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DOLE FOOD COMPANY INC
Form S-8 POS
July 02, 2001

As filed with the Securities and Exchange Commission
on July 2, 2001

Registration No. 33-28782

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1
TO
FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

DOLE FOOD COMPANY, INC.
(Exact name of registrant as specified in its charter)

Delaware 99-0035300
(State or other jurisdiction of (I.R.S. Employer
incorporation or organization) Identification No.)
One Dole Drive
Westlake Village, California 91362-7300
(818) 879-6600
(Address, including zip code, and telephone number, including
area code, of registrant's principal executive offices)

CASTLE & COOKE, INC. 1982 STOCK OPTION AND AWARD PLAN
(Full title of the plan)

C. Michael Carter
Vice President, General Counsel and Corporate Secretary
One Dole Drive
Westlake Village, California 91368-7300
(818) 879-6600
(Name, address, including zip code, and telephone number,
including area code, of agent for service)

Copy to:
Charles F. Niemeth, Esq.
O'Melveny & Myers LLP
153 East 53rd Street
New York, New York 10022-4611
(212) 326-2000

CALCULATION OF REGISTRATION FEE

| Title of securities to be registered | Amount to be registered | Proposed maximum offering price per unit | Proposed maximum aggregate offering price | Amount of registration fee |
|--------------------------------------|-------------------------|--|---|----------------------------|
|--------------------------------------|-------------------------|--|---|----------------------------|

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See below(1) N/A N/A N/A N/A

(1) No additional securities are to be registered, and registration fees were paid upon filing of the original Registration Statement No. 33-28782. Therefore, no further registration fee is required.

The Exhibit Index for this Post-Effective Amendment follows the signature page.

DOLE FOOD COMPANY, INC.

POST-EFFECTIVE AMENDMENT NO. 1 TO
REGISTRATION STATEMENT ON FORM S-8

EXPLANATORY NOTE

This Post-Effective Amendment No. 1 (this "Amendment") to that certain Registration Statement on Form S-8 (File No. 33-28782, the "Registration Statement") is being filed pursuant to Rule 414 under the Securities Act of 1933, as amended (the "Securities Act") by Dole Food Company, Inc., a Delaware corporation ("Dole"), which is the successor to Dole Food Company, Inc., a Hawaii corporation ("Dole Hawaii"), following a statutory merger effective 11:59 p.m. (Hawaii time), June 30, 2001 (the "Merger") for the purpose of changing Dole Hawaii's state of incorporation to Delaware. Prior to the Merger, Dole had no assets or liabilities other than nominal assets or liabilities. In connection with the Merger, Dole succeeded by operation of law to all of the assets and liabilities of Dole Hawaii. The Merger was approved by the stockholders of Dole Hawaii at the annual meeting of stockholders on June 8, 2001, for which proxies were solicited pursuant to Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Except as modified by this Amendment, Dole, by virtue of this Amendment, expressly adopts the Registration Statement as its own registration statement for all purposes of the Securities Act and the Exchange Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference

The following documents as originally filed with the Securities and Exchange Commission (the "Commission") by Dole Hawaii (except as noted below) are incorporated herein by reference:

- (a) Annual Report on Form 10-K for the fiscal year ended December 30, 2000, filed pursuant to Section 13 of the Exchange Act;
- (b) Quarterly Report on Form 10-Q for the fiscal quarter ended March 24, 2001, filed pursuant to Section 13 of the Exchange Act; and

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- (c) The description of the Common Stock contained in Amendment No. 1 on Form 8-A/A filed with the Commission on July 2, 2001 (filed by Dole) and the Amended Certificate of Incorporation which appeared as Appendix D to the Proxy Statement for the Annual Meeting of Stockholders of Dole Hawaii held on June 8, 2001.

All documents subsequently filed by Dole pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained herein or in a document, all or a portion of which is incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or amended, to constitute a part of this Registration Statement.

Item 4. Description of Securities

The Common Stock is registered pursuant to Section 12 of the Exchange Act and, therefore, the description of securities is omitted.

Item 5. Interests of Named Experts and Counsel

Not applicable.

Item 6. Indemnification of Directors and Officers

Dole's Certificate of Incorporation provides that a director of Dole shall not be personally liable to Dole or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to Dole or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) FOR the payment of unlawful dividends or unlawful stock repurchases or redemptions, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of Dole shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. Any repeal or modification of the foregoing provisions by the stockholders of Dole shall not adversely affect any right or protection of a director of Dole existing at the time of such repeal or modification. Dole has obtained insurance which insures the directors and officers of Dole against specified losses and which insures Dole against specific obligations to indemnify its directors and officers.

Dole's By-Laws provide that each person (an "indemnitee") who was or is made a party or is threatened to be made a party to

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or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she is or was a director or an officer of Dole or is or was serving at the request of Dole as a director, officer or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, whether the basis of such proceeding is alleged action in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by Dole to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits Dole to provide broader indemnification rights than such law permitted Dole to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by the indemnitee in connection therewith. Nonetheless, except with respect to proceedings to enforce rights to indemnification, Dole shall indemnify the indemnitee in connection with a proceeding (or part thereof) initiated by the indemnitee only if that proceeding (or part thereof) was authorized by the Board of Directors of Dole.

