

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1103

Entitled, "Amendments to the Perishable Agricultural Commodities Act,  
1930".

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 1995

Mr. POMBO (for himself, Mr. DOOLITTLE, Mr. FOLEY, Mrs. THURMAN, Mr. PASTOR, and Mr. FARR) introduced the following bill; which was referred to the Committee on Agriculture

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## A BILL

Entitled, "Amendments to the Perishable Agricultural  
Commodities Act, 1930".

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DEFINITIONS.**

4 (a) Section 1(b)(6) of the Perishable Agricultural  
5 Commodities Act, 1930 (7 U.S.C. 499a) is hereby amend-  
6 ed to read as follows:

7 "(b)(6) The term 'dealer' means any person engaged  
8 in the business of buying or selling in wholesale or jobbing  
9 quantities, including for resale at retail, as defined by the  
10 Secretary, any perishable agricultural commodity in inter-

1 state or foreign commerce, except that (A) no producer  
2 shall be considered a 'dealer' in respect to sales of any  
3 such commodity of his own raising; and (B) no person  
4 buying any commodity other than potatoes for canning  
5 and/or processing within the State where grown shall be  
6 considered a 'dealer' whether or not the canned or proc-  
7 essed product is to be shipped in interstate or foreign com-  
8 merce, unless such product is frozen or packed in ice or  
9 consists of cherries in brine, within the meaning of para-  
10 graph (4) of this section. Any person not considered as  
11 a 'dealer' under clauses (A) or (B) may elect to secure  
12 a license under the provisions of section 499c of this title,  
13 and in such case and while the license is in effect such  
14 person shall be considered as a 'dealer'."

15 (b) Section 1 of the Perishable Agricultural Commod-  
16 ities Act, 1930 (7 U.S.C. 499a) is hereby amended to add  
17 a new subsection (b)(11) and a new subsection (b)(12),  
18 to read as follows:

19 "“(11) The terms 'collateral fees and expenses'  
20 mean any promotional allowances, rebates, service or  
21 materials fees paid or provided, directly or indirectly,  
22 in connection with the distribution or marketing of  
23 any perishable agricultural commodity.

24 "“(12) The term 'producer' means any person  
25 who raises perishable agricultural commodities for

1 sale of those commodities in wholesale or jobbing  
2 quantities, under the producer's own brands or la-  
3 bels, as defined by the Secretary.”.

4 **SEC. 2. UNFAIR TRADE PRACTICES.**

5 (a) Section 2(1) of the Perishable Agricultural Com-  
6 modities Act, 1930 (7 U.S.C. 499b) is hereby amended  
7 to read as follows:

8 “(1) For any commission merchant, dealer,  
9 broker, or producer to engage in or use any unfair,  
10 unreasonable, discriminatory, or deceptive practice  
11 in connection with the weighing, counting, or in any  
12 way determining the quantity of any perishable agri-  
13 cultural commodity received, bought, sold, shipped,  
14 or handled in interstate or foreign commerce;”.

15 (b) Section 2(4) of the Perishable Agricultural Com-  
16 modities Act, 1930 (7 U.S.C. 499b) is hereby amended  
17 to read as follows:

18 “(4) For any commission merchant, dealer,  
19 broker, or producer to make, for a fraudulent pur-  
20 pose, any false or misleading statement in connec-  
21 tion with any transaction involving any perishable  
22 agricultural commodity which is received in inter-  
23 state or foreign commerce by such commission mer-  
24 chant, or bought or sold, or contracted to be bought,  
25 sold or consigned, in such commerce by such dealer,

1 or the purchase or sale of which in such commerce  
2 is negotiated by such broker; or to fail or refuse  
3 truly and correctly to account and make full pay-  
4 ment promptly in respect of any transaction in any  
5 such commodity to the person with whom such  
6 transaction is had; or to fail to disclose the grant or  
7 receipt of any collateral fee or expense in connection  
8 with any cost-plus transaction in any such commod-  
9 ity to the person with whom such transaction is had;  
10 or to fail, without reasonable cause to perform any  
11 specification or duty, express or implied, arising out  
12 of any undertaking in connection with any such  
13 transaction; or to fail to maintain the trust as re-  
14 quired under section 499e(c) of this title;”.

