

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. 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, ex-

cept 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 em-

ployee 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 Presi-

dent 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.

#### § 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”.

#### § 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