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## CROSS REFERENCES

Agricultural Adjustment Act of 1933, see section 1281 et seq. of this title.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 499b-1, 671, 672, 673, 1446, 7271 of this title; title 12 section 1150a; title 16 section 2005b; title 18 section 433; title 41 section 22.

## SUBCHAPTER I—DECLARATION OF CONDITIONS AND POLICY

## § 601. Declaration of conditions

It is declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.

(May 12, 1933, ch. 25, title I, § 1, 48 Stat. 31; June 3, 1937, ch. 296, §§ 1, 2(a), 50 Stat. 246.)

## SHORT TITLE

Section 8(a) of act June 16, 1933, ch. 90, 48 Stat. 199, provided in part that title I of act May 12, 1933, which is classified to this chapter, may for all purposes be referred to as the "Agricultural Adjustment Act."

## VALIDITY OF CERTAIN SECTIONS AFFIRMED

Act June 3, 1937, ch. 296, §§ 1, 2, 50 Stat. 246, provided as follows: "The following provisions of the Agricultural Adjustment Act, as amended, not having been intended for the control of the production of agricultural commodities, and having been intended to be effective irrespective of the validity of any other provision of that Act are expressly affirmed and validated, and are reenacted without change except as provided in section 2:

"(a) Section 1 (relating to the declaration of emergency [this section]):

"(b) Section 2 (relating to declaration of policy [section 602 of this title]):

"(c) Section 8a(5), (6), (7), (8), and (9) (relating to violations and enforcement [section 608a(5), (6), (7), (8), and (9) of this title]):

"(d) Section 8b (relating to marketing agreements [section 608b of this title]):

"(e) Section 8c (relating to orders [section 608c of this title]):

"(f) Section 8d (relating to books and records [section 608d of this title]):

"(g) Section 8e (relating to determination of base period [former section 608e of this title]):

"(h) Section 10(a), (b)(2), (c), (f), (g), (h), and (i) (miscellaneous provisions [section 610(a), (b)(2), (c), (f), (g), (h), and (i) of this title]):

"(i) Section 12(a) and (c) (relating to appropriation and expenses [section 612(a) and (c) of this title]):

"(j) Section 14 (relating to separability [section 614 of this title]):

"(k) Section 22 (relating to imports [section 624 of this title]).

"SEC. 2. The following provisions, reenacted in section I of this act, are amended as follows: \* \* \* [sections 601, 602(1), 608a(6), 608c(5)(B)(d), (6)(B), (6)(B)(18), (19), 610(c), (f), 612(a) of this title]."

Section 2 of act June 3, 1937, also added subsec. (j) to section 610.

Section 2 of act June 3, 1937, was amended by act Aug. 5, 1937, ch. 567, 50 Stat. 563, which amending act provided for amendments to subsecs. (2) and (6) of section 608c of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 671, 672, 673, 1392 of this title.

**§ 602. Declaration of policy; establishment of price basing period; marketing standards; orderly supply flow; circumstances for continued regulation**

It is declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this chapter, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish, as the prices to farmers, parity prices as defined by section 1301(a)(1) of this title.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this chapter which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section.

(3) Through the exercise of the powers conferred upon the Secretary of Agriculture under this chapter, to establish and maintain such production research, marketing research, and development projects provided in section 608c(6)(I) of this title, such container and pack requirements provided in section 608c(6)(H) of this title<sup>1</sup> such minimum standards of quality and maturity and such grading and inspection requirements for agricultural commodities enumerated in section 608c (2) of this title, other than milk and its products, in interstate commerce as will effectuate such orderly mar-

<sup>1</sup> So in original. Probably should be followed by a comma.

keting of such agricultural commodities as will be in the public interest.

(4) Through the exercise of the powers conferred upon the Secretary of Agriculture under this chapter, to establish and maintain such orderly marketing conditions for any agricultural commodity enumerated in section 608c(2) of this title as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices.

(5) Through the exercise of the power conferred upon the Secretary of Agriculture under this chapter, to continue for the remainder of any marketing season or marketing year, such regulation pursuant to any order as will tend to avoid a disruption of the orderly marketing of any commodity and be in the public interest, if the regulation of such commodity under such order has been initiated during such marketing season or marketing year on the basis of its need to effectuate the policy of this chapter.

(May 12, 1933, ch. 25, title I, § 2, 48 Stat. 32; Aug. 24, 1935, ch. 641, §§ 1, 62, 49 Stat. 750, 782; June 3, 1937, ch. 296, §§ 1, 2(b), 50 Stat. 246, 247; Aug. 1, 1947, ch. 425, § 1, 61 Stat. 707; July 3, 1948, ch. 827, title III, § 302(a), 62 Stat. 1257; Aug. 28, 1954, ch. 1041, title IV, § 401(a), 68 Stat. 906; Pub. L. 87-128, title I, § 141(1), Aug. 8, 1961, 75 Stat. 303; Pub. L. 89-330, § 1(a), Nov. 8, 1965, 79 Stat. 1270; Pub. L. 91-292, § 1(1), June 25, 1970, 84 Stat. 333.)

#### AMENDMENTS

1970—Subsec. (3). Pub. L. 91-292 inserted authority to establish and maintain the production research, marketing research, and development projects provided in section 608c(6)(I) of this title.

1965—Subsec. (3). Pub. L. 89-330 inserted “such container and pack requirements provided in section 608c(6)(H) of this title”.

1961—Subsec. (5). Pub. L. 87-128 added subsec. (5).

1954—Subsec. (4). Act Aug. 28, 1954, added subsec. (4).

1948—Subsec. (1). Act July 3, 1948, made definition of “parity” conform to definition stated in section 1301(a)(1) of this title.

1947—Subsec. (3). Act Aug. 1, 1947, added subsec. (3).

1937—Act June 3, 1937, inserted “orderly marketing conditions for agricultural commodities in interstate commerce as will establish” before “as the prices to farmers”.

1935—Subsec. (1). Act Aug. 24, 1935, ch. 641, § 1, amended first sentence and act Aug. 24, 1935, ch. 641, § 62, amended second and third sentences.

Subsec. (2). Act Aug. 24, 1935, amended subsec. (2).

#### EFFECTIVE DATE OF 1948 AMENDMENT

Amendment by act July 3, 1948, effective Jan. 1, 1950, see section 303 of act July 3, 1948, set out as a note under section 1301 of this title.

#### VALIDITY OF SECTION AFFIRMED

Section 1 of act June 3, 1937, affirmed and validated, and reenacted without change the provisions of this section except for the amendment to subsec. (1) by section 2 of said act. See note set out under section 601 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 608c, 609, 672, 673, 1392 of this title.

#### SUBCHAPTER II—COTTON OPTION CONTRACTS

#### § 603. Government owned cotton; transfer to Secretary of Agriculture; powers of Secretary

The Farm Credit Administration and all departments and other agencies of the Government, not including the Federal intermediate credit banks are directed—

(a) To sell to the Secretary of Agriculture at such price as may be agreed upon, not in excess of the market price, all cotton now owned by them.

(b) To take such action and to make such settlements as are necessary in order to acquire full legal title to all cotton on which money has been loaned or advanced by any department or agency of the United States, including futures contracts for cotton or which is held as collateral for loans or advances and to make final settlement of such loans and advances as follows:

(1) In making such settlements with regard to cotton, including operations to which such cotton is related, such cotton shall be taken over by all such departments or agencies other than the Secretary of Agriculture at a price or sum equal to the amounts directly or indirectly loaned or advanced thereon and outstanding, including loans by the Government, department or agency and any loans senior thereto, plus any sums required to adjust advances to growers to 90 per centum of the value of their cotton at the date of its delivery in the first instance as collateral to the department or agency involved, such sums to be computed by subtracting the total amount already advanced to growers on account of pools of which such cotton was a part, from 90 per centum of the value of the cotton to be taken over as of the time of such delivery as collateral, plus unpaid accrued carrying charges and operating costs on such cotton, less, however, any existing assets of the borrower derived from net income, earnings, or profits arising from such cotton, and from operations to which such cotton is related; all as determined by the department or agency making the settlement.

(2) The Secretary of Agriculture shall make settlements with respect to cotton held as collateral for loans or advances made by him on such terms as in his judgment may be deemed advisable, and to carry out the provisions of this section, is authorized to indemnify or furnish bonds to warehousemen for lost warehouse receipts and to pay the premiums on such bonds.

When full legal title to the cotton referred to in this subsection has been acquired, it shall be sold to the Secretary of Agriculture for the purposes of this section, in the same manner as provided in subsection (a) of this section.

(c) The Secretary of Agriculture is authorized to purchase the cotton specified in subsections (a) and (b) of this section.

(May 12, 1933, ch. 25, title I, § 3, 48 Stat. 32; 1933 Ex. Ord. No. 6084, Mar. 22, 1933.)

#### CHANGE OF NAME

Ex. Ord. No. 6084, set out as a note preceding section 2241 of Title 12, Banks and Banking, changed the name

of "Federal Farm Board" to "Farm Credit Administration".

#### TRANSFER OF FUNCTIONS

Ex. Ord. No. 9322, Mar. 26, 1943, 8 F.R. 3807, as amended by Ex. Ord. No. 9334, Apr. 19, 1943, 8 F.R. 5423, removed Farm Credit Administration from Food Production Administration of Department of Agriculture and returned it to its former status as a separate agency of Department.

Ex. Ord. No. 9280, Dec. 5, 1942, 7 F.R. 10179, made Farm Credit Administration a part of Food Production Administration of Department of Agriculture.

Farm Credit Administration transferred to Department of Agriculture by 1939 Reorg. Plan No. 1, § 401, 4 F.R. 2727, 53 Stat. 1423, set out in the Appendix to Title 5, Government Organization and Employees.

#### EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Corporations of Department of Agriculture, boards of directors and officers of such corporations; Advisory Board of Commodity Credit Corporation; and Farm Credit Administration or any agency, officer or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, effective June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out as a note under section 2201 of this title.

#### FARM CREDIT ADMINISTRATION

Establishment of Farm Credit Administration as independent agency, and other changes in status, functions, etc., see section 2241 et seq., of Title 12, Banks and Banking.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 604, 673 of this title.

### § 604. Borrowing money; expenditures; authority of Secretary

(a) The Secretary of Agriculture shall have authority to borrow money upon all cotton in his possession or control and may, at his discretion, deposit as collateral for such loans the warehouse receipts for such cotton.

(b) The Secretary of the Treasury is authorized to advance, in his discretion, out of any money in the Treasury not otherwise appropriated, the sum of \$100,000,000, to the Secretary of Agriculture, for paying off any debt or debts which may have been or may be incurred by the Secretary of Agriculture and discharging any lien or liens which may have arisen or may arise pursuant to sections 603, 604, and 607 of this title, for protecting title to any cotton which may have been or may be acquired by the Secretary of Agriculture under authority of said sections, and for paying any expenses (including, but not limited to, warehouse charges, insurance, salaries, interest, costs, and commissions) incident to carrying, handling, insuring, and marketing of said cotton and for the purposes described in subsection (e) of this section. This sum shall be available until the cotton acquired by the Secretary of Agriculture under authority of this chapter including cotton futures, shall have been finally marketed by any agency which may have been or may be established by the Secretary of Agriculture for the handling, carrying, insuring, or marketing of any cotton acquired by the Secretary of Agriculture.

(c) The funds authorized by subsection (b) of this section shall be made available to the Sec-

retary of Agriculture from time to time upon his request and with the approval of the Secretary of the Treasury. Each such request shall be accompanied by a statement showing by weight and average grade and staple the quantity of cotton held by the Secretary of Agriculture and the approximate aggregate market value thereof.

(d) It is the purpose of subsections (b) and (c) of this section to provide an alternative method to that provided by subsection (a) of this section, for enabling the Secretary of Agriculture to finance the acquisition, carrying, handling, insuring, and marketing of cotton acquired by him under authority of section 603 of this title. The Secretary of Agriculture may at his discretion make use of either or both of the methods provided in this section for obtaining funds for the purposes hereinabove enumerated.

(e) The Secretary of Agriculture is authorized to use in his discretion any funds obtained by him pursuant to the provisions of subsection (a) or (b) of this section for making advances to any agency which may have been or may be established by the Secretary of Agriculture for the handling, carrying, insuring, or marketing of any cotton acquired by the Secretary of Agriculture, to enable any such agency to perform, exercise, and discharge any of the duties, privileges, and functions which such agency may be authorized to perform, exercise, or discharge.

(f) The proceeds derived from the sale of cotton shall be held for the Secretary of Agriculture by the Treasurer of the United States in a special deposit account and shall be used by the Secretary of Agriculture to discharge the obligations incurred under authority of sections 603, 604, and 607 of this title. Whenever any cotton shall be marketed the net proceeds (after discharge of other obligations incurred with respect thereto) derived from the sale thereof shall be used, to the extent required, to reimburse the Treasury for such portion of the funds hereby provided for as shall have been used, which shall be covered into the Treasury as a miscellaneous receipt. If when all of the cotton acquired by the Secretary of Agriculture shall have been marketed and all of the obligations incurred with respect to such cotton shall have been discharged, and the Treasury reimbursed for any and all sums which may have been advanced pursuant to subsection (b) of this section, there shall remain any balance in the hands of the Secretary of Agriculture, such balance shall be covered into the Treasury as miscellaneous receipts.

The word "obligation" when used in this section shall include (without being limited to) administrative expenses, warehouse charges, insurance, salaries, interest, costs, commissions, and other expenses incident to handling, carrying, insuring, and marketing of said cotton.

(May 12, 1933, ch. 25, title I, § 4, 48 Stat. 33; June 19, 1934, ch. 648, title II, § 1, 48 Stat. 1058; Aug. 24, 1935, ch. 641, §§ 35, 36, 49 Stat. 775.)

#### AMENDMENTS

1935—Subsec. (b). Act Aug. 24, 1935, § 35, struck out "to be available until March 1, 1936" after "\$100,000,000" and inserted last sentence relating to availability of the sum of \$100,000,000.

Subsec. (f). Act Aug. 24, 1935, §36, inserted last par. defining "obligation".

1934—Subsec. (a). Act June 19, 1934, inserted "may in his discretion" after "or control and".

Subsecs. (b) to (f). Act June 19, 1934, added subsecs. (b) to (f).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 673 of this title; title 12 section 1150a.

#### § 605. Repealed. June 30, 1947, ch. 166, title II, § 206(d), 61 Stat. 208

Section, acts May 12, 1933, ch. 25, title I, §5, 48 Stat. 33; June 19, 1934, ch. 648, title II, §1, 48 Stat. 1059, related to loans from Reconstruction Finance Corporation and warehouse receipts as collateral.

#### § 606. Repealed. Aug. 24, 1935, ch. 641, §34, 49 Stat. 775

Section, act May 12, 1933, ch. 25, title I, §6, 48 Stat. 33, related to option contracts.

#### § 607. Sale by Secretary; additional options; validation of assignments; publication of information

The Secretary shall sell cotton held or acquired by him pursuant to authority of this chapter at his discretion subject only to the conditions and limitations of this chapter: *Provided*, That the Secretary shall have authority to enter into option contracts with producers of cotton to sell to or for the producers such cotton held and/or acquired by him in such amounts and at such prices and upon such terms and conditions as he, the Secretary, may deem advisable, and such option contracts may be transferred or assigned in such manner as the Secretary of Agriculture may prescribe.

Notwithstanding any provisions contained in option contracts heretofore issued and/or any provision of law, assignments made prior to January 11, 1934, of option contracts exercised prior to January 18, 1934, shall be deemed valid upon determination by the Secretary that such assignment was an assignment in good faith of the full interest in such contract and for full value and is free from evidence of fraud or speculation by the assignee.

Notwithstanding any provision of existing law, the Secretary of Agriculture may, in the administration of this chapter, make public such information as he deems necessary in order to effectuate the purposes of this chapter.

(May 12, 1933, ch. 25, title I, §7, 48 Stat. 34; June 16, 1933, ch. 90, title II, §221, 48 Stat. 210; Aug. 24, 1935, ch. 641, §33, 49 Stat. 775.)

#### AMENDMENTS

1935—Act Aug. 24, 1935, among other changes, inserted provisions as to presumption of validity of assignments made prior to Jan. 11, 1934 of option contracts exercised prior to Jan. 18, 1934 if in good faith, for full value, and without fraud or speculation by the assignee.

1933—Act June 16, 1933, amended section generally.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 608d, 673 of this title.

### SUBCHAPTER III—COMMODITY BENEFITS

#### § 608. Powers of Secretary

##### (1) Investigations; proclamation of findings

Whenever the Secretary of Agriculture has reason to believe that:

(a) The current average farm price for any basic agricultural commodity is less than the fair exchange value thereof, or the average farm price of such commodity is likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, and

(b) The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that the exercise of any one or more of the powers conferred upon the Secretary under subsections (2) and (3) of this section would tend to effectuate the declared policy of this chapter,

he shall cause an immediate investigation to be made to determine such facts. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such determination and shall exercise such one or more of the powers conferred upon him under subsections (2) and (3) of this section as he finds, upon the basis of an investigation, administratively practicable and best calculated to effectuate the declared policy of this chapter.

##### (2) Agreements for adjustment of acreage or production and for rental or benefit payments

Subject to the provisions of subsection (1) of this section, the Secretary of Agriculture shall provide, through agreements with producers or by other voluntary methods,

(a) For such adjustment in the acreage or in the production for market, or both, of any basic agricultural commodity, as he finds, upon the basis of the investigation made pursuant to subsection (1) of this section, will tend to effectuate the declared policy of this chapter, and to make such adjustment program practicable to operate and administer, and

(b) For rental or benefit payments in connection with such agreements or methods in such amounts as he finds, upon the basis of such investigation, to be fair and reasonable and best calculated to effectuate the declared policy of this chapter, and to make such program practicable to operate and administer, to be paid out of any moneys available for such payments or, subject to the consent of the producer, to be made in quantities of one or more basic agricultural commodities acquired by the Secretary pursuant to this chapter.

##### (3) Payments by Secretary

Subject to the provisions of subsection (1) of this section, the Secretary of Agriculture shall make payments, out of any moneys available for such payments, in such amounts as he finds, upon the basis of the investigation made pursuant to subsection (1) of this section, to be fair and reasonable and best calculated to effectuate the declared policy of this chapter:

(a) To remove from the normal channels of trade and commerce quantities of any basic agricultural commodity or product thereof;

(b) To expand domestic or foreign markets for any basic agricultural commodity or product thereof;

(c) In connection with the production of that part of any basic agricultural commodity which is required for domestic consumption.

**(4) Additional investigation; suspension of exercise of powers**

Whenever, during a period during which any of the powers conferred in subsection (2) or (3) of this section is being exercised, the Secretary of Agriculture has reason to believe that, with respect to any basic agricultural commodity:

(a) The current average farm price for such commodity is not less than the fair exchange value thereof, and the average farm price for such commodity is not likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, or

(b) The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that none of the powers conferred in subsections (2) and (3) of this section, and no combination of such powers, would, if exercised, tend to effectuate the declared policy of this chapter,

he shall cause an immediate investigation to be made to determine such facts. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such determination, and shall not exercise any of such powers with respect to such commodity after the end of the marketing year current at the time when such proclamation is made and prior to a new proclamation under subsection (1) of this section, except insofar as the exercise of such power is necessary to carry out obligations of the Secretary assumed, prior to the date of such proclamation made pursuant to this subsection, in connection with the exercise of any of the powers conferred upon him under subsections (2) or (3) of this section.

**(5) Hearings; notice**

In the course of any investigation required to be made under subsection (1) or (4) of this section, the Secretary of Agriculture shall hold one or more hearings, and give due notice and opportunity for interested parties to be heard.

**(6) Commodity in which payment made**

No payment under this chapter made in an agricultural commodity acquired by the Secretary in pursuance of this chapter shall be made in a commodity other than that in respect of which the payment is being made. For the purposes of this subsection, hogs and field corn may be considered as one commodity.

**(7) Additional payments to producers of sugar beets or sugarcane**

In the case of sugar beets or sugarcane, in the event that it shall be established to the satisfaction of the Secretary of Agriculture that returns to growers or producers, under the contracts for the 1933-1934 crop of sugar beets or sugarcane,

entered into by and between the processors and producers and/or growers thereof, were reduced by reason of the payment of the processing tax, and/or the corresponding floor stocks tax, on sugar beets or sugarcane, in addition to the foregoing rental or benefit payments, the Secretary of Agriculture shall make such payments, representing in whole or in part such tax, as the Secretary deems fair and reasonable, to producers who agree, or have agreed, to participate in the program for reduction in the acreage or reduction in the production for market, or both, of sugar beets or sugarcane.

**(8) Pledge by rice producer for production credit of right to rental or benefit payments**

In the case of rice, the Secretary of Agriculture, in exercising the power conferred upon him by subsection (2) of this section to provide for rental or benefit payments, is directed to provide in any agreement entered into by him with any rice producer pursuant to such subsection, upon such terms and conditions as the Secretary determines will best effectuate the declared policy of this chapter, that the producer may pledge for production credit in whole or in part his right to any rental or benefit payments under the terms of such agreement and that such producer may designate therein a payee to receive such rental or benefit payments.

**(9) Advances of payments on stored nonperishable commodity**

Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage of any nonperishable agricultural commodity on the farm, inspection and measurement of any such commodity so stored, and the locking and sealing thereof, and such other regulations as may be prescribed by the Secretary of Agriculture for the protection of such commodity and for the marketing thereof, a reasonable percentage of any benefit payment may be advanced on any such commodity so stored. In any such case such deduction may be made from the amount of the benefit payment as the Secretary of Agriculture determines will reasonably compensate for the cost of inspection and sealing but no deduction may be made for interest.

(May 12, 1933, ch. 25, title I, § 8, 48 Stat. 34; Apr. 7, 1934, ch. 103, § 7, 48 Stat. 528; May 9, 1934, ch. 263, § 14, 48 Stat. 676; Mar. 18, 1935, ch. 32, § 7, 49 Stat. 46; Aug. 24, 1935, ch. 641, §§ 2, 4-7, 49 Stat. 751, 753-762.)

CODIFICATION

Section as originally enacted consisted of subsections (1) to (5). Act Aug. 24, 1935, amended section by striking out or amending and redesignating the various subsections.

AMENDMENTS

1935—Subsec. (1) was, together with subsecs. (2) to (9), inserted in lieu of former (1) by section 2 of act Aug. 24, 1935, which also struck out former (1) as amended by acts May 9, 1934, and March 18, 1935.

Subsec. (2) was, together with subsecs. (1) and (3) to (9), inserted in lieu of former (1) by section 2 of act Aug. 24, 1935. Former subsec. (2), as amended by act Apr. 7, 1934, was designated section 8b of the Agricultural Adjustment Act, section 608b of this title, and amended by section 4 of said act Aug. 24, 1935.

Subsec. (3) was, together with subssecs. (1), (2), and (4) to (9), inserted in lieu of former (1) by section 2 of act Aug. 24, 1935. Former subsec. (3) was struck out by section 5 of said act Aug. 24, 1935, which also added section 8c to the Agricultural Adjustment Act, section 608c of this title.

Subsec. (4) was, together with subssecs. (1) to (3) and (5) to (9), inserted in lieu of former (1) by section 2 of act Aug. 24, 1935. Former subsec. (4) was struck out by section 6 of said act Aug. 24, 1935, which also added sections 8d and 8e to the Agricultural Adjustment Act, section 608d and former section 608e, respectively, of this title.

Subsec. (5) was, together with subssecs. (1) to (4) and (6) to (9), inserted in lieu of former (1) by section 2 of act Aug. 24, 1935. Former subsec. (5) was designated section 8f of the Agricultural Adjustment Act, section 608f of this title, and amended by section 7 of said act Aug. 24, 1935.

Subsecs. (6) to (9) were, together with subssecs. (1) to (5), inserted in lieu of former (1) by section 2 of act Aug. 24, 1935.

1934—Act May 9, 1934, amended subsec. (1) generally. Act Apr. 7, 1934, amended subsec. (2) by striking out proviso.

#### VALIDITY OF AGREEMENTS AND LICENSES PRESERVED UNDER 1935 ACT

Section 38 of act Aug. 24, 1935, which amended this chapter generally, provided as follows: "Nothing contained in this Act shall (a), invalidate any marketing agreement or license in existence on the date of the enactment hereof [Aug. 24, 1935], or any provision thereof, or any act done pursuant thereto, either before or after the enactment of this Act, or (b) impair any remedy provided for on the date of the enactment thereof for the enforcement of any such marketing agreement or license, or (c) invalidate any agreement entered into pursuant to section 8(1) of the Agricultural Adjustment Act prior to the enactment of this Act, or subsequent to the enactment of this Act in connection with a program the initiation of which has been formally approved by the Secretary of Agriculture under such section 8(1) prior to the enactment of this Act, or any act done or agreed to be done or any payment made or agreed to be made in pursuance of any such agreement, either before or after the enactment of this Act, or any change in the terms and conditions of any such agreement, or any voluntary arrangements or further agreements which the Secretary finds necessary or desirable in order to complete or terminate such program pursuant to the declared policy of the Agricultural Adjustment Act [this chapter]; *Provided*, That the Secretary shall not prescribe, pursuant to any such agreement or voluntary arrangement, any adjustment in the acreage or in the production for market of any basic agricultural commodity to be made after July 1, 1937, except pursuant to the provisions of section 8 of the Agricultural Adjustment Act as amended by this Act."

#### CROSS REFERENCES

Delegation of regulatory functions of Secretary of Agriculture, see section 450c of this title.

Marketing quotas for tobacco, corn, wheat, cotton, and rice, see section 1311 et seq. of this title.

Parity payments to producers, see section 1303 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 609, 610, 612, 623, 673 of this title; title 12 section 1150a.

#### § 608-1. Omitted

##### CODIFICATION

Section, act July 2, 1940, ch. 521, §9, 54 Stat. 729, which related to adjustments between payee and third persons, was omitted as executed.

#### § 608a. Enforcement of chapter

##### (1) to (4) Omitted

##### (5) Forfeitures

Any person exceeding any quota or allotment fixed for him under this chapter by the Secretary of Agriculture and any other person knowingly participating or aiding in the exceeding of such quota or allotment shall forfeit to the United States a sum equal to the value of such excess at the current market price for such commodity at the time of violation, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

##### (6) Jurisdiction of district courts

The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this chapter, in any proceeding now pending or hereafter brought in said courts.

##### (7) Duties of United States attorneys; investigation of violations by Secretary; hearings

Upon the request of the Secretary of Agriculture, it shall be the duty of the several United States attorneys, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to this chapter. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto issued pursuant to this chapter, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

##### (8) Cumulative remedies

The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this chapter or now or hereafter existing at law or in equity.

##### (9) "Person" defined

The term "person" as used in this chapter includes an individual, partnership, corporation, association, and any other business unit.

(May 12, 1933, ch. 25, title I, §8a, as added May 9, 1934, ch. 263, §4, 48 Stat. 672; amended Aug. 24, 1935, ch. 641, §§8-10, 49 Stat. 762; June 3, 1937, ch. 296, §§1, 2(c), 50 Stat. 246, 247; June 25, 1948, ch. 646, §1, 62 Stat. 909; Pub. L. 87-128, title I, §141(2), Aug. 8, 1961, 75 Stat. 304.)

##### CODIFICATION

Provisions of subssecs. (1) to (4), relating to establishment, regulation and determination of sugar quotas, agreements limiting or regulating child labor, wages, and adjustment of disputes in the sugar industry, and prescribing penalties for violations thereof, were omitted since they ceased to apply on Sept. 1, 1937, in accordance with the provisions of section 510 of the Sugar Act of 1937, act Sept. 1, 1937, ch. 898, 50 Stat. 916. Sec-

tion 510 of act Sept. 1, 1937, provided in part that: "The provisions of the Agricultural Adjustment Act, as amended [this chapter], shall cease to apply to sugar upon the enactment of this Act [Sept. 1, 1937]". Provisions similar to former subsecs. (1) to (4) were contained in the Sugar Act of 1948, section 1100 et seq. of this title, which expired on Dec. 31, 1974.

#### AMENDMENTS

1961—Subsec. (5). Pub. L. 87-128 struck out "willfully" after "Any person" and substituted provision for forfeiture of a sum equal to the value of the excess at the current market price for the commodity at the time of violation for provision for forfeiture of a sum equal to three times the current market value of the excess.

1937—Subsec. (6). Act June 3, 1937, §2(c), struck out "the provisions of this section, or of".

1935—Subsec. (1). Act Aug. 24, 1935, §8, substituted "persons engaged in handling" for "handlers" wherever appearing; struck out "or in competition with," in par. (B); inserted "directly" before "to burden" in par. (B); and struck out "in any way" in par. (B).

Subsec. (6). Act Aug. 24, 1935, §9, inserted "or" after "regulation," and struck out "or license".

Subsec. (7). Act Aug. 24, 1935, §10, inserted last sentence.

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys" in subsec. (7). See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

#### ADMISSION OF HAWAII AS STATE

Admission of Hawaii into the Union was accomplished Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding 491 of Title 48, Territories and Insular Possessions.

#### VALIDITY OF SECTION AFFIRMED

Act June 3, 1937, affirmed and validated, and reenacted without change the provisions of subsections (5), (6), (7), (8), and (9) of this section, except for the amendment to subsection (6) by section 2 of the act. See note set out under section 601 of this title.

#### CROSS REFERENCES

Anti-hog-cholera serum and hog-cholera virus provisions, provisions of section as applicable to, see section 855 of this title.

Jurisdiction of district courts of actions for fines, penalties and forfeitures, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Pendency of proceedings by handler for modification of order or exemption as not impeding the United States or the Secretary from obtaining relief pursuant to subsection (6) of this section, see section 608c of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 608c, 608e-1, 616, 672, 673, 855, 1392 of this title.

#### § 608a-1. Repealed. Sept. 1, 1937, ch. 898, title V, § 510, 50 Stat. 916

Section, act June 19, 1936, ch. 612, §2, 49 Stat. 1539, related to additional provisions regulating the sugar quotas.

#### § 608b. Marketing agreements; exemption from anti-trust laws; inspection requirements for handlers not subject to agreements

(a) In order to effectuate the declared policy of this chapter, the Secretary of Agriculture shall

have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided*, That no such agreement shall remain in force after the termination of this chapter.

(b)(1) If an agreement with the Secretary is in effect with respect to peanuts pursuant to this section—

(A) all peanuts handled by persons who have not entered into such an agreement with the Secretary shall be subject to inspection to the same extent and manner as is required by such agreement;

(B) no such peanuts shall be sold or otherwise disposed of for human consumption if such peanuts fail to meet the quality requirements of such agreement; and

(C) any assessment (except with respect to any assessment for the indemnification of losses on rejected peanuts) imposed under the agreement shall—

(i) apply to peanut handlers (as defined by the Secretary) who have not entered into such an agreement with the Secretary in addition to those handlers who have entered into the agreement; and

(ii) be paid to the Secretary.

(2) Violation of this subsection by a person who has not entered into such an agreement shall result in the assessment by the Secretary of a penalty equal to 140 percent of the support price for quota peanuts multiplied by the quantity of peanuts sold or disposed of in violation of subsection (b)(1)(B) of this section, as determined under section 1445c-3<sup>1</sup> of this title, for the marketing year for the crop with respect to which such violation occurs.

(May 12, 1933, ch. 25, title I, §8b, formerly §8(2), 48 Stat. 34; Apr. 7, 1934, ch. 103, §7, 48 Stat. 528; renumbered and amended Aug. 24, 1935, ch. 641, §4, 49 Stat. 753; June 3, 1937, ch. 296, §1, 50 Stat. 246; June 30, 1947, ch. 166, title II, §206(d), 61 Stat. 208; Pub. L. 101-220, §4, Dec. 12, 1989, 103 Stat. 1878; Pub. L. 102-237, title I, §115(1), Dec. 13, 1991, 105 Stat. 1840; Pub. L. 103-66, title I, §1109(b), Aug. 10, 1993, 107 Stat. 326.)

#### REFERENCES IN TEXT

Section 1445c-3 of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 104-127, title I, §171(b)(2)(E), Apr. 4, 1996, 110 Stat. 938.

#### CODIFICATION

The provisions appearing in subsec. (a) of this section except the first sentence, were originally enacted as part of section 8(2) of act May 12, 1933, and formerly appeared as section 608(2) of this title.