15 (c) Section 2(5) of the Perishable Agricultural Com-  
16 modities Act, 1930 (7 U.S.C. 499b) is hereby amended  
17 to read as follows:

18 “(5) For any commission merchant, dealer,  
19 broker, or producer to misrepresent by word, act,  
20 mark, stencil, label, statement, or deed, the char-  
21 acter, kind, grade, quality, quantity, size, pack,  
22 weight, condition, degree of maturity, or State,  
23 country, or region of origin of any perishable agri-  
24 cultural commodity received, shipped, sold, or of-  
25 fered to be sold in interstate or foreign commerce:

1       *Provided*, That any commission merchant, dealer,  
2       broker, or producer who has violated—

3               “(A) any provision of this paragraph may,  
4               with the consent of the Secretary, admit the  
5               violation or violations; or

6               “(B) any provision of this paragraph relat-  
7               ing to a misrepresentation by mark, stencil, or  
8               label shall be permitted by the Secretary to  
9               admit the violation or violations if such viola-  
10              tion or violations are not repeated or flagrant;  
11              and pay, in the case of a violation under either  
12              clause (A) or (B) of this paragraph, a monetary pen-  
13              alty not to exceed \$2,000 in lieu of a formal pro-  
14              ceeding for the suspension or revocation of license,  
15              any payment so made to be deposited in the Treas-  
16              ury of the United States as miscellaneous receipts:

17       *Provided further*, That a person other than the first  
18       licensee handling misbranded perishable agricultural  
19       commodities shall not be held liable for a violation  
20       of this paragraph by reason of the conduct of an-  
21       other if that person did not have knowledge of the  
22       violation or lacked the ability to correct the viola-  
23       tion;”.

24       (d) Section 2(6) of the Perishable Agricultural Com-  
25       modities Act, 1930 (7 U.S.C. 499b) is hereby amended

1 to strike the words “any commission merchant, dealer, or  
2 broker,” and in lieu thereof insert the words “any commis-  
3 sion merchant, dealer, broker, or producer,”.

4 (e) Section 2(7) of the Perishable Agricultural Com-  
5 modities Act, 1930 (7 U.S.C. 499b) is hereby amended  
6 to strike the words “any commission merchant, dealer, or  
7 broker,” and in lieu thereof insert the words “any commis-  
8 sion merchant, dealer, broker, or producer,”.

9 **SEC. 3. LICENSE FEES.**

10 Section 3(b) of the Perishable Agricultural Commod-  
11 ities Act, 1930 (7 U.S.C. 499c(b)) is amended to read as  
12 follows:

13 “Any person desiring any such license shall make ap-  
14 plication to the Secretary. The Secretary may by regula-  
15 tion prescribe the information to be contained in such ap-  
16 plication and to be furnished thereafter. Upon filing the  
17 application, and annually thereafter, the applicant shall  
18 pay such fees, both individually and in the aggregate, as  
19 the Secretary determines, upon rulemaking pursuant to 5  
20 U.S.C. section 553, are necessary to meet the reasonably  
21 anticipated expenses for administering this chapter and  
22 section 491, 493 to 497 of this title. For fiscal year 1996,  
23 such individual license fee shall not exceed \$500, plus  
24 \$200 for each branch or additional business facility oper-  
25 ated by the applicant in excess of nine such facilities, as

1 determined by the Secretary. For fiscal year 1996, total  
2 annual fees for any applicant shall not exceed \$2,000 in  
3 the aggregate. No retailer shall be required to pay a li-  
4 cense fee until the invoice cost of its purchases of perish-  
5 able agricultural commodities in any calendar year are in  
6 excess of \$400,000. The Secretary shall provide by regula-  
7 tion that persons operating subsidiary organizations may  
8 consolidate those organizations on the license of the parent  
9 organization. Such fee, when collected, shall be deposited  
10 in the Treasury of the United States as a special fund,  
11 without fiscal year limitation, to be designated as the 'Per-  
12 ishable Agricultural Commodities Act Fund' which shall  
13 be available for all expenses necessary to the administra-  
14 tion of this chapter, and sections 491, 493 to 497 of this  
15 title, referred to above. License fees paid into such fund  
16 by persons designated as 'retailers' by the Secretary shall  
17 not exceed more than 25 percent of all fees collected in  
18 any fiscal year. Any reserve funds in the Perishable Agri-  
19 cultural Commodities Act Fund may be invested by the  
20 Secretary in insured or fully-collateralized interest-bearing  
21 accounts or, at the discretion of the Secretary, by the Sec-  
22 retary of the Treasury in United States Government debt  
23 instruments. Any interest earned on such reserve funds  
24 shall be credited to the Perishable Agricultural Commod-  
25 ities Act Fund and shall be available for the same pur-

