

AUTHORIZING THE CONDEMNATION OF MATERIALS WHICH  
ARE INTENDED FOR USE IN PROCESS OR RENOVATED BUTTER  
AND WHICH ARE UNFIT FOR HUMAN CONSUMPTION

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APRIL 24 (legislative day, MARCH 5), 1946.—Ordered to be printed

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Mr. LA FOLLETTE, from the Committee on Finance, submitted the following

## REPORT

[To accompany H. R. 3611]

The Committee on Finance, to whom was referred the bill (H. R. 3611) to amend section 2325 of the Internal Revenue Code, approved February 10, 1939 (53 Stat. 254), 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, and recommend that the bill do pass.

This bill is identical with S. 1006, which passed the Senate during the Seventy-eighth Congress. The provisions of the bill are explained in detail in the report of the House Committee on Ways and Means, which is as follows:

### GENERAL STATEMENT

This bill 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 present law. It is patterned after the Meat Inspection Act and 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. There is no disposition to legislate process butter out of existence, because it has a definite place in the Nation's food supply and it does 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, process butter has ever been condemned under that authority, because insoluble foreign matter which may be present in the stock from which the processed

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 has usually 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. This bill, therefore, provides for the inspection and condemnation of materials unfit for human consumption before manufacture.

Formerly, protection was afforded consumers by various State laws. 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 Company 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.

The bill (H. R. 3611) was submitted to the Department of Agriculture and to the Department of Commerce for their opinions, and their replies to Hon. Robert L. Doughton, chairman of the Committee on Ways and Means, are as follows:

DEPARTMENT OF AGRICULTURE,  
*Washington 25, February 7, 1946.*

HON. ROBERT L. DOUGHTON,  
*Chairman, Committee on Ways and Means,  
House of Representatives, Washington, D. C.*

DEAR MR. DOUGHTON: This is in further reply to your request of December 11, 1945, for a report on H. R. 3611, entitled "A bill to authorize 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."

Under existing law, as construed by the legal office of this Department, the Department's authority is limited to the condemnation of process or renovated butter only when the finished product is found to contain foreign matter which would render it unfit for human consumption. As a result, little, if any, process butter is condemned. Insoluble foreign matter that may have been present in the original stock would be removed in the course of manufacture, and soluble foreign matter, which obviously cannot be removed in the manufacturing process and which renders the final product unfit for human consumption, can be detected in the finished product only with the greatest difficulty, if at all. Even if detection in the finished product were possible, the detection would not be made until after the product has entered into commerce and had, perhaps, been consumed.

In order to safeguard the health of consumers of process or renovated butter, the Department must have authority to condemn butter, milk, butter oil, and other ingredients containing foreign matter which cannot be removed in the course of manufacture and which, if not removed, would render the finished product unfit for human consumption. The Department believes that there is a place for process or renovated butter in the Nation's food supply. The manufacture of this product provides a good outlet for farm butter, particularly in the South, but it obviously should be clean and wholesome and not constitute a menace to the health of the consumer.

A similar bill, designated S. 1006, after the incorporation of amendments which were concurred in by both the renovated-butter industry and this Department, was introduced in the Seventy-eighth Congress by Senator George. This bill passed the Senate March 14, 1944, and was referred to your committee March 15, 1944. The provisions of the bill H. R. 3611, now before your committee, are identical with those of S. 1006.

When the Department's report on the latter bill was submitted it was thought that this enforcement work could be handled by existing personnel incidental to their regular duties, thus avoiding the need for additional funds. After further study, however, it seems that continuous factory inspection would be required to give full effect to the proposed legislation. Approximately \$15,000 additional per year would be necessary for the employment of the additional personnel needed by the Bureau of Dairy Industry to properly carry out the responsibilities of the Department under this bill.

After careful consideration of the proposed legislation as embodied in the current bill, I am of the opinion that H. R. 3611 is highly desirable and I recommend its favorable consideration by your committee.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely,

CLINTON P. ANDERSON, *Secretary.*

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DEPARTMENT OF COMMERCE,  
OFFICE OF THE SECRETARY,  
Washington 25, February 15, 1946.

Hon. ROBERT L. DOUGHTON,  
*Chairman, Committee on Ways and Means,  
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: Reference is made to your communication of December 11, 1945, requesting the views of this Department with respect to H. R. 3611, a bill to authorize 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.

Under section 2325 of the Internal Revenue Code as presently in effect, the control over the quality of process or renovated butter is effective relative to the finished product. The proposed bill places the emphasis on the ingredients of which the renovated or process butter is made. As a result, there is double protection for the consumer through inspection of the raw materials going into the product as well as process and renovated butter itself.

Process or renovated butter is made by five plants in the United States. The farmers sell their surplus butter (usually offgrade in quality) to traders who in turn sell to the processors of renovated butter. The new section of the Internal Revenue Code would affect principally the traders. In order for their butter to qualify as "Inspected and passed," care will be required to keep their purchases from farmers in good condition, which is not always true at present. The processors are reported as favoring the bill as it will provide them with better raw materials, making possible a better finished product.

As it seems reasonable that control of food products for sanitary and health purposes should extend to the raw materials going into them, as well as to the final product, the bill is considered entirely justified.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter to your committee.

