

104TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } 104-207

PERISHABLE AGRICULTURAL COMMODITIES ACT
AMENDMENTS OF 1995

—————
JULY 26, 1995.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. ROBERTS, from the Committee on Agriculture,
submitted the following

R E P O R T

[To accompany H.R. 1103]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 1103) entitled, "Amendments to the Perishable Agricultural Commodities Act, 1930", having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Perishable Agricultural Commodities Act Amendments of 1995".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Addition of definitions of retailer and grocery wholesaler.
- Sec. 3. Gradual elimination of annual license fee for retailers and grocery wholesalers that are dealers.
- Sec. 4. Establishment and alteration of license fees for commission merchants, dealers (other than retailers and grocery wholesalers), and brokers.
- Sec. 5. Increase in penalties for operating without a license and increase in late renewal fee.
- Sec. 6. Statutory trust on commodities and sale proceeds.
- Sec. 7. Authority of Department of Agriculture regarding possible violations.
- Sec. 8. Filing and handling fees for reparation complaints.
- Sec. 9. Consideration of collateral fees and expenses.
- Sec. 10. Clarification of misbranding prohibition.
- Sec. 11. Imposition of civil penalty in lieu of license suspension or revocation.
- Sec. 12. Extension of sanctions to persons responsibly connected to a commission merchant, dealer, or broker.

SEC. 2. ADDITION OF DEFINITIONS OF RETAILER AND GROCERY WHOLESALER.

Section 1(b) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(b)), is amended by adding at the end the following new paragraphs:

“(11) The term ‘retailer’ means a person that is a dealer engaged in the business of selling any perishable agricultural commodity at retail.

“(12) The term ‘grocery wholesaler’ means a person that is a dealer primarily engaged in the full-line wholesale distribution and resale of grocery and related nonfood items (such as perishable agricultural commodities, dry groceries, general merchandise, meat, poultry, and seafood, and health and beauty care items) to retailers. However, such term does not include a person described in the preceding sentence if the person is primarily engaged in the wholesale distribution and resale of perishable agricultural commodities rather than other grocery and related nonfood items.”.

SEC. 3. GRADUAL ELIMINATION OF ANNUAL LICENSE FEE FOR RETAILERS AND GROCERY WHOLESALERS THAT ARE DEALERS.

(a) **ELIMINATION OF ANNUAL FEES OVER THREE-YEAR PERIOD.**—Subsection (b) of section 3 of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499c), is amended—

(1) by inserting “(1) APPLICATION FOR LICENSE.—” before the start of the first sentence and adjusting the margin to conform to paragraph (3);

(2) by striking the third and fourth sentences;

(3) by inserting “(5) PERISHABLE AGRICULTURAL COMMODITIES ACT FUND.—” before the start of the fifth sentence and adjusting the margin to conform to paragraph (3);

(4) by striking the last sentence; and

(5) by inserting before paragraph (5) (as so designated) the following new paragraphs:

“(3) **ONE-TIME FEE FOR RETAILERS AND GROCERY WHOLESALERS THAT ARE DEALERS.**—During the three-year period beginning on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995, a retailer or grocery wholesaler making an initial application for a license under this section shall pay the license fee required under subparagraph (A), (B), or (C) of paragraph (4) for license renewals in the year in which the initial application is made. After the end of such period, a retailer or grocery wholesaler making an initial application for a license under this section shall pay an administrative fee equal to \$100. In either case, a retailer or grocery wholesaler paying a fee under this paragraph shall not be required to pay any fee for renewal of the license for subsequent years.

“(4) **GRADUAL ELIMINATION OF ANNUAL FEES FOR RETAILERS AND GROCERY WHOLESALERS THAT ARE DEALERS.**—In the case of a retailer or grocery wholesaler that holds a license under this section as of the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995, payments for the renewal of the license shall be made pursuant to the following schedule:

“(A) For anniversary dates occurring during the one-year period beginning on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995, the licensee shall pay a renewal fee in an amount equal to 100 percent of the applicable renewal fee (subject to the \$4,000 aggregate limit on such payments) in effect under this subsection on the day before such enactment date.

“(B) For anniversary dates occurring during the one-year period beginning at the end of the period in subparagraph (A), the licensee shall pay a renewal fee in an amount equal to 75 percent of the amount paid by the licensee under subparagraph (A).

“(C) For anniversary dates occurring during the one-year period beginning at the end of the period in subparagraph (B), the licensee shall pay a renewal fee in an amount equal to 50 percent of the amount paid by the licensee under subparagraph (A).

“(D) After the end of the three-year period beginning on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995, the licensee shall not be required to pay any fee if the licensee seeks renewal of the license.”.

(b) **STYLISTIC AMENDMENTS.**—Such section is further amended—

(1) by striking the section heading and “SEC. 3. (a)” and inserting the following:

“SEC. 3. LICENSES.

“(a) **LICENSE REQUIRED; PENALTIES FOR VIOLATIONS.**—”;

(2) in subsection (b), by inserting “APPLICATION AND FEES FOR LICENSES.—” after “(b)”;

(3) in subsection (c), by inserting “USE OF TRADE NAMES.—” after “(c)”.

SEC. 4. ESTABLISHMENT AND ALTERATION OF LICENSE FEES FOR COMMISSION MERCHANTS, DEALERS (OTHER THAN RETAILERS AND GROCERY WHOLESALERS), AND BROKERS.

(a) DISCRETION OF SECRETARY TO ESTABLISH AND ALTER FEES.—Section 3(b) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499c(b)), is amended by inserting after paragraph (1), as designated by section 3(a)(1), the following new paragraph:

“(2) LICENSE FEES.—Upon the filing of an application under paragraph (1), the applicant shall pay such license fees, both individually and in the aggregate, as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this Act and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491–497). Thereafter, the licensee shall pay such license fees annually or at such longer interval as the Secretary may prescribe. The Secretary shall take due account of savings to the program when determining an appropriate interval for renewal of licenses. The Secretary shall establish and alter license fees only by rulemaking under section 553 of title 5, United States Code, except that the Secretary may not alter the fees required under paragraph (3) or (4) for retailers and grocery wholesalers that are dealers. Effective on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995 and until such time as the Secretary alters such fees by rule, an individual license fee shall equal \$550 per year, plus \$200 for each branch or additional business facility operated by the applicant in excess of nine such facilities, as determined by the Secretary, subject to an annual aggregate limit of \$4,000 per licensee. Any increase in license fees prescribed by the Secretary under this paragraph shall not take effect unless the Secretary determines that, without such increase, the funds on hand as of the end of the fiscal year in which the increase takes effect will be less than 25 percent of the projected budget to administer such Acts for the next fiscal year. In no case may a license fee increase by the Secretary take effect before the end of the three-year period beginning on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995.”

(b) REPEAL OF CURRENT CAP ON RESERVE FUNDS.—Paragraph (5) of such section, as designated by section 3(a)(3), is amended by striking the sentence that begins with “The amount of money”.

(c) CONFORMING AMENDMENTS REGARDING THIS SECTION AND SECTION 3.—Section 4(a) of such Act (7 U.S.C. 499d(a)) is amended—

(1) in the matter preceding the provisos, by striking “any anniversary date thereof unless the annual fee has been paid” and inserting “the anniversary date of the license at the end of the annual or multiyear period covered by the license fee unless the licensee submits the required renewal application and pays the applicable renewal fee (if such fee is required)”;

(2) in the first proviso, by striking “the necessity of paying the annual fee” and inserting “the necessity of renewing the license and of paying the renewal fee (if such fee is required)”;

(3) in the second proviso, by striking “annual fee” and inserting “renewal fee (if required)”.

SEC. 5. INCREASE IN PENALTIES FOR OPERATING WITHOUT A LICENSE AND INCREASE IN LATE RENEWAL FEE.

(a) LICENSE PENALTIES.—Section 3(a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499c(a)), as amended by section 3(b)(1), is further amended—

(1) by striking “\$500” and inserting “\$1,000”;

(2) by striking “\$25” both places it appears and inserting “\$250”.

(b) LATE FILING FEES.—Section 4(a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499d(a)), as amended by section 4(c), is further amended in the second proviso by striking “plus \$5” and inserting “plus \$50”.

SEC. 6. STATUTORY TRUST ON COMMODITIES AND SALE PROCEEDS.

(a) REPEAL OF SECRETARIAL NOTIFICATION REQUIREMENT.—Paragraph (3) of section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)), is amended in the first sentence by striking “and has filed such notice with the Secretary”.

(b) CLARIFICATION OF CONTENT OF NOTIFICATION.—Such paragraph is further amended by inserting after the first sentence the following new sentence: “The writ-

ten notice to the commission merchant, dealer, or broker shall set forth information in sufficient detail to identify the transaction subject to the trust.”.

(c) ADDITIONAL METHOD OF NOTIFICATION FOR LICENSEES.—Such section is further amended—

(1) by redesignating paragraph (4) as paragraph (5); and

(2) by inserting after paragraph (3) the following new paragraph:

“(4) In addition to the method of preserving the benefits of the trust specified in paragraph (3), a licensee may use ordinary and usual billing or invoice statements to provide notice of the licensee’s intent to preserve the trust. The bill or invoice statement must include the information required by the last sentence of paragraph (3) and contain on the face of the statement the following: ‘The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.’”.

SEC. 7. AUTHORITY OF DEPARTMENT OF AGRICULTURE REGARDING POSSIBLE VIOLATIONS.