<sup>1</sup> See References in Text note below.

## AMENDMENTS

1993—Subsec. (b)(1)(C). Pub. L. 103-66 added subpar. (C).

1991—Subsec. (b)(2). Pub. L. 102-237 made technical amendment to reference to section 1445c-3 of this title involving corresponding provisions of original Act.

1989—Pub. L. 101-220 designated existing provisions as subsec. (a) and added subsec. (b).

1947—Act June 30, 1947, repealed provisions providing for loans from Reconstruction Finance Corporation.

1935—Act Aug. 24, 1935, designated subsection 2 of section 8 of act May 12, 1933, as section 8b and amended first sentence generally.

1934—Act Apr. 7, 1934, empowered Secretary of Agriculture to enter into marketing agreements with individual producers.

## EFFECTIVE DATE OF 1989 AMENDMENT

Section 4(c) of Pub. L. 101-220 provided that: "The amendment made by this section [amending this section] shall be effective with respect to the 1990 and subsequent crops of peanuts."

## VALIDITY OF SECTION AFFIRMED

Act June 3, 1937, affirmed and validated, and reenacted without change the provisions of this section. See note set out under section 601 of this title.

## CROSS REFERENCES

Anti-trust laws, see section 1 et seq. of Title 15, Commerce and Trade.

Orders with marketing agreement, see section 608c of this title.

Termination of marketing agreements entered into under this section, see section 608c of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 608c, 672, 673, 1392 of this title; title 12 section 1150a.

**§ 608c. Orders regulating handling of commodity****(1) Issuance by Secretary**

The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this chapter as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. In carrying out this section, the Secretary shall complete all informal rulemaking actions necessary to respond to recommendations submitted by administrative committees for such orders as expeditiously as possible, but not more than 45 days (to the extent practicable) after submission of the committee recommendations. The Secretary shall establish time frames for each office and agency within the Department of Agriculture to consider the committee recommendations.

**(2) Commodities to which applicable; single commodities and separate agricultural commodities**

Orders issued pursuant to this section shall be applicable only to (A) the following agricultural commodities and the products thereof (except

canned or frozen pears, grapefruit, cherries, apples, or cranberries, the products of naval stores, and the products of honeybees), or to any regional, or market classification of any such commodity or product: Milk, fruits (including filberts, almonds, pecans, and walnuts but not including apples, other than apples produced in the States of Washington, Oregon, Idaho, New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, Connecticut, Colorado, Utah, New Mexico, Illinois, and Ohio, and not including fruits for canning or freezing other than pears, olives, grapefruit, cherries, cranberries, and apples produced in the States named above except Washington, Oregon, and Idaho), tobacco, vegetables (not including vegetables, other than asparagus, for canning or freezing and not including potatoes for canning, freezing, or other processing), hops, honeybees, and naval stores as included in the Naval Stores Act [7 U.S.C. 91 et seq.] and standards established thereunder (including refined or partially refined oleoresin): *Provided*, That no order issued pursuant to this section shall be effective as to any grapefruit for canning or freezing unless the Secretary of Agriculture determines, in addition to other findings and determinations required by this chapter, that the issuance of such order is approved or favored by the processors who, during a representative period determined by the Secretary, have been engaged in canning or freezing such commodity for market and have canned or frozen for market more than 50 per centum of the total volume of such commodity canned or frozen for market during such representative period; and (B) any agricultural commodity (except honey, cotton, rice, wheat, corn, grain sorghums, oats, barley, rye, sugarcane, sugarbeets, wool, mohair, livestock, soybeans, cottonseed, flaxseed, poultry (but not excepting turkeys and not excepting poultry which produce commercial eggs), fruits and vegetables for canning or freezing, including potatoes for canning, freezing, or other processing<sup>1</sup> and apples), or any regional or market classification thereof, not subject to orders under (A) of this subdivision, but not the products (including canned or frozen commodities or products) thereof. No order issued pursuant to this section shall be effective as to cherries, apples, or cranberries for canning or freezing unless the Secretary of Agriculture determines, in addition to other required findings and determinations, that the issuance of such order is approved or favored by processors who, during a representative period determined by the Secretary, have engaged in canning or freezing such commodity for market and have frozen or canned more than 50 per centum of the total volume of the commodity to be regulated which was canned or frozen within the production area, or marketed within the marketing area, defined in such order, during such representative period. No order issued pursuant to this section shall be applicable to peanuts produced in more than one of the following production areas: the Virginia-Carolina production area, the Southeast production area, and the Southwest production area. If the Sec-

<sup>1</sup> So in original. Probably should be followed by a comma.

retary determines that the declared policy of this chapter will be better achieved thereby (i) the commodities of the same general class and used wholly or in part for the same purposes may be combined and treated as a single commodity and (ii) the portion of an agricultural commodity devoted to or marketed for a particular use or combination of uses, may be treated as a separate agricultural commodity. All agricultural commodities and products covered hereby shall be deemed specified herein for the purposes of subsections (6) and (7) of this section.

**(3) Notice and hearing**

Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this chapter with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

**(4) Finding and issuance of order**

After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this chapter with respect to such commodity.

**(5) Milk and its products; terms and conditions of orders**

In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers. Throughout the 2-year period beginning on the effective date of this sentence (and subsequent to such 2-year period unless modified by amendment to the order involved), the minimum aggregate amount of the adjustments, under clauses (1) and (2) of the preceding sentence, to prices for milk of the highest use classification under orders that are in effect under this section on December 23, 1985, shall be as follows:

Marketing Area Subject to Order	Minimum Aggregate Dollar Amount of Such Adjustments Per Hundredweight of Milk Having 3.5 Percent Milkfat
New England .....	\$3.24
New York-New Jersey .....	3.14

Middle Atlantic .....	3.03
Georgia .....	3.08
Alabama-West Florida .....	3.08
Upper Florida .....	3.58
Tampa Bay .....	3.88
Southeastern Florida .....	4.18
Michigan Upper Peninsula .....	1.35
Southern Michigan .....	1.75
Eastern Ohio-Western Pennsylvania ...	1.95
Ohio Valley .....	2.04
Indiana .....	2.00
Chicago Regional .....	1.40
Central Illinois .....	1.61
Southern Illinois .....	1.92
Louisville-Lexington-Evansville .....	2.11
Upper Midwest .....	1.20
Eastern South Dakota .....	1.50
Black Hills, South Dakota .....	2.05
Iowa .....	1.55
Nebraska-Western Iowa .....	1.75
Greater Kansas City .....	1.92
Tennessee Valley .....	2.77
Nashville, Tennessee .....	2.52
Paducah, Kentucky .....	2.39
Memphis, Tennessee .....	2.77
Central Arkansas .....	2.77
Fort Smith, Arkansas .....	2.77
Southwest Plains .....	2.77
Texas Panhandle .....	2.49
Lubbock-Plainview, Texas .....	2.49
Texas .....	3.28
Greater Louisiana .....	3.28
New Orleans-Mississippi .....	3.85
Eastern Colorado .....	2.73
Western Colorado .....	2.00
Southwestern Idaho-Eastern Oregon ...	1.50
Great Basin .....	1.90
Lake Mead .....	1.60
Central Arizona .....	2.52
Rio Grande Valley .....	2.35
Puget Sound-Inland .....	1.85
Oregon-Washington .....	1.95

Effective at the beginning of such two-year period, the minimum prices for milk of the highest use classification shall be adjusted for the locations at which delivery of such milk is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: *Provided*, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, (d) a further adjustment to encourage seasonal adjustments in the production of milk through equitable apportionment of the total value of the milk purchased by any handler, or by all handlers, among producers on the basis of their marketings of milk during a representative period of time, which need not be limited to one year, (e) a provision providing for the accumulation and disbursement of a fund to encourage seasonal adjustments in the production of milk may be included in an order, and (f) a further adjustment, equitably to apportion the total value of milk purchased by any handler or by all handlers among producers on the basis of the milk components contained in their marketings of milk.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection, providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) of this subsection.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection.

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection, for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of sections 291 and 292 of this title, engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all of its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: *Provided*, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing

area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

(H) Omitted

(I) Establishing or providing for the establishment of research and development projects, and advertising (excluding brand advertising), sales promotion, educational, and other programs designed to improve or promote the domestic marketing and consumption of milk and its products, to be financed by producers in a manner and at a rate specified in the order, on all producer milk under the order. Producer contributions under this subparagraph<sup>2</sup> may be deducted from funds due producers in computing total pool value or otherwise computing total funds due producers and such deductions shall be in addition to the adjustments authorized by paragraph (B) of this subsection. Provision may be made in the order to exempt, or allow suitable adjustments or credits in connection with, milk on which a mandatory checkoff for advertising or marketing research is required under the authority of any State law. Such funds shall be paid to an agency organized by milk producers and producers' cooperative associations in such form and with such methods of operation as shall be specified in the order. Such agency may expend such funds for any of the purposes authorized by this subparagraph<sup>2</sup> and may designate, employ, and allocate funds to persons and organizations engaged in such programs which meet the standards and qualifications specified in the order. All funds collected under this subparagraph<sup>2</sup> shall be separately accounted for and shall be used only for the purposes for which they were collected. Programs authorized by this subparagraph<sup>2</sup> may be either local or national in scope, or both, as provided in the order, but shall not be international. Order provisions under this subparagraph<sup>2</sup> shall not become effective in any marketing order unless such provisions are approved by producers separately from other order provisions, in the same manner provided for the approval of marketing orders, and may be terminated separately whenever the Secretary makes a determination with respect to such provisions as is provided for the termination of an order in subsection (16)(B) of this section. Disapproval or termination of such order provisions shall not be considered disapproval of the order or of other terms of the order. Notwithstanding any other provision of this chapter, any producer against whose marketings any assessment is withheld or collected under the authority of this subparagraph,<sup>2</sup> and who is not in favor of supporting the research and promotion programs, as provided for herein, shall have the right to demand and receive a refund of such assessment pursuant to the terms and conditions specified in the order.

(J) Providing for the payment, from the total sums payable by all handlers for milk (irrespective of the use classification of such milk) and before computing uniform prices under paragraph (A) and making adjustments in payments

<sup>2</sup> So in original. Probably should be "paragraph".

under paragraph (C), to handlers that are cooperative marketing associations described in paragraph (F) and to handlers with respect to which adjustments in payments are made under paragraph (C), for services of marketwide benefit, including but not limited to—

(i) providing facilities to furnish additional supplies of milk needed by handlers and to handle and dispose of milk supplies in excess of quantities needed by handlers;

(ii) handling on specific days quantities of milk that exceed the quantities needed by handlers; and

(iii) transporting milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification or for providing a market outlet for milk of any use classification.

(K)(i) Notwithstanding any other provision of law, milk produced by dairies—

(I) owned or controlled by foreign persons; and

(II) financed by or with the use of bonds the interest on which is exempt from Federal income tax under section 103 of title 26;

shall be treated as other-source milk, and shall be allocated as milk received from producer-handlers for the purposes of classifying producer milk, under the milk marketing program established under this chapter. For the purposes of this subparagraph,<sup>2</sup> the term “foreign person” has the meaning given such term under section 3508(3) of this title.

(ii) The Secretary of Agriculture shall prescribe regulations to carry out this subparagraph.<sup>2</sup>

(iii) This subparagraph<sup>2</sup> shall not apply with respect to any dairy that began operation before May 6, 1986.

(L) Providing that adjustments in payments by handlers under paragraph (A) need not be the same as adjustments to producers under paragraph (B) with regard to adjustments authorized by subparagraphs (2) and (3) of paragraph (A) and clauses (b), (c), and (d) of paragraph (B)(ii).

**(6) Other commodities; terms and conditions of orders**

In the case of the agricultural commodities and the products thereof, other than milk and its products, specified in subsection (2) of this section orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section), no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf

of any and all producers thereof, during any specified period or periods, under a uniform rule based upon the amounts sold by such producers in such prior period as the Secretary determines to be representative, or upon the current quantities available for sale by such producers, or both, to the end that the total quantity thereof to be purchased, or handled during any specified period or periods shall be apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers and handlers thereof.

(E) Establishing or providing for the establishment of reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

(F) Requiring or providing for the requirement of inspection of any such commodity or product produced during specified periods and marketed by handlers.

(G) In the case of hops and their products in addition to, or in lieu of, the foregoing terms and conditions, orders may contain one or more of the following:

(i) Limiting, or providing methods for the limitation of, the total quantity thereof, or of any grade, type, or variety thereof, produced during any specified period or periods, which all handlers may handle in the current of or so as directly to burden, obstruct, or affect interstate or foreign commerce in hops or any product thereof.

(ii) Apportioning, or providing methods for apportioning, the total quantity of hops of the production of the then current calendar year permitted to be handled equitably among all producers in the production area to which the order applies upon the basis of one or more or a combination of the following: The total

quantity of hops available or estimated will become available for market by each producer from his production during such period; the normal production of the acreage of hops operated by each producer during such period upon the basis of the number of acres of hops in production, and the average yield of that acreage during such period as the Secretary determines to be representative, with adjustments determined by the Secretary to be proper for age of plantings or abnormal conditions affecting yield; such normal production or historical record of any acreage for which data as to yield of hops are not available or which had no yield during such period shall be determined by the Secretary on the basis of the yields of other acreage of hops of similar characteristics as to productivity, subject to adjustment as just provided for.

(iii) Allotting, or providing methods for allotting, the quantity of hops which any handler may handle so that the allotment fixed for that handler shall be limited to the quantity of hops apportioned under preceding clause (ii) to each respective producer of hops; such allotment shall constitute an allotment fixed for that handler within the meaning of subsection (5) of section 608a of this title.

(H) Providing a method for fixing the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging, transportation, sale, shipment, or handling of any fresh or dried fruits, vegetables, or tree nuts: *Provided, however,* That no action taken hereunder shall conflict with the Standard Containers Act of 1916 (15 U.S.C. 251-256) and the Standard Containers Act of 1928 (15 U.S.C. 257-257i).

(I) Establishing or providing for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of any such commodity or product, the expense of such projects to be paid from funds collected pursuant to the marketing order: *Provided,* That with respect to orders applicable to almonds, filberts (otherwise known as hazelnuts), California-grown peaches, cherries, papayas, carrots, citrus fruits, onions, Tokay grapes, pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, eggs, avocados, apples, raisins, walnuts, tomatoes, or Florida-grown strawberries, such projects may provide for any form of marketing promotion including paid advertising and with respect to almonds, filberts (otherwise known as hazelnuts), raisins, walnuts, olives, and Florida Indian River grapefruit may provide for crediting the pro rata expense assessment obligations of a handler with all or any portion of his direct expenditures for such marketing promotion including paid advertising as may be authorized by the order and when the handling of any commodity for canning or freezing is regulated, then any such projects may also deal with the commodity or its products in canned or frozen form: *Provided further,* That the inclusion in a Federal marketing order of provisions for research and marketing promotion, including paid advertising, shall not be deemed to preclude, preempt or supersede

any such provisions in any State program covering the same commodity.

(J) In the case of pears for canning or freezing, any order for a production area encompassing territory within two or more States or portions thereof shall provide that the grade, size, quality, maturity, and inspection regulation under the order applicable to pears grown within any such State or portion thereof may be recommended to the Secretary by the agency established to administer the order only if a majority of the representatives from that State on such agency concur in the recommendation each year.

**(7) Terms common to all orders**

In the case of the agricultural commodities and the products thereof specified in subsection (2) of this section orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their powers and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph shall be deemed to be acting in an official capacity, within the meaning of section 610(g) of this title, unless such person receives compensation for his personal services from funds of the United States. There shall be included in the membership of any agency selected to administer a marketing order applicable to grapefruit or pears for canning or freezing one or more representatives of processors of the commodity specified in such order: *Provided,* That in a marketing order applicable to pears for canning or freezing the representation of processors and producers on such agency shall be equal.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5) to (7) of this section and necessary to effectuate the other provisions of such order.

**(8) Orders with marketing agreement**

Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per

centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 608b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: *Provided*, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

**(9) Orders with or without marketing agreement**

Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area

producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this chapter with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

**(10) Manner of regulation and applicability**

No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be issued under this chapter prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity, or product covered by such marketing agreement.

**(11) Regional application**

(A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional production areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this chapter.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe

such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

**(12) Approval of cooperative association as approval of producers**

Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

**(13) Retailer and producer exemption**

(A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this chapter shall be applicable to any producer in his capacity as a producer.

**(14) Violation of order; penalty**

(A) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order shall, on conviction, be fined not less than \$50 or more than \$5,000 for each such violation, and each day during which such violation continues shall be deemed a separate violation. If the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15) of this section.

(B) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order may be assessed a civil penalty by the Secretary not exceeding \$1,000 for each such violation. Each day during which such violation continues shall be deemed a separate violation, except that if the Secretary finds that a petition pursuant to paragraph (15) was filed and prosecuted by the handler in good faith and not for delay, no civil penalty may be assessed under this paragraph for such violations as occurred between the date on which the handler's petition was filed with the Secretary, and the date on which notice of the Secretary's ruling thereon was given to the handler in accordance with regulations prescribed pursuant to paragraph (15). The Secretary may

issue an order assessing a civil penalty under this paragraph only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable in the district courts of the United States in any district in which the handler subject to the order is an inhabitant, or has the handler's principal place of business. The validity of such order may not be reviewed in an action to collect such civil penalty.

**(15) Petition by handler for modification of order or exemption; court review of ruling of Secretary**

(A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States in any district in which such handler is an inhabitant, or has his principal place of business, are vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 608a(6) of this title. Any proceedings brought pursuant to section 608a(6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

**(16) Termination of orders and marketing agreements**

(A)(i) Except as provided in clause (ii), the Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this chapter, terminate or suspend the operation of such order or such provision thereof.

(ii) The Secretary may not terminate any order issued under this section for a commodity for which there is no Federal program established to support the price of such commodity unless the Secretary gives notice of, and a statement of the reasons relied upon by the Sec-

retary for, the proposed termination of such order to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives not later than 60 days before the date such order will be terminated.

(B) The Secretary shall terminate any marketing agreement entered into under section 608b of this title, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: *Provided*, That such majority have, during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) Except as otherwise provided in this subsection with respect to the termination of an order issued under this section, the termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

#### **(17) Provisions applicable to amendments**

The provisions of this section and section 608d of this title applicable to orders shall be applicable to amendments to orders: *Provided*, That notice of a hearing upon a proposed amendment to any order issued pursuant to this section, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof: *Provided further*, That if one-third or more of the producers as defined in a milk order apply in writing for a hearing on a proposed amendment of such order, the Secretary shall call such a hearing if the proposed amendment is one that may legally be made to such order. Subsection (12) of this section shall not be construed to permit any cooperative to act for its members in an application for a hearing under the foregoing proviso and nothing in such proviso shall be construed to preclude the Secretary from calling an amendment hearing as provided in subsection (3) of this section. The Secretary shall not be required to call a hearing on any proposed amendment to an order in response to an application for a hearing on such proposed amendment if the application requesting the hearing is received by the Secretary within ninety days after the date on which the

Secretary has announced the decision on a previously proposed amendment to such order and the two proposed amendments are essentially the same.

#### **(18) Milk prices**

The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain the parity prices of such commodities. The prices which it is declared to be the policy of Congress to establish in section 602 of this title shall, for the purposes of such agreement, order, or amendment, be adjusted to reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 608b of this title or this section, as the case may be, that the parity prices of such commodities are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk to meet current needs and further to assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, make adjustments in such prices.

#### **(19) Producer or processor referendum for approving order**

For the purpose of ascertaining whether the issuance of an order is approved or favored by producers or processors, as required under the applicable provisions of this chapter, the Secretary may conduct a referendum among producers or processors and in the case of an order other than an amendatory order shall do so. The requirements of approval or favor under any such provision shall be held to be complied with if, of the total number of producers or processors, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. The terms and conditions of the proposed order shall be described by the Secretary in the ballot used in the conduct of the referendum. The nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto. Nothing in this subsection shall be construed as limiting representation by cooperative associations as provided in subsection (12) of this section. For the purpose of ascertaining whether the issuance of an order applicable to

pears for canning or freezing is approved or favored by producers as required under the applicable provisions of this chapter, the Secretary shall conduct a referendum among producers in each State in which pears for canning or freezing are proposed to be included within the provisions of such marketing order and the requirements of approval or favor under any such provisions applicable to pears for canning or freezing shall be held to be complied with if, of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of 66% per centum except that in the event that pear producers in any State fail to approve or favor the issuance of any such marketing order, it shall not be made effective in such State.

(May 12, 1933, ch. 25, title I, §8c, as added Aug. 24, 1935, ch. 641, §5, 49 Stat. 753; amended June 25, 1936, ch. 804, 49 Stat. 1921; June 3, 1937, ch. 296, §§1, 2(d), (e), (f), (k), (l), (m), 50 Stat. 246, 247; Aug. 5, 1937, ch. 567, 50 Stat. 563; Apr. 13, 1938, ch. 143, §§1, 2, 52 Stat. 215; May 31, 1939, ch. 157, 53 Stat. 793; Feb. 10, 1942, ch. 52, §§2, 3, 56 Stat. 85; 1947 Reorg. Plan No. 1, §102, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; Aug. 1, 1947, ch. 425, §§2, 4, 61 Stat. 707, 710; July 3, 1948, ch. 827, title III, §302(b), (c), 62 Stat. 1258; June 29, 1949, ch. 273, 63 Stat. 282; Aug. 28, 1954, ch. 1041, title IV, §401(b)-(d), 68 Stat. 906, 907; Pub. L. 87-128, title I, §141(3), (4), Aug. 8, 1961, 75 Stat. 304, 305; Pub. L. 87-703, title IV, §403, Sept. 27, 1962, 76 Stat. 632; Pub. L. 89-321, title I, §§101, 102, Nov. 3, 1965, 79 Stat. 1187; Pub. L. 89-330, §1(b), Nov. 8, 1965, 79 Stat. 1270; Pub. L. 91-196, §1, Feb. 20, 1970, 84 Stat. 14; Pub. L. 91-292, §1(2), June 25, 1970, 84 Stat. 333; Pub. L. 91-341, July 18, 1970, 84 Stat. 438; Pub. L. 91-363, July 31, 1970, 84 Stat. 687; Pub. L. 91-384, Aug. 18, 1970, 84 Stat. 827; Pub. L. 91-522, Nov. 25, 1970, 84 Stat. 1357; Pub. L. 91-524, title II, §201(a), Nov. 30, 1970, 84 Stat. 1359; Pub. L. 91-670, title I, §101, title II, §201, Jan. 11, 1971, 84 Stat. 2040, 2041; Pub. L. 92-120, Aug. 13, 1971, 85 Stat. 340; Pub. L. 92-233, Feb. 15, 1972, 86 Stat. 39; Pub. L. 92-466, Oct. 6, 1972, 86 Stat. 780; Pub. L. 91-524, title II, §201(f), Nov. 30, 1970, as added Pub. L. 93-86, §1(2)(B), Aug. 10, 1973, 87 Stat. 222; Pub. L. 93-230, Dec. 29, 1973, 87 Stat. 945; Pub. L. 95-279, title IV, §401(a), May 15, 1978, 92 Stat. 242; Pub. L. 96-494, title I, §101, Dec. 3, 1980, 94 Stat. 2570; Pub. L. 97-98, title I, §101(a), Dec. 22, 1981, 95 Stat. 1218; Pub. L. 98-171, §1, Nov. 29, 1983, 97 Stat. 1117; Pub. L. 98-180, title III, §304, Nov. 29, 1983, 97 Stat. 1151; Pub. L. 99-198, title I, §§131(a), 133, title XVI, §§1661(a), 1662(a), Dec. 23, 1985, 99 Stat. 1372, 1373, 1630, 1631; Pub. L. 100-203, title I, §1501, Dec. 22, 1987, 101 Stat. 1330-27; Pub. L. 100-418, title IV, §§4601, 4602, Aug. 23, 1988, 102 Stat. 1407; Pub. L. 101-624, title I, §§112, 113, title XIII, §1306, Nov. 28, 1990, 104 Stat. 3380, 3561; Pub. L. 102-237, title I, §115(2), Dec. 13, 1991, 105 Stat. 1840; Pub. L. 102-553, §2, Oct. 28, 1992, 106 Stat. 4141.)

#### AMENDMENT OF SECTION

*For termination of amendment by section 101(b) of Pub. L. 97-98, see Effective and Termination Dates of 1981 Amendment note below.*

#### REFERENCES IN TEXT

The Naval Stores Act, referred to in subsec. (2), is act Mar. 3, 1923, ch. 217, 42 Stat. 1435, as amended, which is classified generally to chapter 4 (§91 et seq.) of this title. For complete classification of this Act to the Code, see section 91 of this title and Tables.

For the effective date of this sentence, referred to in subsec. (5)(A), see Effective Date of 1985 Amendment note below.

The Standard Containers Act of 1916 and the Standard Containers Act of 1928, referred to in subsec. (6)(H), are act Aug. 31, 1916, ch. 426, 39 Stat. 673, as amended, and act May 21, 1928, ch. 664, 45 Stat. 685, as amended, respectively, and were repealed by Pub. L. 90-628, §1(a), (b), Oct. 22, 1968, 82 Stat. 1320.

#### CODIFICATION

Subsec. (5)(H), which permitted marketing orders applicable to milk and its products to be limited in application to milk used for manufacturing, was omitted as terminated. See Termination of 1965 Amendments note set out below.

Phrase "with the approval of the President," following "Secretary of Agriculture" in opening par. of subsec. (9) of this section was omitted on the authority of 1947 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees, which abolished the function of the President with respect to approving determinations of the Secretary of Agriculture in connection with agricultural marketing orders under this section.

The words "(including the district court of the United States for the District of Columbia)" in subsec. (15)(B) following "The District Courts of the United States" have been deleted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure which states that "There should be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of said Title 28 which states that "The District of Columbia constitutes one judicial district."

In subsec. (18), "or, in the case of orders applying only to manufacturing milk, the production area" following "marketing area" in two places, was deleted from the Code. See Termination of 1965 Amendments note set out below.

#### AMENDMENTS

1992—Subsec. (1). Pub. L. 102-553 inserted at end "In carrying out this section, the Secretary shall complete all informal rulemaking actions necessary to respond to recommendations submitted by administrative committees for such orders as expeditiously as possible, but not more than 45 days (to the extent practicable) after submission of the committee recommendations. The Secretary shall establish time frames for each office and agency within the Department of Agriculture to consider the committee recommendations."

1991—Subsec. (5)(B). Pub. L. 102-237 substituted "and" for "and," before cl. (f) in last sentence.

1990—Subsec. (5)(B)(f). Pub. L. 101-624, §112, added cl. (f).

Subsec. (5)(L). Pub. L. 101-624, §113, added par. (L).

Subsec. (14)(A). Pub. L. 101-624, §1306(1), struck out "(other than a provision calling for payment of a pro rata share of expenses)" before "shall, on conviction" and substituted ". If" for "Provided, That if".

Subsec. (14)(B). Pub. L. 101-624, §1306(2), struck out "(other than a provision calling for payment of a pro rata share of expenses)" before "may be assessed".

1988—Subsec. (5)(K). Pub. L. 100-418, §4601, added par. (K).

Subsec. (6)(I). Pub. L. 100-418, §4602, substituted "tomatoes, or Florida-grown strawberries," for "or tomatoes".

1987—Subsec. (14). Pub. L. 100-203 designated existing provisions as par. (A) and added par. (B).

1985—Subsec. (5)(A). Pub. L. 99-198, §131(a), inserted provisions, with accompanying table, establishing the

minimum aggregate amounts of the adjustments under cls. (1) and (2) to prices for milk of the highest use classification under orders in effect on Dec. 23, 1985, and requiring that such prices be adjusted for the locations at which delivery of such milk is made to such handlers.

Subsec. (5)(J). Pub. L. 99-198, §133, added par. (J).

Subsec. (14). Pub. L. 99-198, §1661(a), substituted "\$5,000" for "\$500".

Subsec. (16)(A). Pub. L. 99-198, §1662(a)(1), designated existing provisions of par. (A) as cl. (i), substituted "Except as provided in clause (ii), the Secretary" for "The Secretary", and added cl. (ii).

Subsec. (16)(C). Pub. L. 99-198, §1662(a)(2), substituted "Except as otherwise provided in this subsection with respect to the termination of an order issued under this section, the termination" for "The termination".

1983—Subsec. (2). Pub. L. 98-180, §304(1), substituted "poultry (but not excepting turkeys and not excepting poultry which produce commercial eggs)," for "poultry (but not excepting turkeys), eggs (but not excepting turkey hatching eggs)."

Subsec. (6)(I). Pub. L. 98-180, §304(2), inserted "eggs," after "pecans."

Pub. L. 98-171 inserted "filberts (otherwise known as hazelnuts)," after "almonds," in two places.

1981—Subsec. (5)(B). Pub. L. 97-98, §101(a)(1), struck out cl. (f) which extended authority for Class I Base Plans, provided for a representative Class I base period of one to three years to be automatically updated each year, inserted provisions to automatically keep the total of bases closely related to changing levels of market utilization, provided authorization for transfers of Class I bases on such terms and conditions as prescribed in the order by the Secretary, added authority to make provision in the order for the alleviation of hardship and inequity among producers including abnormally low production during a base forming period due to circumstances beyond his control, operation during part but not all of a base period, acts of God, and reduced marketing due to diseases, pesticides, residues, and condemnation of milk, and removed provision under which the participation of new producers in the market's Class I sales was confined to increases in such sales with defined exceptions.

Subsec. (17). Pub. L. 97-98, §101(a)(2), inserted provisions governing procedures when one-third or more of producers apply in writing for a hearing on a proposed amendment of an order, prohibiting any construction of subsec. (12) in a way which might permit cooperatives to act for their members in applying for hearings, and excusing the Secretary from the requirement of having to call a hearing on proposed amendments to an order in response to an application for such a hearing when the application for such a hearing is received by the Secretary within ninety days after the date on which the Secretary has announced his decision on a previously proposed amendment to such order and the two proposed amendments are essentially the same. An identical amendment was made by Pub. L. 91-524, §201(f)(1), as added by Pub. L. 93-86, see Termination of 1970 Amendment note set out below.

Subsec. (18). Pub. L. 97-98, §101(a)(3), inserted "to meet current needs and further to assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs" after "pure and wholesome milk". An identical amendment was made by Pub. L. 91-524, §201(f)(2), as added by Pub. L. 93-86, see Termination of 1970 Amendment note set out below.

1980—Subsec. (6)(I). Pub. L. 96-494 inserted "walnuts" before "or tomatoes" and substituted "walnuts, olives, and Florida Indian River grapefruit" for "Florida Indian River grapefruit".

1978—Subsec. (6)(I). Pub. L. 95-279 inserted "raisins" after "apples" and after "with respect to almonds".

1973—Subsec. (6)(I). Pub. L. 93-230 inserted "and Florida Indian River grapefruit" after "with respect to almonds".

Subsec. (17). Pub. L. 91-524, §201(f)(1), as added by Pub. L. 93-86, inserted provisions governing procedures

when one-third or more of producers apply in writing for a hearing on a proposed amendment of an order, prohibiting any construction of subsec. (12) in a way which might permit cooperatives to act for their members in applying for hearings, and excusing the Secretary from the requirement of having to call a hearing on proposed amendments to an order in response to an application for such a hearing when the application for such a hearing is received by the Secretary within ninety days after the date on which the Secretary has announced his decision on a previously proposed amendment to such order and the two proposed amendments are essentially the same.

Subsec. (18). Pub. L. 91-524, §201(f)(2), as added by Pub. L. 93-86, inserted "to meet current needs and further to assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs" after "insure a sufficient quantity of pure and wholesome milk".

1972—Subsec. (2). Pub. L. 92-233 inserted potatoes for canning, freezing or other processing to the agricultural commodities excluded from the categories of commodities which the Secretary may regulate. The amendment served to make permanent the temporary exemption first inserted by Pub. L. 91-196. See 1970 Amendment note and Effective Date of 1970 Amendment note.

Subsec. (2)(A). Pub. L. 92-466, §1(1), inserted "pears," after "except canned or frozen" and after "canning or freezing other than".

Subsec. (6)(I). Pub. L. 92-466, §1(2), struck out "fresh" before "pears" and provided that when the handling of any commodity for canning or freezing is regulated, then any projects may also deal with the commodity or its products in canned or frozen form.

