

104TH CONGRESS
1ST SESSION

H. R. 1103

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 10), 1995

Read twice and referred to the Committee on Agriculture, Nutrition, and
Forestry

AN ACT

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

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Perishable Agricultural Commodities Act Amendments of
4 1995”.

5 (b) TABLE OF CONTENTS.—The table of contents of
6 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.

7 **SEC. 2. ADDITION OF DEFINITIONS OF RETAILER AND GRO-**
8 **CERY WHOLESALER.**

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

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

15 “(12) The term ‘grocery wholesaler’ means a person
16 that is a dealer primarily engaged in the full-line wholesale
17 distribution and resale of grocery and related nonfood

1 items (such as perishable agricultural commodities, dry
2 groceries, general merchandise, meat, poultry, and sea-
3 food, and health and beauty care items) to retailers. How-
4 ever, such term does not include a person described in the
5 preceding sentence if the person is primarily engaged in
6 the wholesale distribution and resale of perishable agricul-
7 tural commodities rather than other grocery and related
8 nonfood items.”.

9 **SEC. 3. GRADUAL ELIMINATION OF ANNUAL LICENSE FEE**
10 **FOR RETAILERS AND GROCERY WHOLE-**
11 **SALERS THAT ARE DEALERS.**

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

16 (1) by inserting “(1) APPLICATION FOR LI-
17 CENSE.—” before the start of the first sentence and
18 adjusting the margin to conform to paragraph (3);

19 (2) by striking the third and fourth sentences;

20 (3) by inserting “(5) PERISHABLE AGRICUL-
21 TURAL COMMODITIES ACT FUND.—” before the start
22 of the fifth sentence and adjusting the margin to
23 conform to paragraph (3);

24 (4) by striking the last sentence; and

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

3 “(3) ONE-TIME FEE FOR RETAILERS AND GRO-
4 CERY WHOLESALERS THAT ARE DEALERS.—During
5 the three-year period beginning on the date of the
6 enactment of the Perishable Agricultural Commod-
7 ities Act Amendments of 1995, a retailer or grocery
8 wholesaler making an initial application for a license
9 under this section shall pay the license fee required
10 under subparagraph (A), (B), or (C) of paragraph
11 (4) for license renewals in the year in which the ini-
12 tial application is made. After the end of such pe-
13 riod, a retailer or grocery wholesaler making an ini-
14 tial application for a license under this section shall
15 pay an administrative fee equal to \$100. In either
16 case, a retailer or grocery wholesaler paying a fee
17 under this paragraph shall not be required to pay
18 any fee for renewal of the license for subsequent
19 years.

20 “(4) GRADUAL ELIMINATION OF ANNUAL FEES
21 FOR RETAILERS AND GROCERY WHOLESALERS THAT
22 ARE DEALERS.—In the case of a retailer or grocery
23 wholesaler that holds a license under this section as
24 of the date of the enactment of the Perishable Agri-
25 cultural Commodities Act Amendments of 1995,

1 payments for the renewal of the license shall be
2 made pursuant to the following schedule:

3 “(A) For anniversary dates occurring dur-
4 ing the one-year period beginning on the date
5 of the enactment of the Perishable Agricultural
6 Commodities Act Amendments of 1995, the li-
7 censee shall pay a renewal fee in an amount
8 equal to 100 percent of the applicable renewal
9 fee (subject to the \$4,000 aggregate limit on
10 such payments) in effect under this subsection
11 on the day before such enactment date.

12 “(B) For anniversary dates occurring dur-
13 ing the one-year period beginning at the end of
14 the period in subparagraph (A), the licensee
15 shall pay a renewal fee in an amount equal to
16 75 percent of the amount paid by the licensee
17 under subparagraph (A).

18 “(C) For anniversary dates occurring dur-
19 ing the one-year period beginning at the end of
20 the period in subparagraph (B), the licensee
21 shall pay a renewal fee in an amount equal to
22 50 percent of the amount paid by the licensee
23 under subparagraph (A).

