

REPEALING THE TAXES ON OLEOMARGARINE

MARCH 4, 1950.—Ordered to be printed

Mr. COOLEY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H. R. 2023]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 2023) to regulate oleomargarine, to repeal certain taxes relating to oleomargarine, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment numbered 10.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, and 16 and agree to the same.

Amendment numbered 2:

That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

(b) *No person shall sell, or offer for sale, colored oleomargarine or colored margarine unless:*

(1) *such oleomargarine or margarine is packaged,*

(2) *the net weight of the contents of any package sold in a retail establishment is one pound or less,*

(3) *there appears on the label of the package (A) the word "oleomargarine" or "margarine" in type or lettering at least as large as any other type or lettering on such label, and (B) a full and accurate statement of all the ingredients contained in such oleomargarine or margarine, and*

(4) each part of the contents of the package is contained in a wrapper which bears the word "oleomargarine" or "margarine" in type or lettering not smaller than 20-point type.

The requirements of this subsection shall be in addition to and not in lieu of any of the other requirements of this Act.

And the Senate agree to the same.

Amendment numbered 11:

That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

(d) Section 402 of the Federal Food, Drug, and Cosmetic Act (21 U. S. C., sec. 342) is amended by adding a new subsection (e) as follows:

"(e) If it is oleomargarine or margarine or butter and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance, or such oleomargarine or margarine or butter is otherwise unfit for food."

And the Senate agree to the same.

Amendment numbered 12:

That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 4. (a) Section 15 of the Federal Trade Commission Act, as amended, is amended by inserting "(1)" after the letter "(a)" in subsection (a) thereof, and by adding at the end of such subsection the following new paragraph:

"(2) In the case of oleomargarine or margarine an advertisement shall be deemed misleading in a material respect if in such advertisement representations are made or suggested by statement, word, grade designation, design, device, symbol, sound, or any combination thereof, that such oleomargarine or margarine is a dairy product, except that nothing contained herein shall prevent a truthful, accurate, and full statement in any such advertisement of all the ingredients contained in such oleomargarine or margarine."

(b) Such section 15 is further amended by adding at the end thereof the following new subsection:

"(f) For the purposes of this section and section 407 of the Federal Food, Drug, and Cosmetic Act, as amended, the term 'oleomargarine' or 'margarine' includes—

"(1) all substances, mixtures, and compounds known as oleomargarine or margarine;

"(2) all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter."

(c) Subsection (l) of section 5 of the Federal Trade Commission Act is amended by adding at the end thereof the following new sentence:

"Each separate violation of such an order shall be a separate offense,

except that in the case of a violation through continuing failure or neglect to obey a final order of the Commission each day of continuance of such failure or neglect shall be deemed a separate offense."

And the Senate agree to the same.

HAROLD D. COOLEY,
STEPHEN PACE,
W. R. POAGE,

Managers on the Part of the House.

WALTER F. GEORGE,
TOM CONNALLY,
E. D. MILLIKIN,
ROBERT A. TAFT,

Managers on the Part of the Senate.

STATEMENT OF MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 2023) to regulate oleomargarine to repeal certain taxes relating to oleomargarine and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report.

The committee of conference has agreed to recommend that the Senate recede from its amendment No. 10, a clerical amendment which became unnecessary, that the House recede from its disagreement to the Senate amendments Nos. 1, 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, and 16, and that new provisions be substituted in lieu of Senate amendments Nos. 2, 11, and 12, all as explained below:

Section 3 (b) of the bill (Senate amendment No. 1)

Section 3 (b) of the bill as passed by the House made the serving of colored oleomargarine or colored margarine in violation of section 407 (b) a prohibited act and a violation of the Federal Food, Drug, and Cosmetic Act, as amended (21 U. S. C. 331). Senate amendment No. 1, which was accepted by the conference, amended section 3 (b) of the bill by expanding the provision so as to make unlawful and bring within the prohibited acts section of the Federal Food, Drug, and Cosmetic Act the sale or offering for sale of colored oleomargarine or the possession or serving of colored oleomargarine in violation of sections 407 (b) or 407 (c) of the Federal Food, Drug, and Cosmetic Act, which sections are new sections added to the Federal Food, Drug, and Cosmetic Act under section 3 (c) of this bill.