Subsec. (6)(J). Pub. L. 92-466, §1(5), added par. (J).

Subsec. (7)(C). Pub. L. 92-466, §1(3), inserted "or pears" after "marketing order applicable to grapefruit" and inserted proviso that in a marketing order applicable to pears for canning or freezing the representation of processors and producers on the agency shall be equal.

Subsec. (19). Pub. L. 92-466, §1(4), inserted provision respecting producer or processor referendum for approving order applicable to pears for canning or freezing.

1971—Subsec. (5)(I). Pub. L. 91-670, §101, added par. (I).

Subsec. (6)(I). Pub. L. 92-120 inserted reference to "California-grown peaches" in proviso.

Pub. L. 91-670, §201, inserted reference to "tomatoes" in proviso.

1970—Subsec. (2). Pub. L. 91-196 inserted potatoes for canning, freezing or other processing to the category of agricultural commodities excluded from the Secretary's power to issue orders to regulate the handling of such commodities.

Subsec. (2)(A). Pub. L. 91-341 inserted provision for marketing orders for apples produced in Colorado, Utah, New Mexico, Illinois and Ohio.

Subsec. (5)(B). Pub. L. 91-524 retained and separately stated the existing authority for base-surplus or base-excess provisions in milk marketing orders in cl. (d), clarified and reaffirmed, in cl. (e), the authority for plans under which leveling of spring and fall production is encouraged by withholding from sums paid for milk in the spring and subsequently paying the same sums to producers in the fall, and, in cl. (f), extended the authority for Class I Base Plans, provided for a representative Class I base period of one to three years to be automatically updated each year, inserted provisions to automatically keep the total of bases closely related to changing levels of market utilization, provided authorization for transfers of Class I bases on such terms and conditions as prescribed in the order by the Secretary, added authority to make provision in the order for the alleviation of hardship and inequity among producers including abnormally low production during a base forming period due to circumstances beyond his control, operation during part but not all of a base period, acts of God, and reduced marketing due to dis-

eases, pesticides, residues, and condemnation of milk, and removed provision under which the participation of new producers in the market's Class I sales was confined to increases in such sales with defined exceptions.

Subsec. (6)(I). Pub. L. 91-522 in first proviso inserted applicability to almonds and provisions authorizing with respect to almonds the crediting of the pro rata expense assessment obligations of a handler with all or any portion of his direct expenditures for marketing promotion including paid advertising as authorized by the order, and in second proviso inserted provisions relating to marketing promotion, including paid advertising, in Federal marketing orders.

Pub. L. 91-384 inserted "papayas," after "applicable to cherries,".

Pub. L. 91-363 substituted "avocados, or apples" for "or avocados" in proviso.

Pub. L. 91-292 authorized the establishment of production research, inserted efficient production to the enumeration of aims to be served by established projects, and inserted proviso that the inclusion in a Federal marketing order of provisions for research not be deemed to preclude, preempt, or supersede research provisions in any State program covering the same commodity.

1965—Subsec. (5). Pub. L. 89-321, §§101, 102, inserted ", which may be adjusted to reflect sales of such milk by any handler or by all handlers in any classification or classifications," before "during a representative period of time" in cl. (d) of par. (B) and, after "representative period of time", inserted "which need not be limited to one year" in completion of first sentence of cl. (d) as well as all the remaining sentences in completion of cl. (d), and added par. (H).

Subsec. (6)(I). Pub. L. 89-330 inserted "carrots, citrus fruits, onions, Tokay grapes, fresh pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, or avocados" in proviso.

Subsec. (18). Pub. L. 89-321, §102, inserted "or, in the case of orders applying only to manufacturing milk, the production area" after "marketing area" wherever occurring.

1962—Subsec. (6)(I). Pub. L. 87-703 inserted the cherry marketing order provisions for advertising.

1961—Subsec. (2). Pub. L. 87-128, §141(3), designated existing provisions as par. (A), included in exception provision thereof cherries, apples, and cranberries, substituted "Idaho, New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, and Connecticut, and not including fruits for canning or freezing other than olives, grapefruit, cherries, cranberries, and apples produced in the States named above except Washington, Oregon, and Idaho)" for "and Idaho, and not including fruits, other than olives and grapefruit, for canning or freezing)", struck out "soybeans" before ", hops, honeybees", and added par. (B) and provisions respecting the effectiveness of orders as to cherries, apples and cranberries for canning or freezing, the applicability of orders to peanuts, the treatment of commodities as single commodities and separate agricultural commodities, and the deeming of the covered agricultural commodities and products as specified in the subsection.

Subsec. (19). Pub. L. 87-128, §141(4), provided for processor referendum for approving order, required referendum in case of an order other than an amendatory order, and a description of the terms and conditions of the proposed order in the ballot used in the conduct of the referendum, and prohibited the use of such description as a basis for attacking legality of orders or any action relating thereto.

1954—Subsec. (2). Act Aug. 28, 1954, §401(b), made grapefruit for canning and freezing (but not the canned or frozen product) subject to its provisions, and inserted proviso.

Subsec. (6). Act Aug. 28, 1954, §401(c), brought within its scope all agricultural commodities specified in subsec. (2) of this section, and added pars. (H) and (I).

Subsec. (7)(C). Act Aug. 28, 1954, §401(d), provided for the appointment of representatives from the grapefruit for canning processors.

1949—Subsecs. (2), (6). Act June 29, 1949, made section applicable to filberts and almonds.

1948—Subsec. (17). Act July 3, 1948, §302(c), struck out "section 608e of this title".

Subsec. (18). Act July 3, 1948, §302(b), made definition of "parity" conform to definition stated in section 1301(a)(1) of this title.

1947—Subsec. (2). Act Aug. 1, 1947, inserted "or freezing" after "canning" in two places.

Subsec. (6). Act Aug. 1, 1947, in opening par., inserted "or freezing" after "canning" in two places, reenacted pars. (A) to (E) without change, inserted par. (F), redesignated former par. (F) as (G) and reenacted such par. without further change.

1942—Subsec. (6), opening par. Act Feb. 10, 1942, §2, inserted "and their products" after "hops".

Subsec. (6)(F). Act Feb. 10, 1942, §3, added par. (F).

1939—Subsecs. (2), (6). Act May 31, 1939, amended Act June 3, 1937, §2, by adding subsection (m) thereto, which in turn amended subsecs. (2) and (6) of this section.

1938—Subsec. (2). Act Apr. 13, 1938, §1, inserted "hops" after "soybeans".

Subsec. (6). Act Apr. 13, 1938, §2, inserted "hops" after "soybeans and their products".

1937—Subsec. (2). Act Aug. 5, 1937, amended act June 3, 1937, by adding thereto subsec. (k), which in turn amended subsec. (2) by inserting "and the products of honeybees" after "except the products of naval stores" and ", honeybees" after "soybeans".

Subsec. (5)(B)(d). Act June 3, 1937, §2(d), substituted "marketings" for "production".

Subsec. (6). Act Aug. 5, 1937, amended act June 3, 1937, by adding subsec. (l), which in turn amended subsec. (6) by inserting "honeybees" after "soybeans and their products,".

Subsec. (6)(B). Act June 3, 1937, §2(e), struck out "produced or" and "production or sales of" and inserted in lieu thereof "quantities available for sale by".

Subsecs. (18), (19). Act June 3, 1937, §2(f), added subsecs. (18) and (19). See note set out under section 601 of this title.

1936—Act June 25, 1936, provided that the Supreme Court of the District of Columbia should thereafter be known as the "district court of the United States for the District of Columbia".

1935—Section added to the Agricultural Adjustment Act by act Aug. 24, 1935, which also struck out former section 608(3) of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendments by sections 112 and 113 of Pub. L. 101-624 effective beginning with 1991 crop of an agricultural commodity, with provision for prior crops, see section 1171 of Pub. L. 101-624, set out as a note under section 1421 of this title.

#### EFFECTIVE DATE OF 1985 AMENDMENT

Section 131(b) of Pub. L. 99-198 provided that: "The amendment made by this section [amending this section] shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act [Dec. 23, 1985]."

Section 133 of Pub. L. 99-198 provided that the amendment made by that section is effective Jan. 1, 1986.

Section 1661(b) of Pub. L. 99-198 provided that: "The amendment made by subsection (a) [amending this section] shall not apply with respect to any violation described in section 8c(14) of the Agricultural Adjustment Act [subsec. (14) of this section] occurring before the date of the enactment of this Act [Dec. 23, 1985]."

#### EFFECTIVE AND TERMINATION DATES OF 1981 AMENDMENT

Section 101(b) of Pub. L. 97-98, as amended by Pub. L. 99-198, title I, §132, Dec. 23, 1985, 99 Stat. 1373; Pub. L. 101-624, title I, §108, Nov. 28, 1990, 104 Stat. 3380; Pub. L. 103-66, title I, §1105(b), Aug. 10, 1993, 107 Stat. 317, provided that: "The provisions of subsection (a) [amending

this section] shall become effective January 1, 1982, and shall terminate December 31, 1996.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 401(a) of Pub. L. 95-279 provided that the amendment made by that section is effective Oct. 1, 1978.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Section 2 of Pub. L. 91-196 provided that: “The amendments made by this Act [amending this section] shall be effective only during the period beginning with the date of enactment of this Act [Feb. 20, 1970] and ending two years after such date.” The limited effective period beginning Feb. 20, 1970, and ending two years after such date for the amendment made by Pub. L. 91-196 was removed as a result of the enactment of Pub. L. 92-233, Feb. 15, 1972, 86 Stat. 39, which made an amendment to the section identical to that made by Pub. L. 91-196 but without a time limit on such amendment of the type which had limited the duration of such earlier Pub. L. 91-196 amendment.

#### EFFECTIVE DATE OF 1948 AMENDMENT

Amendment by act July 3, 1948, effective Jan. 1, 1950, see section 303 of act July 3, 1948, set out as a note under section 1301 of this title.

#### TERMINATION OF 1970 AMENDMENT; SAVINGS PROVISION

Section 201(e) of Pub. L. 91-524, as amended by Pub. L. 93-86, §1(2)(A), Aug. 10, 1973, 87 Stat. 222; Pub. L. 95-113, title II, §201, Sept. 29, 1977, 91 Stat. 919, provided that: “The provisions of this section [amending this section] shall not be effective after December 31, 1981, except with respect to orders providing for class I base plans issued prior to such date, but in no event shall any order so issued extend or be effective beyond December 31, 1984.”

#### TERMINATION OF 1965 AMENDMENTS; REVERSION OF STATUS OF PRODUCER HANDLERS OF MILK TO PRE-AMENDMENT STATUS

Sections 103 and 104 of Pub. L. 89-321, as amended by Pub. L. 90-559, §1(3), Oct. 11, 1968, 82 Stat. 996, provided that:

“SEC. 103. The provisions of this title [amending this section] shall not be effective after December 31, 1970.

“SEC. 104. The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, shall be the same subsequent to the adoption of the amendments made by this title [amending this section] as it was prior thereto.”

#### SHORT TITLE

Section 1 of Pub. L. 89-321 provided: “That this Act [enacting sections 1305, 1306, 1316, 1344b, 1379, 1446a-1, and 1838 of this title, amending this section and sections 1301, 1314b, 1332, 1333, 1334, 1335, 1339, 1339a, 1339c, 1340, 1346, 1348, 1350, 1353, 1374, 1379b, 1379c, 1379d, 1379e, 1379g, 1379i, 1423, 1427, 1428, 1444, 1445a, and 1782 of this title and section 590p of Title 16, Conservation, repealing sections 1801 to 1816, 1821 to 1824, 1831, and 1832 to 1837 of this title, enacting provisions set out as notes under this section and sections 1282, 1301, 1332, 1334, 1339, 1350, 1359, 1379b, 1379c, 1379d, 1379i, 1428, 1441, and 1445a of this title and section 590p of Title 16, and amending provisions set out as notes under sections 1339, 1379c, and 1427 of this title] may be cited as the ‘Food and Agriculture Act of 1965’.”

#### MINNESOTA-WISCONSIN PRICE SERIES REFORM

Section 103 of Pub. L. 101-624 provided that:

“(a) IN GENERAL.—Within 60 days of the date of enactment of this Act [Nov. 28, 1990], the Secretary of Agriculture shall commence to accept alternative pricing formula recommendations, as they may relate to the

Minnesota-Wisconsin price series used to determine the minimum prices paid under milk marketing orders, in order to amend such milk marketing orders authorized under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937. Among the alternative pricing formulas to be considered by the Secretary shall be a price series based on prices paid by milk processors for Grade A milk and manufacturing grade milk that is used in the manufacture of dairy products.

“(b) AVAILABILITY OF DATA.—The Secretary shall compile and make available to the public the historical and current data used to compare the alternative pricing formulas submitted and recommended as provided in subsection (a) with the existing Minnesota-Wisconsin price series.

“(c) IMPLEMENTATION IN FEDERAL MARKETING ORDERS.—

“(1) ANNOUNCEMENT OF HEARING.—Not later than October 1, 1991, the Secretary shall—

“(A) announce a national hearing to consider the proposed replacement of the Minnesota-Wisconsin price series in Federal milk marketing orders; and

“(B) invite industry and consumer proposals on the specific provisions to be considered for each order.

“(2) REPORT TO CONGRESS.—On issuance of the final decision on the hearing proposals, the Secretary shall report the decision to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

“(3) OPPORTUNITY FOR PUBLIC COMMENT.—The opportunity for public comment on the recommended decision shall not be less than 30 legislative days. For purposes of this paragraph, the term ‘legislative day’ means a day on which either House of Congress is in session.”

#### HEARINGS ON FEDERAL MILK MARKETING ORDERS

Section 104 of Pub. L. 101-624 provided that: “The Secretary of Agriculture shall—

“(1) conclude the national hearings announced by the Secretary on March 29, 1990, regarding possible changes in the pricing provisions of Federal milk marketing orders; and

“(2) to the maximum extent practicable consistent with applicable laws, effect any resulting system-wide changes in the Federal orders setting minimum prices that milk processors must pay for Grade A milk received from producers, by January 1, 1992.”

#### STATUS OF PRODUCER HANDLERS

Section 115 of title I of Pub. L. 101-624 provided that: “The legal status of producer handlers of milk under the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, shall be the same after the amendments made by this title [enacting section 1446e of this title and amending sections 450l, 608c, and 1446a of this title, section 713a-14 of Title 15, Commerce and Trade, and provisions set out as notes under sections 608c and 1731 of this title] take effect as it was before the effective date of the amendments [see Effective Date of 1990 Amendment note set out under section 1421 of this title].”

#### MULTIPLE COMPONENT PRICING STUDY

Section 116 of Pub. L. 101-624 provided that:

“(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act [Nov. 28, 1990], the Secretary of Agriculture shall initiate a study to determine whether, and to what extent, milkfat is being produced in the United States in excess of commercial market needs as a result of any provision of law, regulation, or order that affects the manner in which producers receive payment for milk on the basis of the milk components contained in their marketings of milk under any Federal or State milk pricing program.

“(b) STUDY.—In conducting the study, the Secretary shall assess the potential impact on achieving balance in the production, marketing, and domestic commercial use of milkfat through adoption of multiple component pricing programs under Federal and State milk pricing programs.

“(c) REPORT.—Not later than 180 days after the date of enactment of this Act [Nov. 28, 1990], the Secretary shall—

“(1) report the results of the study conducted under subsection (a), together with associated recommendations, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate; and

“(2) publish the results of the study.

“(d) IMPLEMENTATION IN FEDERAL MARKETING ORDERS.—On completion and publication of the study described in this section, the Secretary shall—

“(1) announce a national hearing to consider the adoption of multiple component pricing provisions in individual Federal milk marketing orders issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937; and

“(2) invite industry and consumer proposals on the specific provisions to be considered for each order.”

#### MARKETWIDE SERVICE PAYMENTS

Pub. L. 99-260, § 9, Mar. 20, 1986, 100 Stat. 51, provided that:

“(a) HEARING.—Not later than 90 days after receipt of a proposal to amend a milk marketing order in accordance with section 8c(5)(J) of the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(5)(J)) (as added by section 133 of the Food Security Act of 1985), the Secretary of Agriculture shall conduct a hearing on the proposal.

“(b) IMPLEMENTATION.—Not later than 120 days after a hearing is conducted under subsection (a), the Secretary shall implement, in accordance with the Agricultural Adjustment Act [this chapter], a marketwide service payment program under section 8c(5)(J) of such Act that meets the requirements of such Act.”

#### TERMINATION OF MARKETING ORDERS

Section 1662(b) of Pub. L. 99-198 provided that: “The Secretary of Agriculture may not terminate any marketing order under section 8c(16) of the [so in original] Agricultural Adjustment Act (7 U.S.C. 608c(16)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, if such termination becomes effective before January 16, 1986.”

#### REPORT TO HOUSES OF CONGRESS REGARDING IMPLEMENTATION OF PROVISIONS RELATING TO HANDLING OF COMMODITIES

Section 401(b) of Pub. L. 95-279 provided that: “Within a period of sixty days following the second anniversary of the implementation of this section, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that shall describe in detail how this section has been implemented including, but not limited to, information as to the issuance or amendment of any affected order, the annual amount of assessments collected, in the aggregate and by size and class of handler, the manner in which such assessments were collected, the amount of direct expenditures credited against the pro rata expense assessment obligations of each handler, and the purpose to which such assessments and such direct expenditures of each such handler were devoted.”

#### RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1985 AMENDMENT STATUS

Section 134 of Pub. L. 99-198 provided that: “The legal status of producer handlers of milk under the Agricul-

tural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, shall be the same after the amendments made by this title [probably means this subtitle, subtitle C (§§131-134) of title I of Pub. L. 99-198, amending subsec. (5) of this section and provisions set out as a note above] take effect as it was before the effective date of such amendments.”

#### RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1981 AMENDMENT STATUS

Section 102 of Pub. L. 97-98 provided that: “The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 [this chapter] shall be the same subsequent to the adoption of the amendment made by the Agriculture and Food Act of 1981 [see Tables] as it was prior thereto.”

#### RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1977 AMENDMENT STATUS

Pub. L. 95-113, title II, §202, Sept. 29, 1977, 91 Stat. 919, provided that: “The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act [see Short Title note set out under section 601 of this title], as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended [act June 3, 1937, ch. 296, 50 Stat. 246, set out as a note under section 601 of this title] shall be the same subsequent to the adoption of the amendment made by the Food and Agriculture Act of 1977 [see Short Title of 1977 Amendment note set out under section 1281 of this title] as it was prior thereto.”

#### RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1973 AMENDMENT STATUS

Section 206 of Pub. L. 91-524, as added by Pub. L. 93-86, §1(6), Aug. 10, 1973, 87 Stat. 224; amended Pub. L. 93-125, §1(a)(iii), Oct. 18, 1973, 87 Stat. 450, provided that: “The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, shall be the same subsequent to the adoption of the amendments made by the Agriculture and Consumer Protection Act of 1973 [amending this section and sections 450f, 1446, and 1446a of this title] as it was prior thereto.”

#### RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1970 AMENDMENT STATUS

Section 201(b) of Pub. L. 91-524 provided that: “The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, shall be the same subsequent to the adoption of the amendments made by this Act [amending subsec. (5)(B) of this section] as it was prior thereto.”

#### RATIFICATION, LEGALIZATION, CONFIRMATION, AND EXTENSION OF CLASS I BASE PLAN PROVISIONS IN MARKETING ORDERS ISSUED PRIOR TO NOV. 30, 1970

Section 201(c) of Pub. L. 91-524 provided that: “Nothing in subsection (a) of this section 201 [amending subsec. (5)(B) of this section] shall be construed as invalidating any class I base plan provisions of any marketing order previously issued by the Secretary of Agriculture pursuant to authority contained in the Food and Agriculture Act of 1965 (79 Stat. 1187), but such provisions are expressly ratified, legalized, and confirmed and may be extended through and including December 31, 1971.”

#### REAFFIRMATION OF SUBSEC. (5)(G) OF THIS SECTION

Section 201(d) of Pub. L. 91-524 provided that: “It is not intended that existing law be in any way altered,

rescinded, or amended with respect to section 8c(5)(G) of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended [subsec. (5)(G) of this section], and such section 8c(5)(G) is fully reaffirmed.”

#### VALIDITY OF SECTION AFFIRMED

Act June 3, 1937, affirmed and validated, and reenacted without change the provisions of this section, except for the amendments to subsections (5)(B)(d) and (6)(B) by section 2 of the act, and the addition of subsections (18) and (19) by said section 2. See note set out under section 601 of this title.

#### FEDERAL RULES OF CIVIL PROCEDURE

One form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.  
Process, see rule 4.

#### CROSS REFERENCES

Anti-hog-cholera serum and hog-cholera virus, marketing agreements relating to, see section 853 of this title.

Anti-hog-cholera serum and hog-cholera virus provisions, provisions of section as applicable to, see section 855 of this title.

Referendum on quotas established for tobacco, corn, wheat, cotton, and rice, see sections 1312 and 1336 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 608e-1, 610, 672, 673, 853, 855, 1392, 6409, 7253, 7256, 7401 of this title.

#### § 608c-1. Repealed. June 29, 1945, ch. 196, 59 Stat. 263

Section, acts Apr. 13, 1938, ch. 143, § 3, 52 Stat. 215; May 26, 1939, ch. 150, 53 Stat. 782; Feb. 10, 1942, ch. 52, § 1, 56 Stat. 85, related to orders applicable to hops. Section was not a part of the Agricultural Adjustment Act of 1933.

#### § 608d. Books and records; disclosure of information; notification of Congressional committees

(1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this chapter and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the antitrust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of section 607 of this title, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section, as well as information for marketing order programs that is categorized as trade secrets and commercial or financial information exempt under section 552(b)(4) of title 5 from disclosure under section 552 of such title, shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Notwithstanding the preceding sentence, any such information relating to a marketing agreement or order applicable to milk may be released upon the authorization of any regulated milk handler to whom such information pertains. The Secretary shall notify the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives not later than 10 legislative days before the contemplated release under law, of the names and addresses of producers participating in such marketing agreements and orders, and shall include in such notice a statement of reasons relied upon by the Secretary in making the determination to release such names and addresses. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

(May 12, 1933, ch. 25, title I, § 8d, as added Aug. 24, 1935, ch. 641, § 6, 49 Stat. 761; amended June 3, 1937, ch. 296, § 1, 50 Stat. 246; Pub. L. 99-198, title XVI, § 1663, Dec. 23, 1985, 99 Stat. 1631.)

#### REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (1), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

#### CODIFICATION

Act Aug. 24, 1935, struck out provisions of section 8(4) of act May 12, 1933, formerly appearing in section 608(4) of this title and added a new section 8d containing provisions appearing in text.

#### AMENDMENTS

1985—Subsec. (2). Pub. L. 99-198, § 1663(1), extended confidentiality requirement to include information for marketing order programs that is categorized as trade secrets and commercial or financial information that is exempt from disclosure under section 552 of title 5.

Pub. L. 99-198, §1663(2), inserted provisions directing that confidential information relating to a marketing agreement or order applicable to milk may be released upon the authorization of any regulated milk handler to whom such information pertains and that the Secretary notify the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives not later than 10 legislative days before the contemplated release under law, of the names and addresses of producers participating in such marketing agreements and orders, and include in such notice a statement of reasons relied upon by the Secretary in making the determination to release such names and addresses.

#### RELEASE OF INFORMATION

Pub. L. 103-111, title VII, §715, Oct. 21, 1993, 107 Stat. 1079, provided that: "Hereafter, none of the funds available to the Department of Agriculture may be expended to release information acquired from any handler under the Agricultural Marketing Agreement Act of 1937, as amended [see section 674 of this title]: *Provided*, That this provision shall not prohibit the release of information to other Federal agencies for enforcement purposes: *Provided further*, That this provision shall not prohibit the release of aggregate statistical data used in formulating regulations pursuant to the Agricultural Marketing Agreement Act of 1937, as amended: *Provided further*, That this provision shall not prohibit the release of information submitted by milk handlers."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-341, title VII, §721, Aug. 14, 1992, 106 Stat. 908.

Pub. L. 102-142, title VII, §728, Oct. 28, 1991, 105 Stat. 914.

Pub. L. 101-506, title VI, §630, Nov. 5, 1990, 104 Stat. 1349.

Pub. L. 101-161, title VI, §630, Nov. 21, 1989, 103 Stat. 985.

Pub. L. 100-460, title VI, §630, Oct. 1, 1988, 102 Stat. 2262.

#### VALIDITY OF SECTION AFFIRMED

Act June 3, 1937, affirmed and validated, and reenacted without change the provisions of this section. See note set out under section 601 of this title.

#### CROSS REFERENCES

Amendments to orders, section as applicable to, see section 608c of this title.

Anti-hog-cholera serum and hog-cholera virus provisions, provisions of section as applicable to, see section 855 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 608c, 610, 672, 673, 855, 1392 of this title.

#### § 608e. Repealed. July 3, 1948, ch. 827, title III, § 302(d), 62 Stat. 1258

Section, act May 12, 1933, ch. 25, title I, §8e, as added Aug. 24, 1935, ch. 641, §6, 49 Stat. 762; amended June 3, 1937, ch. 296, §1, 50 Stat. 246, related to determination of base period.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1950, see section 303 of act July 3, 1948 set out as an Effective Date of 1948 Amendment note under section 1301 of this title.

#### § 608e-1. Import prohibitions on specified foreign produce

##### (a) Import prohibitions on tomatoes, avocados, limes, etc.

Subject to the provisions of subsections (c) and (d) of this section and notwithstanding any

other provision of law, whenever a marketing order issued by the Secretary of Agriculture pursuant to section 608c of this title contains any terms or conditions regulating the grade, size, quality, or maturity of tomatoes, raisins, olives (other than Spanish-style green olives), prunes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates, filberts, table grapes, eggplants, kiwifruit, nectarines, plums, pistachios, or apples produced in the United States the importation into the United States of any such commodity, other than dates for processing, during the period of time such order is in effect shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order or comparable restrictions promulgated hereunder: *Provided*, That this prohibition shall not apply to such commodities when shipped into continental United States from the Commonwealth of Puerto Rico or any Territory or possession of the United States where this chapter has force and effect: *Provided further*, That whenever two or more such marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation into the United States of any such commodity, other than dates for processing, shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition. Such prohibition shall not become effective until after the giving of such notice as the Secretary of Agriculture determines reasonable, which shall not be less than three days. In determining the amount of notice that is reasonable in the case of tomatoes the Secretary of Agriculture shall give due consideration to the time required for their transportation and entry into the United States after picking. Whenever the Secretary of Agriculture finds that the application of the restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the domestic and imported commodity he shall establish with respect to the imported commodity, other than dates for processing, such grade, size, quality, and maturity restrictions by varieties, types, or other classifications as he finds will be equivalent or comparable to those imposed upon the domestic commodity under such order. The Secretary of Agriculture may promulgate such rules and regulations as he deems necessary, to carry out the provisions of this section. Any person who violates any provision if<sup>1</sup> this section or of any rule, regulation, or order promulgated hereunder shall be subject to a forfeiture in the amount prescribed in section 608a(5) of this title or, upon conviction, a penalty in the amount prescribed in section 608c(14) of this title, or to both such forfeiture and penalty.

##### (b) Extension of time for marketing order; factors; review

(1) The Secretary may provide for a period of time (not to exceed 35 days) in addition to the

<sup>1</sup> So in original. Probably should be "of".

period of time covered by a marketing order during which the marketing order requirements would be in effect for a particular commodity during any year if the Secretary determines that such additional period of time is necessary—

(A) to effectuate the purposes of this chapter; and

(B) to prevent the circumvention of the grade, size, quality, or maturity standards of a seasonal marketing order applicable to a commodity produced in the United States by imports of such commodity.

(2) In making the determination required by paragraph (1), the Secretary, through notice and comment procedures, shall consider—

(A) to what extent, during the previous year, imports of a commodity that did not meet the requirements of a marketing order applicable to such commodity were marketed in the United States during the period that such marketing order requirements were in effect for available domestic commodities (or would have been marketed during such time if not for any additional period established by the Secretary);

(B) if the importation into the United States of such commodity did, or was likely to, circumvent the grade, size, quality or maturity standards of a seasonal marketing order applicable to such commodity produced in the United States; and

(C) the availability and price of commodities of the variety covered by the marketing order during any additional period the marketing order requirements are to be in effect.

(3) An additional period established by the Secretary in accordance with this subsection shall be—

(A) announced not later than 30 days before the date such additional period is to be in effect; and

(B) reviewed by the Secretary on request, through notice and comment procedures, at least every 3 years in order to determine if the additional period is still needed to prevent circumvention of the seasonal marketing order by imported commodities.

(4) For the purposes of carrying out this subsection, the Secretary is authorized to make such reasonable inspections as may be necessary.

**(c) Notification of United States Trade Representative of import restrictions; advisement of Secretary of Agriculture**

Prior to any import prohibition or regulation under this section being made effective with respect to any commodity—

(1) the Secretary of Agriculture shall notify the United States Trade Representative of such import prohibition or regulation; and

(2) the United States Trade Representative shall advise the Secretary of Agriculture, within 60 days of the notification under paragraph (1), to ensure that the application of the grade, size, quality, and maturity provisions of the relevant marketing order, or comparable restrictions, to imports is not inconsistent with United States international obligations

under any trade agreement, including the General Agreement on Tariffs and Trade.

**(d) Proposed prohibition or regulation; authority of Secretary of Agriculture to proceed**

The Secretary may proceed with the proposed prohibition or regulation if the Secretary receives the advice and concurrence of the United States Trade Representative within 60 days of the notification under subsection (c)(1) of this section.

(May 12, 1933, ch. 25, title I, §8e, as added Aug. 28, 1954, ch. 1041, title IV, §401(e), 68 Stat. 907; amended Aug. 31, 1954, ch. 1172, §3(a), 68 Stat. 1047; Pub. L. 87-128, title I, §141(5), Aug. 8, 1961, 75 Stat. 305; Pub. L. 91-670, title IV, §401, Jan. 11, 1971, 84 Stat. 2047; Pub. L. 95-113, title X, §1006, Sept. 29, 1977, 91 Stat. 951; Pub. L. 97-312, §2, Oct. 14, 1982, 96 Stat. 1461; Pub. L. 100-418, title IV, §4603, Aug. 23, 1988, 102 Stat. 1407; Pub. L. 101-624, title XIII, §§1307, 1308, Nov. 28, 1990, 104 Stat. 3561.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-624, §§1307, 1308(1), substituted "Subject to the provisions of subsections (c) and (d) of this section and notwithstanding any other provision of law," for "Notwithstanding any other provision of law," and "eggplants, kiwifruit, nectarines, plums, pistachios, or apples" for "or eggplants".

Subsecs. (c), (d). Pub. L. 101-624, §1308(2), added subsecs. (c) and (d).

1988—Pub. L. 100-418 designated existing provisions as subsec. (a) and added subsec. (b).

1982—Pub. L. 97-312 extended import prohibition to table grapes.

1977—Pub. L. 95-113 extended import prohibition to filberts.

1971—Pub. L. 91-670 extended import prohibition to raisins, olives (other than Spanish-style green olives), and prunes.

1961—Pub. L. 87-128 extended importation prohibition to oranges, onions, walnuts and dates, other than dates for processing.

1954—Act Aug. 31, 1954, made section applicable to mangoes.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-113 effective Oct. 1, 1977, see section 1901 of Pub. L. 95-113, set out as a note under section 1307 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 3(b) of act Aug. 31, 1954, provided that: "The amendment made by this section [amending this section] shall become effective upon the enactment of this Act [Aug. 31, 1954] or upon the enactment of the Agricultural Act of 1954 [Aug. 28, 1954], whichever occurs later."

**§ 608f. Repealed. Pub. L. 89-106, §9, Aug. 4, 1965, 79 Stat. 432**

Section, act May 12, 1933, ch. 25, title I, §8f, formerly §8(5), 48 Stat. 34; renumbered §8f and amended Aug. 24, 1935, ch. 641, §7, 49 Stat. 762; Oct. 8, 1940, ch. 759, 54 Stat. 1019, prohibited, except in specified cases, the shipment of grain from public grain warehouses to other warehouse without cancellation of warehouse receipts to avoid conflict with other laws regulating warehousemen.