24 “(D) After the end of the three-year period
25 beginning on the date of the enactment of the

1 Perishable Agricultural Commodities Act
2 Amendments of 1995, the licensee shall not be
3 required to pay any fee if the licensee seeks re-
4 newal of the license.”.

5 (b) **STYLISTIC AMENDMENTS.**—Such section is fur-
6 ther amended—

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

9 **“SEC. 3. LICENSES.**

10 “(a) **LICENSE REQUIRED; PENALTIES FOR VIOLA-**
11 **TIONS.—**”;

12 (2) in subsection (b), by inserting “**APPLICA-**
13 **TION AND FEES FOR LICENSES.—**” after “(b)”; and

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

16 **SEC. 4. ESTABLISHMENT AND ALTERATION OF LICENSE**

17 **FEES FOR COMMISSION MERCHANTS, DEAL-**

18 **ERS (OTHER THAN RETAILERS AND GROCERY**

19 **WHOLESALEERS), AND BROKERS.**

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

1 “(2) LICENSE FEES.—Upon the filing of an ap-
2 plication under paragraph (1), the applicant shall
3 pay such license fees, both individually and in the
4 aggregate, as the Secretary determines necessary to
5 meet the reasonably anticipated expenses for admin-
6 istering this Act and the Act to prevent the destruc-
7 tion or dumping of farm produce, approved March
8 3, 1927 (7 U.S.C. 491–497). Thereafter, the li-
9 censee shall pay such license fees annually or at
10 such longer interval as the Secretary may prescribe.
11 The Secretary shall take due account of savings to
12 the program when determining an appropriate inter-
13 val for renewal of licenses. The Secretary shall es-
14 tablish and alter license fees only by rulemaking
15 under section 553 of title 5, United States Code, ex-
16 cept that the Secretary may not alter the fees re-
17 quired under paragraph (3) or (4) for retailers and
18 grocery wholesalers that are dealers. Effective on the
19 date of the enactment of the Perishable Agricultural
20 Commodities Act Amendments of 1995 and until
21 such time as the Secretary alters such fees by rule,
22 an individual license fee shall equal \$550 per year,
23 plus \$200 for each branch or additional business fa-
24 cility operated by the applicant in excess of nine
25 such facilities, as determined by the Secretary, sub-

1 ject to an annual aggregate limit of \$4,000 per li-
2 censee. Any increase in license fees prescribed by the
3 Secretary under this paragraph shall not take effect
4 unless the Secretary determines that, without such
5 increase, the funds on hand as of the end of the fis-
6 cal year in which the increase takes effect will be
7 less than 25 percent of the projected budget to ad-
8 minister such Acts for the next fiscal year. In no
9 case may a license fee increase by the Secretary take
10 effect before the end of the three-year period begin-
11 ning on the date of the enactment of the Perishable
12 Agricultural Commodities Act Amendments of
13 1995.”.

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

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

21 (1) in the matter preceding the provisos, by
22 striking “any anniversary date thereof unless the an-
23 nual fee has been paid” and inserting “the anniver-
24 sary date of the license at the end of the annual or
25 multiyear period covered by the license fee unless

1 the licensee submits the required renewal application
2 and pays the applicable renewal fee (if such fee is
3 required)”;

4 (2) in the first proviso, by striking “the neces-
5 sity of paying the annual fee” and inserting “the ne-
6 cessity of renewing the license and of paying the re-
7 newal fee (if such fee is required)”; and

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

10 **SEC. 5. INCREASE IN PENALTIES FOR OPERATING WITH-**
11 **OUT A LICENSE AND INCREASE IN LATE RE-**
12 **NEWAL FEE.**

13 (a) LICENSE PENALTIES.—Section 3(a) of the Per-
14 ishable Agricultural Commodities Act, 1930 (7 U.S.C.
15 499c(a)), as amended by section 3(b)(1), is further
16 amended—

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

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

21 (b) LATE FILING FEES.—Section 4(a) of the Perish-
22 able Agricultural Commodities Act, 1930 (7 U.S.C.
23 499d(a)), as amended by section 4(c), is further amended
24 in the second proviso by striking “plus \$5” and inserting
25 “plus \$50”.