Sincerely yours,

H. A. WALLACE, *Secretary of Commerce.*

As can be seen from the above letters; both the Secretary of the Department of Agriculture and the Secretary of the Department of Commerce have endorsed this bill. Further, the qualified process-butter manufacturers are in favor of this bill. It has the approval of the Association of Food and Drug Officials of the United States, as well as 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 this bill and, in addition, editorial endorsements of it in the dairy trade press have been noted.

In view of the foregoing facts and endorsements, it is recommended that the bill be passed.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE

[SEC. 2325. INSPECTION, MANUFACTURE, STORAGE, AND MARKING OF PROCESS OR RENOVATED BUTTER.

[The Secretary of Agriculture is authorized and required to cause a rigid sanitary inspection to be made, at such times as he may deem proper or necessary, of all factories and storehouses where process or renovated butter is manufactured, packed, or prepared for market, and of the products thereof and materials going into the manufacture of the same. All process or renovated butter and the packages containing the same shall be marked with the words "Renovated Butter" or "Process Butter" and by such other marks, labels, or brands and in such manner as may be prescribed by the Secretary of Agriculture, and no process or renovated butter shall be shipped or transported from its place of manufacture into any other State or Territory or the District of Columbia, or to any foreign country, until it has been marked as provided in this section. The Secretary of Agriculture shall make all needful regulations for carrying this section and sections 2326 (c) and 2327 (b) into effect and shall cause to be ascertained and reported from time to time the quantity and quality of process or renovated butter manufactured, and the character and the condition of the material from which it is made. And he shall also have power to ascertain whether or not materials used in the manufacture of said process or renovated butter are deleterious to health or unwholesome in the finished product, and in case such deleterious or unwholesome materials are found to be used in product intended for exportation or shipment into other States or in course of exportation or shipment he shall have power to confiscate the same.]

SEC. 2325. INSPECTION OF PROCESS OR RENOVATED BUTTER.

*For the purpose of protecting interstate and foreign commerce from process or renovated butter which is unclean, unwholesome, unhealthful, or otherwise unfit for human food—*

(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.*

(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.*

(c) *The Secretary of Agriculture shall cause inspections to be made of all factories wherein process or renovated butter is manufactured to determine the sanitary conditions thereof, and if it is found that the conditions existing in any such factory do not meet the standards prescribed by the Secretary in his regulations, he shall cause inspection to be withdrawn therefrom.*

(d) *The Secretary of Agriculture is authorized to withdraw inspection from any factory wherein process or renovated butter is made, if the manufacturer shall fail to comply with any of the provisions of this section or with any of the rules and regulations prescribed hereunder.*

(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.*

(j) No person, firm, or corporation shall transport, or offer for transportation, or sell or offer for sale, in interstate or foreign commerce, or in commerce affecting commerce among the States, any process or renovated butter that has not been inspected and passed and marked, labeled, and branded in accordance with this section and the regulations issued hereunder.

(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 edition, 301, and the following), 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.

(f) The Secretary of Agriculture shall cause to be ascertained, and he shall report, from time to time, the quantity and quality of all process or renovated butter manufactured and the character and condition of the materials from which it is made.

(g) No person, firm, or corporation shall forge, counterfeit, simulate, falsely represent, detach, or knowingly alter, deface, or destroy, or use without proper authority, any of the marks, stamps, labels, or tabs provided for in this section or in any regulations prescribed hereunder by the Secretary of Agriculture for use on process or renovated butter or on wrappers, packages, containers, or cases in which the product is contained, or any certificate in relation thereto.

(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.

(i) No statement that is false or misleading in any particular shall be placed on or affixed to any wrapper, label, carton, or container of process or renovated butter.

#### SEC. 2326. PENALTIES.

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(c) FAILURE TO COMPLY WITH PROVISIONS RELATING TO THE MANUFACTURE, STORAGE, AND MARKING OF PROCESS OR RENOVATED BUTTER.—Any person, firm, or corporation violating any of the provisions of section 2325 shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not [less than \$50 nor more than \$500 or by imprisonment not less than one month nor more than six months, or by both said punishments] more than \$1,000 or by imprisonment for a period of not more than six months, or by both such fine and imprisonment, in the discretion of the court.

#### SEC. 2327. OTHER LAWS APPLICABLE.

(a) OLEOMARGARINE.—The provisions of sections 2301 (c) (2), 2305 to 2311 inclusive (except subsections (a), (b), and (h) of section 2308), and section 3791 (a) (1), shall apply to manufacturers of adulterated butter to an extent necessary to enforce the marking, branding, identification, and regulation of the exportation and importation of adulterated butter.

[(b) INSPECTION OF LIVE CATTLE AND MEAT.—All parts of an act providing for an inspection of meats for exportation, approved August 30, 1890, c. 839, 26 Stat. 414, and of an Act to provide for the inspection of live cattle, hogs, and the carcasses and products thereof which are the subjects of interstate commerce, approved March 3, 1891, c. 555, 26 Stat. 1089, and of amendment thereto approved March 2, 1895, c. 169, § 1, 28 Stat. 732, which are applicable to the subjects and purposes described in section 2325 shall apply to process or renovated butter.

[(c) SLAUGHTERING AND MEAT CANNING.—The sanitary provisions for slaughtering, meat canning, or similar establishments as set forth in the act of June 30, 1906, c. 3913, 34 Stat. 676, shall be extended to cover renovated butter factories as defined in this subchapter, under such regulations as the Secretary of Agriculture may prescribe.]

(d) TOBACCO AND SNUFF.—The provisions of law governing the engraving, issuing, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to the stamps provided in section 2321 (c) (1).