(a) DISCIPLINARY VIOLATIONS.—Subsection (b) of section 6 of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499f), is amended to read as follows:

“(b) DISCIPLINARY VIOLATIONS.—Any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any other interested person (other than an employee of an agency of the Department of Agriculture administering this Act) may file, in accordance with rules prescribed by the Secretary, a written notification of any alleged violation of this Act by any commission merchant, dealer, or broker. In addition, any official certificates of the United States Government or States or Territories of the United States and trust notices filed pursuant to section 5 shall constitute written notification for the purposes of conducting an investigation under subsection (c). The identity of any person filing a written notification under this subsection shall be considered to be confidential information. The identity of such person, and any portion of the notification to the extent that it would indicate the identity of such person, are specifically exempt from disclosure under section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), as provided in subsection (b)(3) of such section.”.

(b) GROUNDS AND PROCESS OF INVESTIGATIONS.—Subsection (c) of such section is amended to read as follows:

“(c) INVESTIGATION OF COMPLAINTS AND NOTIFICATIONS.—

“(1) COMMENCING OR EXPANDING AN INVESTIGATION.—If there appears to be, in the opinion of the Secretary, reasonable grounds for investigating a complaint made under subsection (a) or a written notification made under subsection (b), the Secretary shall investigate such complaint or notification. In the course of the investigation, if the Secretary determines that violations of this Act are indicated other than the alleged violations specified in the complaint or notification that served as the basis for the investigation, the Secretary may expand the investigation to include such additional violations.

“(2) ISSUANCE OF COMPLAINT BY SECRETARY; PROCESS.—In the opinion of the Secretary, if an investigation under this subsection substantiates the existence of violations of this Act, the Secretary may cause a complaint to be issued. The Secretary shall have the complaint served by registered mail or certified mail or otherwise on the person concerned and afford such person an opportunity for a hearing thereon before a duly authorized examiner of the Secretary in any place in which the subject of the complaint is engaged in business. However, in complaints wherein the amount claimed as damages does not exceed \$30,000, a hearing need not be held and proof in support of the complaint and in support of respondent’s answer may be supplied in the form of depositions or verified statements of fact.

“(3) SPECIAL NOTIFICATION REQUIREMENTS FOR CERTAIN INVESTIGATIONS.—Whenever the Secretary initiates an investigation on the basis of a written notification made under subsection (b) or expands such an investigation, the Secretary shall promptly notify the subject of the investigation of the existence of the investigation and the nature of the alleged violations of this Act to be investigated. Not later than 180 days after providing the initial notification, the Secretary shall provide the subject of the investigation with notice of the status of the investigation, including whether the Secretary intends to issue a complaint under paragraph (2), terminate the investigation, or continue or expand the investigation. The Secretary shall provide additional status reports at the request

of the subject of the investigation and shall promptly notify the subject of the investigation whenever the Secretary terminates the investigation.”

(c) INCREASE IN THRESHOLD FOR SHORTENED PROCEDURE CASES.—Subsection (d) of such section is amended by striking “\$15,000” both places it appears and inserting “\$30,000”.

(d) STYLISTIC AMENDMENTS.—Such section is further amended—

(1) by striking the section heading and “SEC. 6.” and inserting the following:

“SEC. 6. COMPLAINTS, WRITTEN NOTIFICATIONS, AND INVESTIGATIONS.”;

(2) in subsection (d), by inserting “DECISIONS ON COMPLAINTS.—” after “(d)”; and

(3) in subsection (e), by inserting “BOND REQUIRED FOR CERTAIN COMPLAINTS.—” after “(e)”.

SEC. 8. FILING AND HANDLING FEES FOR REPARATION COMPLAINTS.

(a) PERMANENT FILING AND HANDLING FEES.—Section 6(a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499f(a)), is amended—

(1) by striking “(a)” and inserting the following:

“(a) REPARATION COMPLAINTS.—

“(1) PETITION; PROCESS.—”; and

(2) by adding at the end the following new paragraph:

“(2) FILING AND HANDLING FEES.—A person submitting a petition to the Secretary under paragraph (1) shall include a filing fee of \$60 per petition. If the Secretary determines under paragraph (1) that the facts contained in the petition warrant further action, the person or persons submitting the petition shall submit to the Secretary a handling fee of \$300. The Secretary may not forward a copy of the complaint to the commission merchant, dealer, or broker involved until after the Secretary receives the required handling fee. The Secretary shall deposit fees submitted under this paragraph into the Perishable Agricultural Commodities Act Fund provided for by section 3(b). The Secretary may alter the fees specified in this paragraph by rulemaking under section 553 of title 5, United States Code.”.

(b) INCLUSION OF HANDLING FEE IN CALCULATION OF DAMAGES.—Section 5(a) of such Act (7 U.S.C. 499e(a)) is amended by inserting after “damages” the following: “(including any handling fee paid by the injured person or persons under section 6(a)(2))”.

(c) CONFORMING AMENDMENT TO TEMPORARY FEE AUTHORITY.—Public Law 103-276 (7 U.S.C. 499f note) is repealed.

SEC. 9. CONSIDERATION OF COLLATERAL FEES AND EXPENSES.

(a) DEFINITION.—Section 1(b) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(b)), is amended by inserting after paragraph (12), as added by section 2, the following new paragraph:

“(13) The term ‘collateral fees and expenses’ means any promotional allowances, rebates, service or materials fees paid or provided, directly or indirectly, in connection with the distribution or marketing of any perishable agricultural commodity.”.

(b) USE OF DEFINITION.—Section 2 of such Act (7 U.S.C. 499b) is amended—

(1) by striking “commerce—” in the matter before paragraph (1) and inserting “commerce.”;

(2) by striking the semicolon at the end of each paragraph and inserting a period; and

(3) in paragraph (4), by adding at the end the following new sentence: “However, this paragraph shall not be considered to make the good faith offer, solicitation, payment, or receipt of collateral fees and expenses, in and of itself, unlawful under this Act.”.

SEC. 10. CLARIFICATION OF MISBRANDING PROHIBITION.

Section 2(5) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499b(5)), is amended—

(1) by striking “commerce: *Provided*, That” and inserting “commerce. However.”; and

(2) by adding at the end the following new sentence: “A person other than the first licensee handling misbranded perishable agricultural commodities shall not be held liable for a violation of this paragraph by reason of the conduct of another if the person did not have knowledge of the violation or lacked the ability to correct the violation.”.

SEC. 11. IMPOSITION OF CIVIL PENALTY IN LIEU OF LICENSE SUSPENSION OR REVOCATION.

Section 8 of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499h), is amended by adding at the end the following new subsection:

“(e) ALTERNATIVE CIVIL PENALTIES.—In lieu of suspending or revoking a license under this section when the Secretary determines, as provided by section 6, that a commission merchant, dealer, or broker has violated section 2 or subsection (b) of this section, the Secretary may assess a civil penalty not to exceed \$2,000 for each violative transaction or each day the violation continues. In assessing the amount of a penalty under this subsection, the Secretary shall give due consideration to the size of the business, the number of employees, and the seriousness, nature, and amount of the violation. Amounts collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.”.

SEC. 12. EXTENSION OF SANCTIONS TO PERSONS RESPONSIBLY CONNECTED TO A COMMISSION MERCHANT, DEALER, OR BROKER.

(a) EXCEPTION TO DEFINITION.—Section 1(b)(9) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(b)(9)), is amended by adding at the end the following new sentence: “A person shall not be deemed to be responsibly connected if the person demonstrates by a preponderance of the evidence that the person was not actively involved in the activities resulting in a violation of this Act and that the person either was only nominally a partner, officer, director, or shareholder of a violating licensee or entity subject to license or was not an owner of a violating licensee or entity subject to license which was the alter ego of its owners.”.

(b) EXTENSION OF EMPLOYMENT SANCTION.—Section 8(b) of such Act (7 U.S.C. 499h(b)) is amended by adding at the end the following new sentence: “The Secretary may extend the period of employment sanction as to a responsibly connected person for an additional one-year period upon the determination that the person has been unlawfully employed as provided in this subsection.”.

(c) CONFORMING AMENDMENT REGARDING LICENSING SANCTION.—Section 4 of such Act (7 U.S.C. 499d) is amended—

(1) in subsection (b), by inserting “is prohibited from employment with a licensee under section 8(b) or” after “with the applicant,” in the matter preceding subparagraph (A); and

(2) in subsection (c), by adding at the end the following new sentence: “The Secretary may not issue a license to an applicant under this subsection if the applicant or any person responsibly connected with the applicant is prohibited from employment with a licensee under section 8(b).”.

Amend the title so as to read:

A bill to amend the Perishable Agricultural Commodities Act, 1930, to modernize, streamline, and strengthen the operation of the Act.

BRIEF SUMMARY

H.R. 1103 amends the Perishable Agricultural Commodities Act (PACA) to modernize, streamline and strengthen the operation of the Act. Specifically, the legislation phases retailers and grocery wholesalers out of license fee payment in three years, establishes a one-time administrative fee for new retailers and grocery wholesalers entering the program after the three-year phase-out, increases license fees for those remaining in the program from \$400 to \$550 each year, allows the U.S. Department of Agriculture (USDA) to adjust future license fees under rulemaking authority, implements a paperless system to administer the PACA trust, requires USDA to receive a written complaint before pursuing an investigation, requires additional USDA investigation notification procedures, increases current administrative penalties, establishes civil penalties, continues current filing fees for formal and informal reparation complaints, clarifies the status of collateral fees and expenses, clarifies misbranding prohibitions, and amends responsibly connected provisions of PACA. Other than the changes summarized above, current law remains intact.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title, table of contents

Section 1 states that this Act may be cited by its short title as the “Perishable Agricultural Commodities Act Amendment of 1995”, and provides a table of contents.

Section 2—Addition of definitions of retailer and grocery wholesaler

This section adds retailers and grocery wholesalers, who will be phased-out of the license fees requirement under the Perishable Agricultural Commodities Act, to the definition section of current statute. Each of these entities operate as a dealer within the program and are therefore defined as a person that is a dealer engaged in their respective operations.

