; hops; peas; dry field; peppermint oil; popcorn; potatoes; spearmint oil; and tobacco, types 61-62. All other com-

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modities for which monthly price data are not available.

[21 FR 761, Feb. 3, 1956]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §5.2 see the List of CFR Sections Affected in the Finding Aids section of this volume.

§5.3 Selection of calendar year price data.

In computing the adjusted base price for those commodities for which calendar year price data are used, “* * * the average of the prices received by farmers for such commodity, at such times as the Secretary may select during each year * * *,” as used in section 301(a)(1)(B)(i), shall be the simple average of the 12 monthly estimates of the prices received by farmers as published by the National Agricultural Statistics Service in “Agricultural Prices” for those commodities for which such prices are available. An allowance for unredeemed loans and purchase agreement deliveries, any supplemental payments resulting from price support operations, and the value of marketing certificates, such as those received by producers of wheat pursuant to the Agricultural Adjustment Act of 1938, as amended, and others of generally similar character and effect, shall be added to the price specified above. Prices received for milk wholesale, milkfat, beef cattle, sheep, and lambs shall include wartime subsidy payments as provided by section 301(a)(1)(B). For Maryland Tobacco, type 32, the price data for each calendar year shall be the weighted average price of type 32 tobacco sold during the period January 1-December 31.

[Amdt. 14, 29 FR 12451, Sept. 1, 1964]

§5.4 Commodities for which parity prices shall be calculated.

Parity prices shall be calculated for the following commodities:

BASIC COMMODITIES

Wheat; corn; American upland cotton; extra long staple cotton; rice; peanuts;¹ and

¹For the purpose of calculating parity prices the commodity peanuts shall exclude peanuts produced for oil in 1950 and 1951 under the provisions of subsections (g) and

the following types of tobacco: flue-cured, types 11-14; Virginia fire-cured, type 21; Kentucky-Tennessee fire-cured, types 22-23; burley, type 31; Maryland, type 32; dark air-cured, types 35-36; sun-cured, type 37; Pennsylvania seedleaf, type 41; cigar filler and binder, types 42-44 and 53-55; Puerto Rican filler, type 46; and cigar binder, types 51-52.

DESIGNATED NONBASIC COMMODITIES

Milk sold to plants; milkfat in cream; tung nuts; honey, wholesale extracted.

WOOL AND MOHAIR

Wool and mohair.

OTHER NONBASIC COMMODITIES

CITRUS FRUIT

Grapefruit; lemons; limes; oranges; tangerines; and Temples.

DECIDUOUS AND OTHER FRUIT

Apples (primarily for fresh use); apples for processing; apricots for fresh consumption; apricots for processing (except dried); dried apricots; avocados; blackberries; boysenberries; gooseberries; loganberries; black raspberries; red raspberries; youngberries; tart cherries; sweet cherries; cranberries; dates; grapes, raisins, dried; all grapes, excluding raisins, dried; nectarines for fresh consumption; nectarines for processing; olives for processing (excluding crushed for oil); olives, crushed for oil; olives for canning; papayas (Hawaii), for fresh consumption; peaches for fresh consumption; clingstone peaches for processing (except dried); freestone peaches for processing (except dried); dried peaches; pears for fresh consumption; pears for processing (except dried); dried pears; plums (California), for fresh consumption; plums (California), for processing; dried prunes (California); prunes and plums (excluding California), for processing (except dried); strawberries for fresh consumption; and strawberries for processing.

SEED CROPS

Alfalfa, bentgrass, crimson clover, Chewings fescue, red fescue, tall fescue, Marion Kentucky bluegrass, Ladino clover, lespedeza, orchard grass, red clover, timothy, and hairy vetch.

SUGAR CROPS

Sugar beets, and sugarcane for sugar.

TREE NUTS

Almonds; filberts; pecans, all; and walnuts.

(h) of section 359 of the Agricultural Adjustment Act of 1938 as amended.

