

AMENDING SECTION 2325 OF INTERNAL REVENUE CODE
TO STRENGTHEN INSPECTION OF PROCESS OR RENO-
VATED BUTTER

FEBRUARY 17 (legislative day, FEBRUARY 7), 1944.—Ordered to be printed

Mr. GEORGE, from the Committee on Finance, submitted the following

R E P O R T

[To accompany S. 1006]

The Committee on Finance, to whom was referred the bill (S. 1006) to amend section 2325 of the Internal Revenue Code (26 U. S. C. 1940 ed. 2325) by authorizing the condemnation of materials which are intended for use in process or renovated butter, and which are unfit for human consumption, and for other purposes, having considered the same, report thereon with amendments, and recommend that the bill do pass as so amended.

The first amendment: Delete all after the first sentence in paragraph (a) of section 1, the deleted portion (lines 4 to 12, both inclusive, on p. 2 of the bill) reading as follows:

Such ingredients shall be marked "Inspected and Passed" if found to be clean, wholesome, healthful, and otherwise fit for use in the manufacture of process or renovated butter. All ingredients found to be unclean, unwholesome, unhealthful, or otherwise unfit for use in the manufacture of process or renovated butter shall be marked "Inspected and Condemned" and shall be destroyed or denatured for food purposes in the presence of an inspector.

and make a substitution in lieu of the deleted portion so that paragraph (a) will read as follows:

(a) The Secretary of Agriculture shall, through inspectors appointed by him, cause inspections to be made of all milk, butter, butter oil, and other ingredients intended for use in the manufacture of process or renovated butter. All ingredients which are found to be putrid or decomposed or which contain organic or inorganic substances which are foreign to such ingredients when properly made, manufactured, produced, collected, stored, transported, or handled, and which organic or inorganic substances cannot be removed by processing, shall be deemed unfit for use in the manufacture of process or renovated butter, shall be marked "U. S. Inspected and Condemned", and shall be denatured or destroyed under the supervision of the inspector. All other ingredients shall be marked "U. S. Inspected and Passed", and shall be deemed fit for use in the manufacture of process or renovated butter.

The second amendment: In paragraph (b) of section 1 change the words "destroyed or denatured" (line 19 on p. 2 of the bill) to "denatured or destroyed"; delete the words "for food purposes in the

presence of an" (lines 19 and 20 on p. 2 of the bill) and add in lieu thereof the words "under the supervision of the", so that the paragraph will read as follows:

(b) The Secretary of Agriculture shall cause inspections to be made of all process or renovated butter. If such butter is found to be clean, wholesome, healthful, and otherwise fit for human food, it shall be marked "U. S. Inspected and Passed". Process or renovated butter that is found to be unclean, unwholesome, unhealthful, or otherwise unfit for human food shall be denatured or destroyed under the supervision of the inspector.

The third amendment: Add a sentence at the end of paragraph (e) of section 1 (which paragraph is now contained in lines 8 to 12, both inclusive, on p. 3 of the bill), so that such paragraph will read as follows:

(e) The Secretary of Agriculture is authorized to make such rules and regulations as he deems necessary for the efficient administration of the provisions of this section, and all inspections hereunder shall be made in such manner as may be prescribed in such regulations. The Secretary of Agriculture may, from time to time, by regulations define the foreign substances and the extent thereof that render the ingredients unfit for use in manufacturing process or renovated butter.

The fourth amendment: Change the phrase "shall be marked with the words 'Process Butter' or 'Renovated Butter'" in paragraph (h) of section 1 (lines 2 and 3 on p. 4 of the bill) to "shall be marked with the words 'Process Butter'", so that the paragraph will read as follows:

(h) All process or renovated butter and the packages or containers thereof shall be marked with the words "Process Butter" and by such other marks, labels, or brands, and in such manner, as may be prescribed by the Secretary of Agriculture.

The fifth amendment: Add the following new section 4 at the end of the bill:

SEC. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons or circumstances shall not be affected thereby.

The sixth amendment: Add the following new paragraph (k) at the end of section 1:

(k) The administration and enforcement of the provisions of this Act, other than its provisions relating to revenue, but including the seizure and denaturing or destruction of ingredients intended to be used in the manufacture of process or renovated butter and the denaturing or destruction of process or renovated butter, are committed exclusively to the Secretary of Agriculture: *Provided*, That any powers and duties of the Food and Drug Administration of the Federal Security Agency under the Federal Food, Drug, and Cosmetic Act, as amended (21 U. S. C. 1940 ed. 301 *et seq.*), as regards such ingredients before they come into the possession of the manufacturers of process or renovated butter, or as regards such powers and duties in connection with process or renovated butter after it leaves such manufacturers and comes into the hands of wholesale or retail dealers, or others, shall not be affected by this Act.