1 poses as the fees deposited in such fund. The amount of  
2 money accumulated and on hand in the special fund at  
3 the end of any fiscal year shall not exceed 33 percent of  
4 the projected budget for the next following fiscal year. Fi-  
5 nancial statements prescribed by the Director of the Office  
6 of Management and Budget for the last completed fiscal  
7 year, and as estimated for the current and ensuing fiscal  
8 years, shall be included in the budget as submitted to the  
9 Congress annually.”.

10 **SEC. 4. ISSUANCE OF LICENSE.**

11 Section 4(a) of the Perishable Agricultural Commod-  
12 ities Act, 1930 (7 U.S.C. 499d(a)) is amended to read  
13 as follows:

14 “(a) Whenever an applicant has made application and  
15 paid any applicable fee, the Secretary, except as provided  
16 elsewhere in this chapter, shall issue to such applicant a  
17 license, which shall entitle the licensee to do business as  
18 a commission merchant and/or dealer and/or broker unless  
19 and until it is suspended or revoked by the Secretary in  
20 accordance with the provisions of this chapter, or is auto-  
21 matically suspended under section 499g(d) of this title,  
22 but said license shall automatically terminate on any anni-  
23 versary date thereof unless the application has been made  
24 and any applicable fee has been paid: *Provided*, That no-  
25 tice of the necessity of application and paying any applica-

1 ble fee shall be mailed at least thirty days before the anni-  
2 versary date: *Provided further*, That if the application is  
3 not made and any applicable fee is not paid by the anni-  
4 versary date the licensee may obtain a renewal of that li-  
5 cense at any time within thirty days by making application  
6 and paying any applicable fee provided in section 499c(b)  
7 of this title, plus \$5, which shall be deposited in the Per-  
8 ishable Agricultural Commodities Act fund provided for by  
9 section 499c(b) of this title: *Provided further*, That the  
10 license of any licensee shall terminate upon said licensee,  
11 or in case the licensee is a partnership, a partner being  
12 discharged as a bankrupt, unless the Secretary finds upon  
13 examination of the circumstances of such bankruptcy,  
14 which he shall examine if requested to do so by said li-  
15 censee, that such circumstances do not warrant such ter-  
16 mination.”.

17 **SEC. 5. LIABILITY TO PERSON INJURED.**

18 (a) Section 5 of the Perishable Agricultural Commod-  
19 ities Act, 1930 (7 U.S.C. 499e(a)) is hereby amended to  
20 strike the words “any commission merchant, dealer, or  
21 broker,” and in lieu thereof insert the words “any commis-  
22 sion merchant, dealer, broker, or producer,”.

23 (b) Section 5 of the Perishable Agricultural Commod-  
24 ities Act, 1930 (7 U.S.C. 499e(c)(3)) is hereby amended  
25 to add at the end thereof the following: “The Secretary

1 of Agriculture shall require persons who do not pay license  
2 fees under section 499c of this title to pay a filing fee  
3 for each notice of intent to preserve trust benefits filed  
4 pursuant to section 499e of this title. For fiscal year 1996,  
5 such filing fee shall be set at \$20. Thereafter, such fee  
6 shall be set by the Secretary upon rulemaking pursuant  
7 to 5 U.S.C. section 553, in order to meet the reasonably  
8 anticipated expenses for administering direct and indirect  
9 costs for such persons' participation in proceedings under  
10 this chapter.”.

11 **SEC. 6. COMPLAINT AND INVESTIGATION.**

12 (a) Section 6(a) of the Perishable Agricultural Com-  
13 modities Act, 1930 (7 U.S.C. 499f(a)) is hereby amended  
14 to designate existing section (a) as section (a)(1), and to  
15 strike the words “any commission merchant, dealer, or  
16 broker,” and in lieu thereof insert the words “any commis-  
17 sion, merchant, dealer, broker, or producer,” in the two  
18 instances in which it appears in that subsection.