**§ 609. Processing tax; methods of computation; rate; what constitutes processing; publicity as to tax to avoid profiteering**

(a) To obtain revenue for extraordinary expenses incurred by reason of the national eco-

nomic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that any one or more payments authorized to be made under section 608 of this title are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that (1) in the case of sugar beets and sugarcane, the Secretary of Agriculture shall, on or before the thirtieth day after May 9, 1934, proclaim that rental or benefit payments with respect to said commodities are to be made, and the processing tax shall be in effect on and after the thirtieth day after May 9, 1934, and (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935. In the case of sugar beets and sugarcane, the calendar year shall be considered to be the marketing year and for the year 1934 the marketing year shall begin January 1, 1934. In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (b) of this section. Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that all payments authorized under section 608 of this title which are in effect are to be discontinued with respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: *Provided*, That upon any article upon which a manufacturers' sales tax is levied under the authority of the Revenue Act of 1932, act June 6, 1932, ch. 209, 47 Stat. 169-289, and which manufacturers' sales tax is computed on the basis of weight, such manufacturers' sales tax shall be computed on the basis of the weight of said finished article less the weight of the processed cotton contained therein on which a processing tax has been paid.

(b)(1) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this chapter, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to section 615(c) of this title

with respect to the commodity and (B) the amount of tax which he estimates would have been collected during such period upon all processings of such commodity, which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an institution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will occur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph.

(2) In the case of wheat, cotton, field corn, hogs, peanuts, tobacco, paper, and jute, and (except as provided in paragraph (8) of this subsection) in the case of sugarcane and sugar beets, the tax on the first domestic processing of the commodity generally or for any particular use, or in the production of any designated product for any designated use, shall be levied, assessed, collected, and paid at the rate prescribed by the regulations of the Secretary of Agriculture in effect on August 24, 1935, during the period from such date to December 31, 1937, both dates inclusive.

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough rice.

(4) For the period from September 1, 1935, to December 31, 1937, both inclusive, the processing tax with respect to rye shall be levied, assessed, collected, and paid at the rate of 30 cents per

bushel of fifty-six pounds. In the case of rye, the first marketing year shall be considered to be the period commencing September 1, 1935, and ending June 30, 1936. Subsequent marketing years shall commence on July 1 and end on June 30 of the succeeding year. The provisions of section 616 of this title shall not apply in the case of rye.

(5) If at any time prior to December 31, 1937, a tax with respect to barley becomes effective pursuant to proclamation as provided in subsection (a) of this section, such tax shall be levied, assessed, collected, and paid during the period from the date upon which such tax becomes effective to December 31, 1937, both inclusive, at the rate of 25 cents per bushel of forty-eight pounds. The provisions of section 616 of this title shall not apply in the case of barley.

(6)(A) Any rate of tax which is prescribed in paragraphs (2) to (4), or (5) of this subsection or which is established pursuant to this paragraph on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae, standards, and requirements of paragraph (1) of this subsection, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph.

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraphs (2) to (4), or (5) of this subsection or is established pursuant to this paragraph, during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(i) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(ii) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(iii) exceeds by more than 20 per centum the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph, until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In accordance with the formulae, standards, and requirements prescribed in this chapter, any rate of tax prescribed in paragraphs (2) to (4) or (5) of this subsection or which is established pursuant to this paragraph shall be increased.

(E) Any tax, the rate of which is prescribed in paragraphs (2) to (4), or (5) of this subsection or which is established pursuant to this paragraph, shall terminate pursuant to proclamation as provided in subsection (a) of this section or pursuant to section 613 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in subsection (a) of this section shall again become effective at the rate prescribed in paragraphs (2) to (4), or (5) of this subsection, subject however to the provisions of subdivisions (A) and (B) of this paragraph, from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in subsection (a) of this section, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to this section or terminated pursuant to section 613 of this title.

(F) After December 31, 1937 (in the case of the commodities specified in paragraphs (2), (4), and (5) of this subsection), and after July 31, 1936 (in the case of rice), rates of tax shall be determined by the Secretary of Agriculture in accordance with the formulae, standards, and requirements prescribed in this chapter but not in this paragraph, and shall, subject to such formulae, standards, and requirements, thereafter be effective.

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph, is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this chapter, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph with respect to all tax liabilities incurred under this chapter on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph), rates of tax fixed under paragraphs (2) to (4), or (5) of this subsection, and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in subsection (a) of this section or pursuant to section 613 of this title) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2) to (4), and (5) shall not be levied, assessed, collected or paid.

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight

of rough rice when delivered to a processor, except that, where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing.

(8) In the case of sugar beets or sugarcane the rate of tax shall be applied to the direct-consumption sugar, resulting from the first domestic processing, translated into terms of pounds of raw value according to regulations to be issued by the Secretary of Agriculture, and in the event that the Secretary increases or decreases the rate of tax fixed by paragraph (2) of this subsection, pursuant to the provisions of paragraph (6) of this subsection, then the rate of tax to be so applied shall be the higher of the two following quotients: The difference between the current average farm price and the fair exchange value (A) of a ton of sugar beets and (B) of a ton of sugarcane, divided in the case of each commodity by the average extraction therefrom of sugar in terms of pounds of raw value (which average extraction shall be determined from available statistics of the Department of Agriculture); the rate of tax fixed by paragraph (2) of this subsection or adjusted pursuant to the provisions of paragraph (6) of this subsection shall in no event exceed the amount of the reduction by the President on a pound of sugar raw value of the rate of duty in effect on January 1, 1934, under paragraph 501 of section 1001<sup>1</sup> of title 19, as adjusted to the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, and/or the provisions of sections 124 and 125 of title 19.

(9) In computing the current average farm price in the case of wheat, premiums paid producers for protein content shall not be taken into account.

(c) For the purposes of this chapter, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in section 602 of this title; and, in the case of all commodities where the base period is the prewar period, August 1909 to July 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity in effect on August 24, 1935, shall not be affected by the adoption of this amendment and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to subsection (a) of this section.

(d) As used in this chapter—

(1) In case of wheat, rye, barley and corn, the term "processing" means the milling or other processing (except cleaning and drying) of wheat, rye, barley or corn for market, including

custom milling for toll as well as commercial milling, but shall not include the grinding or cracking thereof not in the form of flour for feed purposes only.

(2) In case of cotton, the term "processing" means the spinning, manufacturing, or other processing (except ginning) of cotton; and the term "cotton" shall not include cotton linters.

(3) In case of tobacco, the term "processing" means the manufacturing or other processing (except drying or converting into insecticides and fertilizers) of tobacco.

(4) Repealed. June 26, 1934, ch. 759, §2(a), 48 Stat. 1242.

(5) Repealed. Aug. 24, 1935, ch. 641, §14(b), 49 Stat. 767.

(6) In the case of sugar beets and sugarcane—

(A) The term "first domestic processing" means each domestic processing, including each processing of successive domestic processings, of sugar beets, sugarcane, or raw sugar, which directly results in direct-consumption sugar.

(B) The term "sugar" means sugar in any form whatsoever, derived from sugar beets or sugarcane, whether raw sugar or direct-consumption sugar, including also edible molasses, sirups, and any mixture containing sugar (except blackstrap molasses and beet molasses).

(C) The term "blackstrap molasses" means the commercially so-designated "byproduct" of the cane-sugar industry, not used for human consumption or for the extraction of sugar.

(D) The term "beet molasses" means the commercially so-designated "byproduct" of the beet-sugar industry, not used for human consumption or for the extraction of sugar.

(E) The term "raw sugar" means any sugar, as defined above, manufactured or marketed in, or brought into, the United States, in any form whatsoever, for the purpose of being, or which shall be, further refined (or improved in quality, or further prepared for distribution or use).

(F) The term "direct-consumption sugar" means any sugar, as defined above, manufactured or marketed in, or brought into, the United States in any form whatsoever, for any purpose other than to be further refined (or improved in quality, or further prepared for distribution or use).

(G) The term "raw value" means a standard unit of sugar testing ninety-six sugar degrees by the polariscope. All taxes shall be imposed and all quotas shall be established in terms of "raw value" and for purposes of quota and tax measurements all sugar shall be translated into terms of "raw value" according to regulations to be issued by the Secretary, except that in the case of direct-consumption sugar produced in continental United States from sugar beets the raw value of such sugar shall be one and seven one-hundredths times the weight thereof.

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling (including custom milling

<sup>1</sup> See References in Text note below.

for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "cooperating producer" means any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor", as used in subsection (b-1) of section 615 of this title, means any person (including a cooperative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling).

(8) In the case of any other commodity, the term "processing" means any manufacturing or other processing involving a change in the form of the commodity or its preparation for distribution or use, as defined by regulations of the Secretary of Agriculture; and in prescribing such regulations the Secretary shall give due weight to the customs of the industry.

(e) When any processing tax, or increase or decrease therein, takes effect in respect of a commodity the Secretary of Agriculture, in order to prevent pyramiding of the processing tax and profiteering in the sale of the products derived from the commodity, shall make public such information as he deems necessary regarding (1) the relationship between the processing tax and the price paid to producers of the commodity, (2) the effect of the processing tax upon prices to consumers of products of the commodity, (3) the relationship, in previous periods, between prices paid to the producers of the commodity and prices to consumers of the products thereof, and (4) the situation in foreign countries relating to prices paid to producers of the commodity and prices to consumers of the products thereof.

(f) For the purposes of this chapter, processing shall be held to include manufacturing.

(g) Nothing contained in this chapter shall be construed to authorize any tax upon the processing of any commodity which processing results in the production of newsprint.

(May 12, 1933, ch. 25, title I, § 9, 48 Stat. 35; Apr. 7, 1934, ch. 103, § 3(a), 48 Stat. 528; May 9, 1934, ch. 263, §§ 2, 3, 5, 6, 9, 48 Stat. 670, 671, 675, 676; June 26, 1934, ch. 759, § 2, 48 Stat. 1242; Mar. 18, 1935, ch. 32, §§ 1-6, 49 Stat. 45, 46; Aug. 24, 1935, ch. 641, §§ 11-15, 49 Stat. 762-767.)

#### REFERENCES IN TEXT

Section 1001 of title 19, referred to in subsec. (b)(8), was repealed by Pub. L. 87-456, title I, § 101(a), May 24, 1962, 76 Stat. 72. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

The treaty of commercial reciprocity concluded between the United States and Cuba on December 11, 1902, referred to in subsec. (b)(8), was terminated Aug. 21,

1963, pursuant to notice given by the United States on Aug. 21, 1962. See, Bevans, *Treaties and Other International Agreements of the United States of America, 1776-1949*, vol. VI, page 1106.

Sections 124 and 125 of title 19, referred to in subsec. (b)(8), have been omitted from the Code.

Phrase "this amendment" in subsec. (c) refers to amendments by act Aug. 24, 1935.

#### AMENDMENTS

1935—Subsec. (a). Act Aug. 24, 1935, § 11, struck out second sentence preceding semicolon and inserted in lieu thereof "When the Secretary of Agriculture determines that any one or more payments authorized to be made under section 608 of this title are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation."

Act Mar. 18, 1935, §§ 1, 2, struck out comma after "except that" in second sentence and inserted in lieu thereof "(i)", and inserted "and (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935".

Subsec. (b). Act Aug. 24, 1935, § 12, amended subsec. (b) generally.

Act Mar. 18, 1935, §§ 3, 4, among other changes inserted "In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing."

Subsec. (c). Act Aug. 24, 1935, § 13, among other changes inserted "The rate of tax upon the processing of any commodity, in effect on August 24, 1935, shall not be affected by the adoption of this amendment and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to subsection (a) of this section."

Subsec. (d). Act Aug. 24, 1935, § 14, inserted " , rye, barley" after "wheat" wherever appearing and struck out par. (5).

Act Mar. 18, 1935, §§ 5, 6, struck out " , rice," in two places in par. (1), added par. (7), and renumbered former par. (7) as (8).

Subsec. (g). Act Aug. 24, 1935, § 15, added subsec. (g). 1934—Subsec. (a). Act May 9, 1934, § 9, struck out the period after "proclamation" and inserted in lieu thereof " ; except that, in the case of sugar beets and sugarcane, the Secretary of Agriculture shall, on or before the thirtieth day after May 9, 1934, proclaim that rental or benefit payments with respect to said commodities are to be made, and the processing tax shall be in effect on and after the thirtieth day after May 9, 1934. In the case of sugar beets and sugarcane, the calendar year shall be considered to be the marketing year and for the year 1934 the marketing year shall begin January 1, 1934."

Subsec. (b). Act May 9, 1934, § 3, among other changes amended first two sentences and inserted "In the case of sugar beets or sugarcane the rate of tax shall be applied to the direct-consumption sugar, resulting from the first domestic processing, translated into terms of pounds of raw value according to regulations to be issued by the Secretary of Agriculture, and the rate of tax to be so applied shall be the higher of the two following quotients: The difference between the current average farm price and the fair exchange value (1) of a ton of sugar beets and (2) of a ton of sugarcane, divided in the case of each commodity by the average extraction therefrom of sugar in terms of pounds of raw value (which average extraction shall be determined from available statistics of the Department of Agriculture); except that such rate shall not exceed the amount of the reduction by the President on a pound of sugar raw

value of the rate of duty in effect on January 1, 1934, under paragraph 501 of section 1001 of Title 19, as adjusted to the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, and/or the provisions of sections 124 and 125 of Title 19."

Subsec. (d). Act June 26, 1934, §2(a), struck out par. (4).

Act June 26, 1934, §2(b), amended par. (7).

Act May 9, 1934, §§2, 5, amended par. (6) generally and renumbered former par. (6) as (7).

Act Apr. 7, 1934, added par. (5) and renumbered former par. (5) as (6).

Subsec. (f). Act May 9, 1934, §6, added subsec. (f).

#### UNCONSTITUTIONALITY

This section may be obsolete in view of the Supreme Court's holding that the processing and floor stock taxes provided for by the Agricultural Adjustment Act of 1933 are unconstitutional. See *U.S. v. Butler*, Mass. 1936, 56 S.Ct. 312, 297 U.S. 1, 80 L.Ed. 477, 102 A.L.R. 914.

#### SEPARABILITY

Validity of remainder of this chapter as not affected should any of those provisions be declared unconstitutional, see section 614 of this title.

#### CROSS REFERENCES

Processing and compensating taxes not to be levied or collected, see section 673 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 619a, 673 of this title; title 12 section 1150a.

### § 610. Administration

#### (a) Appointment of officers and employees; impounding appropriations

The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, and such experts, as are necessary to execute the functions vested in him by this chapter: *Provided*, That the Secretary shall establish the Agricultural Adjustment Administration in the Department of Agriculture for the administration of the functions vested in him by this chapter: *And provided further*, That the State Administrator appointed to administer this chapter in each State shall be appointed by the President, by and with the advice and consent of the Senate. Section 8 of Title II of the Act entitled "An Act to maintain the credit of the United States Government," approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropriations contained in this chapter.

#### (b) State and local committees or associations of producers; handlers' share of expenses of authority or agency

(1) The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this chapter, State and local committees, or associations of producers, and to permit cooperative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of payments authorized to be made under section 608 of this title. The Secretary, in the administration of this chapter, shall accord

such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress, and as will tend to promote efficient methods of marketing and distribution.

(2)(i) Each order relating to milk and its products issued by the Secretary under this chapter shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of milk or products thereof received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of milk or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers.

(ii) Each order relating to any other commodity or product issued by the Secretary under this chapter shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find are reasonable and are likely to be incurred by such authority or agency, during any period specified by him, for such purposes as the Secretary may, pursuant to such order, determine to be appropriate, and for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. The payment of assessments for the maintenance and functioning of such authority or agency, as provided for herein, may be required under a marketing agreement or marketing order throughout the period the marketing agreement or order is in effect and irrespective of whether particular provisions thereof are suspended or become inoperative.

(iii) Any authority or agency established under an order may maintain in its own name, or in the name of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several district courts of the United States are vested with jurisdiction to entertain such suits regardless of the amount in controversy.

**(c) Regulations; penalty for violation**

The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this chapter. Any violation of any regulation shall be subject to such penalty, not in excess of \$100, as may be provided therein.

**(d) Regulations of Secretary of the Treasury**

The Secretary of the Treasury is authorized to make such regulations as may be necessary to carry out the powers vested in him by this chapter.

**(e) Review of official acts**

The action of any officer, employee, or agent in determining the amount of and in making any payment authorized to be made under section 608 of this title shall not be subject to review by any officer of the Government other than the Secretary of Agriculture or Secretary of the Treasury.

**(f) Geographical application**

The provisions of this chapter shall be applicable to the United States and its possessions, except the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; except that, in the case of sugar beets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this chapter, is authorized by proclamation to make the provisions of this chapter applicable to the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam.

**(g) Officers; dealing or speculating in agricultural products; penalties**

No person shall, while acting in any official capacity in the administration of this chapter, speculate, directly or indirectly, in any agricultural commodity or product thereof to which this chapter applies, or in contracts relating thereto, or in the stock or membership interest of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than \$10,000 or imprisoned not more than two years, or both.

**(h) Adoption of Federal Trade Commission Act; hearings; report of violations to Attorney General**

For the efficient administration of the provisions of this chapter, the provisions, including penalties, of sections 48, 49, and 50 of title 15, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this chapter, and to any person subject to the provisions of this chapter, whether or not a corporation. Hearings authorized or required under this chapter shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under this chapter, to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States without delay.

**(i) Cooperation with State authorities; imparting information**

The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this chapter and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 608c of this title) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: *Provided*, That information furnished to the Secretary of Agriculture pursuant to section 608d(1) of this title shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 608d(2) of this title.

**(j) Definitions**

The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this chapter (but in nowise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State of the products so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of said sections. As used herein, the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nations.

(May 12, 1933, ch. 25, title I, § 10, 48 Stat. 37; June 16, 1933, ch. 98, title VIII, § 86, 48 Stat. 273; May 9, 1934, ch. 263, § 7, 48 Stat. 675; Aug. 24, 1935, ch. 641, §§ 16-18, 49 Stat. 767; Aug. 26, 1935, ch. 685, 49

Stat. 801; June 22, 1936, ch. 690, §601(a), 49 Stat. 1739; June 3, 1937, ch. 296, §§1, 2(g)-(i), 50 Stat. 246, 248; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7817, 60 Stat. 1352; Aug. 1, 1947, ch. 425, §3, 61 Stat. 709; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972.)

## REFERENCES IN TEXT

Section 8 of title II of the Act entitled "An Act to maintain the credit of the United States Government," referred to in subsec. (a), means act Mar. 20, 1933, ch. 3, title II, §8, 48 Stat. 15, which is not classified to the Code.

For definition of Canal Zone, referred to in subsec. (f), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

## CODIFICATION

In subsec. (a), "chapter 51 and subchapter III of chapter 53 of title 5" substituted for "the Classification Act of 1949" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Provisions of subsec. (a), which authorized appointment of officers and employees without regard to the civil-service laws and regulations and which limited the maximum salary payable to any officer or employee to not more than \$10,000 per annum, were omitted from the Code as obsolete and superseded. Such appointments are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to act Nov. 26, 1940, ch. 919, title I, §1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5.

The salary limitation was superseded by the Classification Act of 1949.

References to the Philippine Islands in subsec. (f) of this section were omitted from the Code as obsolete in view of the independence of the Philippine Islands, proclaimed by the President of the United States in Proc. No. 2695, which is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse.

## AMENDMENTS

1949—Subsec. (a). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

1947—Subsec. (b)(2). Act Aug. 1, 1947, among other changes inserted subpar. (i), designated former first and second sentences of subsection as subpar. (ii) and inserted last sentence relating to the payment of assessments for the maintenance and functioning of such authority thereto, and designated former third and fourth sentences of subsection as subpar. (iii).

1937—Subsec. (c). Act June 3, 1937, §2(g), struck out last clause of first sentence which related to regulations establishing conversion factors for any commodity and article processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto.

Subsec. (f). Act June 3, 1937, §2(b), struck out sentence which authorized the President to attach by executive order any or all possessions to any internal-revenue district for the purpose of carrying out provisions with respect to the collection of taxes.

Subsec. (j). Act June 3, 1937, §2(i), added subsec. (j).

1936—Subsec. (d). Act June 22, 1936, reenacted subsec. (d) for refund purposes.

1935—Subsec. (b). Act Aug. 24, 1935, §16, among other changes inserted "The Secretary, in the administration of this chapter, shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress, and as will tend to promote efficient methods of marketing and distribution.

"(2) Each order issued by the Secretary under this chapter shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several District Courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy."

Subsec. (e). Act Aug. 24, 1935, §17, struck out "rental or benefit payment" and inserted in lieu thereof "payment authorized to be made under section 8".

Subsec. (f). Act Aug. 26, 1935, inserted sentence authorizing the President to attach by executive order any or all possessions to any internal-revenue district for the purpose of carrying out provisions with respect to the collection of taxes.

Subsec. (i). Act Aug. 24, 1935, §18, added subsec. (i).

1934—Subsec. (f). Act May 9, 1934, inserted exception provision.

1933—Subsec. (a). Act June 16, 1933, inserted "And provided further, That the State Administrator appointed to administer this chapter in each State shall be appointed by the President, by and with the advice and consent of the Senate" at end of first sentence.

## REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

## TRANSFER OF FUNCTIONS

Functions of all officers, agencies, and employees of Department of Agriculture transferred, with certain exceptions, to Secretary of Agriculture by 1953 Reorg. Plan No. 2, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out as a note under section 2201 of this title.

Executive and administrative functions of Federal Trade Commission, with certain reservations, transferred to Chairman of Commission by 1950 Reorg. Plan No. 8, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out in the Appendix to Title 5, Government Organization and Employees.

1946 Reorg. Plan No. 3, §501, eff. July 16, 1946, 11 F.R. 7877, 60 Stat. 1100, set out in the Appendix to Title 5, transferred functions of Agricultural Adjustment Administration to Secretary of Agriculture. In his letter to Congress, the President stated that purpose of this transfer was to permit Secretary of Agriculture to continue consolidation already effected in Production and Marketing Administration. By temporary Executive Orders 9069 and 9577, and Ex. Ord. No. 9280, Dec. 5, 1942, 7 F.R. 10, 179, and Ex. Ord. No. 9322, Mar. 26, 1943, 8 F.R. 3807, as amended by Ex. Ord. No. 9334, Apr. 19, 1943, 8 F.R. 5423, the Agricultural Adjustment Administration had been successively consolidated into Agricultural Conservation and Adjustment Administration, Food Production Administration, and War Food Administration, which was terminated and its functions transferred to Secretary of Agriculture by said Ex. Ord. 9577. Secretary of Agriculture consolidated functions of Agricultural Adjustment Administration into Production and Marketing Administration by Memorandum 1118, Aug. 18, 1945.

## VALIDITY OF SECTION AFFIRMED

Act June 3, 1937, §1, affirmed, validated, and reenacted without change the provisions of subsecs. (a), (b) (2), (c), and (f) to (i) of this section, except for the amendments to subsecs. (c) and (f) by section 2 of the act. See note set out under section 601 of this title.

## APPROPRIATIONS FOR REFUNDS AND PAYMENTS OF PROCESSING AND RELATED TAXES AND LIMITATIONS THEREON

Acts June 25, 1938, ch. 681, 52 Stat. 1150; May 6, 1939, ch. 115, §1, 53 Stat. 661, 662; Feb. 12, 1940, ch. 28, §1, 54 Stat. 36; Mar. 25, 1940, ch. 71, title I, 54 Stat. 61; May 31, 1941, ch. 156, title I, §1, 55 Stat. 218; Mar. 10, 1942, ch. 178, title I, §1, 56 Stat. 156; June 30, 1943, ch. 179, title I, 57 Stat. 257; Apr. 22, 1944, ch. 175, title I, §1, 58 Stat. 201; Apr. 24, 1945, ch. 92, title I, 59 Stat. 62; July 20, 1946, ch. 588, title I, 60 Stat. 574.

## EX. ORD. NO. 10199. REGULATIONS WITHOUT APPROVAL OF PRESIDENT

Ex. Ord. No. 10199, Dec. 21, 1950, 15 F.R. 9217, provided: By virtue of the authority vested in me by the act of August 8, 1950, Public Law 673, 81st Congress [sections 301 to 303 of Title 3] I hereby authorize the Secretary of Agriculture to make without the approval of the President such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by the Agricultural Marketing Agreement Act of 1937, as amended [this chapter].

HARRY S TRUMAN.

## CROSS REFERENCES

Anti-hog-cholera serum and hog-cholera virus provisions, provisions of section as applicable to, see section 855 of this title.

Creditable service for retirement of employees of a committee or association of employees described by subsec. (b) of this section, see section 8332 of Title 5, Government Organization and Employees.

Member of agency as acting in an official capacity when compensated from United States funds, see section 608c of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 608c, 671, 672, 673, 855, 1392 of this title; title 5 sections 3502, 6312, 8332.

**§ 611. "Basic agricultural commodity" defined; exclusion of commodities**

As used in this chapter, the term "basic agricultural commodity" means wheat, rye, flax, barley, cotton, field corn, grain sorghums, hogs, cattle, rice, potatoes, tobacco, sugar beets and sugarcane, peanuts, and milk and its products, and any regional or market classification, type, or grade thereof; but the Secretary of Agriculture shall exclude from the operation of the provisions of this chapter, during any period, any such commodity or classification, type, or grade thereof if he finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that the conditions of production, marketing, and consumption are such that during such period this chapter can not be effectively administered to the end of effectuating the declared policy with respect to such commodity or classification, type, or grade thereof. As used in this chapter, the term "potatoes" means all varieties of potatoes included in the species *Solanum tuberosum*.

(May 12, 1933, ch. 25, title I, §11, 48 Stat. 38; Apr. 7, 1934, ch. 103, §§1, 3(b), 4, 5, 48 Stat. 528; May 9, 1934, ch. 263, §1, 48 Stat. 670; Aug. 24, 1935, ch. 641, §61, 49 Stat. 782.)

## AMENDMENTS

1935—Act Aug. 24, 1935, inserted "potatoes" after "rice" and last sentence defining potatoes.

1934—Act May 9, 1934, inserted "sugar beets and sugarcane" after "tobacco".

Act Apr. 7, 1934, inserted "cattle" after "hogs", "peanuts" after "tobacco", "rye, flax, barley" after "wheat", and "grain sorghums" after "field corn".

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 673 of this title; title 12 section 1150a.

**§ 612. Appropriation; use of revenues; administrative expenses**

(a) There is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this chapter, and for payments authorized to be made under section 608 of this title. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance under such terms and conditions as he may prescribe, surplus reductions with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section and to support and balance the markets for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$200,000,000: *Provided*, That not more than 60 per centum of such amount shall be used for either of such industries.

(b) In addition to the foregoing, for the purpose of effectuating the declared policy of this chapter, a sum equal to the proceeds derived from all taxes imposed under this chapter is appropriated to be available to the Secretary of Agriculture for (1) the acquisition of any agricultural commodity pledged as security for any loan made by any Federal agency, which loan was conditioned upon the borrower agreeing or having agreed to cooperate with a program of production adjustment or marketing adjustment adopted under the authority of this chapter, and (2) the following purposes under this chapter: Administrative expenses, payments authorized to be made under section 608 of this title, and refunds on taxes. The Secretary of Agriculture and the Secretary of the Treasury shall jointly estimate from time to time the amounts, in addition to any money available under subsection (a) of this section, currently required for such purposes; and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this subsection.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall

transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this chapter, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this chapter.

(May 12, 1933, ch. 25, title I, § 12, 48 Stat. 38; Apr. 7, 1934, ch. 103, § 2, 48 Stat. 528; Aug. 24, 1935, ch. 641, §§ 3, 19, 49 Stat. 753, 768; June 3, 1937, ch. 296, §§ 1, 2(j), 50 Stat. 246, 248.)

#### AMENDMENTS

1937—Subsec. (a). Act June 3, 1937, § 2(j), struck out “and production adjustments” after “surplus reductions” in second par.

1935—Subsec. (a). Act Aug. 24, 1935, § 19, substituted “payments authorized to be made under section 608” for “rental and benefit payments made with respect to reduction in acreage or reduction in production for market under part 2 of this title”.

Subsec. (b). Act Aug. 24, 1935, § 3, amended subsec. (b) generally.

1934—Subsec. (a). Act Apr. 7, 1934, added second par.

#### VALIDITY OF SECTION AFFIRMED

Act June 3, 1937, § 1, affirmed and validated, and reenacted without change the provisions of subsecs. (a) and (c) of this section, except for the amendment to subsec. (a) by section 2 of the act. See note set out under section 601 of this title.

#### SETTLEMENT OF CERTAIN CLAIMS AND ACCOUNTS

Act June 5, 1942, ch. 349, §§ 2, 3, 56 Stat. 324, authorized Comptroller General to relieve disbursing and certifying officers from liability for payments made prior to January 6, 1936, under Agricultural Adjustment Act of 1933 or amendments thereto [this chapter] or under the appropriation “Payments for Agricultural Adjustment” in act Feb. 11, 1936, ch. 49, 49 Stat. 1116, upon certificate of Secretary of Agriculture that such payments were made in good faith, and also provided that no action should be taken to recover such excess payments, if the Secretary of Agriculture should further certify that in view of the good faith of the parties or other circumstances of the case, such attempt to recover them would be inadvisable or inequitable.

#### EX. ORD. NO. 10914. EXPANDED PROGRAM OF FOOD DISTRIBUTION TO NEEDY FAMILIES

Ex. Ord. No. 10914, Jan. 21, 1961, 26 F.R. 639, provided: Whereas one of the most important and urgent problems confronting this Nation today is the development of a positive food and nutrition program for all Americans;

Whereas I have received the report of the Task Force on Area Redevelopment under the chairmanship of Senator Douglas, in which special emphasis is placed upon the need for additional food to supplement the diets of needy persons in areas of chronic unemployment;

Whereas I am also advised that there are now almost 7 million persons receiving some form of public assistance, that 4.5 million persons are reported as being unemployed and that a substantial number of needy persons are not recipients in the present food distribution program;

Whereas the variety of foods currently being made available is limited and its nutritional content inadequate; and

Whereas despite an abundance of food, farm income has been in a period of decline, and a strengthening of farm prices is desirable.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

The Secretary of Agriculture shall take immediate steps to expand and improve the program of food dis-

tribution throughout the United States, utilizing funds and existing statutory authority available to him, including section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612) [this section], so as to make available for distribution, through appropriate State and local agencies, to all needy families a greater variety and quantity of food out of our agricultural abundance.

JOHN F. KENNEDY.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 616, 672, 673, 724, 1392 of this title; title 12 section 1150a; title 31 section 1511.

#### §§ 612a, 612b. Omitted

#### CODIFICATION

Section 612a, act Apr. 7, 1934, ch. 103, § 6, 48 Stat. 528; 1940 Reorg. Plan No. III, § 5, 5 F.R. 2108, 54 Stat. 1232, authorized appropriation of \$50,000,000 for purpose of dairy and beef products for distribution for relief purposes, and for elimination of diseased cattle.

Section 612b, act Aug. 24, 1935, ch. 641, § 37, 49 Stat. 775, provided appropriations for elimination of disease in dairy and beef cattle to remain available until June 30, 1936.

#### § 612c. Appropriation to encourage exportation and domestic consumption of agricultural products

There is appropriated for each fiscal year beginning with the fiscal year ending June 30, 1936 an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws during the period January 1 to December 31, both inclusive, preceding the beginning of each such fiscal year. Such sums shall be maintained in a separate fund and shall be used by the Secretary of Agriculture only to (1) encourage the exportation of agricultural commodities and products thereof by the payment of benefits in connection with the exportation thereof or of indemnities for losses incurred in connection with such exportation or by payments to producers in connection with the production of that part of any agricultural commodity required for domestic consumption; (2) encourage the domestic consumption of such commodities or products by diverting them, by the payment of benefits or indemnities or by other means, from the normal channels of trade and commerce or by increasing their utilization through benefits, indemnities, donations or by other means, among persons in low income groups as determined by the Secretary of Agriculture; and (3) reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption. Determinations by the Secretary as to what constitutes diversion and what constitutes normal channels of trade and commerce and what constitutes normal production for domestic consumption shall be final. The sums appropriated under this section shall be expended for such one or more of the above-specified purposes, and at such times, in such manner, and in such amounts as the Secretary of Agriculture finds will effectuate substantial accomplishment of any one or more of the purposes of this section. Notwithstanding any other provision of this section, the amount that may be devoted, during any fiscal year after June 30, 1939, to any

one agricultural commodity or the products thereof in such fiscal year, shall not exceed 25 per centum of the funds available under this section for such fiscal year. The sums appropriated under this section shall be devoted principally to perishable nonbasic agricultural commodities (other than those receiving price support under section 1446 of this title) and their products. The sums appropriated under this section shall, notwithstanding the provisions of any other law, continue to remain available for the purposes of this section until expended; but any excess of the amount remaining unexpended at the end of any fiscal year over \$300,000,000 shall, in the same manner as though it had been appropriated for the service of such fiscal year, be subject to the provisions of section 3690<sup>1</sup> of the Revised Statutes, and section 5<sup>1</sup> of the Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes". A public or private nonprofit organization that receives agricultural commodities or the products thereof under clause (2) of the second sentence may transfer such commodities or products to another public or private nonprofit organization that agrees to use such commodities or products to provide, without cost or waste, nutrition assistance to individuals in low-income groups.