Section 3—Gradual elimination of annual license fee for retailers and grocery wholesalers that are dealers

Section 3 eliminates annual license fees for retailers and grocery wholesalers over a period of three years. The phase-out begins on the first renewal date upon enactment of the legislation. In year one, 100% of the license fee will be paid. In year two, 75% of the licensee fee will be paid. In year three, 50% of the license fee will be paid. In the fourth year, no license fee is required.

Although retailers and grocery wholesalers will not be required to pay a license fee after three years, they are still required to obtain a PACA license and will remain subject to provisions of the PACA program.

New retailers and grocery wholesalers entering the program within the three-years of enactment of the legislation are required to pay the license fee established under the applicable phase-out year. After the third year, new retailers and grocery wholesalers will be required to pay a one-time administrative fee of \$100.

Section 3 phases out license fees for retailers and grocery wholesalers. It defines the term “retailer” as a person who is a dealer engaged in the business of selling any perishable commodity at retail. Approximately 4,000 retailers are currently estimated to be licensed under PACA. Those businesses such as grocery stores and other like businesses that predominantly serve those consumers purchasing food for consumption at home or off the premises of the retail establishment are considered to be included in the definition of retailer. It is not the intent of the Committee that the definition of retailer be construed to include foodservice establishments such as restaurants, or schools, hospitals and other institutional cafeterias. Further, the definition of retailer is not intended to include those businesses primarily engaged in the wholesaling or distributing of perishable agricultural commodities, but that occasionally sell directly to consumers. The term grocery wholesaler is defined to mean a person who is a dealer primarily engaged in the full-line wholesale distribution and resale of grocery and related nonfood items (such as perishable agricultural commodities, dry groceries, general merchandise, meat, poultry, seafood, and health and beauty care items) to retailers. The Committee established specific types of products typically distributed by grocery wholesalers to provide the Secretary the means by which to discriminate between grocery

wholesalers and other persons engaged in the business of wholesaling or distributing perishable agricultural commodities in wholesale or jobbing quantities. Wholesaling and jobbing quantities are considered the aggregate quantities of all types of produce totaling one ton or more in weight in any day, shipped, received, or contracted to be shipped or received.

At the end of the three year phase out period, retailers and grocery wholesalers currently paying annual license fees will not be required to pay any fee for renewal of the license. During the phase out period, new retailer and grocery wholesaler applicants will pay the specified fee established under the applicable phase-out year. After the phase out, new retailer and grocery wholesaler applicants will pay a one-time administrative fee of \$100 for their license.

The Committee expects that licenses for retailers and grocery wholesalers will be renewed utilizing a simplified process. The Secretary shall mail to each licensed retailer and grocery wholesaler, at least 30 days before the anniversary date, a notice of the necessity of renewing the license and a copy of the ownership information currently on file. If there are no changes to this information, the licensee shall sign the renewal form and return it to the Secretary. If changes have occurred the licensee shall note these changes and return the signed form. The license will then be automatically renewed.

Section 4—Establishment and alteration of license fees for commission merchants, dealers (other than retailers and grocery wholesalers), and brokers

Section 4 addresses how license fees will be handled for other entities remaining under the PACA program. This Section strikes the current license fee cap of \$400 and increases fees to \$550. After three years, the Secretary will have the authority to adjust license fee caps pursuant to rulemaking authority only when the PACA operating reserve reaches 25 percent or less. Under current law, the license fee cap can only be changed through legislation. In addition, Section 4 repeals the current 25 percent cap on the operating reserve.

Section 4 gives the Secretary the discretion to issue licenses for periods of more than a year. In an effort to achieve cost effectiveness and efficiency within PACA, the Committee strongly urges the Secretary to move to issuance of multi-year licenses. The USDA shall promptly examine the necessity for a yearly renewal requirement for retailers and grocery wholesalers in an effort to move toward multi-year licenses. Section 4 also gives the Secretary the authority to increase license fees under rulemaking authority, except that the Secretary may not increase the license fee for retailers and grocery wholesalers.

Section 5—Increase in penalties for operating without a license and increase in late renewal fee

Section 5 increases penalties for operating without a license, inadvertent operation without a license, and for late renewals. The penalty for operating without a license is increased from \$500 to \$1000. The \$25 daily penalty for operation without a license is increased to \$250 a day. The fine for inadvertent operation without

a license is increased from \$25 to \$250. The late renewal fee is increased from \$5 to \$50.

Section 6—Statutory trust on commodities and sale proceeds

Section 6 implements the paperless trust provisions of the PACA agreement. Currently, those who wish to protect their trust benefits must notify USDA within 30 days after final payment was due. This provision removes the filing requirement with USDA. Instead, transaction terms set forth in sufficient detail must be submitted by the unpaid supplier, seller and agent to the commission merchant, dealer or broker. Section 6 establishes that a licensee may also preserve trust benefits through the use of ordinary and usual billing or invoice practices as long as a statement indicating that the commodities listed on the invoice are subject to trust claims.

Section 6 implements new provisions regarding the PACA trust. The amendments to the PACA trust provisions contained in this legislation are intended to strengthen and improve the operation of the trust and eliminate the expense to USDA in administering these provisions. Despite the changes to the trust embodied in this legislation certain procedures, obligations and activities must be followed: proper notice must be provided by the supplier to the buyer under the trust provisions, persons within the industry must properly account for assets preserved by the trust. In addition, USDA retains authority to prevent and restrain dissipation of trust assets.

To enhance the operation of the trust, an alternative method of preserving trust benefits has been included in the bill. The current requirement to file a trust notice with USDA is eliminated. Instead, the legislation makes clear that a licensee may use standard invoices or other billing statements to provide notice to the buyer of intent to preserve trust benefits in the event that payment is late or the payment instrument is not honored. For the purposes of preserving the trust, the following notice will meet the requirement of this section if conspicuously placed on invoices or other billing statements: "The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

Under current law, the trust is in effect at the time of shipment of the perishable commodity. The unpaid supplier, seller, or agent must provide notice of trust coverage to the buyer in order to preserve these trust benefits. Consistent with this principle, this legislation, under paragraph 4 of section 5(c) of PACA, provides that the supplier, seller, or agent may perfect its trust claim by giving notice to the buyer on the invoice or billing statement. This change to the Act provides both a convenience and cost savings to the unpaid supplier, seller or agent. The Committee intends the effect of notice provided through the use of usual billing or invoice statements to be the legal equivalent to the current practice of providing

notice subsequent to the payment date by means independent of the billing statement or invoice.

Section 7—Authority of Department of Agriculture regarding possible violations

Section 7 outlines new requirements for USDA when pursuing a PACA investigation. USDA must have a written complaint in hand before pursuing and/or expanding a PACA investigation. The Secretary may expand an investigation if additional violations are discovered while investigating a complaint based on reasonable grounds. The identity of any person filing written notification is considered confidential. USDA is also required to inform the subject of an investigation about the status of USDA's actions no later than 180 days after initial notification. Section 7 also increases the damage threshold required to receive an expedited review (shortened procedure) of the complaint from \$15,000 to \$30,000.

Section 7 amends PACA to provide special notification requirements for certain investigations. When the Secretary requires production of certain documents or records for the purpose of investigating a written notification, the Secretary shall notify the subject of the investigation of the existence of the written notification and the nature of the alleged violations of PACA.

Section 8—Filing and handling fees for reparation complaints

Section 8 extends current provisions adopted last year that establish filing fees for informal and formal reparation complaints. The \$60 fee for an informal reparation complaint and the \$300 fee for a formal reparation complaint are retained and become subject to rulemaking authority of the Secretary wishes to adjust the level in the future.

Section 9—Consideration of collateral fees and expenses

Section 9 establishes clarification of the status of collateral fees and expenses. Collateral fees refer to promotional allowances, rebates, service or material fees paid or provided, directly or indirectly, in connection with the distribution or marketing of perishable agricultural commodities. They are fees considered separate from invoice fees. Section 9 clarifies that a collateral fee is lawful in and of itself.

Section 10—Clarification of misbranding prohibition

In the cases of misbranding, when produce grade, quality, quantity, weight or origin is misrepresented, persons other than the first licensee handling the misbranded commodities are not held liable for the violation by reason of the conduct of another if the person did not have knowledge of the violation or lacked the ability to correct the violation.

Section 11—Imposition of civil penalty in lieu of license suspension or revocation

Section 11 authorizes USDA to assess civil monetary penalties not to exceed \$2000 for violation of Section 2 in lieu of license suspension or revocation for each violation or each day it continues. Currently, if an entity operating within PACA is found to employ

a person responsibly connected with a violating entity the only recourse available to USDA is to initiate a revocation hearing for the entity's license. This provision allows USDA to take a less stringent step by assessing a civil penalty on the entity in lieu of license revocation in cases where entities are found employing a person responsibly connected with a violating entity. However, USDA is required to give consideration to the business size, number of employees, seriousness, nature and amount of the violation when assessing the amount of the penalty.

Section 12—Extension of sanctions to persons responsibly connected to a commission merchant, dealer, or broker

Section 12 addresses two separate issues concerning “responsibly connected”. Regarding the first issue, this section amends the current definition to permit individuals, who are responsibly connected to a company in violation of PACA, the opportunity to demonstrate that they were not responsible for the specific violation.

The second issue concerns extension of employment sanctions. Under current law, an individual found to be responsibly connected to a company in violation of PACA can be banned from working (employment sanction) within the industry for a year. However, under current law if such individual is found to be working in the industry while under an employment sanction, USDA can bring enforcement action only against the company employing the individual. Section 12 permits USDA to extend the employment sanction to such individual for an additional year under such circumstances.

In addition to forgoing, the Committee also provided for certain instructions and directions that it intended that the Secretary of Agriculture should comply with as part of this bill.