The objective of the proposed first and third amendments is primarily to clarify and make more definite the provisions respecting the manner in which the suitability of the raw materials for use in the manufacture of renovated butter shall be determined, it being the position of the manufacturers that the test of "unclean, unwholesome, unhealthful, or otherwise unfit for use" contained in the bill as it is now drawn is too indefinite. The proposed second amendment would require that any process or renovated butter which might be found to be unfit for human consumption would be denatured or destroyed

under the supervision of the inspector assigned to the particular plant. It is believed that the desirability of those three amendments is self-evident. The proposed fourth amendment was prompted by the desire of the manufacturers that they be given the privilege of labeling process or renovated butter as "process butter" only and to avoid using the term "renovated butter." That is satisfactory to the Department of Agriculture, since, under the present act the manufacturers are permitted to label the product as "process butter" or "renovated butter." The proposed fifth amendment would provide that any holding by a court that one provision of the act is unconstitutional would not affect the remaining provisions.

The proposed sixth amendment would insure that the governmental supervision of the Department of Agriculture would be exclusive with respect to process or renovated butter and the ingredients used in its manufacture so long as the finished product or the ingredients remain in the possession of the manufacturers, but that the powers and duties of the Food and Drug Administration of the Federal Security Agency under the Federal Food, Drug, and Cosmetic Act, as amended (21 U. S. C., 1940 ed., 301 et seq.), with respect to such ingredients before they come into the possession of the manufacturers of process or renovated butter, and with regard to such powers and duties in connection with process or renovated butter after it leaves those manufacturers and comes into the hands of wholesale or retail dealers, or others, would remain unimpaired.

S. 1006 is substantially the same as a bill (S. 2079) on the same matter which was introduced in the first session of the Seventy-seventh Congress, with the amendments thereto which were proposed at a hearing held before a subcommittee of this committee under date of July 2, 1942. No formal report on S. 2079 was ever submitted by this committee because objections to certain of its provisions were raised by the qualified process-butter manufacturers, and it was intended that further hearings would be held in that connection. However, the Seventy-seventh Congress expired before that action was taken, and S. 1006 was introduced in the present Congress to revive the matter.

Until the fall of 1941, although the hands of the Department of Agriculture were virtually tied by the lack of authority to proceed against the ingredients intended to be used in the manufacture of the finished product when they were found to contain unwholesome or deleterious foreign matter, considerable assistance was given by the officials of the States in which the factories were located by seizing the contaminated ingredients under State laws. On February 2, 1942, however, the Supreme Court of the United States, in the case entitled *Cloverleaf Butter Co. v. Patterson* (315 U. S. 148, as amended in 315 U. S. 786), held, in effect, that the Federal law and the regulations of the Department of Agriculture issued thereunder occupy the field with respect to the preparation of, and interstate commerce in, process or renovated butter, and that the States are without authority to condemn any filthy material in the factory prior to its conversion into the finished product. This leaves a situation in which neither the Department of Agriculture nor a State may now proceed against unwholesome ingredients in a factory before they are processed or renovated, and renders more acute the need for remedial legislation.

In conclusion, this bill, as proposed to be amended, would revise completely section 2325 of the Internal Revenue Code by establishing and maintaining continuous inspection of all qualified establishments which manufacture process butter and seeks thereby to correct a long-existing weakness in the present law. Patterned after the Meat Inspection Act, it provides for the inspection of all raw materials entering into the manufacture of process butter; for the inspection and labeling of the finished product; for sanitary control over the factories in which the product is prepared; and for the adoption of uniform regulations governing the manufacture and sale of the product.

Since the expressions "process butter" and "renovated butter" may be used interchangeably, and both refer to the same product, your committee, for convenience, will hereafter refer to the product under the single name of "process butter."

With respect to S. 1006, as it is now proposed to be amended, your committee finds that there is no disposition to legislate process butter out of existence. It has a definite place in the Nation's food supply in order to provide an outlet for farm butter, particularly in the South. However, the product ought to be clean, healthful, wholesome, and fit for human consumption. To that end, section 2325 of the Internal Revenue Code conferred upon the Secretary of Agriculture authority to ascertain all materials used in the manufacture of process butter which are deleterious to health or unwholesome in the finished product and, in case such deleterious or unwholesome materials are found in the finished product, it authorized him to confiscate the lot. Little, if any, renovated butter has been condemned under that authority, though, because insoluble foreign matter which may be present in the stock from which the renovated butter is made, and which may otherwise render the finished product unfit for human consumption is removed in the course of manufacture and soluble foreign matter, including, frequently, the fat of maggots, is impossible of detection in the finished product without careful and expensive chemical and microscopic analyses. By the time such an analysis can be completed, the product usually has entered commerce and, perhaps, has been entirely consumed. In order to safeguard the health of the consumers, therefore, it is essential to authorize the condemnation of butter, milk, butter oil, and other ingredients containing filthy or decomposed animal or vegetable matter which ordinarily is not removed in the process of manufacture.

The Department of Agriculture, which strongly endorses the bill, states that it does not anticipate that its passage will require any additional appropriation of funds, and that the Bureau of the Budget has informed it that there is no objection to its submission to Congress. As has been indicated, the qualified process-butter manufacturers are in favor of the bill with the proposed amendments suggested herein. Further, it has the approval of the Association of Food and Drug Officials of the United States, as well as of the International Association of Milk Sanitarians, both of which have passed resolutions endorsing it. The executive committee of the National Cooperative Milk Producers Federation is also on record in favor of the bill and, in addition, editorial endorsements of it in the Dairy Trade Press have been noted.