(Aug. 24, 1935, ch. 641, § 32, 49 Stat. 774; Feb. 29, 1936, ch. 104, § 2, 49 Stat. 1151; Feb. 16, 1938, ch. 30, title II, § 203, 52 Stat. 38; June 30, 1939, ch. 253, title I, 53 Stat. 975; July 3, 1948, ch. 827, title III, § 301, 62 Stat. 1257; Oct. 31, 1949, ch. 792, title IV, § 411, 63 Stat. 1057; Jan. 30, 1954, ch. 2, § 5(b), 68 Stat. 7; Pub. L. 99-198, title XV, § 1561, Dec. 23, 1985, 99 Stat. 1589.)

#### REFERENCES IN TEXT

Section 3690 of the Revised Statutes, and section 5 of act June 30, 1875, referred to in text, which were classified to sections 712 and 713 of former Title 31, Money and Finance, were repealed by act July 6, 1949, ch. 299, § 3, 63 Stat. 407.

#### CODIFICATION

Section was not enacted as part of the Agricultural Adjustment Act which comprises this chapter.

#### AMENDMENTS

1985—Pub. L. 99-198 inserted sentence authorizing a public or private nonprofit organization that receives agricultural commodities or the products thereof under clause (2) of the second sentence to transfer such commodities or products to another public or private nonprofit organization that agrees to use such commodities or products to provide, without cost or waste, nutrition assistance to individuals in low-income groups.

1954—Act Jan. 30, 1954, substituted "(other than those receiving price support under section 1446 of this title)" for "(other than those designated in section 1446 of this title)," in next to last sentence.

1949—Act Oct. 31, 1949, inserted sentence relating to perishable nonbasic agricultural commodities.

1948—Act July 3, 1948, inserted sentence providing for the accumulation of funds up to \$300,000,000.

1939—Act June 30, 1939, in cl. (2), inserted "or by increasing their utilization through benefits, indemnities, donations or by other means, among persons in

low income groups as determined by the Secretary of Agriculture".

1938—Act Feb. 16, 1938, inserted "Notwithstanding any other provision of this section, the amount that may be devoted, during any fiscal year after June 30, 1939, to any one agricultural commodity or the products thereof in such fiscal year, shall not exceed 25 per centum of the funds available under this section for such fiscal year."

1936—Act Feb. 29, 1936, struck out cl. (3) and inserted in lieu thereof immediately preceding second proviso "(3) reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption. Determinations by the Secretary as to what constitutes diversion and what constitutes normal channels of trade and commerce and what constitutes normal production for domestic consumption shall be final. The sums appropriated under this section shall be expended for such one or more of the above-specified purposes, and at such times, in such manner, and in such amounts as the Secretary of Agriculture finds will effectuate substantial accomplishment of any one or more of the purposes of this section."

#### EFFECTIVE DATE OF 1948 AMENDMENT

Amendment by act July 3, 1948, effective Jan. 1, 1950, see section 303 of act July 3, 1948, set out as a note under section 1301 of this title.

#### TRANSFER OF FUNCTIONS

Functions of all officers, agencies, and employees of the Department of Agriculture transferred, with certain exceptions, to Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out as a note under section 2201 of this title.

Federal Surplus Relief Corporation changed to Federal Surplus Commodities Corporation by amendment of its charter in 1935. It consolidated with Division of Marketing and Marketing Agreements of Agricultural Adjustment Administration to form Surplus Marketing Administration by 1940 Reorg. Plan No. III, § 5, 5 F.R. 2108, 54 Stat. 1232, set out in the Appendix to Title 5, Government Organization and Employees. By Executive orders under First War Powers Act, former section 601 et seq. of Appendix to Title 50, War and National Defense, Surplus Marketing Administration merged into Agricultural Marketing Administration, which consolidated into Food Distribution Administration, which consolidated into War Food Administration, which terminated and its functions transferred to Secretary of Agriculture. By Memorandum 1118, Secretary of Agriculture, Aug. 18, 1945, functions of Federal Surplus Commodities Corporation transferred to Production and Marketing Administration. 1946 Reorg. Plan No. 3, § 501(a), eff. July 16, 1946, 11 F.R. 7877, 60 Stat. 1100, transferred functions of Surplus Marketing Administration to Secretary of Agriculture. In his letter to Congress, the President stated that purpose of this transfer was to permit Secretary of Agriculture to continue the consolidation already effected in Production and Marketing Administration.

Federal Surplus Commodities Corporation and Division of Marketing and Marketing Agreements of Agricultural Adjustment Administration and their functions consolidated into Surplus Marketing Administration in Department of Agriculture by Reorg. Plan No. III, § 5, eff. June 30, 1940, set out in the Appendix to Title 5. See, also, sections 8 and 9 of said plan for provisions relating to transfer of records, property, personnel, and funds.

#### ADDITIONAL APPROPRIATIONS

Joint Res. July 1, 1941, ch. 266, § 34, 55 Stat. 407, appropriated, in addition to the funds already provided, \$25,000,000, to be used by the Secretary of Agriculture, for the purpose of effectuating this section, subject to the provisions of law relating to the expenditure of such funds.

<sup>1</sup> See References in Text note below.

Act July 1, 1941, ch. 267, §1, 55 Stat. 435, made the funds provided for in this section available for the fiscal year 1942.

Joint Res. June 26, 1940, ch. 432, §41, 54 Stat. 627, appropriated, in addition to the funds already provided, \$50,000,000, to be used by the Secretary of Agriculture, for the purpose of effectuating this section, subject to the provisions of law relating to the expenditure of such funds.

Act June 25, 1940, ch. 421, §1, 54 Stat. 561, made the funds provided for in this section available for the fiscal year 1941.

Act June 30, 1939, besides amending clause 2, provided for the availability of funds provided by this section during the fiscal year 1940.

Act Aug. 25, 1937, ch. 757, title I, §1, 50 Stat. 762, provided for availability of portions of funds available under this section in fiscal years 1938 and 1939, for expenditure for price-adjustment payments with respect to 1937 cotton crop.

#### USE OF APPROPRIATION

Section 301 of act July 30, 1947, ch. 356, title III, 61 Stat. 550, provided that, notwithstanding section 612c of this title, no more than \$44,000,000 would be available during the fiscal year ending June 30, 1948, for use in effectuating this chapter; that \$65,000,000 of the fiscal year 1948 appropriation were made available to carry out the National School Lunch Act of June 4, 1946, without regard to the 25 per cent limitation in section 612c and exclusive of funds expended pursuant to the last sentence of section 9 of the National School Lunch Act: provided that no part of such funds were to be used for nonfood assistance under section 5 of said Act; and that the remainder of the fund appropriated by said Act for the fiscal year 1948 was rescinded effective July 1, 1947, carried to the surplus fund, and covered into the Treasury immediately thereafter.

#### CANCELLATION OR RESCISSION OF APPROPRIATION

Section 112(f) of act Apr. 3, 1948, ch. 169, title I, 62 Stat. 148, which provided in part for the rescission or cancellation of appropriations under this section as provided for in act July 30, 1947, ch. 356, title III, 61 Stat. 550, was repealed by act Oct. 10, 1951, ch. 479, title V, §503(b)(1), as added June 20, 1952, ch. 449, §7 (c), 66 Stat. 144.

#### DOMESTIC FISH OR FISH PRODUCT COMPLIANCE WITH FOOD SAFETY STANDARDS OR PROCEDURES DEEMED TO HAVE MET REQUIREMENTS FOR FEDERAL COMMODITY PURCHASE PROGRAMS

Domestic fish or fish products produced in compliance with food safety standards or procedures accepted by Food and Drug Administration deemed to have met inspection requirements for program authorized by this section, except that lot inspections may be utilized, see section 733 of Pub. L. 104-180, set out as a note under section 342 of Title 21, Food and Drugs.

#### REPORT ON ENTITLEMENT COMMODITY PROCESSING

Pub. L. 101-624, title XVII, §1773(f), Nov. 28, 1990, 104 Stat. 3811, directed Comptroller General of the United States, not later than Jan. 1, 1992, to submit a report to Congress regarding processing of entitlement commodities used in child nutrition programs, with evaluation of extent to which processing of entitlement commodities occurs in the States, governmental requirements for participation in the processing vary among States, and entitlement commodity recipients are satisfied with access to and services provided through entitlement commodity processing, prior to repeal by Pub. L. 104-193, title VIII, §874, Aug. 22, 1996, 110 Stat. 2346.

#### SOUP KITCHENS AND OTHER EMERGENCY FOOD AID

Pub. L. 100-435, title I, §110, Sept. 19, 1988, 102 Stat. 1651, as amended by Pub. L. 101-624, title XVII, §1774(a), Nov. 28, 1990, 104 Stat. 3811; Pub. L. 102-237, title IX,

§922(a), Dec. 13, 1991, 105 Stat. 1888; Pub. L. 104-127, title IV, §404, Apr. 4, 1996, 110 Stat. 1029, established formula so that amount, measured by their value, of additional commodities that were to be provided to each State for redistribution to soup kitchens and food banks could be precisely calculated for fiscal years 1989 through 2002, and further provided for definitions, appropriations through fiscal year 2002 to purchase additional commodities, mandatory allotments to States, maintenance of effort by States, authority of Secretary to establish different formula for allocation of commodities, priority system for State distribution of commodities, and settlement and adjustment of claims, prior to repeal by Pub. L. 104-193, title VIII, §873(1), Aug. 22, 1996, 110 Stat. 2346.

#### GLEANING CLEARINGHOUSES

Pub. L. 100-435, title I, §111, Sept. 19, 1988, 102 Stat. 1654, as amended by Pub. L. 101-624, title XVII, §1774(b), Nov. 28, 1990, 104 Stat. 3812, provided that:

“(a) DEFINITION OF GLEANING.—For purposes of this section, the term ‘to glean’ means to collect unharvested crops from the fields of farmers, or to obtain agricultural products from farmers, processors, or retailers, in order to distribute the products to needy individuals, including unemployed and low-income individuals, and the term includes only those situations in which agricultural products and access to fields and facilities are made available without charge.

“(b) ESTABLISHMENT.—

“(1) IN GENERAL.—The Secretary of Agriculture (hereafter in this section referred to as the ‘Secretary’) is authorized to assist States and private nonprofit organizations in establishing Gleaning Clearinghouses (hereafter in this section referred to as a ‘Clearinghouse’).

“(2) ASSISTANCE.—The Secretary is authorized to provide technical information and other assistance considered appropriate by the Secretary to encourage public and nonprofit private organizations to—

“(A) initiate and carry out gleaning activities, and to assist other organizations and individuals to do so, through lectures, correspondence, consultation, or such other measures as the Secretary may consider appropriate;

“(B) collect from public and private sources (including farmers, processors, and retailers) information relating to the kinds, quantities, and geographical locations of agricultural products not completely harvested;

“(C) gather, compile, and make available to public and nonprofit private organizations and to the public the statistics and other information collected under this paragraph, at reasonable intervals;

“(D) establish and operate a toll-free telephone line by which—

“(i) farmers, processors, and retailers may report to a Clearinghouse for dissemination information regarding unharvested crops and agricultural products available for gleaning, and may also report how they may be contacted;

“(ii) public and nonprofit organizations that wish to glean or to assist others to glean, may report to a Clearinghouse the kinds and amounts of products that are wanted for gleaning, and may also report how they may be contacted;

“(iii) persons who can transport crops or products may report the availability of free transportation for gleaned crops or products; and

“(iv) information about gleaning can be provided without charge by a Clearinghouse to the persons and organizations described in clauses (i), (ii), and (iii);

“(E) prepare, publish, and make available to the public, at cost and on a continuing basis, a handbook on gleaning that includes such information and advice as may be useful in operating efficient gleaning activities and projects, including information regarding how to—

“(i) organize groups to engage in gleaning; and  
 “(ii) distribute to needy individuals, including low-income and unemployed individuals, food and other agricultural products that have been gleaned; or

“(F) advertise in print, on radio, television, or through other media, as the Secretary considers to be appropriate, the services offered by a Clearinghouse under this section.”

[Section 111 of Pub. L. 100-435 effective and implemented on Oct. 1, 1988, except that such section to become effective and implemented on Oct. 1, 1989, if final order is issued under section 902(b) of Title 2, The Congress, for fiscal year 1989 making reductions and sequestrations specified in the report required under section 901(a)(3)(A) of Title 2, see section 701(a), (c)(2) of Pub. L. 100-435, set out as an Effective Date of 1988 Amendment note under section 2012 of this title.]

#### CONTINUATION OF PROVISION OF CHEESE SUPPLIES

Pub. L. 100-435, title I, §130, Sept. 19, 1988, 102 Stat. 1655, was redesignated section 5(d)(2) of Pub. L. 93-86, set out below, by Pub. L. 101-624, title XVII, §1774(c)(2)(A), Nov. 28, 1990, 104 Stat. 3813.

#### ENCOURAGEMENT OF FOOD PROCESSING AND DISTRIBUTION BY ELIGIBLE RECIPIENT AGENCIES

Pub. L. 100-435, title II, §220, Sept. 19, 1988, 102 Stat. 1659, as amended by Pub. L. 101-624, title XVII, §1772(h)(5), Nov. 28, 1990, 104 Stat. 3809; Pub. L. 102-237, title IX, §942, Dec. 13, 1991, 105 Stat. 1893, provided that, not later than 60 days after Sept. 19, 1988, Secretary of Agriculture was, to extent that Commodity Credit Corporation's inventory levels permitted, solicit applications for surplus commodities available for distribution under section 202 of Pub. L. 98-8 (7 U.S.C. 7502), and further provided for requirements for solicitations as well as review of applications, prior to repeal by Pub. L. 104-193, title VIII, §873(2), Aug. 22, 1996, 110 Stat. 2346.

#### FOOD BANK DEMONSTRATION PROJECTS

Pub. L. 100-435, title V, §502, Sept. 19, 1988, 102 Stat. 1671, authorized Secretary of Agriculture to carry out demonstration projects to provide and redistribute certain agricultural commodities to needy individuals and families through community food banks and other charitable food banks, authorized Secretary to determine quantities, varieties, and types of agricultural commodities and products thereof to be made available to community food banks, and provided for report to Congress not later than July 1, 1990, as well as for termination of authority on Sept. 30, 1990, and appropriations to carry out projects, prior to repeal by Pub. L. 104-193, title VIII, §873(3), Aug. 22, 1996, 110 Stat. 2346.

#### COMMODITY DISTRIBUTION REFORM

Pub. L. 100-237, §§1-4, 7, 13-18, Jan. 8, 1988, 101 Stat. 1733, 1739, 1740, 1742, 1743, as amended by Pub. L. 101-624, title XVII, §§1772(h)(3), (4), 1773(a)-(e), Nov. 28, 1990, 104 Stat. 3809-3811; Pub. L. 102-342, title IV, §401, Aug. 14, 1992, 106 Stat. 914; Pub. L. 103-448, title III, §303, Nov. 2, 1994, 108 Stat. 4750; Pub. L. 105-336, title III, §§301, 302, Oct. 31, 1998, 112 Stat. 3167, 3168, provided that:

#### “SECTION 1. SHORT TITLE.

“This Act [amending section 1431e of this title and sections 1755, 1769, and 1786 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 1786 of Title 42] may be cited as the ‘Commodity Distribution Reform Act and WIC Amendments of 1987’.

#### “SEC. 2. STATEMENT OF PURPOSE; SENSE OF CONGRESS.

“(a) STATEMENT OF PURPOSE.—It is the purpose of this Act to improve the manner in which agricultural commodities acquired by the Department of Agriculture are distributed to recipient agencies, the quality of the commodities that are distributed, and the degree to which such distribution responds [sic] to the needs of the recipient agencies.

“(b) SENSE OF CONGRESS.—It is the sense of Congress that the distribution of commodities and products—

“(1) should be improved as an effective means of removing agricultural surpluses from the market and providing nutritious high-quality foods to recipient agencies;

“(2) is inextricably linked to the agricultural support and surplus removal programs; and

“(3) is an important mission of the Secretary of Agriculture.

#### “SEC. 3. COMMODITY DISTRIBUTION PROGRAM REFORMS.

“(a) COMMODITIES SPECIFICATIONS.—

“(1) DEVELOPMENT.—In developing specifications for commodities acquired through price support, surplus removal, and direct purchase programs of the Department of Agriculture that are donated for use for programs or institutions described in paragraph (2), the Secretary shall—

“(A) consult with the advisory council established under paragraph (3);

“(B) consider both the results of the information received from recipient agencies under subsection (f)(2) and the results of an ongoing field testing program under subsection (g) in determining which commodities and products, and in which form the commodities and products, should be provided to recipient agencies; and

“(C) give significant weight to the recommendations of the advisory council established under paragraph (3) in ensuring that commodities and products are—

“(i) of the quality, size, and form most usable by recipient agencies; and

“(ii) to the maximum extent practicable, consistent with the Dietary Guidelines for Americans published by the Secretary of Agriculture and the Secretary of Health and Human Services.

“(2) APPLICABILITY.—Paragraph (1) shall apply to—

“(A) the commodity distribution and commodity supplemental food programs established under sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 [Pub. L. 93-86] (7 U.S.C. 612c note);

“(B) the program established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b));

“(C) the school lunch, commodity distribution, and child care food programs established under sections 6, 14, and 17 of the National School Lunch Act (42 U.S.C. 1755, 1762a, and 1766);

“(D) the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773);

“(E) the donation of surplus commodities to provide nutrition services under section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a); and

“(F) to the extent practicable—

“(i) the emergency food assistance program established under the Emergency Food Assistance Act of 1983 (Public Law 100-237 [Pub. L. 98-8, title II]; 7 U.S.C. 612c note) [7 U.S.C. 7501 et seq.]; and

“(ii) programs under which food is donated to charitable institutions.

“(3) ADVISORY COUNCIL.—(A) The Secretary shall establish an advisory council on the distribution of donated commodities to recipient agencies. The Secretary shall appoint not less than nine and not more than 15 members to the council, including—

“(i) representatives of recipient agencies, including food banks;

“(ii) representatives of food processors and food distributors;

“(iii) representatives of agricultural organizations;

“(iv) representatives of State distribution agency directors; and

“(v) representatives of State advisory committees.

“(B) The council shall meet not less than semi-annually with appropriate officials of the Depart-

ment of Agriculture and shall provide guidance to the Secretary on regulations and policy development with respect to specifications for commodities.

“(C) Members of the council shall serve without compensation but shall receive reimbursement for necessary travel and subsistence expenses incurred by them in the performance of the duties of the committee.

“(D) The council shall report annually to the Secretary of Agriculture, the Committee on Education and Labor [now Committee on Education and the Workforce] and the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

“(E) The council shall expire on September 30, 1996.

“(b) DUTIES OF SECRETARY WITH RESPECT TO PROVISION OF COMMODITIES.—With respect to the provision of commodities to recipient agencies, the Secretary shall—

“(1) before the end of the 270-day period beginning on the date of the enactment of this Act [Jan. 8, 1988]—

“(A) implement a system to provide recipient agencies with options with respect to package sizes and forms of such commodities, based on information received from such agencies under subsection (f)(2), taking into account the duty of the Secretary—

“(i) to remove surplus stocks of agricultural commodities through the Commodity Credit Corporation;

“(ii) to purchase surplus agriculture commodities through section 32 of the Agricultural Adjustment Act (7 U.S.C. 601 et seq.) [probably means section 32 of act Aug. 24, 1935, which is classified to section 612c of this title]; and

“(iii) to make direct purchases of agricultural commodities and other foods for distribution to recipient agencies under—

“(I) the commodity distribution and commodity supplemental food programs established under sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 [Pub. L. 93-86] (7 U.S.C. 612c note);

“(II) the program established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b));

“(III) the school lunch, commodity distribution, and child care food programs established under sections 6, 14, and 17 of the National School Lunch Act (42 U.S.C. 1755, 1762a, and 1766);

“(IV) the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

“(V) the donation of surplus commodities to provide nutrition services under section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a); and

“(B) implement procedures to monitor the manner in which State distribution agencies carry out their responsibilities;

“(2) provide technical assistance to recipient agencies on the use of such commodities, including handling, storage, and menu planning and shall distribute to all recipient agencies suggested recipes for the use of donated commodities and products (the recipe cards shall be distributed as soon as practicable after the date of enactment of this Act [Jan. 8, 1988] and updated on a regular basis taking into consideration the Dietary Guidelines for Americans published by the Secretary of Agriculture and the Secretary of Health and Human Services, as in effect at the time of the update of the recipe files);

“(3) before the end of the 120-day period beginning on the date of the enactment of this Act [Jan. 8, 1988], implement a system under which the Secretary shall—

“(A) make available to State agencies summaries of the specifications with respect to such commodities and products; and

“(B) require State agencies to make such summaries available to recipient agencies on request;

“(4) implement a system for the dissemination to recipient agencies and to State distribution agencies—

“(A) not less than 60 days before each distribution of commodities by the Secretary is scheduled to begin, of information relating to the types and quantities of such commodities that are to be distributed; or

“(B) in the case of emergency purchases and purchases of perishable fruits and vegetables, of as much advance notification as is consistent with the need to ensure that high-quality commodities are distributed;

“(5) before the expiration of the 90-day period beginning on the date of the enactment of this Act [Jan. 8, 1988], establish procedures for the replacement of commodities received by recipient agencies that are stale, spoiled, out of condition, or not in compliance with the specifications developed under subsection (a)(1), including a requirement that the appropriate State distribution agency be notified promptly of the receipt of commodities that are stale, spoiled, out of condition, or not in compliance with the specifications developed under subsection (a)(1);

“(6) monitor the condition of commodities designated for donation to recipient agencies that are being stored by or for the Secretary to ensure that high quality is maintained;

“(7) establish a value for donated commodities and products to be used by State agencies in the allocation or charging of commodities against entitlements; and

“(8) require that each State distribution agency shall receive donated commodities not more than 90 days after such commodities are ordered by such agency, unless such agency specifies a longer delivery period.

“(c) QUALIFICATIONS FOR PURCHASE OF COMMODITIES.—

“(1) OFFERS FOR EQUAL OR LESS POUNDAGE.—Subject to compliance by the Secretary with surplus removal responsibilities under other provisions of law, the Secretary may not refuse any offer in response to an invitation to bid with respect to a contract for the purchase of entitlement commodities (provided in standard order sizes) solely on the basis that such offer provides less than the total amount of poundage for a destination specified in such invitation.

“(2) OTHER QUALIFICATIONS.—The Secretary may not enter into a contract for the purchase of entitlement commodities unless the Secretary considers the previous history and current patterns of the bidding party with respect to compliance with applicable meat inspection laws and with other appropriate standards relating to the wholesomeness of food for human consumption.

“(d) DUTIES OF STATE DISTRIBUTION AGENCIES.—On or before July 1, 1992, the Secretary shall by regulation require each State distribution agency to—

“(1) evaluate its system for warehousing and distributing donated commodities to recipient agencies designated in subparagraphs (A) and (B) of section 13(3) (hereafter referred to in this Act as ‘child and elderly nutrition program recipient agencies’);

“(2) in the case of State distribution agencies that require payment of fees by child and elderly nutrition program recipient agencies for any aspect of warehousing or distribution, implement the warehousing and distribution system that provides donated commodities to such recipient agencies in the most efficient manner, at the lowest cost to such recipient agencies, and at a level that is not less than a basic level of services determined by the Secretary;

“(3) in determining the most efficient and lowest cost system, use commercial facilities for providing warehousing and distribution services to such recipient agencies, unless the State applies to the Secretary for approval to use other facilities dem-

onstrating that, when both direct and indirect costs incurred by such recipient agencies are considered, such other facilities are more efficient and provide services at a lower total cost to such recipient agencies;

“(4) consider the preparation and storage capabilities of recipient agencies when ordering donated commodities, including capabilities of such agencies to handle commodity product forms, quality, packaging, and quantities; and

“(5) in the case of any such agency that enters into a contract with respect to processing of agricultural commodities and their products for recipient agencies—

“(A) test the product of such processing with the recipient agencies before entering into a contract for such processing; and

“(B) develop a system for monitoring product acceptability.

“(e) REGULATIONS.—

“(1) IN GENERAL.—The Secretary shall provide by regulation for—

“(A) whenever fees are charged to local recipient agencies, the establishment of mandatory criteria for such fees based on national standards and industry charges (taking into account regional differences in such charges) to be used by State distribution agencies for storage and deliveries of commodities;

“(B) minimum performance standards to be followed by State agencies responsible for intrastate distribution of donated commodities and products;

“(C) procedures for allocating donated commodities among the States; and

“(D) delivery schedules for the distribution of commodities and products that are consistent with the needs of eligible recipient agencies, taking into account the duty of the Secretary—

“(i) to remove surplus stocks of agricultural commodities through the Commodity Credit Corporation;

“(ii) to purchase surplus agricultural commodities through section 32 of the Act entitled ‘An Act to amend the Agricultural Adjustment Act, and for other purposes’, approved August 24, 1935 (7 U.S.C. 612c); and

“(iii) to make direct purchases of agricultural commodities and other foods for distribution to recipient agencies under—

“(I) the commodity distribution and commodity supplemental food programs established under sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 [Pub. L. 93-86] (7 U.S.C. 612c note);

“(II) the program established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

“(III) the school lunch, commodity distribution, and child care food programs established under sections 6, 14, and 17 of the National School Lunch Act (42 U.S.C. 1755, 1762a, and 1766);

“(IV) the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

“(V) the donation of surplus commodities to provide nutrition services under section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a).

“(2) TIME FOR PROMULGATION OF REGULATIONS.—The Secretary shall promulgate—

“(A) regulations as required by paragraph (1)(D) before the end of the 90-day period beginning on the date of enactment of this Act [Jan. 8, 1988]; and

“(B) regulations as required by subparagraphs (A), (B), and (C) of paragraph (1) before the end of the 270-day period beginning on such date.

“(f) REVIEW OF PROVISION OF COMMODITIES.—

“(1) IN GENERAL.—Before the expiration of the 270-day period beginning on the date of the enactment of this Act [Jan. 8, 1988], the Secretary shall establish procedures to provide for systematic review of the costs and benefits of providing commodities of the kind and quantity that are suitable to the needs of recipient agencies.

“(2) INFORMATION FROM RECIPIENT AGENCIES.—

“(g) TESTING FOR ACCEPTABILITY.—The Secretary shall establish an ongoing field testing program for present and anticipated commodity and product purchases to test product acceptability with program participants. Test results shall be taken into consideration in deciding which commodities and products, and in what form the commodities and products, should be provided to recipient agencies.

“(h) BUY AMERICAN PROVISION.—

“(1) IN GENERAL.—The Secretary shall require that recipient agencies purchase, whenever possible, only food products that are produced in the United States.

“(2) WAIVER.—The Secretary may waive the requirement established in paragraph (1)—

“(3) EXCEPTION.—The requirement established in paragraph (1) shall not apply to recipient agencies in Alaska, Guam, American Samoa, Puerto Rico, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands. The requirement established in paragraph (1) shall apply to recipient agencies in Hawaii only with respect to the purchase of pineapples.

“(i) UNIFORM INTERPRETATION.—The Secretary shall take such actions as are necessary to ensure that regional offices of the Department of Agriculture interpret uniformly across the United States policies and regulations issued to implement this section.

“(j) [Amended section 6(e) of the National School Lunch Act (42 U.S.C. 1755(e)).]

“(k) REPORT.—Not later than January 1, 1989, the Secretary shall submit to the Committee on Education and Labor and the Committee on Agriculture of the House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the implementation and operation of this section.

“SEC. 3A. ADVANCE FUNDING FOR STATE OPTION CONTRACTS.

“(a) IN GENERAL.—The Secretary may use the funds of the Commodity Credit Corporation and funds made available to carry out section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) to pay for all or a portion of the cost, as agreed on with the State distribution agency, of food or the processing or packaging of food on behalf of a State distribution agency.

“(b) REIMBURSEMENT.—In such cases, the State distribution agency shall reimburse the Secretary for the agreed on cost. Any funds received by the Secretary as reimbursement shall be deposited to the credit of the Commodity Credit Corporation or section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as appropriate. If the State distribution agency fails, within 150 days of delivery, to make the required reimbursement in full, the Secretary shall, within 30 days, offset any outstanding amount against the appropriate account.

“SEC. 4. FOOD BANK PROJECT.

“(a) COMMUNITY FOOD BANKS.—The Secretary shall carry out no less than one demonstration project to provide and redistribute agricultural commodities and food products thereof as authorized under section 32 of

the Act entitled 'An Act to amend the Agricultural Adjustment Act, and for other purposes', approved August 24, 1935 (7 U.S.C. 612c), to needy individuals and families through community food banks. The Secretary may use a State agency or any other food distribution system for such provision or redistribution of section 32 agricultural commodities and food products through community food banks under a demonstration project.

“(b) RECORDKEEPING AND MONITORING.—Each food bank participating in the demonstration projects under this section shall establish a recordkeeping system and internal procedures to monitor the use of agricultural commodities and food products provided under this section. The Secretary shall develop standards by which the feasibility and effectiveness of the projects shall be measured, and shall conduct an ongoing review of the effectiveness of the projects.

“(c) DETERMINATION OF QUANTITIES, VARIETIES, AND TYPES OF COMMODITIES.—The Secretary shall determine the quantities, varieties, and types of agricultural commodities and food products to be made available under this section.

“(d) EFFECTIVE PERIOD.—This section shall be effective for the period beginning on the date of enactment of this Act [Jan. 8, 1988].

“SEC. 7. ASSESSMENT AND REPORT TO CONGRESS.

“(a) ASSESSMENT.—The Comptroller General of the United States shall monitor and assess the implementation by the Secretary of the provisions of this Act [see section 1 set out above].

“(b) REPORT.—Before the expiration of the 18-month period beginning on the date of the enactment of this Act [Jan. 8, 1988], the Comptroller General shall submit to the Committee on Education and Labor and the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report of the findings of the assessment conducted as required by subsection (a).

“SEC. 13. AUTHORITY TO TRANSFER COMMODITIES BETWEEN PROGRAMS.

“(a) TRANSFER.—Subject to subsection (b), the Secretary may transfer any commodities purchased with appropriated funds for a domestic food assistance program administered by the Secretary to any other domestic food assistance program administered by the Secretary if the transfer is necessary to ensure that the commodities will be used while the commodities are still suitable for human consumption.

“(b) REIMBURSEMENT.—The Secretary shall, to the maximum extent practicable, provide reimbursement for the value of the commodities transferred under subsection (a) from accounts available for the purchase of commodities under the program receiving the commodities.

“(c) CREDITING.—Any reimbursement made under subsection (b) shall—

“(1) be credited to the accounts that incurred the costs when the transferred commodities were originally purchased; and

“(2) be available for the purchase of commodities with the same limitations as are provided for appropriated funds for the reimbursed accounts for the fiscal year in which the transfer takes place.

“SEC. 14. AUTHORITY TO RESOLVE CLAIMS.

“(a) IN GENERAL.—The Secretary may determine the amount of, settle, and adjust all or part of a claim arising under a domestic food assistance program administered by the Secretary.

“(b) WAIVER.—The Secretary may waive a claim described in subsection (a) if the Secretary determines that a waiver would serve the purposes of the program.

“(c) AUTHORITY OF THE ATTORNEY GENERAL.—Nothing in this section diminishes the authority of the Attorney General under section 516 of title 28, United States Code, or any other provision of law, to supervise and conduct litigation on behalf of the United States.