Section 3 (c) of the bill (Senate amendment No. 2)

The Senate amended section 3 (c) of the House bill by adding a new subsection (b) to section 407, the effect of which would have required the retail packages of colored oleomargarine to be manufactured in such a way that each part of the contents of the package would be triangular in shape. The conference committee struck out this Senate amendment No. 2, and agreed to a substitute which amends the Federal Food, Drug, and Cosmetic Act by adding a new subsection (b) to section 407 of that act. This provision provides that no person shall sell or offer for sale colored oleomargarine or colored margarine unless—

- (1) It is packaged;
- (2) The packages sold in retail establishments are not larger than 1 pound;
- (3) The label of the package bears the word "oleomargarine" or "margarine" in size of type or lettering at least as large as any other type or lettering on the label, and bears also a full and accurate statement of all ingredients in the oleomargarine or margarine; and

(4) Each part of the contents of the package is wrapped with a covering bearing the word "oleomargarine" or "margarine" in type or lettering not smaller than 20-point type.

These special labeling and packaging provisions, which are in addition to other labeling and packaging provisions of the Federal Food, Drug, and Cosmetic Act, are intended to provide assurance that the consumer purchasing oleomargarine in retail establishments will be fully informed as to the contents of the package. It was not intended by the provision requiring packages to be not larger than 1 pound to modify the requirements of existing law with respect to accurate weight and measure. The purpose of this provision is to preclude the retail vending of colored oleomargarine or colored margarine in bulk-size containers or in packages larger than 1 pound. It does not preclude the present practice of placing in the 1-pound packages a slight excess of oleomargarine to assure compliance with the net-weight declaration. The package still must bear a label containing an "accurate statement of the quantity of the contents in terms of weight," pursuant to section 403 (e) (2) of the Federal Food, Drug, and Cosmetic Act, and the package must not be "so made, formed or filled as to be misleading," pursuant to section 403 (d) of that act.

This provision also requires that the label on the package of oleomargarine or margarine bear "a full and accurate statement of all the ingredients contained in such oleomargarine or margarine." This provision will require each ingredient contained in oleomargarine or margarine to be listed separately on the label but it does not require any indication as to either the actual or relative quantities of such ingredients.

Senate amendments Nos. 3, 4, 5, 6, and 7

Senate amendments Nos. 3, 4, 5, 6, and 7, which were accepted by the committee of conference, all are designed to simplify the provision of section 3 (c) of the House bill which adds a new subsection (407 (c)) to the Federal Food, Drug, and Cosmetic Act. This section appeared in the House bill as section 407 (b), but was renumbered as section 407 (c) by the Senate amendments. These amendments relate to requirements imposed in connection with the serving of colored oleomargarine or colored margarine in public eating places. The amendments break the section down into two sentences; the first relating to the type of notice which must be posted in public establishments which serve or possess in a form ready for serving colored oleomargarine or colored margarine; and, the second, dealing with the particular notice that must be given by way of identification of individual servings of colored oleomargarine or colored margarine. No changes were made in the substance of the provision as passed by the House. Under this section no person is permitted to serve or possess in a form ready for serving colored oleomargarine or colored margarine in a public eating establishment, unless there is posted in such public eating establishments a prominent and conspicuous sign informing customers of the fact that oleomargarine is served, or unless appropriate notice to that effect is given on the menu. In addition, each separate serving either must bear or be accompanied by labeling identifying the colored fat as oleomargarine or margarine, or the separate servings must be triangular in shape. As indicated above,

the Senate amendments make no change in substance but are simply clarifying.

Senate amendments Nos. 8 and 9 do nothing more than redesignate paragraphs (c) and (d) of section 407 of the House bill to (d) and (e) and are not intended to change in any manner the substantive provisions of these subsections as passed by the House. The renumbering was necessary because of the addition of new paragraph (b) hereinbefore discussed.

Section 3 (d) of the bill (Senate amendment No. 11)

Senate amendment No. 11, as amended and agreed to by the committee of conference, adds a new provision to the bill the effect of which is to amend section 402 of the Federal Food, Drug, and Cosmetic Act by adding thereto a new subsection (e). The provision is as follows:

(e) If it is oleomargarine or margarine or butter and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance, or such oleomargarine, or margarine, or butter is otherwise unfit for food.

This section, as agreed to by the conferees, adds nothing to section 402 (a) (3) of the Federal Food, Drug, and Cosmetic Act as it has been consistently interpreted and construed both by the administrative officials charged with its enforcement and by the Federal courts. It was adopted by the conferees, however, so as to make abundantly clear the intent of Congress that butter, oleomargarine, and margarine and all of their raw materials used in the manufacture of such butter, oleomargarine, and margarine should be subject to precisely the same standard of purity and to the same type of inspection.

It was not the intent of the conferees by adopting this new provision to weaken in any way the provisions of existing law as they have been interpreted and construed which provide that any food shall be deemed to be adulterated food (including all components thereof) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food.