The Committee instructs the Secretary of the Department of Agriculture to conduct a study and report to the Chairman of the House Committee on Agriculture and to the Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, within one year of the date of enactment, a study regarding the feasibility of regulating the sale and marketing of fresh-cut flowers under PACA. The report shall include other potential solutions to payment problems that may impact fresh-cut flower producers.

The Committee further instructs the Secretary to conduct and report to the Chairmen of the House and Senate Committees within one year a study regarding options for including carriers and transporters of perishable commodities under PACA. The study shall include recommendations regarding the impact of trust provisions on, and protection available to truckers and carriers under, bankruptcy proceedings.

In order to accurately reflect an increased role as a purchaser's agent, the Committee directs USDA to review and revise, to the extent practicable, the category or broker and buying broker.

PURPOSE AND NEED

The Perishable Agricultural Commodities Act is a \$7.4 million industry financed user fee program administered by USDA to establish and enforce fair trading practices in the marketing of fresh and frozen fruits and vegetables.

Unlike other user fee programs which set license fees through rulemaking procedures, PACA license fee limits are currently set by law. On September 24, 1993, USDA transmitted legislation to Congress to increase the PACA statutory license fee limit. USDA cited increased cost pressures to the program primarily resulting from payment of fees to the Office of General Counsel (OGC) to pay for services that had previously been covered through appropriated funds. Instead of implementing USDA's request to increase PACA license fees, the 103rd Congress implemented temporary filing fees for reparation complaints that are scheduled to expire at the end of fiscal year 1996. In order to prevent potential program disruptions resulting after the expiration of temporary filing fees and to maintain financial stability of the program, the Committee reported H.R. 1103 to modify, reform, and strengthen PACA.

CURRENT PROGRAM OPERATION

License Fees—PACA is funded and enforced through a license fee and licensing system. Annual license fees are \$400. If the applicant operates more than nine branches or additional business facilities they are required to pay an additional \$200 for each branch. Aggregate annual fees are capped at \$4000 for each applicant. Almost everyone who operates in the fresh and frozen fruit and vegetable industry is required to hold a PACA license. Exemptions are allowed for: (1) growers who sell their own products, (2) retailers and frozen food brokers who purchase or negotiate less than 230,000 in annual produce sales, and (3) restaurants and truckers who are contract carrier.

Violations—The PACA program provides entities operating within the fruit and vegetable trade certain protection. A party found to have committed unfair trading practices under PACA faces license suspension or revocation. Some of the most common PACA violations the program is designed to protect suppliers and sellers of perishable agricultural commodities against include: **Prompt Payment**—failure to pay the agreed price of produce within 10 days (unless a different agreement is arranged between the buyer and seller), **Nonpayment**—failure to pay for shipments of produce purchased, **Misbranding**—misrepresentation of grade, quality, quantity, weight or origin of produce, **Discarding**—dumping or destroying produce without reasonable cause, or **Rejection**—of produce without reasonable cause.

Trust—The PACA trust is another form of protection under PACA which was established in 1984 to protect unpaid produce suppliers and sellers in the case of bankruptcy. The statutory trust consists of a buyer's produce-related assets which are held for produce suppliers in the case of a business failure. Technically, the trust goes into effect at the time the buyer receives the goods. However, produce sellers must preserve their rights to access the trust by filing a trust notice with the Department of Agriculture within 30 days of the date that the payment is past due. During bankruptcy, the buyers produce related assets are not distributed to other creditors until claims for unpaid produce sellers are satisfied. A company's PACA trust assets consist of fruit and vegetable inventory, products derived from fruits and vegetables, and all receivables or proceeds from the sale of fruits and vegetables.

Reparation Complaints—Reparation complaints are actions filed to make amends for injury. Informal and formal reparation complaints can be filed under PACA against a licensee if a trader suffers damages from a violation. The complaint must be filed within nine months of the payment due date. Most complaints are resolved informally with USDA acting as a mediator. If the complaint is not settled at the informal level a formal reparation complaint may be filed. Based on evidence in the case, an award plus interest may be issued. If the award is not paid in a timely fashion or is appealed the firm's license is automatically suspended until the award is paid. A \$60 fee is charged for filing informal complaints and a \$300 fee is charged for formal complaints.

Industry Entities—Entities comprising the fruit and vegetable marketing chain are numerous. The chain begins with the grower who raises produce for marketing and ends with a retailer defined as a business that exclusively sells to consumers. Multiple entities operate as middlemen within the industry. Grower: producer who raises produce for marketing. Shipper: buys produce from growers and ships the produce to other buyers. Broker: middleman negotiating a sale on behalf of a seller or buyer never taking title to goods. Distributor: middleman who buys truckload or railcar lots of produce from growing areas, transports the product to market areas and resells the product to wholesalers or retail chains. Commission Merchant: (Grower-agent) entity who sells fruits and vegetables in its own name on behalf of another. At a shipping point this entity is referred to as a grower-agent who may also perform other services such as harvesting and grading and packing. In a receiving market, this entity is known as a commission merchant. Dealer: anyone buying or selling more than a ton of fruits and vegetables in any one day. Unlike commission merchants and brokers, dealers have an ownership interest in the goods. Wholesale Market Receiver: a fruit and vegetable wholesaler operating at a receiving market selling to small retailers, food service dealers and restaurants. Wholesale Grocers: a full line wholesaler selling to affiliated or independent retailers. Food Service: a business selling to restaurants, hospitals and schools. Trucker: a business hauling freight for hire. Truckers are subject to PACA because they occasionally buy and resell produce. Retailer: a business only selling to consumers; includes retail grocery chain stores, independent retailers, institutions and restaurants, and sometimes growers.

LEGISLATIVE HISTORY

100th Congress—Legislation to increase PACA license fees was enacted by Congress in 1988 (P.L. 100-414). License fees under this legislation were increased from \$300 to \$400 for annual fees, from \$150 to \$200 for branch operations in excess of nine, and aggregate annual ceilings from \$3,000 to \$4,000. This legislation also established a PACA Advisory Committee charged with reviewing the administration, operations and funding of the program. The PACA Advisory Commission issued its recommendations in May of 1990 regarding licensing, PACA trust, prompt pay and misbranding issues.

102d Congress—The House Agriculture Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition convened a hear-

ing on October 3, 1991 (Serial No. 102-39) for the purposes of reviewing the PACA Advisory Committee recommendations.

H.R. 5741, the Perishable Agricultural Commodities Act Technical Amendments of 1992, was introduced on July 31, 1992. The legislation clarified the intent and purpose of the PACA trust in protecting unpaid sellers. The legislation was introduced in response to the *C.H. Robinson Co. v. Trust Company Bank*, N.A., 952 F. 2d 1311 (11th Cir. 1992) decision which held that an unpaid seller could not recover trust assets transferred by the buyer to the buyer's lender if the lender did not have actual notice of the breach of trust. H.R. 5741 attempted to ensure that lender did not circumvent the trust through certain financial arrangements. The legislation was reported by the House Agriculture Committee, subsequently passed the House but was not enacted into law.

103d Congress—USDA transmitted draft legislation to the Congress in late 1993 that provided for an increase in the license fee ceiling to raise additional revenue for the program thus avoiding insolvency of PACA. USDA requested the legislation due to increased cost pressures resulting in rent, communication charges and OGC legal fees. Beginning in fiscal year 1993, USDA's Office of General Counsel (OGC) began charging the PACA program for legal fees based on an initiative by the Office of Management and Budget. Previously, OGC had received a direct appropriation for their services. OGC costs of \$321,000 for FY 1993 put a strain on the program and its operating reserves. Language to temporarily increase the license fees was included in the FY 1995 agriculture appropriations bill. A compromise position acceptable to growers and retailers to impose filing fees for informal and formal reparation complaints through FY 1996 was signed into law on July 5, 1994, P.L. 103-276. The appropriations language was subsequently deleted prior to enactment.

104th Congress—Two bills were introduced in 1995 regarding the PACA program. On January 25, 1995, Mr. Boehner introduced H.R. 669, legislation to repeal PACA. On March 1, 1995, H.R. 1103 was introduced by Mr. Pombo to reform PACA.

SUBCOMMITTEE CONSIDERATION

HEARING

On March 16, 1995, the Risk Management and Specialty Crops Subcommittee conducted a hearing for the purposes of reviewing the Perishable Agricultural Commodities Act. (Serial No. 104-7) The Subcommittee received testimony from the following witnesses: USDA, General Accounting Office, National American Wholesale Grocers-International Foodservice Distributors Association, Florida Fruit and Vegetable Association, Food Marketing Institute, National Grocers Association, Produce Marketing Association, United Fresh Fruit and Vegetable Association, American Farm Bureau Federation, American Frozen Food Institute, National Association of Perishable Agricultural Receivers, National Association of State Departments of Agriculture, Western Growers Association, and the California Cut Flower Commission.

INDUSTRY NEGOTIATIONS

An industry briefing session held on May 25, 1995 by the Chairman of the Subcommittee on Risk Management and Speciality Crops, with industry representatives and Committee Members and staff in attendance, discussed a framework for an amendment in the nature of a substitute to H.R. 1103. Industry represented at the briefing included United Fresh Fruit and Vegetable Association, American Frozen Food Institute, National American Wholesale Grocers Association, Food Marketing Institute, National Grocers Association, Western Growers Association, Florida Fruit and Vegetable Association, and the American Farm Bureau Federation. USDA representatives were also present. It is clearly understood that there is general support by industry of the Amendment in the Nature of a Substitute to H.R. 1103 offered in the Subcommittee and adopted by the Committee on June 28, 1995. The industry also agreed to support the substitute amendment without further amendment during all house senate proceedings

The following letter to Subcommittee Chairman Ewing sets forth the support of industry:

JUNE 20, 1995.