“SEC. 15. PAYMENT OF COSTS ASSOCIATED WITH REMOVAL OF COMMODITIES THAT POSE A HEALTH OR SAFETY RISK.

“(a) IN GENERAL.—The Secretary may use funds available to carry out section 32 of the Act of August 24, 1935 (49 Stat. 774, chapter 641; 7 U.S.C. 612c), that are not otherwise committed, for the purpose of reimbursing States for State and local costs associated with the removal of commodities distributed under any domestic food assistance program administered by the Secretary if the Secretary determines that the commodities pose a health or safety risk.

“(b) ALLOWABLE COSTS.—The costs—

“(1) may include costs for storage, transportation, processing, and destruction of the commodities described in subsection (a); and

“(2) shall be subject to the approval of the Secretary.

“(c) REPLACEMENT COMMODITIES.—

“(1) IN GENERAL.—The Secretary may use funds described in subsection (a) for the purpose of purchasing additional commodities if the purchase will expedite replacement of the commodities described in subsection (a).

“(2) RECOVERY.—Use of funds under paragraph (1) shall not restrict the Secretary from recovering funds or services from a supplier or other entity regarding the commodities described in subsection (a).

“(d) CREDITING OF RECOVERED FUNDS.—Funds recovered from a supplier or other entity regarding the commodities described in subsection (a) shall—

“(1) be credited to the account available to carry out section 32 of the Act of August 24, 1935 (49 Stat. 774, ch. 641; 7 U.S.C. 612c), to the extent the funds represent expenditures from that account under subsections (a) and (c); and

“(2) remain available to carry out the purposes of section 32 of that Act until expended.

“(e) TERMINATION DATE.—The authority provided by this section terminates effective October 1, 2000.

“SEC. 16. AUTHORITY TO ACCEPT COMMODITIES DONATED BY FEDERAL SOURCES.

“(a) IN GENERAL.—The Secretary may accept donations of commodities from any Federal agency, including commodities of another Federal agency determined to be excess personal property pursuant to section 202(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(d)).

“(b) USE.—The Secretary may donate the commodities received under subsection (a) to States for distribution through any domestic food assistance program administered by the Secretary.

“(c) PAYMENT.—Notwithstanding section 202(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(d)), the Secretary shall not be required to make any payment in connection with the commodities received under subsection (a).

“SEC. 17. DEFINITIONS.

“For purposes of this Act:

“(1) The term ‘donated commodities’ means agricultural commodities and their products that are donated by the Secretary to recipient agencies.

“(2) The term ‘entitlement commodities’ means agricultural commodities and their products that are donated and charged by the Secretary against entitlements established under programs authorized by statute to receive such commodities.

“(3) The term ‘recipient agency’ means—

“(A) a school, school food service authority, or other agency authorized under the National School Lunch Act [42 U.S.C. 1751 et seq.] or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) to operate breakfast programs, lunch programs, child care food programs, summer food service programs, or similar programs and to receive donations of agricultural commodities and their products acquired by the Secretary through price support, surplus removal, or direct purchase;

“(B) a nutrition program for the elderly authorized under title III of the Older Americans Act of 1965 (42 U.S.C. 3021 et seq.) to receive donations of agricultural commodities and their products acquired by the Secretary through price support, surplus removal, or direct purchase;

“(C) an agency or organization distributing commodities under the commodity supplemental food program established in section 4 of the Agriculture and Consumer Protection Act of 1973 [Pub. L. 93-86] (7 U.S.C. 612c note);

“(D) any charitable institution, summer camp, or assistance agency for the food distribution program on Indian reservations authorized under section 4 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) to receive donations of agricultural commodities and their products acquired by the Secretary through price support, surplus removal, or direct purchase; or

“(E) an agency or organization distributing commodities under a program established in section 202 of the Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) [7 U.S.C. 7502].

“(4) The term ‘State distribution agency’ means a State agency responsible for the intrastate distribution of donated commodities.

“(5) The term ‘Secretary’ means Secretary of Agriculture, unless the context specifies otherwise.

#### “SEC. 18. GENERAL EFFECTIVE DATE.

“Except as otherwise provided in this Act, this Act and the amendments made by this Act [see section 1 above] shall take effect on the date of the enactment of this Act [Jan. 8, 1988].”

#### FOOD BANK DEMONSTRATION PROJECT

Pub. L. 100-232, § 3, Jan. 5, 1988, 101 Stat. 1566, authorized Secretary of Agriculture to carry out no less than one demonstration project to provide and redistribute agricultural commodities and food products thereof as authorized under this section to needy individuals and families through community food banks and to use State agency or any other food distribution system for such provision or redistribution of commodities and food products, further required each food bank participating in demonstration projects to establish record-keeping system and internal procedures to monitor use of agricultural commodities and food products, authorized Secretary to determine quantities, varieties, and types of agricultural commodities and food products to be made available, and further provided for termination of authority on Dec. 31, 1990, and annual progress reports by Secretary, prior to repeal by Pub. L. 104-193, title VIII, § 872, Aug. 22, 1996, 110 Stat. 2346.

#### CONTINUATION OF DISTRIBUTION OF AGRICULTURAL COMMODITIES TO LOW-INCOME ELDERLY AT EXISTING LEVELS

Section 1562(d) of Pub. L. 99-198 provided that: “Notwithstanding any other provision of law, in implementing the commodity supplemental food program under section 4 of the Agriculture and Consumer Protection Act of 1973 [Pub. L. 93-86, set out as a note below], the Secretary of Agriculture shall allow agencies distributing agricultural commodities to low-income elderly people under such programs on the date of enactment of this Act [Dec. 23, 1985] to continue such distribution at levels no lower than existing caseloads.”

#### REPORT TO CONGRESS ON ACTIVITIES OF PROGRAM CONDUCTED UNDER TEMPORARY EMERGENCY FOOD ASSISTANCE ACT OF 1983

Section 1571 of Pub. L. 99-198 provided that not later than Apr. 1, 1987, Secretary of Agriculture was to report to Congress on activities of program conducted under Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 7501 et seq.), which was to include information on volume and types of commodities distributed under program, types of State and local agencies

receiving commodities for distribution under program, populations served under program and their characteristics, Federal, State, and local costs of commodity distribution operations under program (including transportation, storage, refrigeration, handling, distribution, and administrative costs), and amount of Federal funds provided to cover State and local costs under program, prior to repeal by Pub. L. 104-193, title VIII, § 871(f), Aug. 22, 1996, 110 Stat. 2345.

#### EMERGENCY FOOD ASSISTANCE ACT OF 1983

Pub. L. 98-8, title II, Mar. 24, 1983, 97 Stat. 35, as amended by Pub. L. 98-92, § 2, Sept. 2, 1983, 97 Stat. 608; Pub. L. 99-198, title XV, §§ 1562(e)(1), 1563-1566, 1567(c), 1568-1570, Dec. 23, 1985, 99 Stat. 1590-1594; Pub. L. 100-77, title VIII, §§ 811-814, July 22, 1987, 101 Stat. 536-538; Pub. L. 100-435, title I, §§ 101-105, Sept. 19, 1988, 102 Stat. 1647-1650; Pub. L. 101-624, title XVII, § 1772(a)-(h)(1), Nov. 28, 1990, 104 Stat. 3808, 3809; Pub. L. 102-237, title IX, § 922(b), Dec. 13, 1991, 105 Stat. 1888; Pub. L. 104-66, title I, § 1011(k), Dec. 21, 1995, 109 Stat. 710; Pub. L. 104-127, title IV, § 403, Apr. 4, 1996, 110 Stat. 1029; Pub. L. 104-193, title VIII, § 871(a)-(e), Aug. 22, 1996, 110 Stat. 2343-2345, known as the Emergency Food Assistance Act of 1983, and formerly set out as a note under this section, established temporary program authorizing Secretary of Agriculture to distribute excess food commodities to public or nonprofit organizations administering certain activities such as school lunch programs, elderly nutrition programs, activities of charitable institutions that serve meals to needy persons, and disaster relief programs. As amended by Pub. L. 104-193, the program became permanent, and title II of Pub. L. 98-8 was transferred to chapter 102 (§ 7501 et seq.) of this title.

#### AGRICULTURAL EXPORT PROMOTION

Pub. L. 97-253, title I, § 135, Sept. 8, 1982, 96 Stat. 772, authorized Secretary of Agriculture, for each of fiscal years 1983, 1984, and 1985, to use up to \$190,000,000 of Commodity Credit Corporation funds to carry out export activities through Commodity Credit Corporation under provisions of law in effect on Sept. 8, 1982, including activities authorized under amendments made by section 405(d) of Pub. L. 98-623 to sections 1707a and 1732 of this title and section 714c(f) of Title 15, Commerce and Trade, even if those export activities were not included in budget program of Corporation.

[Amendments made by section 405(d) of Pub. L. 98-623, amending sections 1707a and 1732 of this title and section 714c(f) of Title 15, Commerce and Trade, to be considered as having taken effect before Sept. 8, 1982, for purposes of section 135 of Pub. L. 97-253, set out above, see section 405(d) of Pub. L. 98-623, set out as an Effective Date of 1984 Amendment note under section 714c of Title 15, Commerce and Trade.]

#### DISTRIBUTION OF COMMODITIES TO INDIVIDUALS IN CASES OF HARDSHIP

Pub. L. 105-277, div. A, title I, § 101(a) [title VII, § 709], Oct. 21, 1998, 112 Stat. 2681, 2681-26, provided that: “Notwithstanding any other provision of this Act [probably means the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, Pub. L. 105-277, div. A, title I, § 101(a), Oct. 21, 1998, 112 Stat. 2681, see Tables for classification], commodities acquired by the Department in connection with Commodity Credit Corporation and section 32 [this section] price support operations may be used, as authorized by law (15 U.S.C. 714c and 7 U.S.C. 612c), to provide commodities to individuals in cases of hardship as determined by the Secretary of Agriculture.”

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 105-86, title VII, § 709, Nov. 18, 1997, 111 Stat. 2105.

Pub. L. 104-180, title VII, § 709, Aug. 6, 1996, 110 Stat. 1597.

Pub. L. 104-37, title VII, § 709, Oct. 21, 1995, 109 Stat. 330.

Pub. L. 103-330, title VII, § 709, Sept. 30, 1994, 108 Stat. 2467.

Pub. L. 103-111, title VII, § 710, Oct. 21, 1993, 107 Stat. 1079.

Pub. L. 102-341, title VII, § 715, Aug. 14, 1992, 106 Stat. 908.

Pub. L. 102-142, title VII, § 718, Oct. 28, 1991, 105 Stat. 913.

Pub. L. 101-506, title VI, § 619, Nov. 5, 1990, 104 Stat. 1347.

Pub. L. 101-161, title VI, § 619, Nov. 21, 1989, 103 Stat. 983.

Pub. L. 100-460, title VI, § 619, Oct. 1, 1988, 102 Stat. 2261.

Pub. L. 100-202, § 101(k) [title VI, § 619], Dec. 22, 1987, 101 Stat. 1329-322, 1329-355.

Pub. L. 99-500, § 101(a) [title VI, § 619], Oct. 18, 1986, 100 Stat. 1783, 1783-29, and Pub. L. 99-591, § 101(a) [title VI, § 619], Oct. 30, 1986, 100 Stat. 3341, 3341-29.

Pub. L. 99-190, § 101(a) [H.R. 3037, title VI, § 619], Dec. 19, 1985, 99 Stat. 1185.

Pub. L. 98-473, title I, § 101(a) [H.R. 5743, title VI, § 619], Oct. 12, 1984, 98 Stat. 1837.

Pub. L. 98-151, § 101(d) [H.R. 3223, title VI, § 619], Nov. 14, 1983, 97 Stat. 972.

Pub. L. 97-370, title VI, § 620, Dec. 18, 1982, 96 Stat. 1811.

Pub. L. 97-103, title VI, § 620, Dec. 23, 1981, 95 Stat. 1490.

#### COMMODITY DISTRIBUTION PROGRAM; PURCHASE OF AGRICULTURAL COMMODITIES; FURNISHING COMMODITIES TO SUMMER CAMPS

Pub. L. 93-86, § 4, Aug. 10, 1973, 87 Stat. 249, as amended by Pub. L. 93-347, § 1, July 12, 1974, 88 Stat. 340; Pub. L. 94-273, § 2(1), Apr. 21, 1976, 90 Stat. 375; Pub. L. 95-113, title XIII, §§ 1302(a)(1), 1304(a), Sept. 29, 1977, 91 Stat. 979, 980, Pub. L. 97-98, title XIII, § 1334, Dec. 22, 1981, 95 Stat. 1292; Pub. L. 98-8, title II, § 207, Mar. 24, 1983, 97 Stat. 36; Pub. L. 98-92, § 3, Sept. 2, 1983, 97 Stat. 612; Pub. L. 99-198, title XV, § 1562(a), Dec. 23, 1985, 99 Stat. 1590; Pub. L. 101-624, title XVII, §§ 1771(a), (b)(1), (c)(1), 1772(h)(2), Nov. 28, 1990, 104 Stat. 3806, 3807, 3809; Pub. L. 104-127, title IV, § 402(a), Apr. 4, 1996, 110 Stat. 1028, provided that:

“(a) Notwithstanding any other provision of law, the Secretary may, during fiscal years 1991 through 2002, purchase and distribute sufficient agricultural commodities with funds appropriated from the general fund of the Treasury to maintain the traditional level of assistance for food assistance programs as are authorized by law, including but not limited to distribution to institutions (including hospitals and facilities caring for needy infants and children), supplemental feeding programs serving women, infants, and children or elderly persons, or both, wherever located, disaster areas, summer camps for children, the United States Trust Territory of the Pacific Islands, and Indians, whenever a tribal organization requests distribution of federally donated foods pursuant to section 4(b) of the Food Stamp Act of 1977 [section 2013(b) of this title]. In providing for commodity distribution to Indians, the Secretary shall improve the variety and quantity of commodities supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet.

“(b) The Secretary may furnish commodities to summer camps for children in which the number of adults participating in camp activities as compared with the number of children 18 years of age and under so participating is not unreasonable in light of the nature of such camp and the characteristics of the children in attendance.”

“(c) Whoever embezzles, willfully misapplies, steals or obtains by fraud any agricultural commodity or its products (or any funds, assets, or property deriving from donation of such commodities) provided under this section, or under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), section 32 of the Act of Au-

gust 24, 1935 (7 U.S.C. 612c), section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1), or the Emergency Food Assistance Act of 1983 [7 U.S.C. 7501 et seq.], whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such commodities, products, funds, assets, or property for personal use or gain, knowing such commodities, products, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such commodities, products, funds, assets, or property are of a value of \$100 or more, be fined not more than \$10,000 or imprisoned not more than five years, or both, or if such commodities, products, funds, assets, or property are of value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.”

[Amendment by section 1771(a) of Pub. L. 101-624 effective Oct. 1, 1990, and amendments by sections 1771(b)(1), (c)(1), and 1772(h)(2) of Pub. L. 101-624 effective Nov. 28, 1990, see section 1781(b)(1), (2) of Pub. L. 101-624, set out as an Effective Date of 1990 Amendment note under section 2012 of this title.]

[Section 1334 of Pub. L. 97-98 provided in part that the amendment of section 4 of Pub. L. 93-86 by Pub. L. 97-98 is effective Oct. 1, 1981.]

[Section 1302(b) and section 1304(a) in part, both of Pub. L. 95-113, provided that the amendment of subsecs. (a) and (b) of section 4 of Pub. L. 93-86 and the repeal of subsec. (c) of section 4 of Pub. L. 93-86 are effective Oct. 1, 1977.]

[Pub. L. 93-233, § 8(b)(1), Dec. 31, 1973, 87 Stat. 956, as amended by Pub. L. 93-335, § 1(b), July 8, 1974, 88 Stat. 291; Pub. L. 94-44, § 3(b), June 28, 1975, 89 Stat. 235; Pub. L. 94-365, § 2(2), July 14, 1976, 90 Stat. 990; Pub. L. 95-59, § 3(2), June 30, 1977, 91 Stat. 255, eff. July 1, 1977, provided that: “Section 4(c) of Public Law 93-86 shall not be effective for the period ending September 30, 1978.”] [For repeal of section 4(c) of Pub. L. 93-86, see section 1304(a) of Pub. L. 95-113.]

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

#### COMMODITY SUPPLEMENTAL FOOD PROGRAM

Section 5 of Pub. L. 93-86, as added by Pub. L. 95-113, title XIII, § 1304(b)(2), Sept. 29, 1977, 91 Stat. 980, and amended by Pub. L. 97-98, title XIII, § 1335, Dec. 22, 1981, 95 Stat. 1293; Pub. L. 98-8, title II, § 209, Mar. 24, 1983, 97 Stat. 36, as amended Pub. L. 98-92, § 2(8), Sept. 2, 1983, 97 Stat. 611; Pub. L. 99-198, title XV, § 1562(b), (c), (e)(2), Dec. 23, 1985, 99 Stat. 1590; Pub. L. 100-435, title I, § 130, redesignated § 5(d)(2) of Pub. L. 93-86 by Pub. L. 101-624, title XVII, § 1774(c)(2)(A), (B), Nov. 28, 1990, 104 Stat. 3813; Pub. L. 101-624, title XVII, §§ 1771(c)(2)-(f), 1774(c)(2)(C), Nov. 28, 1990, 104 Stat. 3807, 3808, 3813; Pub. L. 102-237, title I, § 118(a), title IX, § 922(c), Dec. 13, 1991, 105 Stat. 1841, 1889; Pub. L. 104-127, title IV, § 402(b), Apr. 4, 1996, 110 Stat. 1028; Pub. L. 104-193, title I, § 109(f), Aug. 22, 1996, 110 Stat. 2170; Pub. L. 105-33, title V, § 5514(b), Aug. 5, 1997, 111 Stat. 620, provided that:

“(a) In carrying out the supplemental feeding program (hereinafter referred to as the ‘commodity supplemental food program’) under section 4 of this Act [set out as a note above], the Secretary (1) may institute two pilot projects directed at low-income elderly persons, including, where feasible, distribution of commodities to such persons in their homes; and (2) shall provide to the State agencies administering the commodity supplemental food program, for each of the fiscal years 1991 through 2002, funds appropriated from the general fund of the Treasury in amounts equal to the administrative costs of State and local agencies in operating the program, except that the funds provided to State agencies each fiscal year may not exceed 20 percent of the amount appropriated for the commodity supplemental food program.

“(b) During the first three months of any commodity supplemental food program, or until such program reaches its projected caseload level, whichever comes first, the Secretary shall pay those administrative

costs necessary to commence the program successfully: *Provided*, That in no event shall administrative costs paid by the Secretary for any fiscal year exceed the limitation established in subsection (a) of this section.

“(c) Administrative costs for the purposes of the commodity supplemental food program shall include, but not be limited to, expenses for information and referral, operation, monitoring, nutrition education, start-up costs, and general administration, including staff, warehouse and transportation personnel, insurance, and administration of the State or local office.

“(d)(1) During each fiscal year the commodity supplemental food program is in operation, the types and varieties of commodities and their proportional amounts shall be determined by the Secretary, but, if the Secretary proposes to make any significant changes in the types, varieties, or proportional amounts from those that were available or were planned at the beginning of the fiscal year (or as were available during the fiscal year ending June 30, 1976, whichever is greater) the Secretary shall report such changes before implementation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

“(2) Notwithstanding any other provision of law, the Commodity Credit Corporation shall, to the extent that the Commodity Credit Corporation inventory levels permit, provide not less than 9,000,000 pounds of cheese and not less than 4,000,000 pounds of nonfat dry milk in each of the fiscal years 1991 through 2002 to the Secretary of Agriculture. The Secretary shall use such amounts of cheese and nonfat dry milk to carry out the commodity supplemental food program before the end of each fiscal year.

“(e) The Secretary of Agriculture is authorized to issue such regulations as may be necessary to carry out the commodity supplemental food program.

“(f) The Secretary shall, in any fiscal year, approve applications of additional sites for the program, including sites that serve only elderly persons, in areas in which the program currently does not operate to the full extent that this can be done within the appropriations available for the program for the fiscal year and without reducing actual participation levels (including participation of elderly persons under subsection (g)) in areas in which the program is in effect.

“(g) If a local agency that administers the commodity supplemental food program determines that the amount of funds made available to the agency to carry out this section exceeds the amount of funds necessary to provide assistance under such program to women, infants, and children, the agency, with the approval of the Secretary, may permit low-income elderly persons (as defined by the Secretary) to participate in and be served by such program.

“(h) Each State agency administering a commodity supplemental food program serving women, infants, and children shall—

“(1) ensure that written information concerning food stamps, the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), and the child support enforcement program under part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.) is provided on at least one occasion to each adult who applies for or participates in the commodity supplemental food program;

“(2) provide each local agency with materials showing the maximum income limits, according to family size, applicable to pregnant women, infants, and children up to age 6 under the medical assistance program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (hereinafter referred to in this section as the ‘medicaid program’) which materials may be identical to those provided under section 17(e)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(e)(3)); and

“(3) ensure that local agencies provide to pregnant, breast feeding and post partum women, and adults applying on behalf of infants or children, who apply to the commodity supplemental food program, or who

reapply to such program, written information about the medicaid program and referral to the program or to agencies authorized to determine presumptive eligibility for the medicaid program, if the individuals are not participating in the medicaid program.

“(i) Each State agency administering a commodity supplemental food program serving elderly persons shall ensure that written information is provided on at least one occasion to each elderly participant in or applicant for the commodity supplemental food program for the elderly concerning—

“(1) food stamps provided under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

“(2) the supplemental security income benefits provided under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.); and

“(3) medical assistance provided under title XIX of such Act (42 U.S.C. 1396 et seq.) (including medical assistance provided to a qualified medicare beneficiary (as defined in section 1905(p) of such Act (42 U.S.C. 1396d(5))))).

“(j)(1) If the Secretary must pay a significantly higher than expected price for one or more types of commodities purchased under the commodity supplemental food program, the Secretary shall promptly determine whether the price is likely to cause the number of persons that can be served in the program in a fiscal year to decline.

“(2) If the Secretary determines that such a decline would occur, the Secretary shall promptly notify the State agencies charged with operating the program of the decline and shall ensure that a State agency notify all local agencies operating the program in the State of the decline.

“(k)(1) The Secretary or a designee of the Secretary shall have the authority to—

“(A) determine the amount of, settle, and adjust any claim arising under the commodity supplemental food program; and

“(B) waive such a claim if the Secretary determines that to do so will serve the purposes of the program.

“(2) Nothing contained in this subsection shall be construed to diminish the authority of the Attorney General of the United States under section 516 of title 28, United States Code, to conduct litigation on behalf of the United States.

“(l) CARRIED-OVER FUNDS.—Not more than 20 percent of any commodity supplemental food program food funds carried over under this section shall be available for administrative expenses of the program.”

[Amendment by section 922(c) of Pub. L. 102-237 effective and implemented no later than Feb. 1, 1992, see section 1101(d)(1) of Pub. L. 102-237, set out as an Effective Date of 1991 Amendment note under section 1421 of this title.]

[Amendment by sections 1771(c)(2) and 1774(c) of Pub. L. 101-624 effective Nov. 28, 1990; amendment by section 1771(d) of Pub. L. 101-624 effective Oct. 1, 1990, and amendments by section 1771(e) and (f) of Pub. L. 101-624 effective and implemented the first day of the month beginning 120 days after the publication of implementing regulations which shall be promulgated not later than Oct. 1, 1991, see section 1781(a), (b)(1), (2) of Pub. L. 101-624, set out as an Effective Date of 1990 Amendment note under section 2012 of this title.]

[Section 1335 of Pub. L. 97-98 provided in part that the amendment to section 5 of Pub. L. 93-86 by Pub. L. 97-98 is effective Oct. 1, 1981.]

[Section 1304(b) of Pub. L. 95-113 provided in part that section 5 of Pub. L. 93-86 is effective Oct. 1, 1977.]

#### DIRECT DISTRIBUTION PROGRAMS FOR DIET OF NEEDY CHILDREN AND LOW-INCOME PERSONS SUFFERING FROM GENERAL AND CONTINUED HUNGER; ADDITIONAL FUNDS

Section 6 of Pub. L. 92-32, June 30, 1971, 85 Stat. 86, authorized the Secretary of Agriculture to use during the fiscal year ending June 30, 1972, not to exceed \$20,000,000 in funds from section 612c of this title, in addition to funds appropriated or otherwise available, to

carry out in any area of the United States direct distribution or other programs, without regard to whether such area is under the food stamp program or a system of direct distribution, in order to provide in the vicinity of their residence an adequate diet to needy children and low income persons suffering, through no fault of their own, from general and continued hunger; provided that food made available to needy children was to be in addition to food made available under the National School Lunch Act or the Child Nutrition Act of 1966; and authorized payment of administrative costs incurred by state or local agencies in carrying out programs for needy children.

USE OF FUNDS FOR SCHOOL LUNCH PROGRAM UNDER SECTION 1753 OF TITLE 42

Use of funds appropriated under this section for implementing section 1753 of Title 42 till supplemental appropriation is made and reimbursement of such funds, see section 4(a) of Pub. L. 92-433, set out as a note under section 1753 of Title 42, The Public Health and Welfare.

TRANSFER OF FUNDS TO SCHOOLS IN NEED OF ADDITIONAL ASSISTANCE IN SCHOOL BREAKFAST PROGRAM

Authorization for transfer of funds under this section to assist schools in need of additional funds in school breakfast program, see note set out under section 1773 of Title 42, The Public Health and Welfare.

ADDITIONAL FUNDS FOR FOOD SERVICE PROGRAMS FOR CHILDREN; APPORTIONMENT TO STATES; SPECIAL ASSISTANCE; CONSULTATION WITH CHILD NUTRITION COUNCIL; REIMBURSEMENT FROM SUPPLEMENTAL APPROPRIATION

Additional funds for food service programs for children from appropriations under this section, apportionment to States, special assistance programs, consultation with National Advisory Council on Child Nutrition, and reimbursement from supplemental appropriation, see note set out under section 1753 of Title 42, The Public Health and Welfare.

MEAL AND FLOUR FOR RELIEF

Act Aug. 9, 1955, ch. 671, 69 Stat. 608, authorized the Secretary of Agriculture upon specific request of the Governor of any State, during the period commencing Aug. 9, 1955 and ending June 30, 1957, to make available, pursuant to clause (2) of this section for distribution by State agencies, other than institutions and schools, directly to families and persons determined by appropriate State or local public welfare agencies to be in need, wheat flour and corn meal in such quantities as the Secretary of Agriculture determines can be effectively distributed and utilized within such period without regard to the requirement contained in this section, that such funds be devoted principally to perishable nonbasic agricultural commodities and their products.

ELIGIBILITY OF SUPPLEMENTAL SECURITY INCOME RECIPIENTS FOR FOOD STAMPS DURING THE PERIOD ENDING SEPTEMBER 30, 1978

Pub. L. 93-233, §8(b)(3), Dec. 31, 1973, 87 Stat. 956, as amended by Pub. L. 93-335, §1(b), July 8, 1974, 88 Stat. 291; Pub. L. 94-44, §3(b), June 28, 1975, 89 Stat. 235; Pub. L. 94-365, §2(2), July 14, 1976, 90 Stat. 990; Pub. L. 95-59, §3(2), June 30, 1977, 91 Stat. 255, provided that: "For the period ending September 30, 1978, no individual, who receives supplemental security income benefits under title XVI of the Social Security Act [section 1381 et seq. of Title 42, The Public Health and Welfare], State supplementary payments described in section 1616 of such Act [section 1382e of Title 42], or payments of the type referred to in section 212(a) of Public Law 93-66 [set out as a note under section 1382 of Title 42], shall be considered to be a member of a household for any purpose of the food distribution program for families under section 32 of Public Law 74-320 [this section], section 416 of the Agricultural Act of 1949 [section 1431 of this title],

or any other law, for any month during such period, if, for such month, such individual resides in a State which provides State supplementary payments (A) of the type described in section 1616(a) of the Social Security Act [section 1382e(a) of Title 42], and (B) the level of which has been found by the Secretary of Health, Education, and Welfare to have been specifically increased so as to include the bonus value of food stamps."

[Amendment by Pub. L. 93-335 effective July 1, 1974, see section 1(c) of Pub. L. 93-335, set out as an Effective Date of 1974 Amendment note under section 1382 of Title 42. Section 3 of Pub. L. 95-59 provided in part that the amendment of section 8 of Pub. L. 93-233 by section 3(2) of Pub. L. 95-59 is effective July 1, 1977.]

FOOD STAMP PLAN

Acts June 25, 1940, ch. 421, §1, 54 Stat. 563; July 1, 1941, ch. 267, §1, 55 Stat. 438, provided: "That said 25 per centum provision and the like provision in said section 32 [this section], as amended, shall not apply to amounts devoted to a stamp plan for the removal of surplus agricultural commodities from funds made available hereby and by said section 32 [this section], and, notwithstanding expenditures under such stamp plan, the 25 per centum provision shall continue to be calculated on the aggregate amount available hereunder and under said section 32 [this section]."

DISTRIBUTION OF SURPLUS COMMODITIES TO OTHER UNITED STATES AREAS

Extension of relief programs to areas under United States jurisdiction, see section 1431b of this title.

FISHERY PRODUCTS; USE OF FUNDS

Use of funds made available under this section for distribution of surplus fishery products, and for promotion of free flow of domestically produced fishery products, see sections 713c-2 and 713c-3 of Title 15, Commerce and Trade.

HOME ECONOMICS TRAINING

Authorization of schools to use surplus foods received under this section to train students in home economics, see note set out under section 1431 of this title.

CROSS REFERENCES

Secretary of Agriculture not precluded from carrying on programs under this section by International Wheat Agreement Act of 1949, see section 1641 of this title.

Supplemental appropriations to encourage exportation and domestic consumption of agricultural products, see section 1855 of this title.

Transfer of funds to Federal Surplus Commodities Corporation to effectuate clause (2) of this section, see section 713c of Title 15, Commerce and Trade.

Utilization of services and facilities of Commodity Credit Corporation in carrying out program under this section, see section 1424 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 624, 1392, 1421, 1424, 1431b, 1641, 1855, 2036, 2627, 4004, 5676, 7502 of this title; title 12 section 1150a; title 15 sections 713c, 713c-2, 713c-3; title 31 section 1511; title 40 section 474; title 42 sections 1755, 1758, 1761, 1762a, 1777, 1786, 3030a, 3045f, 5180.

**§ 612c-1. Authorization for appropriations to increase domestic consumption of surplus farm commodities**

On and after December 30, 1963, such sums (not in excess of \$25,000,000 in any one year) as may be approved by the Congress shall be available for the purpose of increasing domestic consumption of any farm commodity or farm commodities determined by the Secretary of Agriculture

to be in surplus supply, such authorization not to restrict authority in existing law, of which amount \$11,000,000 shall remain available until expended for construction and equipping of research facilities determined to be needed as a result of a special survey.

(Pub. L. 88-250, title I, §101, Dec. 30, 1963, 77 Stat. 826.)

#### CODIFICATION

Section was not enacted as part of the Agricultural Adjustment Act which comprises this chapter.

#### § 612c-2. Technical support to exporters and importers of United States agricultural products; scope of support provided by Department of Agriculture

The Department of Agriculture shall provide technical support to exporters and importers of United States agricultural products when so requested. Such support shall include, but not be limited to, a review of the feasibility of the export proposal, adequacy of sources of supply, compliance with trade regulations of the United States and the importing country and such other information or guidance as may be needed to expand and expedite United States agricultural exports by private trading interests.

(Pub. L. 91-524, title VIII, §811, as added Pub. L. 93-86, §1(27)(B), Aug. 10, 1973, 87 Stat. 238.)

#### CODIFICATION

Section was not enacted as part of the Agricultural Adjustment Act which comprises this chapter.

#### § 612c-3. Repealed. Pub. L. 101-624, title XV, § 1578, Nov. 28, 1990, 104 Stat. 3702

Section, Pub. L. 91-524, title VIII, §812, as added Pub. L. 93-86, §1(27)(B), Aug. 10, 1973, 87 Stat. 238, and amended Pub. L. 95-113, title X, §1005, Sept. 29, 1977, 91 Stat. 951; Pub. L. 97-444, title II, §238, Jan. 11, 1983, 96 Stat. 2326, required exporters to report export sales and restricted President from prohibiting or curtailing certain exports. See section 5712 of this title.