Section 4 of the bill (Senate amendment No. 12)

Senate amendment No. 12, as amended and agreed to by the committee of conference, adds a new section 4 to the bill, the effect of which is to amend by adding new provisions to the Federal Trade Commission Act designed to curtail advertising representations and suggestions to the effect that oleomargarine or margarine is a dairy product. It is supplemental to the other provisions of the Federal Trade Commission Act relating to unfair or deceptive acts or practices or false advertising, and makes any advertisement of oleomargarine or margarine misleading if such advertisement represents that oleomargarine or margarine is a dairy product, except that this provision does not preclude the making of a truthful, accurate, and full statement in any advertisement of all the ingredients contained in such oleomargarine or margarine. It was recognized by the conferees that oleomargarine is required by the Federal standard of identity to contain either cream, milk, skim milk, a combination of dried skim milk and water, in which the weight of the dried skim milk is not less than 10 percent of the weight of the water, or a mixture of these ingredients. An exception was, therefore, provided which would permit a truthful,

accurate, and full statement of all the ingredients in the advertising. This provision is consistent with the provision of section 3 (c) of the bill (Senate amendment No. 2), under which the label of oleomargarine or margarine is required to bear a full and accurate statement of all the ingredients contained therein.

Senate amendment No. 12 prior to its amendment by the conference committee also contained a definition of oleomargarine similar to the one contained in the Oleomargarine Tax Act (26 U. S. C. 2300). That definition, however, was regarded by the conferees as obsolete. As rewritten and agreed to by the committee of conference, the definition includes within its terms not only those substances known as oleomargarine and margarine, but also "all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter." This definition is not intended to nullify or impair the definition and standard of identity for oleomargarine which has been adopted under the Federal Food, Drug, and Cosmetic Act. That definition and standard of identity promulgated to promote honesty and fair dealing in the interest of consumers, provides assurance that articles which are represented as, or which purport to be oleomargarine, shall measure up to at least minimum standards for fat, shall be prepared in a specified way, shall contain only those optional ingredients which are expressly permitted, and shall bear the labeling statements prescribed for such optional ingredients. Under that standard an article which is represented as or which purports to be oleomargarine but which for example contains less than 80 percent of fat, would be misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act. Such a product, however, would be oleomargarine for the purposes of new regulations provided in this bill, although it would be misbranded oleomargarine under section 403 (g) of the present law. The statutory definition in this bill was deemed desirable in order to emphasize the purposes of the Congress that the oleomargarine-like or butter-like products which fail to meet minimum standards should in every case come within the controls here being prescribed as well as within the controls of other applicable provisions of the Federal Food, Drug, and Cosmetic Act.

This amendment to the Federal Trade Commission Act also provides that each separate violation of a cease-and-desist order issued by the Federal Trade Commission, shall be a separate offense, except that where the violation occurs through failure or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense.

Other provisions

Senate amendment No. 13 simply renumbered section 4 of the bill to make it section 5. This renumbering having been made necessary by the addition of Senate amendment No. 12.

Senate amendment No. 14 reworded and renumbered section 5 of the House bill, which provided that the act should not abrogate or nullify any statute of any State or Territory. This was done to provide very clearly that the adoption of this act shall not be construed as authorizing the possession, sale, or serving of colored oleo-

margarine or colored margarine in any State or Territory in contravention of the laws of any State or Territory.

Senate amendment No. 15 renumbered and revised section 6 of the bill as it passed the House. As now written, the act will become effective on July 1, 1950. This will make the law effective at the start of the next fiscal year, which also would have been the tax year for the purposes of the Oleomargarine Tax Act. It will provide time within which the Food and Drug Administration may prepare itself for the administration of the requirements of this act and request the necessary funds for administration.

The conferees considered that the separability clause of the Federal Food, Drug, and Cosmetic Act would be applicable to the provision of this act and therefore no additional separability clause would be necessary in connection with this bill.

The bill as agreed to by the conferees repeals the tax provisions of the Internal Revenue Code relating to domestic oleomargarine but leaves the administrative provisions relating to the collection and enforcement of those taxes still in the Internal Revenue Code. By not specifically repealing these provisions it is not intended that such provisions will have any effect with respect to oleomargarine except to the extent necessary to enforce the taxing provisions on imported oleomargarine or for the purpose of sustaining any proper suit, action, or other proceeding with respect to violations which have occurred prior to the effective date of this act.

HAROLD D. COOLEY,
STEPHEN PACE,
W. R. POAGE,

Managers on the Part of the House.