VEGETABLES FOR FRESH MARKET

Artichokes, asparagus, snap beans, broccoli, cabbage, cantaloups, carrots, cauliflower, celery, sweet corn, cucumbers, eggplant, escarole, garlic, honeydew melons, lettuce, onions, green peppers, spinach, tomatoes, and watermelons.

VEGETABLES FOR PROCESSING

Asparagus, lima beans, snap beans, beets, cabbage, sweet corn, cucumbers, green peas, spinach and tomatoes.

OTHER COMMODITIES

Beef cattle; hogs; lambs; calves; sheep; turkeys; eggs; beeswax; potatoes; hops; peppermint oil; popcorn; spearmint oil; tobacco, Types 61 and 62; barley; beans, dry edible; cottonseed; peas, dry field; flaxseed; hay, all baled; oats; rye; sorghum grain; soybeans; sweetpotatoes; and crude pine gum.

[21 FR 763, Feb. 3, 1956, as amended by Amdt. 1, 22 FR 693, Feb. 2, 1957; Amdt. 3, 23 FR 1565, Mar. 5, 1958; Amdt. 17, 31 FR 10767, Aug. 13, 1966; Amdt. 23, 34 FR 1132, Jan. 24, 1969; Amdt. 25, 34 FR 15785, Oct. 14, 1969; Amdt. 26, 35 FR 3158, Feb. 19, 1970; Amdt. 27, 36 FR 15516, Aug. 17, 1971; 38 FR 10795, May 2, 1973]

§ 5.5 Publication of season average, calendar year, and parity price data.

(a) New adjusted base prices for all of the commodities on a calendar year basis and for as many of the commodities on a marketing season average basis as are practicable shall be published on or about January 31 of each year. In cases where preliminary marketing season average price data are used in estimating the adjusted base prices published in January, any additional price data which becomes available shall be used in estimating a revised adjusted base price which shall be published prior to the beginning of the marketing season for the commodity.

(b) The official parity prices determined under section 301(a)(1) and the regulations in this part and the indexes and relevant price data shall be published in the monthly report "Agricultural Prices" issued by the National Agricultural Statistics Service. Parity prices for all commodities for which parity prices are computed shall be so published in the January and July issues each year. The parity prices published in other issues may be restricted

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to those which the National Agricultural Statistics Service, after consultation with the Agricultural Marketing Service, the Farm Service Agency, and any other interested government agency, considers necessary or desirable. The parity prices determined in accordance with this part shall be the parity prices used in other reports, determinations, or documents of the Department.

[21 FR 763, Feb. 3, 1956, as amended by Amdt. 16, 30 FR 2521, Feb. 26, 1965]

§ 5.6 Revision of the parity price of a commodity.

(a) *Initiation of hearings.* The “modernized” parity formula specified in section 301(a)(1) of the Agricultural Adjustment Act of 1938, as amended, takes into consideration the average prices received by farmers for agricultural commodities during the last ten years and is designed gradually to adjust relative parity prices of specific commodities for persistent or continuing changes in demand and supply conditions which are reflected in market prices. Accordingly, only in rare cases is it possible for the parity price of any agricultural commodity to become seriously out of line with the parity prices of other agricultural commodities. In any case, however, in which producers of any agricultural commodity believe that the parity price of such commodity, as computed pursuant to the provisions of section 301(a)(1), is seriously out of line with the parity prices of other agricultural commodities, a request for a public hearing under section 301(a)(1)(F) may be submitted to the Secretary of Agriculture by a substantial number of interested producers. The producers shall also furnish to the Secretary, with such request or separately, data supporting their conclusion that the parity price of such commodity is seriously out of line with the parity prices of other commodities. Upon receipt of such a request with supporting data, or at any time upon the Secretary’s own motion, this Department will make a preliminary study of the relationship between the parity price of such commodity and the parity prices of other commodities, and if the Secretary concludes that there appears to be reason-

able grounds for believing that the parity price of such commodity is seriously out of line with the parity prices of other agricultural commodities, a hearing will be held pursuant to the provisions of section 301(a)(1)(F).