#### EFFECTIVE DATE OF REPEAL

Section 1578 of Pub. L. 101-624 provided that the repeal is effective on the effective date of regulations promulgated under section 5664 of this title. Implementing regulations were promulgated and published in the Federal Register as follows:

May 30, 1991, eff. July 8, 1991, 56 F.R. 25998.  
June 3, 1991, eff. June 7, 1991, 56 F.R. 26323.  
Aug. 16, 1991, eff. Aug. 27, 1991, 56 F.R. 42222.

#### § 613. Termination date; investigations and reports

This chapter shall cease to be in effect whenever the President finds and proclaims that the national economic emergency in relation to agriculture has been ended; and pending such time the President shall by proclamation terminate with respect to any basic agricultural commodity such provisions of this chapter as he finds are not requisite to carrying out the declared policy with respect to such commodity. In the case of sugar beets and sugarcane, the taxes provided by this chapter shall cease to be in effect, and the powers vested in the President or in the Secretary of Agriculture shall terminate on December 31, 1937 unless this chapter ceases to be

in effect at an earlier date, as hereinabove provided. The Secretary of Agriculture shall make such investigations and reports thereon to the President as may be necessary to aid him in executing this section.

(May 12, 1933, ch. 25, title I, §13, 48 Stat. 39; May 9, 1934, ch. 263, §15, 48 Stat. 677; Aug. 24, 1935, ch. 641, §20(a), 49 Stat. 768.)

#### AMENDMENTS

1935—Act Aug. 24, 1935, substituted “on December 31, 1937” for “at the end of three years after the adoption of this amendment”.

1934—Act May 9, 1934, inserted second sentence relating to taxes on sugar beets and sugarcane.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 609, 673 of this title.

#### § 613a. Repealed. Sept. 1, 1937, ch. 898, title V, § 510, 50 Stat. 916

Section, act June 19, 1936, ch. 612, §1, 49 Stat. 1539, related to termination of taxes on sugar beets and sugarcane.

#### § 614. Separability

If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this chapter and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

(May 12, 1933, ch. 25, title I, §14, 48 Stat. 39; June 3, 1937, ch. 296, §1, 50 Stat. 246.)

#### VALIDITY OF SECTION AFFIRMED

Act June 3, 1937, §1, affirmed and validated, and reenacted without change the provisions of this section. See note set out under section 601 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 672, 673, 1392 of this title.

#### § 615. Refunds of tax; exemptions from tax; compensating tax; compensating tax on foreign goods; covering into Treasury

(a) If at any time the Secretary of Agriculture finds, upon investigation and after due notice and opportunity for hearing to interested parties, that any class of products of any commodity is of such low value, considering the quantity of the commodity used for their manufacture, that the imposition of the processing tax would prevent in whole or in large part the use of the commodity in the manufacture of such products and thereby substantially reduce consumption and increase the surplus of the commodity, then the Secretary of Agriculture shall so certify to the Secretary of the Treasury, specifying whether such results will in his judgment most effectively be prevented by a suspension of the imposition of the processing tax or a refund of the tax paid, with respect to such amount of the commodity or any product thereof as is used in the manufacture of such products, and thereafter, as shall be specified in such certification, (1) the imposition of the processing tax shall be suspended with respect to such

amount of the commodity as is used in the manufacture of such products, and thereafter, as shall be specified in such certification, (2) the imposition of the processing tax shall be suspended with respect to such amount of the commodity as is used in the manufacture of such products until such time as the Secretary of Agriculture, after further investigation and due notice and opportunity for hearing to interested parties, revokes his certification to the Secretary of the Treasury, or (3) the Secretary of the Treasury shall refund (in accordance with the provisions of, to such persons and in such manner as shall be specified in, such certification) the amount of any tax paid (prior to the date of any revocation by the Secretary of Agriculture of his certification to the Secretary of the Treasury, upon further investigation and after due notice and opportunity for hearing to interested parties) under this chapter with respect to such amount of the commodity or any product thereof as is used after the date of such certification in the manufacture of such products, or shall credit against any tax due and payable under this chapter the amount of tax which would be refundable. During the period in which any certificate under this section is effective, the provisions of subsection (e) of this section shall be suspended with respect to all imported articles of the kind described in such certificate; and notwithstanding the provisions of section 623 of this title, any compensating taxes, which have heretofore, during the period in which any certificate under this section has been effective, become due and payable upon imported articles of the kind described in such certificate, shall be refunded by the Secretary of the Treasury if the same have been paid, or, if the same have not been paid the amount thereof shall be abated. Notwithstanding the provisions of section 623 of this title, the Secretary of the Treasury shall refund or credit any processing tax paid on or before June 12, 1934, with respect to such amount of cotton as was used in the manufacture of large cotton bags (as defined in the Certificate of the Secretary of Agriculture, dated June 12, 1934) between June 13, and July 7, 1934, both inclusive.

(b) No tax shall be required to be paid on the processing of any commodity by or for the producer thereof for consumption by his own family, employees, or household; and the Secretary of Agriculture is authorized, by regulations, to exempt from the payment of the processing tax the processing of commodities by or for the producer thereof for sale by him where, in the judgment of the Secretary, the imposition of a processing tax with respect thereto is unnecessary to effectuate the declared policy.

(b-1) The Secretary of Agriculture is authorized and directed to issue tax-payment warrants, with respect to rough rice produced in 1933 and 1934 (provided the processing of such rice is not exempt from the tax, and provided no tax payment warrant has been previously issued with respect thereto or previously applied for by application then pending, sufficient to cover the tax with respect to the processing thereof at the rate in effect at the time of such issuance, to any processor with respect to any such rice which he had in his possession on March 31, 1935,

and to, or at the direction of any other person with respect to any such rice which, on or after April 1, 1935, he delivers for processing or sells to a processor: *Provided*, That in case any such processor or other person is the producer of such rice (or has received such rice by gift, bequest, or descent from the producer thereof) that such processor or other person is, if eligible, a cooperating producer: *And provided further*, That in case such processor or other person is not the producer thereof (nor a person who has received such rice by gift, bequest, or descent from the producer thereof), (a) that, if the title to such rice was transferred from the producer thereof, whether by operation of law or otherwise, prior to April 1, 1935, such producer received the price prescribed in any marketing agreement, license, regulation, or administrative ruling, pursuant to this chapter, applicable to the sale of such rice by the producer, and (b) that, if the title to such rice was transferred from the producer thereof, whether by operation of law or otherwise, on or after April 1, 1935, such producer received at least the full market price therefor plus an amount equal to 99 per centum of the face value of taxpayment warrants sufficient to cover the tax on the processing of such rice at rate in effect at the time title was so transferred, and was, if eligible, a cooperating producer.

(b-2) The warrants authorized and directed to be issued by subsection (b-1) of this section—

(1) shall be issued by the Secretary of Agriculture or his duly authorized agent in such manner, at such time or times, at such place or places, in such form, and subject to such terms and conditions with reference to the transfer thereof or the voiding of warrants fraudulently obtained and/or erroneously issued, as the Secretary of Agriculture may prescribe, and the Secretary of Agriculture is authorized to discontinue the further issuance of tax-payment warrants at any time or times and in any region or regions when he shall determine that the rice in any such region or regions can no longer be identified adequately as rice grown in 1933 or 1934; and

(2) shall be accepted by the Collector of Internal Revenue and the Secretary of the Treasury at the face value thereof in payment of any processing tax on rice.

(b-3)(1) Any person who deals or traffics in, or purchases any such tax-payment warrant or the right of any person thereto at less than 99 per centum of its face value shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year or both.

(2) Any person who, with intent to defraud, secures or attempts to secure, or aids or assists in or procures, counsels, or advises, the securing or attempting to secure any tax-payment warrant with respect to rice as to which any tax-payment warrant has been theretofore issued shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(3) Any person who with intent to defraud forges, makes, alters, or counterfeits any tax-payment warrant or any stamp, tag, or other means of identification provided for by this

chapter or any regulation issued pursuant thereto, or makes any false entry upon such warrant or any false statement in any application for the issuance of such warrant, or who uses, sells, lends, or has in his possession any such altered, forged, or counterfeited warrant or stamp, tag, or other means of identification, or who makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such warrants or stamps, tags, or other means of identification, shall, upon conviction thereof, be punished by a fine not exceeding \$5,000 or by imprisonment not exceeding five years, or both.

(4) All producers, warehousemen, processors, and common carriers, having information with respect to rice produced in the years 1933 or 1934, may be required to furnish to the Secretary of Agriculture such information as he shall, by order, prescribe as necessary to safeguard the issuance, transfer, and/or use of tax-payment warrants.

(5) The Secretary of Agriculture may make regulations protecting the interests of producers (including share-tenants and share-croppers) and others, in the issuance, holding, use, and/or transfer of such tax-payment warrants.

(c) Any person, including any State or Federal organization or institution, delivering any product to any organization for charitable distribution or use, including any State or Federal welfare organization, for its own use, whether the product is delivered as merchandise, or as a container for merchandise, or otherwise, shall, if such product or the commodity from which processed is under this chapter subject to tax, be entitled to a refund of the amount of any tax due and paid under this chapter with respect to such product so delivered, or to a credit against any tax due and payable under this chapter of the amount of tax which would be refundable under this section with respect to such product so delivered: *Provided, however,* That no tax shall be refunded or credited under this section, unless the person claiming the refund or credit establishes, in accordance with regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury (1) that he has not included the tax in the price of the product so delivered or collected the amount of the tax from the said organization, or (2) that he has repaid, or has agreed in writing to repay, the amount of the tax to the said organization. The word "State" as used in this section shall include a State and any political subdivision thereof.

(d) The Secretary of Agriculture shall ascertain from time to time whether the payment of the processing tax upon any basic agricultural commodity is causing or will cause to the processors or producers thereof disadvantages in competition from competing commodities by reason of excessive shifts in consumption between such commodities or products thereof. If the Secretary of Agriculture finds, after investigation and due notice and opportunity for hearing to interested parties, that such disadvantages in competition exist, or will exist, he shall proclaim such finding. The Secretary shall specify in this proclamation the competing commodity and the compensating rate of tax on

the processing thereof necessary to prevent such disadvantages in competition. Thereafter there shall be levied, assessed, and collected upon the first domestic processing of such competing commodity a tax, to be paid by the processor, at the rate specified, until such rate is altered pursuant to a further finding under this section, or the tax or rate thereof on the basic agricultural commodity is altered or terminated. In no case shall the tax imposed upon such competing commodity exceed that imposed per equivalent unit, as determined by the Secretary, upon the basic agricultural commodity.

(e) During any period for which a processing tax is in effect with respect to any commodity there shall be levied, assessed, collected, and paid upon any article processed or manufactured wholly or partly from such commodity and imported into the United States or any possession thereof to which this chapter applies, from any foreign country or from any possession of the United States to which this chapter does not apply, whether imported as merchandise, or as a container of merchandise, or otherwise, a compensating tax equal to the amount of the processing tax in effect with respect to domestic processing of such commodity into such an article at the time of importation: *Provided,* (1) That in the event any of the provisions of this chapter have been or are hereafter made applicable to any possession of the United States in the case of any particular commodity or commodities, but not generally, this chapter, for the purposes of this subsection, shall be deemed applicable to such possession with respect to such commodity or commodities but shall not be deemed applicable to such possession with respect to other commodities; and (2) That all taxes collected under this subsection upon articles coming from the possessions of the United States to which this chapter does not apply shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid into the Treasury of the said possessions, respectively, to be used and expended by the governments thereof for the benefit of agriculture. Such tax shall be paid prior to the release of the article from customs custody or control.

(f) The President, in his discretion, is authorized by proclamation to decree that all or part of the taxes collected from the processing of sugar beets or sugarcane in Puerto Rico, the Territory of Hawaii, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam (if the provisions of this chapter are made applicable thereto), and/or upon the processing in continental United States of sugar produced in, or coming from, said areas, shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund, in the name of the respective area to which related, to be used and expended for the benefit of agriculture and/or paid as rental or benefit payments in connection with the reduction in the acreage, or reduction in the production for market, or both, of sugar beets and/or sugarcane, and/or used and expended for expansion of markets and for removal of surplus agricultural products in such areas, respectively, as the Secretary of Agriculture, with the approval of the President, shall direct.

(May 12, 1933, ch. 25, title I, §15, 48 Stat. 39; May 9, 1934, ch. 263, §§8, 11, 48 Stat. 675, 676; June 16, 1934, ch. 551, 48 Stat. 973; June 26, 1934, ch. 759, §1, 48 Stat. 1241; Mar. 18, 1935, ch. 32, §§8, 9, 49 Stat. 47, 48; Aug. 24, 1935, ch. 641, §§21-24, 49 Stat. 768; June 22, 1936, ch. 690, §601(a), 49 Stat. 1739; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7871, 60 Stat. 1352.)

#### REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (f), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

#### CODIFICATION

Reference to the Philippine Islands in subsec. (f) was omitted as obsolete in view of the independence proclaimed by the President of the United States by Proc. No. 2695, which is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse.

#### AMENDMENTS

1936—Subsecs. (a), (c). Act June 22, 1936, reenacted subsecs. (a) and (c) only for the purpose of allowing refunds in cases where the delivery for charitable distribution or use, or the exportation, or the manufacture of large cotton bags, or the decrease in the rate of the processing tax, took place prior to Jan. 6, 1936.

1935—Subsec. (a). Act Aug. 24, 1935, §21, inserted “or shall credit against any tax due and payable under this chapter the amount of tax which would be refundable. During the period in which any certificate under this section is effective, the provisions of subsection (e) of this section shall be suspended with respect to all imported articles of the kind described in such certificate; and notwithstanding the provisions of section 623 of this title, any compensating taxes, which have heretofore, during the period in which any certificate under this section has been effective, become due and payable upon imported articles of the kind described in such certificate, shall be refunded by the Secretary of the Treasury if the same have been paid, or, if the same have not been paid the amount thereof shall be abated. Notwithstanding the provisions of section 623 of this title, the Secretary of the Treasury shall refund or credit any processing tax paid on or before June 12, 1934, with respect to such amount of cotton as was used in the manufacture of large cotton bags (as defined in the Certificate of the Secretary of Agriculture, dated June 12, 1934) between June 13, and July 7, 1934, both inclusive”.

Subsecs. (b-1) to (b-3). Act Mar. 18, 1935, §8, added subsecs. (b-1) to (b-3).

Subsec. (e). Act Aug. 24, 1935, §24, inserted “into such an article” after “with respect to domestic processing of such commodity”.

Subsec. (e). Act Mar. 18, 1935, §9, among other changes, inserted “(1) That in the event any of the provisions of this chapter have been or are hereafter made applicable to any possession of the United States in the case of any particular commodity or commodities, but not generally, this chapter, for the purposes of this subsection, shall be deemed applicable to such possession with respect to such commodity or commodities but shall not be deemed applicable to such possession with respect to other commodities; and (2)” at beginning of proviso.

1934—Subsec. (a). Act June 26, 1934, among other changes, inserted “and thereafter, as shall be specified in such certification, (1) the imposition of the processing tax shall be suspended with respect to such amount of the commodity as is used in the manufacture of such products”.

Subsec. (c). Act June 16, 1934, among other changes, inserted proviso.

Subsec. (e). Act May 9, 1934, §11, substituted “partly” for “in chief value”, inserted “whether imported as merchandise, or as a container of merchandise, or

otherwise,” after “apply”, and inserted “of such commodity” after “processing”.

Subsec. (f). Act May 9, 1934, §8, added subsec. (f).

#### SEPARABILITY

Validity of remainder of this chapter as not affected should any of the provisions of this chapter be declared unconstitutional, see section 614 of this title.

#### CONSTITUTIONALITY

Unconstitutionality of processing and floor stock taxes, see note set out under section 616 of this title.

#### ABOLITION OF OFFICES AND TRANSFER OF FUNCTIONS

The office of Internal Revenue Collector was abolished by 1952 Reorg. Plan No. 1, §1, eff. Mar. 14, 1952, 17 F.R. 2243, 66 Stat. 823, set out in the Appendix to Title 5, Government Organization and Employees, and by section 2 thereof a new office of district commissioner of internal revenue was established. Section 4 of the Plan transferred all functions, that had been vested by statute in any officer or employee of the Bureau of Internal Revenue since the effective date of 1950 Reorg. Plan No. 26, §§1, 2, 15 F.R. 4935, 64 Stat. 1280, 1281, to the Secretary of the Treasury.

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5. The Collector and Commissioner of Internal Revenue, referred to in this section, are officers of the Treasury Department.

#### ADMISSION OF HAWAII TO STATEHOOD

Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 25, 1959, 24 F.R. 6868, 73 Stat. c74. For Hawaii statehood law, see Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48, Territories and Insular Possessions.

#### APPROPRIATIONS

Appropriations for refunds, etc., see note under section 610 of this title.

#### CROSS REFERENCES

Processing and compensating taxes not to be levied or collected, see section 673 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 609, 616, 673 of this title.

#### § 616. Stock on hand when tax takes effect or terminates

(a) Upon the sale or other disposition of any article processed wholly or in chief value from any commodity with respect to which a processing tax is to be levied, that on the date the tax first takes effect or wholly terminates with respect to the commodity, is held for sale or other disposition (including articles in transit) by any person, there shall be made a tax adjustment as follows:

(1) Whenever the processing tax first takes effect, there shall be levied, assessed, and collected a tax to be paid by such person equivalent to the amount of the processing tax which would be payable with respect to the commodity from which processed if the processing had occurred on such date. Such tax upon articles imported prior to, but in customs custody or

control on, the effective date, shall be paid prior to release therefrom. In the case of sugar, the tax on floor stocks, except the retail stocks of persons engaged in retail trade, shall be paid for the month in which the stocks are sold, or used in the manufacture of other articles, under rules and regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

(2) Whenever the processing tax is wholly terminated, (A) there shall be refunded or credited in the case of a person holding such stocks with respect to which a tax under this chapter has been paid, or (B) there shall be credited or abated in the case of a person holding such stocks with respect to which a tax under this chapter is payable, where such person is the processor liable for the payment of such tax, or (C) there shall be refunded or credited (but not before the tax has been paid) in the case of a person holding such stocks with respect to which a tax under this chapter is payable, where such person is not the processor liable for the payment of such tax, a sum in an amount equivalent to the processing tax which would have been payable with respect to the commodity from which processed if the processing had occurred on such date: *Provided*, That in the case of any commodity with respect to which there was any increase, effective prior to June 1, 1934, in the rate of the processing tax, no such refund, credit, or abatement, shall be in an amount which exceeds the equivalent of the initial rate of the processing tax in effect with respect to such commodity.

(b) The tax imposed by subsection (a) of this section shall not apply to the retail stocks of persons engaged in retail trade, held at the date the processing tax first takes effect; but such retail stocks shall not be deemed to include stocks held in a warehouse on such date, or such portion of other stocks held on such date as are not sold or otherwise disposed of within thirty days thereafter. Except as to flour and prepared flour, and cereal preparations made chiefly from wheat, as classified in Wheat Regulations, Series 1, Supplement 1, and as to any article processed wholly or in chief value from cotton, the tax refund, credit, or abatement provided in subsection (a) of this section shall not apply to the retail stocks of persons engaged in retail trade, nor to any article (except sugar) processed wholly or in chief value from sugar beets, sugarcane, or any product thereof, nor to any article (except flour, prepared flour and cereal preparations made chiefly from wheat, as classified in Wheat Regulations, Series 1, Supplement 1) processed wholly or in chief value from wheat, held on the date the processing tax is wholly terminated.

(c)(1) Any sugar, imported prior to the effective date of a processing tax on sugar beets and sugarcane, with respect to which it is established (under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury) that there was paid at the time of importation a duty at the rate in effect on January 1, 1934, and (2) any sugar held on April 25, 1934, by, or to be de-

livered under a bona fide contract of sale entered into prior to April 25, 1934, to, any manufacturer or converter, for use in the production of any article (except sugar) and not for ultimate consumption as sugar, and (3) any article (except sugar) processed wholly or in chief value from sugar beets, sugarcane, or any product thereof, shall be exempt from taxation under subsection (a) of this section, but sugar held in customs custody or control on April 25, 1934, shall not be exempt from taxation under subsection (a) of this section, unless the rate of duty paid upon the withdrawal thereof was the rate of duty in effect on January 1, 1934.

(d) The Secretary of Agriculture is authorized to purchase, out of such proceeds of taxes as are available therefor, during the period this chapter is in effect with respect to sugar beets and sugarcane, not in excess of three hundred thousand tons of sugar raw value from the surplus stocks of direct-consumption sugar produced in the United States beet-sugar area, at a price not in excess of the market price for direct consumption sugar on the date of purchase, and to dispose of such sugar by sale or otherwise, including distribution to any organization for the relief of the unemployed, under such conditions and at such times as will tend to effectuate the declared policy of section 608a of this title. The sugar so purchased shall not be included in the quota for the United States beet-sugar area. All proceeds received by the Secretary of Agriculture, in the exercise of the powers granted, are appropriated to be available to the Secretary of Agriculture for the purposes described in subsections (a) and (b) of section 612 of this title.

(e) Upon the sale or other disposition of any article processed wholly or in chief value from any commodity with respect to which the existing rate of the processing tax is to be increased, or decreased, that on the date such increase, or decrease, first takes effect with respect to the commodity, is held for sale or other disposition (including articles in transit) by any person, and upon the production of any article from a commodity in process on the date on which the rate of the processing tax is to be increased or decreased, there shall be made a tax adjustment as follows:

(1) Whenever, on or after June 1, 1934, the rate of the processing tax on the processing of the commodity generally or for any designated use or uses, or as to any designated product or products thereof for any designated use or uses, or as to any class of products, is decreased, there shall be credited or refunded to such person an amount equivalent to the difference between the rate of the processing tax payable or paid at the time immediately preceding the decrease in rate and the rate of the processing tax which would have been payable with respect to the commodity from which processed, if the processing had occurred on such date: *Provided, however*, That no such credit or refund shall be made in the case of hogs unless the rate of the processing tax immediately preceding said decrease is equal to, or less than, the rate of the processing tax in effect on the date on which any floor stocks tax was paid prior to the adoption

of this subsection. In the case of wheat the provisions of this paragraph and of paragraph (2) of this subsection shall apply to flour, prepared flour and cereal preparations made chiefly from wheat, as classified in Wheat Regulations, Series 1, Supplement 1 only; in the case of sugarcane and sugar beets the provisions of this paragraph and of paragraph (2) of this subsection shall apply to sugar only.

(2) Whenever the rate of the processing tax on the processing of the commodity generally, or for any designated use or uses, or as to any designated product or products thereof for any designated use or uses, or as to any class of products, is increased, there shall be levied, assessed and collected a tax to be paid by such person equivalent to the difference between the rate of the processing tax payable or paid at the time immediately preceding the increase in rate and the rate of the processing tax which would be payable with respect to the commodity from which processed, if the processing had occurred on such date.

(3) Whenever the processing tax is suspended or is to be refunded pursuant to a certification of the Secretary of Agriculture to the Secretary of the Treasury, under section 615(a) of this title, the provisions of subdivision (1) of this subsection shall become applicable.

(4) Whenever the Secretary of Agriculture revokes any certification to the Secretary of the Treasury under section 615(a) of this title, the provisions of paragraph (2) of this subsection shall become applicable.

(5) The provisions of this subsection shall be effective on and after June 1, 1934.

(f) The provisions of this section shall not be applicable with respect to rice.

(May 12, 1933, ch. 25, title I, § 16, 48 Stat. 40; May 9, 1934, ch. 263, §§ 10, 17, 48 Stat. 676, 678; June 26, 1934, ch. 759, § 1, 48 Stat. 1241; Mar. 18, 1935, ch. 32, § 10, 49 Stat. 48; Aug. 24, 1935, ch. 641, §§ 20(b), 25-27, 49 Stat. 768, 769; June 4, 1936, ch. 501, 49 Stat. 1464; June 22, 1936, ch. 690, § 601(a), (c), (g), 49 Stat. 1739, 1740.)

#### AMENDMENTS

1936—Subsec. (e)(1). Act June 22, 1936, § 601(a), (g), reenacted par. (1) for certain refund purposes only and substituted “on or after June 1, 1934” for “subsequent to June 26, 1934”, respectively.

Act June 4, 1936, substituted “on or after June 1, 1934” for “subsequent to June 26, 1934”.

Subsec. (e)(3). Act June 22, 1936, § 601(a), reenacted par. (3) for certain refund purposes only.

Subsec. (g). Act June 22, 1936, § 601(c), repealed subsec. (g) which related to the time for filing refunds.

1935—Subsec. (a)(2). Act Aug. 24, 1935, § 25, substituted a new par. (2) for former par. (2).

Subsec. (b). Act Aug. 24, 1935, § 26, amended second sentence generally.

Subsec. (c). Act Aug. 24, 1935, § 20(b), struck out last sentence.

Subsec. (e). Act Mar. 18, 1935, redesignated former subsec. (c) as (e).

Subsec. (e)(1). Act Aug. 24, 1935, § 27(a), inserted “subsequent to June 26, 1934” at beginning of paragraph, and “in the case of hogs” after “made” in proviso and inserted “In the case of wheat the provisions of this paragraph and of paragraph (2) of this subsection shall apply to flour, prepared flour and cereal preparations made chiefly from wheat, as classified in Wheat Regulations, Series 1, Supplement 1 only; in the case of

sugarcane and sugar beets the provisions of this paragraph and of paragraph (2) of this subsection shall apply to sugar only.”

Subsec. (f). Act Mar. 18, 1935, added subsec. (f).

Subsec. (g). Act Aug. 24, 1935, § 27(b), added subsec. (g). 1934—Subsec. (a)(1). Act May 9, 1934, § 10, inserted second sentence.

Subsec. (c). Act June 26, 1934, added subsec. (c).

Subsec. (c)(1). Act May 9, 1934, § 17, added par. (1).

Subsec. (d). Act May 9, 1934, § 17, added subsec. (d).

#### SEPARABILITY

Validity of remainder of this chapter as not affected should any of the provisions of this chapter be declared unconstitutional. See section 614 of this title.

#### TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury, and functions of all agencies and employees of such Department, transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Internal Revenue, referred to in this section, is an officer of Department of the Treasury.

#### CONSTITUTIONALITY

Section may be obsolete in view of the Supreme Court's holding that the processing and floor stock taxes provided for by the Agricultural Adjustment Act of 1933 are unconstitutional. See U.S. v. Butler, Mass. 1936, 56 S.Ct. 312, 297 U.S. 1, 80 L.Ed. 477, 102 A.L.R. 914.

#### APPROPRIATIONS

Appropriations for refunds, etc., see note set out under section 610 of this title.

#### CROSS REFERENCES

Processing and compensating taxes not to be levied or collected, see section 673 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 609, 621, 673 of this title.

### § 617. Refund on goods exported; bond to suspend tax on commodity intended for export

(a) Upon the exportation to any foreign country (and/or to the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid or is payable under this chapter, the tax due and payable or due and paid shall be credited or refunded. Under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, the credit or refund shall be allowed to the consignor named in the bill of lading under which the product is exported or to the shipper or to the person liable for the tax provided the consignor waives any claim thereto in favor of such shipper or person liable for the tax. In the case of rice, a tax due under this chapter which has been paid by a tax-payment warrant shall be deemed for the purposes of this subsection to have been paid; and with respect to any refund authorized under this section, the amount scheduled by the Commissioner of Internal Revenue for refunding shall be paid, any provision of law notwithstanding. In

the case of sugar beets and sugarcane, this subsection shall be applicable to exports of products thereof to the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam only if this chapter with respect to sugar beets and sugarcane is not made applicable thereto. The term "product" includes any product exported as merchandise, or as a container for merchandise, or otherwise.

(b) Upon the giving of bond satisfactory to the Secretary of the Treasury for the faithful observance of the provisions of this chapter requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any commodity with respect to which a tax is imposed by this chapter, or to hold for such exportation any article processed wholly or partly therefrom.

(May 12, 1933, ch. 25, title I, § 17, 48 Stat. 40; May 9, 1934, ch. 263, §§ 12, 13, 48 Stat. 676; Mar. 18, 1935, ch. 32, § 11, 49 Stat. 48; Aug. 24, 1935, ch. 641, § 28, 49 Stat. 770; June 22, 1936, ch. 690, § 601(a), 49 Stat. 1739; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7871, 60 Stat. 1352.)

#### REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (a), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

#### CODIFICATION

References to the Philippine Islands in subsec. (a) were omitted from the Code as obsolete in view of the independence proclaimed by the President of the United States by Proc. No. 2695, cited to text, which is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse.

#### AMENDMENTS

1936—Subsec. (a). Act June 22, 1936, reenacted subsec. (a) for refund purposes only.

1935—Subsec. (a). Act Aug. 24, 1935, struck out first two sentences and substituted "Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid or is payable under this chapter, the tax due and payable or due and paid shall be credited or refunded. Under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, the credit or refund shall be allowed to the consignor named in the bill of lading under which the product is exported or to the shipper or to the person liable for the tax provided the consignor waives any claim thereto in favor of such shipper or person liable for the tax."

Act Mar. 18, 1935, inserted third sentence.

1934—Subsec. (a). Act May 9, 1934, amended subsec. (a) generally.

Subsec. (b). Act May 9, 1934, § 13, substituted "partly" for "in chief value".

#### SEPARABILITY

Validity of remainder of this chapter as not affected should any of the provisions of this chapter be declared unconstitutional, see section 614 of this title.

#### TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury, and functions of all agencies and employees of such Department, transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any

of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan. No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Internal Revenue, referred to in this section, is an officer of Department the Treasury.

#### CONSTITUTIONALITY

Unconstitutionality of processing and floor stock taxes, see note set out under section 616 of this title.

#### APPROPRIATIONS

Appropriations for refunds, etc., see note set out under section 610 of this title.

#### CROSS REFERENCES

Processing and compensating taxes not to be levied or collected, see section 673 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 673 of this title.

### § 618. Existing contracts; imposition of tax on vendee; collection

(a) If (1) any processor, jobber, or wholesaler has, prior to the date a tax with respect to any commodity is first imposed under this chapter, made a bona fide contract of sale for delivery on or after such date, of any article processed wholly or in chief value from such commodity, and if (2) such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price.

(b) Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be collected and paid to the United States by the vendor in the same manner as other taxes under this chapter. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner of Internal Revenue who shall cause collections of such taxes to be made from the vendee.

(May 12, 1933, ch. 25, title I, § 18, 48 Stat. 41.)

#### SEPARABILITY

Validity of remainder of this chapter as not affected should any of the provisions of this chapter be declared unconstitutional, see section 614 of this title.

#### TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury, and functions of all agencies and employees of such Department, transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Internal Revenue, referred to in this section, is an officer of Department of the Treasury.

#### CONSTITUTIONALITY

Unconstitutionality of processing and floor stock taxes, see note set out under section 616 of this title.

#### CROSS REFERENCES

Processing and compensating taxes not to be levied or collected, see section 673 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 673 of this title.

**§ 619. Collection of tax; provisions of internal revenue laws applicable; returns**

(a) The taxes provided in this chapter shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury. Such taxes shall be paid into the Treasury of the United States.

(b) All provisions of law, including penalties, applicable with respect to the taxes imposed by section 600 of the Revenue Act of 1926, and the provisions of section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this chapter, be applicable in respect of taxes imposed by this chapter: *Provided*, That the Secretary of the Treasury is authorized to permit postponement, for a period not exceeding one hundred and eighty days, of the payment of not exceeding three-fourths of the amount of the taxes covered by any return under this chapter, but postponement of all taxes covered by returns under this chapter for a period not exceeding one hundred and eighty days may be permitted in cases in which the Secretary of the Treasury authorizes such taxes to be paid each month on the amount of the commodity marketed during the next preceding month.

(c) Repealed. June 30, 1947, ch. 166, title II, § 206(d), 61 Stat. 208.

(d) Under regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, any person required pursuant to the provisions of this chapter to file a return may be required to file such return and pay the tax shown to be due thereon to the collector of internal revenue for the district in which the processing was done or the liability was incurred. Whenever the Commissioner of Internal Revenue deems it necessary, he may require any person or class of persons handling or dealing in any commodity or product thereof, with respect to which a tax is imposed under the provisions of this chapter, to make a return, render under oath such statements, or to keep such records, as the Commissioner deems sufficient to show whether or not such person, or any other person, is liable for the tax.