Hon. THOMAS EWING,
*Chairman, Risk Management and Specialty Crops Subcommittee,
House of Representatives, Washington, DC.*

DEAR REPRESENTATIVE EWING: The undersigned organizations are pleased to support the substitute PACA reform legislation to be considered by the Risk Management and Specialty Crops Subcommittee tomorrow. This bill is the product of a great deal of discussion and compromise. It addresses and resolves many issues that have divided us for too long.

We believe this legislation will result in a more efficient, effective and equitable PACA program to the benefit of the industry and consumers. Therefore, we strongly urge the Subcommittee to approve the bill as it is written, without amendment, so that this carefully crafted compromise can be enacted into law as expeditiously as possible.

Respectfully,

American Farm Bureau Federation; American Frozen Food Institute; Florida Fruit and Vegetable Association; Food Marketing Institute; National-American Wholesale Grocers' Association/International Foodservice Distributors Association; National Grocers Association; United Fresh Fruit and Vegetable Association; Western Growers Association.

BUSINESS MEETING

On June 21, 1995, the Risk Management and Specialty Crops Subcommittee met, pursuant to notice, to consider H.R. 1103, the "Perishable Agricultural Commodities Act Amendments of 1995". Chairman Ewing called the meeting to order for purpose of consideration of the bill and asked unanimous consent to offer an amendment in the nature of a substitute. Chairman Ewing stated the amendment was a collaborative result of subcommittee, USDA, and industry meetings. The text of the substitute was opened for

amendment. Without objection, report language to clarify definition of retailer, license renewal procedure, multi-year license renewal, investigative authority of USDA, operation of trust provisions, definition of broker and buying broker, and to study the feasibility of including cut flowers, truckers and carriers under PACA was agreed to and recommended for adoption by the Full Committee. Mr. Pombo moved that the Subcommittee adopt the amendment in the nature of a substitute and report it to Full Committee with the recommendation that it do pass. H.R. 1103, as amended, was unanimously approved by voice vote, a quorum being present, and ordered favorably reported to the Full Committee.

FULL COMMITTEE CONSIDERATION

On June 28, 1995, the House Committee on Agriculture met, pursuant to a one-third quorum notice, to consider H.R. 1103, the "Perishable Agricultural Commodities Act Amendments of 1995." Chairman Roberts called the meeting to order for purpose of consideration of the bill and opened the bill for amendment. No amendments being offered, Ranking Minority Member, Kika de la Garza, moved the previous question and that the Committee report the bill, H.R. 1103, as amended, to the House with the recommendation that the bill do pass, which was unanimously adopted. The Motion was adopted by voice vote with a quorum being present. Mr. Ewing moved that the Committee offer such motions as may be necessary in the House to go to conference with the Senate on the bill or a similar Senate bill. The motion was adopted by voice vote with a quorum being present. By voice vote H.R. 1103, as amended, was unanimously approved and ordered favorably reported to the House. Chairman Roberts asked if any Member planned to give notice of intent to file supplemental minority, or additional views. Hearing none, Chairman Roberts gave usual instructions to the staff regarding technical, clarifying or conforming changes and adjourned the meeting.

REPORTING THE BILL—ROLLCALL VOTES

In compliance with clause 2(1)(2) of rule XI of the House of Representatives, H.R. 1103, was reported, as amended, with a quorum actually present. There was no motion or request for a recorded vote.

ADMINISTRATION POSITION

The views of the Administration on H.R. 1103, as amended, to amend the Perishable Agricultural Commodities Act, 1930, to modernize, streamline, and strengthen the operation of the Act, are set forth in the following letter to the Chairman of the Committee on Agriculture:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, July 6, 1995.

Hon. PAT ROBERTS,
*Chairman, Committee on Agriculture, House of Representatives,
Longworth House Office Building, Washington, DC.*

DEAR PAT: We appreciate the opportunity to comment on H.R. 1103, the proposed "Perishable Agricultural Commodities Act Amendments of 1995", as amended and ordered to be reported by the Subcommittee on Risk Management and Specialty Crops on June 21, 1995.

The Department of Agriculture (USDA) supports H.R. 1103, as amended.

H.R. 1103, as amended, is a result of long and strenuous negotiations between the representatives of the affected industries. As with any compromise, no particular party got everything it wanted, but the resulting legislation would ensure that the Perishable Agricultural Commodities Act (PACA) will continue to provide for the fair trading of fresh and frozen fruits and vegetables. While USDA participated in many of the discussions relating to these amendments and offered its advice, H.R. 1103, as amended, represents the compromise reached by the affected industries.

The PACA program administered by the Agricultural Marketing Service (AMS) establishes a code of fair trading practices in the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. For more than 65 years, PACA has protected growers, shippers, distributors, retailers, and consumers by prohibiting unfair and fraudulent practices such as misbranding, mislabeling, and failure to pay promptly.

Central to enforcing PACA is the law's licensing requirement. Individuals and businesses subject to PACA must be licensed and pay an annual fee. The persons subject to PACA would not change under H.R. 1103, as amended. However, fees currently paid by retailers and grocery wholesalers would be phased out over a period of three years. New retailers and grocery wholesalers required to be licensed during the three-year phase out period would pay the fee in effect for the year in which they are licensed. After the three-year phase out period new retailers and wholesale grocers would pay a one-time fee of \$100. The fee for licensees other than retailers and grocery wholesalers would be set at \$550 during the three-year phase out period. After the three years, the Secretary would have the authority to adjust license fees when the PACA operating reserve falls to 25 percent or less of the projected PACA operating budget for the following fiscal year. The current 25 percent cap on an operating reserve would be repealed.

H.R. 1103, as amended, would update the current penalties for operating without a license and fees for late renewal. Current penalties no longer provide adequate incentive to firms to get licensed and renew licenses in a timely manner.

The PACA currently authorizes imposition of monetary penalties in administrative actions only for misbranding violations. In all other administrative disciplinary proceedings PACA's only sanction against a firm that commits repeated and flagrant violations of the law is suspension or revocation on the firm's license. H.R. 1103, as

amended, would better serve the public interest by allowing the Secretary to assess a monetary penalty for a violation of Section 2 of the PACA (not to exceed \$2,000 for each violative transaction or each day the violation continues) in lieu of suspension or revocation of license. H.R. 1103, as amended, would require that the Secretary take into account the size of a business, number of employees, and the seriousness, nature and amount of the violation when imposing the monetary penalty.

The PACA currently requires persons who receive produce subject to the Act to hold all such produce, inventories of produce or products derived from produce, and receivables or proceeds, in trust for the benefit of their unpaid suppliers until payment is made. Currently, those who wish to protect their trust benefits must notify USDA within 30 days after final payment was due. H.R. 1103, as amended, would eliminate USDA's involvement with the trust by removing the requirement that USDA be notified in order for individuals to protect their trust benefits. In discussions of this provision, USDA expressed concerns regarding the "paperless" trust. Representatives of the affected industries that benefit from the trust considered various alternatives and ultimately agreed upon a paperless trust provision. USDA does not oppose this provision and supports H.R. 1103, as amended.

H.R. 1103, as amended, would impose upon USDA new requirements for certain investigations. Under H.R. 1103, as amended, the Secretary would be required to have a written notification of an alleged violation from a person other than an employee of the agency administering the Act, in order to begin an investigation. Under the Bill when the Secretary requires production of certain documents or records for the purpose of investigating a violation alleged in a written notification, the Secretary would be required to notify the subject of the investigation of the existence of the written notification and the nature of the alleged violations of PACA. The identity of any person filing a written notification would remain confidential. USDA would be required to inform the subject of an investigation about the status of the investigation no later than 180 days after the initial notification. The Secretary would be authorized to expand an investigation if additional violations were discovered while investigating a written notification.

H.R. 1103, as amended, would extend current provisions adopted last year that establish filing fees for informal and formal reparation complaints. The current fee rates would be retained but new authority to set the fees by rulemaking would be provided to the Secretary.

The PACA currently provides that when an individual is found to be responsibly connected to a company in violation of PACA, the individual can be banned from working in the industry for a year. However, under current law, if such an individual is found to be working in the industry while under an employment sanction, USDA can bring enforcement action only against the company employing the individual. H.R. 1103, as amended, would permit the Secretary to extend the employment sanction to such individual for an additional year under such circumstances. H.R. 1103, as amended, also would amend the current definition of "responsibly connected" in the Act to allow individuals an opportunity to dem-

onstrate that they were only nominal officers, directors, or shareholders and that they were uninvolved in the violation.

H.R. 1103, as amended, would define collateral fees and expenses and explicitly state that the offer, receipt, or acceptance of such fees would not be unlawful in and of itself. The amended bill also provides that the first licensee to handle misbranded produce will be the only entity liable for a misbranding violation unless a subsequent licensee knew of the violation or could correct it.

Estimated revenues for the PACA program upon implementation of these provisions would approach \$9.4 million in FY 1996, \$9.0 million in FY 1997, and \$8.6 million in FY 1998. During this transition period, additional revenues generated would restore the reserve to a level that would ensure the financial stability of the program. Upon completion of the phaseout of the license fee for retailers and grocery wholesalers, license fees would be expected to generate revenues of about \$6.7 million in FY 1999 and FY 2000.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DAN GLICKMAN,
Secretary.

BUDGET ACT COMPLIANCE (SECTION 308 AND SECTION 403)

The provisions of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, or new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 2(l)(C)(3) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 17, 1995.

Hon. PAT ROBERTS,
*Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1103, the Perishable Agricultural Commodities Act Amendments of 1995.

Enacting H.R. 1103 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1103.