19 (b) Section 6(a) of the Perishable Agricultural Com-  
20 modities Act, 1930 (7 U.S.C. 499f(a)) is hereby amended  
21 to add at the end thereof a new subsection (a)(2), a new  
22 subsection (a)(3), and a new subsection (a)(4), to read as  
23 follows:

24 “(2) The Secretary shall require all persons,  
25 other than Federal employees acting within the

1 scope of their official duties, who submit informal  
2 complaints to the Secretary under this section, alleg-  
3 ing a violation of section 2 of the Act (7 U.S.C.  
4 499b), to include a filing fee. For licensed persons  
5 that have also paid an annual license fee, such filing  
6 fee shall be \$60 per petition. For all other persons,  
7 such fee shall be \$100 per petition. If the Secretary  
8 determines under section 6(a) of the Act (7 U.S.C.  
9 499f(a)), that the facts contained in a petition de-  
10 scribed in such section warrant further action, the  
11 person or persons submitting the petition shall sub-  
12 mit to the Secretary a further filing fee. For licensed  
13 persons that have also paid an annual license fee,  
14 such filing fee shall be \$300 per petition. For all  
15 other persons, other than Federal employees acting  
16 within the scope of their official duties, such fee  
17 shall be \$500 per petition. The Secretary may not  
18 forward a copy of a complaint to the commission  
19 merchant, dealer, broker, or producer involved until  
20 after the Secretary receives the required filing fees.

21 “(3) In determining the amount of damages in-  
22 curred by a prevailing party in a formal reparation  
23 proceeding under section 7 of this Act (7 U.S.C.  
24 499g), the Secretary shall assess the amount of fil-  
25 ing fees against the losing party: *Provided*, That a

1 prevailing party shall have any filing fees paid by  
2 it refunded as part of any formal reparation  
3 award.”.

4 (c) Section 6(b) of the Perishable Agricultural Com-  
5 modities Act, 1930 (7 U.S.C. 499f(b)) is hereby amended  
6 to strike the words “any commission merchant, dealer, or  
7 broker,” and in lieu thereof insert the words “any commis-  
8 sion merchant, dealer, broker, or producer,” in two in-  
9 stances in which it appears in that subsection.

10 (d) Section 6(d) of the Perishable Agricultural Com-  
11 modities Act, 1930 (7 U.S.C. 499f(d)) is hereby amended  
12 to strike the words “any commission merchant, dealer, or  
13 broker,” and in lieu thereof insert the words “any commis-  
14 sion merchant, dealer, broker, or producer”.

15 **SEC. 7. GROUNDS FOR SUSPENSION OR REVOCATION OF LI-**  
16 **CENSE; CIVIL PENALTIES.**

17 (a) Section 8(a) of the Perishable Agricultural Com-  
18 modities Act, 1930 (7 U.S.C. 499h(a)) is hereby amended  
19 to strike the words “any commission merchant, dealer, or  
20 broker,” and in lieu thereof insert the words “any commis-  
21 sion merchant, dealer, broker, or producer”.

22 (b) Section 8 of the Perishable Agricultural Commod-  
23 ities Act, 1930 (7 U.S.C. 499h) is hereby amended to add  
24 a new subsection (b) to read as follows:

1 “(b) Whenever the Secretary determines, as provided  
2 by section 499f of this title, that any commission mer-  
3 chant, dealer, broker, or producer has violated section  
4 499b, 499h(c), or 499h(d) of this title, the Secretary may  
5 assess a monetary penalty not to exceed \$2,000 for each  
6 violative transaction or each day the violation continues,  
7 to be deposited in the Treasury of the United States as  
8 miscellaneous receipts.”.

9 (c) Section 8 of the Perishable Agricultural Commod-  
10 ities Act, 1930 (7 U.S.C. 499h) is hereby amended by re-  
11 designating existing subsection (b) as subsection (c), exist-  
12 ing subsection (c) as subsection (d), and existing sub-  
13 section (d) as subsection (e).

14 (d) Redesignated section 8(e) of the Perishable Agri-  
15 cultural Commodities Act, 1930 (7 U.S.C. 499h(e)) is  
16 hereby amended to strike the words “any commission mer-  
17 chant, dealer, or broker,” and in lieu thereof insert the  
18 words “any commission merchant, dealer, broker, or pro-  
19 ducer”.