(May 12, 1933, ch. 25, title I, § 19, 48 Stat. 41; June 26, 1934, ch. 759, § 3, 48 Stat. 1242; Aug. 24, 1935, ch. 641, § 29, 49 Stat. 770; June 30, 1947, ch. 166, title II, § 206(d), 61 Stat. 208.)

## REFERENCES IN TEXT

Provisions of section 600 of the Revenue Act of 1926 and section 626 of the Revenue Act of 1932, referred to in subsec. (b), were incorporated in sections 2700, 2704, and 3448 of Title 26, Internal Revenue Code, 1939. See sections 4181, 4182, 4216, 4224, 5831, 6151 and 6601 of Title 26, Internal Revenue Code, 1986.

## AMENDMENTS

1947—Subsec. (c). Act June 30, 1947, repealed subsec. (c) which related to loans by Reconstruction Finance Corporation.

1935—Subsec. (b). Act Aug. 24, 1935, § 29(a), among other changes, inserted at end of proviso “but postponement of all taxes covered by returns under this chapter for a period not exceeding one hundred and

eighty days may be permitted in cases in which the Secretary of the Treasury authorizes such taxes to be paid each month on the amount of the commodity marketed during the next preceding month”.

Subsec. (d). Act Aug. 24, 1935, § 29(b), added subsec. (d). 1934—Subsec. (b). Act June 26, 1934, substituted “one hundred and eighty” for “ninety”.

## SEPARABILITY

Validity of remainder of this chapter as not affected should any of the provisions of this chapter be declared unconstitutional, see section 614 of this title.

## TRANSFER OF FUNCTIONS

Office of Internal Revenue Collector abolished by 1952 Reorg. Plan No. 1, § 1, eff. Mar. 14, 1952, 17 F.R. 2243, 66 Stat. 823, set out in the Appendix to Title 5, Government Organization and Employees, and by section 2 thereof a new office of district commissioner of internal revenue was established. Section 4 of the Plan transferred all functions, that had been vested by statute in any officer or employee of Bureau of Internal Revenue since effective date of 1950 Reorg. Plan No. 26, §§ 1, 2, 15 F.R. 4935, 64 Stat. 1280, 1281, to Secretary of the Treasury.

Functions of all officers of Department of the Treasury, and functions of all agencies and employees of such Department, transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5. Collector and Commissioner of Internal Revenue, referred to in this section, are officers of Department of the Treasury.

## CONSTITUTIONALITY

Unconstitutionality of processing and floor stock taxes, see note set out under section 616 of this title.

## CROSS REFERENCES

Processing and compensating taxes not to be levied or collected, see section 673 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 623, 673 of this title.

**§ 619a. Cotton tax, time for payment**

The processing tax authorized by section 609 of this title, when levied upon cotton, shall be payable ninety days after the filing of the processor's report: *Provided*, That, under regulations to be prescribed by the Secretary of the Treasury, the time for payment of such tax upon cotton may be extended, but in no case to exceed six months from the date of the filing of the report.

(May 17, 1935, ch. 131, title I, § 2, 49 Stat. 281.)

## CODIFICATION

Section was not enacted as part of the Agricultural Adjustment Act which comprises this chapter.

## SEPARABILITY

Validity of remainder of this chapter as not affected should any of the provisions of this chapter be declared unconstitutional, see section 614 of this title.

## CONSTITUTIONALITY

Unconstitutionality of processing and floor stock taxes, see note set out under section 616 of this title.

**§ 620. Falsely ascribing deductions or charges to taxes; penalty**

(a) Whoever in connection with the purchase of, or offer to purchase, any commodity, subject

to any tax under this chapter, or which is to be subjected to any tax under this chapter, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any amount deducted from the market price or the agreed price of the commodity consists of a tax imposed under this chapter, or (2) ascribing a particular part of the deduction from the market price or the agreed price of the commodity, to a tax imposed under this chapter, knowing that such statement is false or that the tax is not so great as the amount deducted from the market price or the agreed price of the commodity, ascribed to such tax, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000 or by imprisonment for not exceeding six months, or both.

(b) Whoever in connection with the processing of any commodity subject to any tax under this chapter, whether commercially, for toll, upon an exchange, or otherwise, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the charge for said processing, whether commercially, for toll, upon an exchange, or otherwise, consists of a tax imposed under this chapter, or (2) ascribing a particular part of the charge for processing, whether commercially, for toll, upon an exchange, or otherwise, to a tax imposed under this chapter, knowing that such statement is false, or that the tax is not so great as the amount charged for said processing ascribed to such tax, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than \$1,000 or by imprisonment for not exceeding six months, or both.

(c) Whoever in connection with any settlement, under a contract to buy any commodity, and/or to sell such commodity, or any product or byproduct thereof, subject to any tax under this chapter, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any amount deducted from the gross sales price, in arriving at the basis of settlement under the contract, consists of a tax under this chapter, or (2) ascribing a particular amount deducted from the gross sales price, in arriving at the basis of settlement under the contract, to a tax imposed under this chapter, knowing that such statement is false, or that the tax is not so great as the amount so deducted and/or ascribed to such tax, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than \$1,000 or by imprisonment for not exceeding six months, or both.

(May 12, 1933, ch. 25, title I, § 20, as added May 9, 1934, ch. 263, § 16, 48 Stat. 677.)

#### CONSTITUTIONALITY

Unconstitutionality of processing and floor stock taxes, see note set out under section 616 of this title.

#### CROSS REFERENCES

Misdemeanor, defined, see section 1 of Title 18, Crimes and Criminal Procedure.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 673 of this title.

### § 621. Machinery belting processed from cotton; exemption from tax

The provisions of section 616 of this title, shall not apply to articles of machinery belting processed wholly or in chief value from cotton, if such processing was completed prior to January 1, 1930.

(June 26, 1934, ch. 753, § 1, 48 Stat. 1223.)

#### CODIFICATION

Section was not enacted as part of the Agricultural Adjustment Act which comprises this chapter.

### § 622. Omitted

#### CODIFICATION

Section, act June 26, 1934, ch. 753, § 2, 48 Stat. 1223, related to refunding or crediting of taxes paid under section 616 of this title.

### § 623. Actions relating to tax; legalization of prior taxes

#### (a) Action to restrain collection of tax or obtain declaratory judgment forbidden

No suit, action, or proceeding (including probate, administration, and receivership proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this chapter on or after August 24, 1935, or (2) of obtaining a declaratory judgment under sections 2201 and 2202 of title 28 in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the court's order.

#### (b) Taxes imposed prior to August 24, 1935, legalized and ratified

The taxes imposed under this chapter, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to August 24, 1935, are legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which had accrued and remained unpaid August 24, 1935, shall be assessed and collected pursuant to section 619 of this title, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agri-

culture or of the President done or made prior to August 24, 1935.

**(c) Rental and benefit payments, agreements, and programs made prior to August 24, 1935, legalized and ratified**

The making of rental and benefit payments under this chapter, prior to August 24, 1935, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under section 608(1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this chapter, and rental and benefit payments made pursuant thereto, are legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount thereof fixed specifically by prior act of Congress.

(May 12, 1933, ch. 25, title I, §21, as added Aug. 24, 1935, ch. 641, §30, 49 Stat. 770; amended June 22, 1936, ch. 690, §§601(c), 901, 49 Stat. 1740, 1747; Pub. L. 95-598, title III, §304, Nov. 6, 1978, 92 Stat. 2673.)

REFERENCES IN TEXT

Subsection (d) of this section, referred to in subsec. (a), was repealed by section 901 of act June 22, 1936. See 1936 Amendment note set out below.

CODIFICATION

“Sections 2201 and 2202 of title 28” was substituted for “the Federal Declaratory Judgments Act”, which had enacted section 400 of former Title 28, Judicial Code and Judiciary, on authority of act June 25, 1948, ch. 646, 62 Stat. 869, section 1 of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-598 struck out “, and bankruptcy” after “receivership” in first sentence, and struck out “bankruptcy,” after “receivership” in second sentence.

1936—Subsecs. (d) to (g). Act June 22, 1936, §901, repealed subsec. (d) relating to prohibition on making certain refunds, subsec. (e) providing for access to books, and subsec. (g) providing for recovery of taxes erroneously collected, and act June 22, 1936, §601(c), repealed subsec. (f) relating to time for filing claim for refund.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SEPARABILITY

Validity of remainder of this chapter as not affected should any of the provisions of this chapter be declared unconstitutional, see section 614 of this title.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury, and functions of all agencies and employees of

such Department, transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Internal Revenue, referred to in this section, is an officer of Department of the Treasury.

CONSTITUTIONALITY

Unconstitutionality of processing and floor stock taxes, see note set out under section 616 of this title.

CROSS REFERENCES

Other refund provisions, see section 615 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 615, 673 of this title.

**§ 624. Limitation on imports; authority of President**

(a) Whenever the Secretary of Agriculture has reason to believe that any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under this chapter or the Soil Conservation and Domestic Allotment Act, as amended [16 U.S.C. 590a et seq.], or section 612c of this title, or any loan, purchase, or other program or operation undertaken by the Department of Agriculture, or any agency operating under its direction, with respect to any agricultural commodity or product thereof, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to which any such program or operation is being undertaken, he shall so advise the President, and, if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made by the United States International Trade Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties, and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such fees not in excess of 50 per centum ad valorem or such quantitative limitations on any article or articles which may be entered, or withdrawn from warehouse, for consumption as he finds and declares shown by such investigation to be necessary in order that the entry of such article or articles will not render or tend to render ineffective, or materially interfere with, any program or operation referred to in subsection (a) of this section, or reduce substantially the amount of any product processed in the United States from any such agricultural commodity or product thereof with respect to which any such program or operation

is being undertaken: *Provided*, That no proclamation under this section shall impose any limitation on the total quantity of any article or articles which may be entered, or withdrawn from warehouse, for consumption which reduces such permissible total quantity to proportionately less than 50 per centum of the total quantity of such article or articles which was entered, or withdrawn from warehouse, for consumption during a representative period as determined by the President: *And provided further*, That in designating any article or articles, the President may describe them by physical qualities, value, use, or upon such other bases as he shall determine.

In any case where the Secretary of Agriculture determines and reports to the President with regard to any article or articles that a condition exists requiring emergency treatment, the President may take immediate action under this section without awaiting the recommendations of the International Trade Commission, such action to continue in effect pending the report and recommendations of the International Trade Commission and action thereon by the President.

(c) The fees and limitations imposed by the President by proclamation under this section and any revocation, suspension, or modification thereof, shall become effective on such date as shall be therein specified, and such fees shall be treated for administrative purposes and for the purposes of section 612c of this title, as duties imposed by the Tariff Act of 1930 [19 U.S.C. 1202 et seq.], but such fees shall not be considered as duties for the purpose of granting any preferential concession under any international obligation of the United States.

(d) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended or terminated by the President whenever he finds and proclaims that the circumstances requiring the proclamation or provision thereof no longer exist or may be modified by the President whenever he finds and proclaims that changed circumstances require such modification to carry out the purposes of this section.

(e) Any decision of the President as to facts under this section shall be final.

(f) No quantitative limitation or fee shall be imposed under this section with respect to any article that is the product of a WTO member (as defined in section 3501(10) of title 19).

(May 12, 1933, ch. 25, title I, § 22, as added Aug. 24, 1935, ch. 641, § 31, 49 Stat. 773; amended Feb. 29, 1936, ch. 104, § 5, 49 Stat. 1152; June 3, 1937, ch. 296, § 1, 50 Stat. 246; Jan. 25, 1940, ch. 13, 54 Stat. 17; July 3, 1948, ch. 827, title I, § 3, 62 Stat. 1248; June 28, 1950, ch. 381, § 3, 64 Stat. 261; June 16, 1951, ch. 141, § 8(b), 65 Stat. 75; Aug. 7, 1953, ch. 348, title I, § 104, 67 Stat. 472; Pub. L. 93-618, title I, § 171(b), Jan. 3, 1975, 88 Stat. 2009; Pub. L. 100-449, title III, § 301(c), Sept. 28, 1988, 102 Stat. 1868; Pub. L. 103-465, title IV, § 401(a)(1), Dec. 8, 1994, 108 Stat. 4957.)

#### REFERENCES IN TEXT

The Soil Conservation and Domestic Allotment Act, as amended, referred to in subsec. (a), is act Apr. 27,

1935, ch. 85, 49 Stat. 163, as amended, which is classified generally to chapter 3B (§ 590a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 590q of Title 16 and Tables.

The Tariff Act of 1930, referred to in subsec. (c), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended, which is classified generally to chapter 4 (§ 1202 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

#### AMENDMENTS

1994—Subsec. (f). Pub. L. 103-465 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section; except that the President may, pursuant to articles 705.5 and 707 of the United States-Canada Free-Trade Agreement, exempt products of Canada from any import restriction imposed under this section.”

1988—Subsec. (f). Pub. L. 100-449 inserted before period at end “; except that the President may, pursuant to articles 705.5 and 707 of the United States-Canada Free-Trade Agreement, exempt products of Canada from any import restriction imposed under this section”.

1975—Subsecs. (a), (b). Pub. L. 93-618 substituted “United States International Trade Commission” for “United States Tariff Commission”.

1953—Subsec. (b) amended by subsec. (c) of section 8 of act June 16, 1951, as added to section 8 by act Aug. 7, 1953, which added second paragraph to subsec. (b).

1951—Subsec. (f). Act June 16, 1951, amended subsec. (f) generally to provide that no trade agreement concessions can be construed to interfere with the operation of agricultural programs.

1950—Subsec. (a). Act June 28, 1950, placed upon the Secretary of Agriculture the responsibility of notifying the President whenever the Secretary believes or has reason to believe that any article or articles are being or practically certain to be brought into this country so as to render, or tend to render ineffective or materially interfere with programs undertaken under this chapter.

Subsecs. (b) to (e). Act June 28, 1950, reenacted subsecs. (b) to (e) without change.

Subsec. (f). Act June 28, 1950, made certain that future international agreements or amendments to existing agreements give effect to this section within the framework of the general agreements on tariffs and trade.

1948—Act July 3, 1948, amended section generally to extend authority of this section to agriculture products as well as commodities; to extend such authority to cover articles the import of which affects any loan, purchase, or other Departmental operation or program; to make quantitative limitation restrictions applicable to the total quantity of an article imported during a representative period as determined by the President, rather than to each country's average annual quantity of the article imported during the period from Jan. 1, 1929, to Dec. 31, 1933, as formerly provided; to give the President a specific grant of authority to describe designated articles by physical qualities, value, use, or upon such bases as he determines; to clarify definition respecting authorized fees, which formerly were considered duties for some purposes, so that they no longer shall be considered as duties for the purpose of granting any preferential concession under any international obligation of the United States; and, to prohibit the enforcement of a proclamation under this section which would be in contravention to any treaty or international agreement to which the United States is a part.

1940—Subsecs. (a) to (c). Act Jan. 25, 1940, amended subsecs. (a) to (c) generally.

1936—Act Feb. 29, 1936, inserted “or the Soil Conservation and Domestic Allotment Act, as amended” after “this chapter” wherever appearing, and sub-

stituted “any” for “an adjustment” wherever appearing.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 401(a)(2) of Pub. L. 103-465 provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on the date of entry into force of the WTO Agreement with respect to the United States (Jan. 1, 1995), except that with respect to wheat, that amendment shall take effect on the later of such date or September 12, 1995.”

#### EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100-449 effective on the date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on the date the Agreement ceases to be in force, see section 501(a), (c), of Pub. L. 100-449, set out in a note under section 2112 of Title 19, Customs Duties.

#### EFFECTIVE DATE OF 1948 AMENDMENT

Section 6 of title I of act July 3, 1948, provided that: “This title [enacting provisions set out as notes under sections 1281, 1282, and 1312 of this title and section 713a-8 of Title 15, Commerce and Trade] shall take effect on January 1, 1949, except that sections 3 and 4 [amending this section and section 590h of Title 16, Conservation] shall take effect on the date of enactment of this Act [July 3, 1948].”

#### CONSTITUTIONALITY

Unconstitutionality of processing and floor stock taxes, see note set out under section 616 of this title.

#### VALIDITY OF SECTION AFFIRMED

Act June 3, 1937, affirmed and validated, and reenacted without change the provisions of this section. See note set out under section 601 of this title.

#### REPORT TO CONGRESS ON TERMINATION OR SUSPENSION OF QUANTITATIVE LIMITATIONS OR FEES

Pub. L. 101-624, title XV, §1554, Nov. 28, 1990, 104 Stat. 3697, directed Secretary of Agriculture to report to Congress before effective date of suspension or termination of any quantitative limitations or fees in effect under 7 U.S.C. 624 on consequences of lifting of limitations or fees, prior to repeal by Pub. L. 104-127, title II, §281(a), Apr. 4, 1996, 110 Stat. 980.

#### INTERFERENCE WITH TOBACCO PRICE SUPPORT PROGRAM

Pub. L. 100-418, title IV, §4609, Aug. 23, 1988, 102 Stat. 1411, provided that: “It is the sense of Congress that—

“(1) the amounts of assessments collected under the no-net-cost tobacco program can be an indicator of import injury and material interference with the tobacco price support program administered by the Secretary of Agriculture; and

“(2) for purposes of any investigation conducted under section 22(a) of the Agricultural Adjustment Act (7 U.S.C. 624(a)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, with respect to tobacco, or articles containing tobacco, imported into the United States, the International Trade Commission should take into account, as if they are costs to the Federal government, contributions and assessments imposed under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1 and 1445-2) in determining whether such imported tobacco or articles containing tobacco materially interfere with the tobacco price support program carried out by the Secretary of Agriculture.”

#### DAIRY IMPORT STUDY BY SECRETARY OF AGRICULTURE; REPORT TO CONGRESS BY JAN. 1, 1975

Pub. L. 91-524, title II, §205, as added Pub. L. 93-86, §1(6), Aug. 10, 1973, 87 Stat. 223; amended Pub. L. 93-125, §1(a)(i), Oct. 18, 1973, 87 Stat. 450, authorized the Sec-

retary of Agriculture to determine the effect upon domestic dairy producers, handlers, and processors and upon consumers of increases in the level of imports, if any, of dairy products and report his findings, together with any recommendations he may have with respect to import quotas or other matters, to the Congress of the United States no later than Jan. 1, 1975, defined dairy products as including (1) all forms of milk and dairy products, butterfat, milk solids-not-fat, and any combination or mixture thereof; (2) any article, compound, or mixture containing 5 per centum or more of butterfat, or milk solids-not-fat, or any combinations of the two; and (3) lactose, and other derivatives of milk, butterfat, or milk solids-not-fat, if imported commercially for any food use, and excluded from the definition of dairy products (1) casein, caseinates, industrial casein, industrial caseinates, or any other industrial products, not to be used in any form for any food use, or an ingredient of food; or (2) articles not normally considered to be dairy products, such as candy, bakery goods, and other similar articles.

#### PROC. NO. 3178. QUOTA ON BUTTER SUBSTITUTES

Proc. No. 3178, Apr. 17, 1957, 22 F.R. 2701, provided: WHEREAS, pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624), the Secretary of Agriculture advised me that there was reason to believe that butter substitutes, including butter oil, containing 45 per centum or more of butterfat, which are dutiable under paragraph 709 of the Tariff Act of 1930, as amended, are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price-support program undertaken by the Department of Agriculture with respect to milk and butterfat, or to reduce substantially the amount of products processed in the United States from domestic milk and butterfat with respect to which such program of the Department of Agriculture is being undertaken; and

WHEREAS on November 17, 1956, under the authority of the said section 22, I caused the United States Tariff Commission [now the United States International Trade Commission] to make an investigation with respect to this matter; and

WHEREAS, in accordance with the said section 22, as implemented by Executive Order No. 7233 of November 23, 1935, the said Tariff Commission has made such investigation and has reported to me its findings and recommendations made in connection therewith; and

WHEREAS, on the basis of the said investigation and report of the Tariff Commission, I find that butter substitutes, including butter oil, containing 45 per centum or more of butterfat and classifiable under paragraph 709 of the Tariff Act of 1930 are practically certain to be imported into the United States under such conditions and in such quantities as to materially interfere with the said price-support program with respect to milk and butterfat, and to reduce substantially the amount of products processed in the United States from domestic milk and butterfat with respect to which said price-support program is being undertaken; and

WHEREAS I find and declare that the imposition of the quantitative limitations hereinafter proclaimed is shown by such investigation of the said Tariff Commission to be necessary in order that the entry, or withdrawal from warehouse, for consumption of such butter substitutes, including butter oil, will not materially interfere with the said price-support program or reduce substantially the amount of products processed in the United States from domestic milk and butterfat with respect to which the said price-support program is being undertaken;

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by the said section 22 of the Agricultural Adjustment Act [this section], do hereby proclaim that the total aggregate quantity of butter substitutes, including butter

oil, containing 45 per centum or more of butterfat and classifiable under paragraph 709 of the Tariff Act of 1930, as amended, which shall be permitted to be entered, or withdrawn from warehouse, for consumption during the calendar year 1958 and each subsequent calendar year shall not exceed 1,200,000 pounds. The specified quantities of the named articles which may be entered, or withdrawn from warehouse, for consumption are not proportionately less than 50 per centum of the total quantities of such articles entered, or withdrawn from warehouse, for consumption during the representative period from January 1, 1956, to December 31, 1956, inclusive.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this fifteenth day of April in the year of our Lord nineteen hundred and fifty-seven, and of the Independence of the United States of America the one hundred and eighty-first.

[SEAL]

DWIGHT D. EISENHOWER.

PROCLAMATION No. 3306

Proc. No. 3306, Aug. 7, 1959, 24 F.R. 6407, which provided for quotas on imports of rye, rye flour, and rye meal terminated on June 30, 1961.

PROCLAMATION No. 3378

Proc. No. 3378, Oct. 31, 1960, 25 F.R. 10449, relating to quotas on imports of tung oil and tung nuts, was terminated by Proc. No. 3471, May 2, 1962, 27 F.R. 4271.

PROC. No. 3428. IMPORT RESTRICTIONS ON CERTAIN COTTON PRODUCTS

Proc. No. 3428, Sept. 11, 1961, 26 F.R. 8535, provided: WHEREAS, pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624), the Secretary of Agriculture advised the President that he had reason to believe that certain cotton products produced in any stage preceding the spinning into yarn are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price-support program and other programs or operations undertaken by the Department of Agriculture with respect to cotton or products thereof, or to reduce substantially the amount of cotton processed in the United States from cotton or products thereof with respect to which any such program or operation is being undertaken; and

WHEREAS, on January 18, 1961, under the authority of the said section 22, the President requested the United States Tariff Commission [now the United States International Trade Commission] to make an investigation with respect to this matter; and

WHEREAS, in accordance with the said section 22, as implemented by Executive Order No. 7233 of November 23, 1935, the Tariff Commission has made such investigation and has reported to me its findings and recommendations made in connection therewith; and

WHEREAS, on the basis of the investigation and report of the Tariff Commission, I find that the articles with respect to which import restrictions are hereinafter proclaimed are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price-support program and other programs or operations undertaken by the Department of Agriculture with respect to cotton or products thereof; and

WHEREAS I find and declare that the important restrictions hereinafter proclaimed are shown by such investigation of the Tariff Commission to be necessary in order that the entry, or withdrawal from warehouse, for consumption of the said articles will not render or tend to render ineffective, or materially interfere with, the price-support program and other programs or oper-

ations undertaken by the Department of Agriculture with respect to cotton or products thereof;

NOW, THEREFORE, I, JOHN F. KENNEDY, President of the United States of America, acting under and by virtue of the authority vested in me by section 22 of the Agricultural Adjustment Act, as amended, do hereby proclaim that the total aggregate quantity of cotton products produced in any stage preceding the spinning into yarn, except cotton wastes, which may be entered, or withdrawn from warehouse, for consumption in any 12-month period, beginning September 11 in 1961 and in subsequent years shall not exceed 1,000 pounds, which permissible total quantity I find and declare to be proportionately not less than 50 per centum of the total quantity of such articles entered, or withdrawn from warehouse, for consumption during the representative period from January 1, 1940, to December 31, 1953, inclusive.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 11th day of September in the year of our Lord nineteen hundred and sixty-one, and of the Independence of the United States of America the one hundred and eighty-sixth.

[SEAL]

JOHN F. KENNEDY.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 625, 672, 673, 1359a, 1392, 1854 of this title; title 19 sections 1360, 1366, 1887, 2581, 2703, 3011, 3203, 3333, 3391.

**§ 625. Review of Burley tobacco imports by Secretary of Agriculture; price-support levels; excessive stocks**

The Secretary of Agriculture shall review, pursuant to section 624 of this title, the effects of imports of Burley tobacco on the Department of Agriculture's Burley tobacco price-support program whenever (1) the level of price support for any crop of Burley tobacco is increased by less than 65 per centum of the amount that it would have otherwise been increased if the level of price support would have been determined in accordance with section 1445(b) of this title, or (2) stocks of Burley tobacco held by producer-owned cooperative marketing associations having loan agreements with the Commodity Credit Corporation exceed 20 per centum of the national marketing quota proclaimed by the Secretary for any such crop of Burley tobacco.

(Pub. L. 98-59, §3, July 25, 1983, 97 Stat. 296.)

CODIFICATION

Section was not enacted as part of the Agricultural Adjustment Act which comprises this chapter.

**§ 626. Import inventory**

**(a) Compilation and report on imports**

The Secretary of Agriculture, in consultation with the Secretary of Commerce, the International Trade Commission, the United States Trade Representative, and the heads of all other appropriate Federal agencies, shall compile and report to the public statistics on the total value and quantity of imported raw and processed agricultural products. The report shall be limited to those statistics that such agencies already obtain for other purposes.

**(b) Compilation and report on consumption**

The Secretary shall compile and report to the public data on the total quantity of production

and consumption of domestically produced raw and processed agricultural products.

**(c) Issuing of data**

The reports required by this section shall be made in a format that correlates statistics for the quantity and value of imported agricultural products to the production and consumption of domestic agricultural products. The Secretary shall issue such reports on an annual basis, with the first report required not later than 1 year after August 23, 1988.

(Pub. L. 100-418, title IV, § 4502, Aug. 23, 1988, 102 Stat. 1403.)

CODIFICATION

Section was enacted as part of the Agricultural Competitiveness and Trade Act of 1988 and also as part of the Omnibus Trade and Competitiveness Act of 1988, and not as part of the Agricultural Adjustment Act which comprises this chapter.

SUBCHAPTER IV—REFUNDS

APPROPRIATIONS FOR REFUNDS AND PAYMENTS OF PROCESSING AND RELATED TAXES AND LIMITATIONS THEREON

Acts June 25, 1938, ch. 681, 52 Stat. 1150; May 6, 1939, ch. 115, § 1, 53 Stat. 661, 662; Feb. 12, 1940, ch. 28, § 1, 54 Stat. 36; Mar. 25, 1940, ch. 71, title I, 54 Stat. 61; May 31, 1941, ch. 156, title I, § 1, 55 Stat. 218; Mar. 10, 1942, ch. 178, title I, § 1, 56 Stat. 156; June 30, 1943, ch. 179, title I, 57 Stat. 257; Apr. 22, 1944, ch. 175, title I, § 1, 58 Stat. 201; Apr. 24, 1945, ch. 92, title I, 59 Stat. 62; July 20, 1946, ch. 588, title I, 60 Stat. 574.

CROSS REFERENCES

Abatements, credits, and refunds of internal revenue taxes, see section 6401 et seq. of Title 26, Internal Revenue Code.

**§§ 641 to 659. Omitted**

CODIFICATION

Section 641, act June 22, 1936, ch. 690, § 601, 49 Stat. 1739, related to refunds in cases where exports, deliveries for charitable distribution or use, manufacture of large cotton bags, or the decrease in rate of processing tax took place prior to January 6, 1936, specified persons entitled to refunds, and filing and determination of claims.

Section 642, acts June 22, 1936, ch. 690, § 602, 49 Stat. 1740; Aug. 10, 1939, ch. 666, title IX, § 911, 53 Stat. 1402, specified amount of refunds on articles processed wholly or in chief value from a commodity subject to processing tax, defined certain terms, prohibited payments with respect to retail floor stocks with some exceptions, and made final determinations of Commissioner of Internal Revenue with respect to such payments.

Section 643, act June 22, 1936, ch. 690, § 603, 49 Stat. 1742, made applicable proclamations, certificates, and regulations of this chapter for purpose of determining amount of refunds or payments authorized by sections 641 and 642.

Section 644, acts June 22, 1936, ch. 690, § 902, 49 Stat. 1747; Oct. 21, 1942, ch. 619, title V, §§ 504(a), (c), 510(e), 56 Stat. 957, 968, conditioned allowance of refunds on a showing by claimant that he bore burden of tax or that he repaid such amount unconditionally to his vendee.

Section 645, acts June 22, 1936, ch. 690, § 903, 49 Stat. 1747; June 29, 1939, ch. 247, title IV, § 405, 53 Stat. 884, prohibited refunds except where claims were filed after June 22, 1936, and prior to January 1, 1940, and provided for regulations relating to filing of such claims.

Section 646, act June 22, 1936, ch. 690, § 904, 49 Stat. 1747, provided that no action could be brought before expiration of eighteen months from date of filing of a

claim, or after expiration of two years from date of mailing to claimant of a notice disallowing the claim.

Section 647, act June 22, 1936, ch. 690, § 905, 49 Stat. 1748, provided for District Courts of the United States to have concurrent jurisdiction with Court of Claims or refund cases regardless of amount in controversy.

Section 648, acts June 22, 1936, ch. 690, § 906, 49 Stat. 1748; Oct. 21, 1942, ch. 619, title V, §§ 504(a), (c), 510(b), (f)(1), (g)-(j), 56 Stat. 957, 967; June 25, 1948, ch. 646, § 32, 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107, related to procedure on claims for refunds of processing taxes, review of actions of Commissioner of Internal Revenue by Tax Court, and review of Tax Court decisions by Courts of Appeals.

Section 649, act June 22, 1936, ch. 690, § 907, 49 Stat. 1751, related to evidence and presumptions.

Section 650, act June 22, 1936, ch. 690, § 908, 49 Stat. 1753, placed limitations on allowance of claims and interest.

Section 651, act June 22, 1936, ch. 690, § 909, 49 Stat. 1753, provided that, in absence of fraud or mistake, findings of fact and conclusions of law of Commissioner was conclusive on any other administrative or accounting officer.

Section 652, act June 22, 1936, ch. 690, § 910, 49 Stat. 1753, related to liability of collectors.

Section 653, act June 22, 1936, ch. 690, § 911, 49 Stat. 1753, made provisions of former sections 644-659 of this title inapplicable to certain refunds.

Section 654, act June 22, 1936, ch. 690, § 912, 49 Stat. 1754, provided that suits or proceedings, and claims barred on June 22, 1936, shall remain barred.

Section 655, act June 22, 1936, ch. 690, § 913, 49 Stat. 1754, defined "tax", "processing tax", "commodity", "article", "refund", and "Agricultural Adjustment Act".

Section 656, act June 22, 1936, ch. 690, § 914, 49 Stat. 1754, related to authority of Commissioner of Internal Revenue.

Section 657, act June 22, 1936, ch. 690, § 915, 49 Stat. 1755, relating to salaries and administrative expenses, made funds available until June 30, 1937, and was not extended.

Section 658, act June 22, 1936, ch. 690, § 916, 49 Stat. 1755, provided that Commissioner of Internal Revenue, with approval of Secretary of Agriculture, prescribe rules and regulations for carrying out provisions of sections 644 to 659 of this title.

Section 659, act June 22, 1936, ch. 690, § 917, 49 Stat. 1755, related to personnel.

**CHAPTER 26A—AGRICULTURAL MARKETING AGREEMENTS**

Sec. 671.	Arbitration of disputes concerning milk.
	(a) Application.
	(b) Conduct of meetings.
	(c) Approval of award.
	(d) Exemption from antitrust laws.
672.	Agreements; licenses, regulations, programs, etc., unaffected.
673.	Taxes under Agricultural Adjustment Act; laws unaffected.
674.	Short title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 499b-1 of this title; title 50 App. section 2166.

**§ 671. Arbitration of disputes concerning milk**

**(a) Application**

The Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, upon written application of any cooperative association, incorporated or otherwise, which is in good faith owned or controlled by producers or organiza-