2. Bill title: Perishable Agricultural Commodities Act Amendments of 1995.

3. Bill status: As ordered reported by the House Committee on Agriculture on June 28, 1995.

4. Bill purpose: H.R. 1103 would amend several sections of the Perishable Agricultural Commodities Act (PACA), 1930, which protects producers, shippers, distributors, retailers, and consumers of perishable agricultural commodities from unfair and fraudulent practices such as misbranding, mislabeling, and failure to pay promptly.

H.R. 1103 would phase out annual license fees for retailers and wholesalers of groceries, as well as alter annual license fees for other merchants, dealers, and brokers. After three years, new retailers and wholesalers of groceries would pay only a one-time administrative fee. The cap on other license fees would increase from \$400 to \$550. In addition, the bill would remove the ceiling on operating reserves of the PACA fund, which currently cannot exceed 25 percent of the projected spending needs for the following fiscal year. It also would allow Department of Agriculture (USDA) to increase fees when the operating reserve falls below 25 percent. Any such increase in fees could not occur until three years after the bill is enacted.

The bill also would eliminate the USDA's administrative role in preserving the claims of PACA suppliers against assets to be held statutorily in trust pending final payment. In addition, the bill would:

- Increase the penalties for operating without a license and for renewing a late license;

- Extend the use of filing and handling fees for informal and formal complaints for reparations;

- Allow USDA to impose civil monetary penalties as an alternative to revoking or suspending licenses;

- Require that USDA have a written complaint before pursuing and/or expanding a PACA investigation;

- Raise the minimum threshold for damages necessary to expedite a review from \$15,000 to \$30,000;

- Clarify the status of collateral fees and the prohibition against misbranding; and

- Provide sanctions against individuals employed in the industry while under PACA suspension.

5. Estimated cost to the Federal Government: Enacting H.R. 1103 would increase Federal revenues in fiscal years 1996 through 1998 and would decrease revenues in fiscal years 1999 and 2000. Because USDA's spending authority for PACA activities is derived from the receipts it collects, and is not subject to annual appropriations, H.R. 1103 also would affect direct spending. Because several provisions of the bill would result in decreased administrative costs, we estimate that USDA's total spending for PACA activities would be reduced under H.R. 1103. The estimated budgetary impacts are summarized in the following table:

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000
Revenues:					
Estimated revenues under current law ¹	8	8	8	8	8
Proposed changes	1	1	1	-1	-1
Estimated revenues under H.R. 1103	9	9	9	7	7
Direct spending:					
Spending under current law:					
Estimated budget authority	8	8	8	8	8
Estimated outlays	8	8	8	8	8
Proposed changes:					
Estimated budget authority	1	1	1	-1	-1
Estimated outlays	(2)	(2)	(2)	(2)	(2)
Spending under H.R. 1103:					
Estimated budget authority	9	9	9	7	7
Estimated outlays	7	7	7	7	7

¹ These revenues are deposited into the PACA fund. H.R. 1103 also would affect receipts deposited into the general fund. The amount of these receipts is uncertain but would not be significant.

² Less than \$500,000 annually.

The costs of this bill fall within budget function 350.

6. Basis of estimate: For the purposes of this estimate, CBO assumes that H.R. 1103 would be enacted by the end of fiscal year 1995.

Revenues from license fees and fines.—The PACA program is financed from license fees and fines, which are deposited into a special fund and are spent, without the need for appropriations, for administering PACA. Section 3 would affect these receipts by providing for the gradual elimination of annual licensing fees for retailers and wholesalers of groceries only. This provision would affect approximately 25 percent of the firms covered under PACA. Affected retailers and wholesalers would pay 100 percent of the current, applicable license fee through the first year. They would pay 75 percent of the license fee in year two and 50 percent in year three. In the fourth year and thereafter, no annual fee would be required. (New retailers and wholesalers would be required to pay a one-time administrative fee of \$100.)

For other merchants, dealers, and brokers, section 4 would remove the current cap on fees charged for annual license renewals and would increase the fee amount to \$550 for the next three years. After three years, USDA would have the authority to raise license fees when the balance on hand in the PACA fund falls below 25 percent of the following fiscal year's projected spending needs. In addition, section 5 would increase the fine for an inadvertent operation without a license from \$25 to \$250 and would increase the fine for renewing a license after its expiration date from \$5 to \$50.

Based on information provided by the USDA, CBO estimates that these changes would cause annual receipts from fees and fines to increase by about \$1 million per year in fiscal years 1996 through 1998. In fiscal years 1999 and 2000, we estimate that annual receipts would be less than under current law by about \$1 million a year.

In addition, PACA generates receipts from penalties, which are deposited into the general fund of the U.S. Treasury and are not available for use under PACA. Section 5 would increase the penalty for operating without a license from \$500 to \$1,000 and the daily

penalty for operating without a license from \$25 to \$250. CBO estimates that additional receipts from these penalties would not be significant.

Section 11 would authorize USDA to assess civil monetary penalties against firms in violation of PACA, such as for fraudulently obtaining a license or for misbranding an item. Such penalties would serve as an alternative to suspending or revoking a license. Penalties under this provision could not exceed \$2,000 per violation. We expect that section 11 would affect only a few cases per year and that the amount of additional receipts would not be significant.

Besides the increase in revenues to the general fund, section 11 also could result in additional income to the PACA fund from the collection of annual fees for licenses that otherwise would be suspended or revoked. CBO estimates that any increase in income from such fees would not be significant.

Direct spending.—H.R. 1103 also would affect direct spending by decreasing USDA's administrative expenses. We expect, therefore, that the initial increase in receipts from fees and fines would be used to build up the operating reserves in the PACA fund, and that USDA would probably not need to spend the new budget authority over the next five years. Thus, we expect that the reserve balance for the PACA fund would be sufficient to prevent an increase in annual fees for licenses.

Section 6 would eliminate USDA's role in administering statutorily required trusts. Businesses or individuals receiving items covered under PACA are required to hold these items, or any receivables or proceeds from these items, in trust until final payment is made to the suppliers. Presently, PACA suppliers must notify USDA within 30 days after a late final payment was due in order to protect their claims against a trust. Section 6 would maintain the trusts and require that notification be provided only to the buyers. Based on information provided by the USDA, CBO estimates that this section would decrease direct spending by approximately \$350,000 per year.

Section 7 would change the conditions under which USDA could pursue an investigation of possible violations of PACA. This section would require that USDA have a written complaint in hand before it could pursue and/or expand an investigation. Section 7 also would increase the threshold for damages under which a shortened review process can take place from \$15,000 to \$30,000. This change would adjust for the increase in the cost of perishable agricultural commodities over time and allow USDA to forgo formal hearings for cases involving damages not greater than \$30,000. CBO estimates that the higher threshold would affect only a few cases per year and that the decrease in direct spending from section 7 would not be significant.

By allowing USDA to settle violations by assessing penalties, section 11 could result in savings in direct spending by reducing the number of hearings and appeals. We expect that section 11 would affect only a few cases per year and that the amount of additional receipts would not be significant.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-

you-go procedures for legislation affecting direct spending or receipts through 1998. Because several sections of this bill would affect receipts and direct spending, pay-as-you-go procedures would apply. The following table shows the estimated pay-as-you-go impact of this bill.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998
Change in outlays	0	0	0	0
Change in receipts	0	1	1	1

- 8. Estimated cost to State and local governments: None.
- 9. Estimate comparison: None.
- 10. Previous CBO estimate: None.
- 11. Estimate prepared by: John R. Righter.
- 12. Estimate approved by: Robert A. Sunshine for Paul N. Van de Water, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 1103, as amended, will have no inflationary impact on the national economy.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Reform and Oversight under clause 2(l)(3)(D) of Rule XI of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 1103, as amended.

No specific oversight activities other than the hearings detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of Rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

SECTION 1. SHORT TITLE AND DEFINITIONS.

- (a) * * *
- (b) DEFINITIONS.—For purposes of this Act.
- (1) * * *

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(9) The term “responsibly connected” means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or associa-

tion. A person shall not be deemed to be responsibly connected if the person demonstrates by a preponderance of the evidence that the person was not actively involved in the activities resulting in a violation of this Act and that the person either was only nominally a partner, officer, director, or shareholder of a violating licensee or entity subject to license or was not an owner of a violating licensee or entity subject to license which was the alter ego of its owners.

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(11) The term "retailer" means a person that is a dealer engaged in the business of selling any perishable agricultural commodity at retail.

(12) The term "grocery wholesaler" means a person that is a dealer primarily engaged in the full-line wholesale distribution and resale of grocery and related nonfood items (such as perishable agricultural commodities, dry groceries, general merchandise, meat, poultry, and seafood, and health and beauty care items) to retailers. However, such term does not include a person described in the preceding sentence if the person is primarily engaged in the wholesale distribution and resale of perishable agricultural commodities rather than other grocery and related nonfood items.

(13) The term "collateral fees and expenses" means any promotional allowances, rebates, service or materials fees paid or provided, directly or indirectly, in connection with the distribution or marketing of any perishable agricultural commodity.

UNFAIR CONDUCT

SEC. 2. It shall be unlawful in or in connection with any transaction in interstate or foreign ~~commerce—~~ commerce:

(1) For any commission merchant, dealer, or broker to engage in or use any unfair, unreasonable, discriminatory, or deceptive practice in connection with the weighing, counting, or in any way determining the quantity of any perishable agricultural commodity received, bought, sold, shipped, or handled in interstate or foreign commerce[;].

(2) For any dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause any perishable agricultural commodity bought or sold or contracted to be bought, sold, or consigned in interstate or foreign commerce by such dealer[;].

(3) For any commission merchant to discard, dump, or destroy without reasonable cause any perishable agricultural commodity received by such commission merchant in interstate or foreign commerce[;].

