

cumvent 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; Pub. L. 107-171, title X, §10601(b), May 13, 2002, 116 Stat. 511; Pub. L. 110-234, title X, §10102, May 22, 2008, 122 Stat. 1335; Pub. L. 110-246, §4(a), title X, §10102, June 18, 2008, 122 Stat. 1664, 2097.)

**CODIFICATION**

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub.

L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

**AMENDMENTS**

2008—Subsec. (a). Pub. L. 110-246, §10102, inserted “clementines,” after “nectarines,” in first sentence.

2002—Subsec. (a). Pub. L. 107-171 substituted “apples, or caneberries (including raspberries, blackberries, and loganberries)” for “or apples” in first sentence.

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 2008 AMENDMENT**

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

**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**

Act Aug. 31, 1954, ch. 1172, §3(b), 68 Stat. 1047, 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 economic 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 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 there-

after, 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, 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 pur-

suant 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<sup>1</sup> 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 chap-

ter, 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-con-

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

sumption 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>2</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), 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

<sup>2</sup> See References in Text note below.

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; Pub. L. 108-357, title VI, § 611(d), Oct. 22, 2004, 118 Stat. 1522.)

#### REFERENCES IN TEXT

The Revenue Act of 1932, referred to in subsec. (a), is act June 6, 1932, ch. 209, 47 Stat. 169. For complete classification of the Act to the Code, see Tables.

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

2004—Subsec. (b)(2). Pub. L. 108-357, § 611(d)(1), struck out "tobacco," after "peanuts,".

Subsec. (b)(6)(B)(i). Pub. L. 108-357, § 611(d)(2), struck out ", or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum," before "the rate of such tax".

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).

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to the 2005 and subsequent crops of tobacco, see section 643 of Pub. L. 108-357, set out as an Effective Date note under section 518 of this title.

#### SAVINGS PROVISION

Amendment by sections 611 to 614 of Pub. L. 108-357 not to affect the liability of any person under any provision of law so amended with respect to the 2004 or an earlier crop of tobacco, see section 614 of Pub. L. 108-357, set out as a note under section 515 of this title.

#### 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.

### § 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.