(b) *Notice of hearing.* If the Secretary of Agriculture determines that such a hearing shall be held, he shall issue a notice of the hearing, which shall be filed with the Hearing Clerk of the United States Department of Agriculture, who shall promptly (1) cause such notice to be published in the FEDERAL REGISTER, and (2) mail a copy thereof to each of the producers who requested the hearing and to grower organizations known to be interested in the hearing. Legal notice of the hearing shall be deemed to be given upon filing such notice with the FEDERAL REGISTER for publication, and failure to give notice in the manner otherwise provided in this paragraph shall not affect the legality of the notice. The notice of hearing shall state the purpose of the hearing and the time and place of the hearing. The time of the hearing shall not be less than fifteen days after the date of publication of the notice in the FEDERAL REGISTER, unless the Secretary shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Secretary determines to be reasonable in the circumstances.

(c) *Conduct of hearing—(1) Presiding officer.* Each hearing held under section 301(a)(1)(F) shall be presided over by a Hearing Examiner of the Office of Administrative Law Judges or such other employee of the Department as the Secretary may designate for the purpose.

(2) *Time and place of hearing.* Each hearing shall be heard at the time and place set forth in the notice of hearing but may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

(3) *Order of procedure.* At the commencement of the hearing, the presiding officer shall file as an exhibit a copy of the FEDERAL REGISTER containing the notice of the hearing and shall then outline briefly the procedure

to be followed. Evidence shall then be received from interested persons in such order as the presiding officer shall prescribe.

(4) *Submission of evidence.* The hearing shall be conducted in such a way as to obtain a clear and orderly record. All interested persons appearing at the hearing shall be given reasonable opportunity to offer data, views, or arguments relevant to (i) whether the parity price for the agricultural commodity involved is or is not seriously out of line with the parity prices of other agricultural commodities, and (ii) the proper relationship between the parity price of such commodity and the parity prices of other agricultural commodities and the revisions, if any, which should be made in computing the parity price of such commodity. All documentary exhibits shall be submitted in duplicate. The presiding officer shall, insofar as possible, exclude irrelevant, immaterial, or unduly repetitious evidence but shall not apply technical judicial rules of evidence. Every witness shall be subject to questioning by the presiding officer or by any other representative of the Department, but cross-examination by other persons shall not be allowed, except in the discretion of the presiding officer. The proceedings at the hearing shall be transcribed verbatim.

(5) *Written arguments.* The presiding officer shall fix a time, not to exceed ten days from the close of the hearing, within which interested persons may file written arguments with the Hearing Clerk.

(d) *Preparation and issuance of determination—(1) Preparation of recommendation.* As soon as practicable after the close of the hearing, the presiding officer, or such employees of the Department as may be assigned for the purpose, shall review, consider, and weigh all evidence of probative value, views, and arguments which have been submitted, and may consider other pertinent information and data which is available in the Department of Agriculture, and shall submit a recommendation thereon to the Secretary.

(2) *Determination by the Secretary.* As soon as possible after receipt of the recommendation, the Secretary shall

determine whether the parity price of such commodity computed in accordance with section 301(a)(1) appears to be seriously out of line with the parity prices of other agricultural commodities whether the facts require a revision of the method of computing the parity price of such commodity, and the revision, if any, which is required in the method of computing the parity price of such commodity. Such determination by the Secretary shall be final. The Secretary's determination shall be filed with the Hearing Clerk who shall cause the determination to be published promptly in the FEDERAL REGISTER. The Hearing Clerk shall also mail a copy of the determination to each producer and grower organization which participated in or is known to be interested in the hearing. Upon application to the Hearing Clerk, any person shall be entitled to a copy of the determination.

[23 FR 9252, Nov. 29, 1958]

PART 6—IMPORT QUOTAS AND FEES

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