(4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned, in such commerce by such dealer, or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had; or to

fail, without reasonable cause, to perform any specification or duty, expressed or implied, arising out of any undertaking in connection with any such transaction; or to fail to maintain the trust as required under section 5(c)[;]. *However, this paragraph shall not be considered to make the good faith offer, solicitation, payment, or receipt of collateral fees and expenses, in and of itself, unlawful under this Act.*

(5) For any commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree of maturity, or State, country, or region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign [commerce: *Provided, That*] *commerce. However, any commission merchant, dealer, or broker who has violated—*

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

(B) any provision of this paragraph relating to a misrepresentation by mark, stencil, or label shall be permitted by the Secretary to admit the violation or violations if such violation or violations are not repeated or flagrant;

and pay, in the case of a violation under either clause (A) or (B) of this paragraph, a monetary penalty not to exceed \$2,000 in lieu of a formal proceeding for the suspension or revocation of license, any payment so made to be deposited in the Treasury of the United States as miscellaneous receipts[;]. *A person other than the first licensee handling misbranded perishable agricultural commodities shall not be held liable for a violation of this paragraph by reason of the conduct of another if the person did not have knowledge of the violation or lacked the ability to correct the violation.*

* * * * *

[LICENSES

[SEC. 3. (a)]

SEC. 3. LICENSES.

(a) *LICENSE REQUIRED; PENALTIES FOR VIOLATIONS.*—After the expiration of six months after the approval of this Act no person shall at any time carry on the business of a commission merchant, dealer, or broker without a license valid and effective at such time. Any person who violates any provision of this subdivision shall be liable to a penalty of not more than [500] \$1,000 for each such offense and not more than [25] \$250 for each day it continues, which shall accrue to the United States and may be recovered in a civil suit brought by the United States.

Any person violating this provision may, upon a showing satisfactory to the Secretary of Agriculture, or his authorized representative, that such violation was not willful but was due to inadvertence, be permitted by the Secretary, or such representative, to settle his liability in the matter by the payment of the fees due for the period covered by such violation and an additional sum, not in excess of [25] \$250, to be fixed by the Secretary of Agriculture or his authorized representative. Such payment shall be deposited

in the Treasury of the United States in the same manner as regular license fees.

(b) *APPLICATION AND FEES FOR LICENSES.*—

(1) *APPLICATION FOR LICENSE.*—Any person desiring any such license shall make application to the Secretary. The Secretary may by regulation prescribe the information to be contained in such application and to be furnished thereafter. [Upon the filing of the application, and annually thereafter, the applicant shall pay such fee as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this Act and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497), but in no event shall such fee exceed \$400, plus \$200 for each branch or additional business facility operated by the applicant in excess of nine such facilities, as determined by the Secretary. Total annual fees for any applicant shall not exceed \$4,000 in the aggregate.]

(2) *LICENSE FEES.*—Upon the filing of an application under paragraph (1), the applicant shall pay such license fees, both individually and in the aggregate, as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this Act and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497). Thereafter, the licensee shall pay such license fees annually or at such longer interval as the Secretary may prescribe. The Secretary shall take due account of savings to the program when determining an appropriate interval for renewal of licenses. The Secretary shall establish and alter license fees only by rulemaking under section 553 of title 5, United States Code, except that the Secretary may not alter the fees required under paragraph (3) or (4) for retailers and grocery wholesalers that are dealers. Effective on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995 and until such time as the Secretary alters such fees by rule, an individual license fee shall equal \$550 per year, plus \$200 for each branch or additional business facility operated by the applicant in excess of nine such facilities, as determined by the Secretary, subject to an annual aggregate limit of \$4,000 per licensee. Any increase in license fees prescribed by the Secretary under this paragraph shall not take effect unless the Secretary determines that, without such increase, the funds on hand as of the end of the fiscal year in which the increase takes effect will be less than 25 percent of the projected budget to administer such Acts for the next fiscal year. In no case may a license fee increase by the Secretary take effect before the end of the three-year period beginning on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995.

(3) *ONE-TIME FEE FOR RETAILERS AND GROCERY WHOLESALEERS THAT ARE DEALERS.*—During the three-year period beginning on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995, a retailer or grocery wholesaler making an initial application for a license under this section shall pay the license fee required under subparagraph (A), (B), or (C) of paragraph (4) for license renewals

in the year in which the initial application is made. After the end of such period, a retailer or grocery wholesaler making an initial application for a license under this section shall pay an administrative fee equal to \$100. In either case, a retailer or grocery wholesaler paying a fee under this paragraph shall not be required to pay any fee for renewal of the license for subsequent years.

(4) *GRADUAL ELIMINATION OF ANNUAL FEES FOR RETAILERS AND GROCERY WHOLESALERS THAT ARE DEALERS.—In the case of a retailer or grocery wholesaler that holds a license under this section as of the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995, payments for the renewal of the license shall be made pursuant to the following schedule:*

(A) *For anniversary dates occurring during the one-year period beginning on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995, the licensee shall pay a renewal fee in an amount equal to 100 percent of the applicable renewal fee (subject to the \$4,000 aggregate limit on such payments) in effect under this subsection on the day before such enactment date.*

(B) *For anniversary dates occurring during the one-year period beginning at the end of the period in subparagraph (A), the licensee shall pay a renewal fee in an amount equal to 75 percent of the amount paid by the licensee under subparagraph (A).*

(C) *For anniversary dates occurring during the one-year period beginning at the end of the period in subparagraph (B), the licensee shall pay a renewal fee in an amount equal to 50 percent of the amount paid by the licensee under subparagraph (A).*

(D) *After the end of the three-year period beginning on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995, the licensee shall not be required to pay any fee if the licensee seeks renewal of the license.*

(5) *PERISHABLE AGRICULTURAL COMMODITIES ACT FUND.—Such fee, when collected, shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the “Perishable Agricultural Commodities Act Fund”, which shall be available for all expenses necessary to the administration of this Act and the Act approved March 3, 1927, referred to above. Any reserve funds in the Perishable Agricultural Commodities Act Fund may be invested by the Secretary in insured or fully-collateralized interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. Any interest earned on such reserve funds shall be credited to the Perishable Agricultural Commodities Act Fund and shall be available for the same purposes as the fees deposited in such fund. [The amount of money accumulated and on hand in the special fund at the end of any fiscal year shall not exceed 25 percent of the projected budget for the next following fiscal year.] Financial statements prescribed by the Director of*

the Bureau of the Budget for the last completed fiscal year, and as estimated for the current and ensuing fiscal years, shall be included in the budget as submitted to the Congress annually. [The Secretary shall give public notice of any increase to be made in the annual fee prescribed by him hereunder and shall allow a reasonable time prior to the effective date of such increase for interested persons to file their views on or objections to such increase.]

(c) *USE OF TRADE NAMES.*—A licensee may conduct business in more than one trade name or change the name under which business is conducted without requiring an additional or new license. The Secretary may disapprove the use of a trade name if, in his opinion, the use of the trade name by the licensee would be deceptive, misleading, or confusing to the trade, and the Secretary may, after notice and opportunity for a hearing, suspend for a period not to exceed ninety days the license of any licensee who continues to use a trade name which the Secretary has disapproved for use by such licensee. The Secretary may refuse to issue a license to an applicant if he finds that the trade name in which the applicant proposes to do business would be deceptive, misleading, or confusing to the trade if used by such applicant.

SEC. 4. (a) Whenever an applicant has paid the prescribed fee the Secretary, except as provided elsewhere in this Act, shall issue to such applicant a license, which shall entitle the licensee to do business as a commission merchant and/or dealer and/or broker unless and until it is suspended or revoked by the Secretary in accordance with the provisions of this Act, or is automatically suspended under section 7(d) of this Act, but said license shall automatically terminate on [any anniversary date thereof unless the annual fee has been paid] *the anniversary date of the license at the end of the annual or multiyear period covered by the license fee unless the licensee submits the required renewal application and pays the applicable renewal fee (if such fee is required): Provided, That notice of [the necessity of paying the annual fee] the necessity of renewing the license and of paying the renewal fee (if such fee is required) shall be mailed at least thirty days before the anniversary date: Provided, further, That if the [annual fee] renewal fee (if required) is not paid by the anniversary date the licensee may obtain a renewal of that license at any time within thirty days by paying the fee provided in section 3(b), plus [\$5] \$50, which shall be deposited in the Perishable Agricultural Commodities Act fund provided for by section 3(b): And provided further, That the license of any licensee shall terminate upon said licensee, or in case the licensee is a partnership, any partner, being discharged as a bankrupt, unless the Secretary finds upon examination of the circumstances of such bankruptcy, which he shall examine if requested to do so by said licensee, that such circumstances do not warrant such termination.*

(b) The Secretary shall refuse to issue a license to an applicant if he finds that the applicant, or any person responsibly connected with the applicant, *is prohibited from employment with a licensee under section 8(b) or is a person who, or is or was responsibly connected with a person who—*

(A) * * *

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(c) Any applicant ineligible for a license by reason of the provisions of subsection (b) of this section may, upon the expiration of the two-year period applicable to him, be issued a license by the Secretary if such applicant furnishes a surety bond in the form and amount satisfactory to the Secretary as assurance that his business will be conducted in accordance with this Act and that he will pay all reparation orders which may be issued against him in connection with transactions occurring within four years following the issuance of the license, subject to his right of appeal under section 7(c). In the event such applicant does not furnish such a surety bond, the Secretary shall not issue a license to him until three years have elapsed after the date of the applicable order of the Secretary or decision of the court on appeal. If the surety bond so furnished is terminated for any reason without the approval of the Secretary the license shall be automatically canceled as of the date of such termination and no new license shall be issued to such person during the four-year period without a new surety bond covering the remainder of such period. The Secretary, based on changes in the nature and volume of business conducted by a bonded licensee, may require an increase or authorize a reduction in the amount of the bond. A bonded licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and upon failure of the licensee to provide such bond his license shall be automatically suspended until such bond is provided. *The Secretary may not issue a license to an applicant under this subsection if the applicant or any person responsibly connected with the applicant is prohibited from employment with a licensee under section 8(b).*

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LIABILITY TO PERSON DAMAGED

SEC. 5. (a) If any commission merchant, dealer, or broker violates any provision of section 2 he shall be liable to the person or persons injured thereby for the full amount of damages *(including any handling fee paid by the injured person or persons under section 6(a)(2))* sustained in consequence of such violation.