In addition, under Dole's By-Laws, an indemnitee shall also have the right to be paid by Dole the expenses (including attorney's fees) incurred in defending the proceeding in advance of its final disposition, provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by the indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to Dole of an undertaking by or on behalf of the indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that the indemnitee is not entitled to be indemnified for those expenses.

Any amendment, alteration or repeal of the above indemnification provisions of Dole's By-Laws that adversely affects any right of an indemnitee or his or her successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to the amendment or repeal. Dole has obtained insurance which insures the directors and officers of Dole against specified losses and which insures Dole against specific obligations to indemnify its directors and officers.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

See the attached Exhibit Index that follows the signature page.

Item 9. Undertakings

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- (a) The undersigned registrant hereby undertakes:
- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to the Registration Statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement; and
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement;
 - (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and
 - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors,

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executive officers and controlling persons of the registrant pursuant to the provisions described in Item 6 above, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Post-Effective Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Westlake Village, State of California, on the 1st day of July, 2001.

By:/s/Lawrence A. Kern
Lawrence A. Kern
President and Chief Operating
Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Lawrence A. Kern and Kenneth J. Kay as his or her true and lawful attorney-in-fact and agent, with full powers of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to the Registration Statement and this Post-Effective Amendment No. 1 to the Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute

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or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Post-Effective Amendment No. 1 to the Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|--|--------------|
| /s/David H. Murdock David H. Murdock | Chairman of the Board and Chief Executive Officer (Principal Executive Officer) | July 1, 2001 |
| /s/Kenneth J. Kay Kenneth J. Kay | Vice President and Chief Financial Officer (Principal Financial Officer) | July 1, 2001 |
| /s/Gil Borok Gil Borok | Controller and Chief Accounting Officer (Principal Accounting Officer) | July 1, 2001 |
| /s/Mike Curb Mike Curb | Director | July 1, 2001 |
| /s/David A. DeLorenzo David A. DeLorenzo | Vice Chairman and Director | July 1, 2001 |
| /s/E. Rolland Dickson E. Rolland Dickson | Director | July 1, 2001 |
| Richard M. Ferry | Director | |
| /s/Lawrence M. Johnson Lawrence M. Johnson | Director | July 1, 2001 |
| /s/Lawrence A. Kern Lawrence A. Kern | President, Chief Operating Officer and Director | July 1, 2001 |
| Zoltan Merszei | Director | |

EXHIBIT INDEX

| Exhibit Number | Description of Exhibit |
|-------------------|---|
| 4.1 | Castle & Cooke, Inc. 1982 Stock Option and Award Plan, as amended* |
| 4.2 | Form of Non-Qualified Stock Option Agreement (without |

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Alternative Settlement Methods), Non-Qualified Stock Option Agreement Authorizing Election of Alternative Settlement Methods and Restricted Stock Agreement relating to the Castle & Cooke, Inc. 1982 Stock Option and Award Plan*

- 4.3 2001 Amendments to 1982 Stock Option and Award Plan**
- 5.1 Opinion of O'Melveny & Myers LLP (opinion re legality)
- 23.1 Consent of Independent Public Accountants
- 23.2 Consent of O'Melveny & Myers LLP (included in Exhibit 5.1)

* Incorporated by reference from Exhibits 28(a) and 28(b) of the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on May 22, 1989 (File No. 33-28782).

** Incorporated by reference from Exhibit 10.10 of the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 30, 2001 (File No. 001-04455).

EXHIBIT 5.1

OPINION OF O'MELVENY & MYERS

July 2, 2001

OUR FILE NUMBER
219,742-191

Dole Food Company, Inc.
One Dole Drive
Westlake Village, California 91362-7300

Re: Post-Effective Amendment No. 1 to the
Registration Statement on Form S-8 of Dole Food
Company, Inc.

Ladies and Gentlemen:

At your request, we have examined Post-Effective Amendment No. 1 to the Registration Statement on Form S-8 to be filed by Dole Food Company, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission in connection with the registration under the Securities Act of 1933, as amended (the "Securities Act"), of shares of common stock, no par value, of the Company (the "Common Stock"), to be issued pursuant to the Castle & Cooke, Inc. 1982 Stock Option and Award Plan (the "Plan"), which shares of Common Stock were registered under the Securities Act by Dole Food Company, Inc., a Hawaii corporation, prior to its reincorporation in Delaware. We

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have examined the proceedings heretofore taken and to be taken in connection with the authorization of the Plan and the Common Stock to be issued pursuant to and in accordance with the Plan.

Based upon such examination and upon such matters of fact and law as we have deemed relevant, we are of the opinion that the Common Stock has been duly authorized by all necessary corporate action on the part of the Company and, when issued in accordance with such authorization, the provisions of the Plan and relevant agreements duly authorized by and in accordance with the terms of the Plan, will be validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to Post-Effective Amendment No. 1 to the above-referenced Registration Statement.

Respectfully submitted,

/s/ O'MELVENY & MYERS LLP

EXHIBIT 23.1

Consent of Independent Public Accountants

As independent public accountants, we hereby consent to the incorporation by reference of our reports dated January 29, 2001 included in Dole Food Company, Inc.'s on Form 10-K for the year ended December 30, 2000 and to all references to our Firm included in this Post-Effective Amendment No. 1 to Registration Statement on Form S-8 Registration No.33-28782.

/s/ ARTHUR ANDERSEN LLP

Los Angeles, California
July 2, 2001