1 **SEC. 6. STATUTORY TRUST ON COMMODITIES AND SALE**
2 **PROCEEDS.**

3 (a) REPEAL OF SECRETARIAL NOTIFICATION RE-
4 QUIREMENT.—Paragraph (3) of section 5(c) of the Perish-
5 able Agricultural Commodities Act, 1930 (7 U.S.C.
6 499e(c)), is amended in the first sentence by striking “and
7 has filed such notice with the Secretary”.

8 (b) CLARIFICATION OF CONTENT OF NOTIFICA-
9 TION.—Such paragraph is further amended by inserting
10 after the first sentence the following new sentence: “The
11 written notice to the commission merchant, dealer, or
12 broker shall set forth information in sufficient detail to
13 identify the transaction subject to the trust.”.

14 (c) ADDITIONAL METHOD OF NOTIFICATION FOR LI-
15 CENSEES.—Such section is further amended—

16 (1) by redesignating paragraph (4) as para-
17 graph (5); and

18 (2) by inserting after paragraph (3) the follow-
19 ing new paragraph:

20 “(4) In addition to the method of preserving the ben-
21 efits of the trust specified in paragraph (3), a licensee may
22 use ordinary and usual billing or invoice statements to
23 provide notice of the licensee’s intent to preserve the trust.
24 The bill or invoice statement must include the information
25 required by the last sentence of paragraph (3) and contain
26 on the face of the statement the following: “The perishable

1 agricultural commodities listed on this invoice are sold
2 subject to the statutory trust authorized by section 5(c)
3 of the Perishable Agricultural Commodities Act, 1930 (7
4 U.S.C. 499e(c)). The seller of these commodities retains
5 a trust claim over these commodities, all inventories of
6 food or other products derived from these commodities,
7 and any receivables or proceeds from the sale of these
8 commodities until full payment is received.'.”.

9 **SEC. 7. AUTHORITY OF DEPARTMENT OF AGRICULTURE**
10 **REGARDING POSSIBLE VIOLATIONS.**

11 (a) DISCIPLINARY VIOLATIONS.—Subsection (b) of
12 section 6 of the Perishable Agricultural Commodities Act,
13 1930 (7 U.S.C. 499f), is amended to read as follows:

14 “(b) DISCIPLINARY VIOLATIONS.—Any officer or
15 agency of any State or Territory having jurisdiction over
16 commission merchants, dealers, or brokers in such State
17 or Territory and any other interested person (other than
18 an employee of an agency of the Department of Agri-
19 culture administering this Act) may file, in accordance
20 with rules prescribed by the Secretary, a written notifica-
21 tion of any alleged violation of this Act by any commission
22 merchant, dealer, or broker. In addition, any official cer-
23 tificates of the United States Government or States or
24 Territories of the United States and trust notices filed
25 pursuant to section 5 shall constitute written notification

1 for the purposes of conducting an investigation under sub-
2 section (c). The identity of any person filing a written no-
3 tification under this subsection shall be considered to be
4 confidential information. The identity of such person, and
5 any portion of the notification to the extent that it would
6 indicate the identity of such person, are specifically ex-
7 empt from disclosure under section 552 of title 5, United
8 States Code (commonly known as the Freedom of Infor-
9 mation Act), as provided in subsection (b)(3) of such sec-
10 tion.”.