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(c)(1) * * *

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(3) The unpaid supplier, seller, or agent shall lose the benefits of such trust unless such person has given written notice of intent to preserve the benefits of the trust to the commission merchant, dealer, or broker [and has filed such notice with the Secretary] within thirty calendar days (i) after expiration of the time prescribed by which payment must be made, as set forth in regulations issued by the Secretary, (ii) after expiration of such other time by which payment must be made, as the parties have expressly agreed to in writing before entering into the transaction, or (iii) after the time the supplier, seller, or agent has received notice that the payment instrument promptly presented for payment has

been dishonored. *The written notice to the commission merchant, dealer, or broker shall set forth information in sufficient detail to identify the transaction subject to the trust.* When the parties expressly agree to a payment time period different from that established by the Secretary, a copy of any such agreement shall be filed in the records of each party to the transaction and the terms of payment shall be disclosed on invoices, accountings and other documents relating to the transaction.

(4) In addition to the method of preserving the benefits of the trust specified in paragraph (3), a licensee may use ordinary and usual billing or invoice statements to provide notice of the licensee's intent to preserve the trust. The bill or invoice statement must include the information required by the last sentence of paragraph (3) and contain on the face of the statement the following: "The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

[(4)] (5) The several district courts of the United States are vested with jurisdiction specifically to entertain (i) actions by trust beneficiaries to enforce payment from the trust, and (ii) actions by the Secretary to prevent and restrain dissipation of the trust.

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【COMPLAINT AND INVESTIGATION】

【SEC. 6. (a)】

SEC. 6. COMPLAINTS, WRITTEN NOTIFICATIONS, AND INVESTIGATIONS.

(a) REPARATION COMPLAINTS.—

(1) PETITION; PROCESS.—Any person complaining of any violation of any provision of section 2 by any commission merchant, dealer, or broker may, at any time within nine months after the cause of action accrues, apply to the Secretary by petition, which shall briefly state the facts, whereupon, if, in the opinion of the Secretary, the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the Secretary to the commission merchant, dealer, or broker, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be prescribed by the Secretary.

(2) FILING AND HANDLING FEES.—A person submitting a petition to the Secretary under paragraph (1) shall include a filing fee of \$60 per petition. If the Secretary determines under paragraph (1) that the facts contained in the petition warrant further action, the person or persons submitting the petition shall submit to the Secretary a handling fee of \$300. The Secretary may not forward a copy of the complaint to the commission merchant, dealer, or broker involved until after the Secretary receives the required handling fee. The Secretary shall deposit fees submitted under this paragraph into the Perishable Agri-

cultural Commodities Act Fund provided for by section 3(b). The Secretary may alter the fees specified in this paragraph by rulemaking under section 553 of title 5, United States Code.

[(b) Any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any employee of the United States Department of Agriculture or any interested person may file, in accordance with rules and regulations of the Secretary, a complaint of any violation of any provisions of this Act by any commission merchant, dealer, or broker and may request an investigation of such complaint by the Secretary.

[(c) If there appear to be, in the opinion of the Secretary, any reasonable grounds for investigating any complaint made under this section, the Secretary shall investigate such complaint and may, if in his opinion the facts warrant such action, have said complaint served by registered mail or by certified mail or otherwise on the person concerned and afford such person an opportunity for a hearing thereon before a duly authorized examiner of the Secretary in any place in which the said person is engaged in business: *Provided*, That in complaints wherein the amount claimed as damages does not exceed the sum of \$15,000 a hearing need not be held and proof in support of the complaint and in support of respondent's answer may be supplied in the form of depositions or verified statements of fact.]

(b) DISCIPLINARY VIOLATIONS.—Any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any other interested person (other than an employee of an agency of the Department of Agriculture administering this Act) may file, in accordance with rules prescribed by the Secretary, a written notification of any alleged violation of this Act by any commission merchant, dealer, or broker. In addition, any official certificates of the United States Government or States or Territories of the United States and trust notices filed pursuant to section 5 shall constitute written notification for the purposes of conducting an investigation under subsection (c). The identity of any person filing a written notification under this subsection shall be considered to be confidential information. The identity of such person, and any portion of the notification to the extent that it would indicate the identity of such person, are specifically exempt from disclosure under section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), as provided in subsection (b)(3) of such section.

(c) INVESTIGATION OF COMPLAINTS AND NOTIFICATIONS.—

(1) COMMENCING OR EXPANDING AN INVESTIGATION.—If there appears to be, in the opinion of the Secretary, reasonable grounds for investigating a complaint made under subsection (a) or a written notification made under subsection (b), the Secretary shall investigate such complaint or notification. In the course of the investigation, if the Secretary determines that violations of this Act are indicated other than the alleged violations specified in the complaint or notification that served as the basis for the investigation, the Secretary may expand the investigation to include such additional violations.

(2) *ISSUANCE OF COMPLAINT BY SECRETARY; PROCESS.*—In the opinion of the Secretary, if an investigation under this subsection substantiates the existence of violations of this Act, the Secretary may cause a complaint to be issued. The Secretary shall have the complaint served by registered mail or certified mail or otherwise on the person concerned and afford such person an opportunity for a hearing thereon before a duly authorized examiner of the Secretary in any place in which the subject of the complaint is engaged in business. However, in complaints wherein the amount claimed as damages does not exceed \$30,000, a hearing need not be held and proof in support of the complaint and in support of respondent's answer may be supplied in the form of depositions or verified statements of fact.

(3) *SPECIAL NOTIFICATION REQUIREMENTS FOR CERTAIN INVESTIGATIONS.*—Whenever the Secretary initiates an investigation on the basis of a written notification made under subsection (b) or expands such an investigation, the Secretary shall promptly notify the subject of the investigation of the existence of the investigation and the nature of the alleged violations of this Act to be investigated. Not later than 180 days after providing the initial notification, the Secretary shall provide the subject of the investigation with notice of the status of the investigation, including whether the Secretary intends to issue a complaint under paragraph (2), terminate the investigation, or continue or expand the investigation. The Secretary shall provide additional status reports at the request of the subject of the investigation and shall promptly notify the subject of the investigation whenever the Secretary terminates the investigation.

(d) *DECISIONS ON COMPLAINTS.*—After opportunity for hearing on complaints where the damages claimed exceed the sum of **[\$15,000]** \$30,000 has been provided or waived and on complaints where damages claimed do not exceed the sum of **[\$15,000]** \$30,000 not requiring hearing as provided herein, the Secretary shall determine whether or not the commission merchant, dealer, or broker has violated any provision of section 2.

(e) *BOND REQUIRED FOR CERTAIN COMPLAINTS.*—In case a complaint is made by a nonresident of the United States, or by a resident of the United States to whom the claim of a nonresident of the United States has been assigned, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Secretary of Agriculture against the complainant on any counter claim by respondent: *Provided*, That the Secretary shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the furnishing of a bond.

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SUSPENSION AND REVOCATION OF LICENSE

SEC. 8. (a) * * *

(b) Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person—

(1) whose license has been revoked or is currently suspended by order of the Secretary;

(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7(c).

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this Act and that the licensee will pay all reparation awards, subject to its right to appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section. *The Secretary may extend the period of employment sanction as to a responsibly connected person for an additional one-year period upon the determination that the person has been unlawfully employed as provided in this subsection.*

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(e) ALTERNATIVE CIVIL PENALTIES.—In lieu of suspending or revoking a license under this section when the Secretary determines, as provided by section 6, that a commission merchant, dealer, or broker has violated section 2 or subsection (b) of this section, the Secretary may assess a civil penalty not to exceed \$2,000 for each violative transaction or each day the violation continues. In assessing the amount of a penalty under this subsection, the Secretary shall give due consideration to the size of the business, the number of employees, and the seriousness, nature, and amount of the violation. Amounts collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

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ACT OF JULY 5, 1994

AN ACT To provide for the imposition of temporary fees in connection with the handling of complaints of violations of the Perishable Agricultural Commodities Act, 1930.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FILING AND HANDLING FEES FOR COMPLAINTS OF VIOLATIONS OF PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930.

[(a) TEMPORARY FILING FEE REQUIRED.—During fiscal years 1995 and 1996, the Secretary of Agriculture shall require persons who submit petitions to the Secretary under section 6(a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499f(a)), alleging a violation of section 2 of such Act (7 U.S.C. 499b), to include a filing fee of \$60 per petition.

[(b) TEMPORARY HANDLING FEE REQUIRED.—During fiscal years 1995 and 1996, if the Secretary determines under section 6(a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499f(a)), that the facts contained in a petition described in such section warrant further action, the person or persons submitting the petition shall submit to the Secretary a handling fee of \$300. The Secretary may not forward a copy of the complaint to the commission merchant, dealer, or broker involved until after the Secretary receives the required handling fee. In determining the amount of damages incurred by an injured person or persons preparatory to issuing a reparation order under section 7 of such Act (7 U.S.C. 499g), the Secretary shall include the amount of any handling fee paid by the injured person or persons under this subsection.

[(c) DEPOSIT OF FEES.—The Secretary shall deposit fees submitted under this section into the Perishable Agricultural Commodities Act Fund.]