20 **SEC. 8. PRESERVATION OF BUSINESS REPUTATION.**

21 Section 13 of the Act (7 U.S.C. 499m) is hereby  
22 amended to add a new subsection (g), to read as follows:

23 “(g) The Secretary is directed, during the course of  
24 any investigation or inquiry under this title, to take due

1 account of preservation of the business reputation of any  
2 person under investigation.”.

3 **SEC. 9.**

4 Section 15 of the Perishable Agricultural Commod-  
5 ities Act, 1930 (7 U.S.C. 499o) is hereby amended to re-  
6 designate the existing provisions as subsection (a), and to  
7 add a new subsection (b) and a new subsection (c), to read  
8 as follows:

9 “(b) REPORT AND INVESTIGATION.—The Secretary  
10 shall investigate and issue a report on industry practices  
11 requiring or soliciting collateral fees and expenses by or  
12 to any commission merchant, dealer, broker, or producer  
13 in connection with any transaction in perishable agricul-  
14 tural commodities. Such report shall be made to the House  
15 Committee on Agriculture and the Senate Committee on  
16 Agriculture, Nutrition, and Forestry, within one hundred  
17 and eighty days of enactment of this legislation.

18 “(c) DISCLOSURE OF COLLATERAL FEES AND EX-  
19 PENSES; RULEMAKING.—If the investigation and report  
20 required by this section conclude that such practices con-  
21 form to the laws of the United States, the Secretary shall  
22 promulgate regulations regarding the sufficiency of disclo-  
23 sure by or to any commission merchant, dealer, broker,  
24 or producer, of the grant or receipt of any collateral fee  
25 or expense in connection with any cost-plus transaction

1 in perishable agricultural commodities: *Provided*, That dis-  
2 closure shall be considered sufficient if it is conspicuously  
3 made on the face of the invoice or in any underlying con-  
4 tract covering the transaction: *Provided further*, That no  
5 commission merchant, dealer, broker, or producer, nor any  
6 individual responsibly connected with any such commis-  
7 sion merchant, dealer, broker, or producer shall be the  
8 subject to any licensure, reparation, or trust enforcement  
9 proceeding under this chapter for any act or omission con-  
10 cerning the disclosure of any collateral fee or expense,  
11 taken or required to be taken prior to the effective date  
12 of regulations required under this subsection.”.

13 **SEC. 10. LIABILITY OF LICENSEES FOR ACTS AND OMIS-**  
14 **SIONS OF AGENTS.**

15 Section 16 of the Perishable Agricultural Commod-  
16 ities Act, 1930 (7 U.S.C. 499p) is hereby amended to  
17 strike the words “any commission merchant, dealer, or  
18 broker,” and in lieu thereof insert the words “any commis-  
19 sion merchant, dealer, broker, or producer,” in the two  
20 instances in which it appears in that section.

21 **SEC. 11. REVIEW OF PROCEDURES AND POLICIES.**

22 The Perishable Agricultural Commodities Act, 1930  
23 is hereby amended by adding at the end thereof the follow-  
24 ing new section (7 U.S.C. 499t):

1           “REVIEW OF POLICIES AND PROCEDURES.

2           “(a) The Secretary is directed to conduct an annual  
3 review of enforcement procedures, policies, and priorities  
4 regarding reparation proceedings, disciplinary complaints,  
5 and the operation of the trust, as well as proceedings  
6 under section 499h(c), to identify opportunities for effi-  
7 ciency and cost reduction in such proceedings. The Sec-  
8 retary shall invite public participation and input into such  
9 review.

10          “(b) The Secretary is directed to submit, to the  
11 House Committee on Agriculture and the Senate Commit-  
12 tee on Agriculture, Nutrition, and Forestry, no later than  
13 September 30 of each year, a projection of enforcement  
14 priorities for the next twelve months. The Secretary is fur-  
15 ther directed to submit, to the House Committee on Agri-  
16 culture and the Senate Committee on Agriculture, Nutri-  
17 tion, and Forestry, no later than September 30 of each  
18 year in which a biennial review is conducted, a report con-  
19 taining the results of its review and recommendations  
20 based on such results. Such biennial report shall describe  
21 reparation proceedings, disciplinary complaints, and the  
22 operation of the trust during the previous twenty-four  
23 months.”.

1 **SEC. 12. EFFECTIVE DATE.**

2       This Act shall be effective upon enactment.

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