11 (b) GROUNDS AND PROCESS OF INVESTIGATIONS.—
12 Subsection (c) of such section is amended to read as fol-
13 lows:

14 “(c) INVESTIGATION OF COMPLAINTS AND NOTIFICA-
15 TIONS.—

16 “(1) COMMENCING OR EXPANDING AN INVES-
17 TIGATION.—If there appears to be, in the opinion of
18 the Secretary, reasonable grounds for investigating a
19 complaint made under subsection (a) or a written
20 notification made under subsection (b), the Sec-
21 retary shall investigate such complaint or notifica-
22 tion. In the course of the investigation, if the Sec-
23 retary determines that violations of this Act are in-
24 dicated other than the alleged violations specified in
25 the complaint or notification that served as the basis

1 for the investigation, the Secretary may expand the
2 investigation to include such additional violations.

3 “(2) ISSUANCE OF COMPLAINT BY SECRETARY;
4 PROCESS.—In the opinion of the Secretary, if an in-
5 vestigation under this subsection substantiates the
6 existence of violations of this Act, the Secretary may
7 cause a complaint to be issued. The Secretary shall
8 have the complaint served by registered mail or cer-
9 tified mail or otherwise on the person concerned and
10 afford such person an opportunity for a hearing
11 thereon before a duly authorized examiner of the
12 Secretary in any place in which the subject of the
13 complaint is engaged in business. However, in com-
14 plaints wherein the amount claimed as damages does
15 not exceed \$30,000, a hearing need not be held and
16 proof in support of the complaint and in support of
17 respondent’s answer may be supplied in the form of
18 depositions or verified statements of fact.

19 “(3) SPECIAL NOTIFICATION REQUIREMENTS
20 FOR CERTAIN INVESTIGATIONS.—Whenever the Sec-
21 retary initiates an investigation on the basis of a
22 written notification made under subsection (b) or ex-
23 pands such an investigation, the Secretary shall
24 promptly notify the subject of the investigation of
25 the existence of the investigation and the nature of

1 the alleged violations of this Act to be investigated.
2 Not later than 180 days after providing the initial
3 notification, the Secretary shall provide the subject
4 of the investigation with notice of the status of the
5 investigation, including whether the Secretary in-
6 tends to issue a complaint under paragraph (2), ter-
7minate the investigation, or continue or expand the
8 investigation. The Secretary shall provide additional
9 status reports at the request of the subject of the in-
10 vestigation and shall promptly notify the subject of
11 the investigation whenever the Secretary terminates
12 the investigation.”.

13 (c) INCREASE IN THRESHOLD FOR SHORTENED PRO-
14 CEDURE CASES.—Subsection (d) of such section is amend-
15 ed by striking “\$15,000” both places it appears and in-
16 serting “\$30,000”.

17 (d) STYLISTIC AMENDMENTS.—Such section is fur-
18 ther amended—

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

21 **“SEC. 6. COMPLAINTS, WRITTEN NOTIFICATIONS, AND IN-**
22 **VESTIGATIONS.”;**

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

1 (3) in subsection (e), by inserting “BOND RE-
2 QUIRED FOR CERTAIN COMPLAINTS.—” after “(e)”.

3 **SEC. 8. FILING AND HANDLING FEES FOR REPARATION**
4 **COMPLAINTS.**

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

8 (1) by striking “(a)” and inserting the follow-
9 ing:

10 “(a) REPARATION COMPLAINTS.—

11 “(1) PETITION; PROCESS.—”; and

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

14 “(2) FILING AND HANDLING FEES.—A person
15 submitting a petition to the Secretary under para-
16 graph (1) shall include a filing fee of \$60 per peti-
17 tion. If the Secretary determines under paragraph
18 (1) that the facts contained in the petition warrant
19 further action, the person or persons submitting the
20 petition shall submit to the Secretary a handling fee
21 of \$300. The Secretary may not forward a copy of
22 the complaint to the commission merchant, dealer,
23 or broker involved until after the Secretary receives
24 the required handling fee. The Secretary shall de-
25 posit fees submitted under this paragraph into the

1 Perishable Agricultural Commodities Act Fund pro-
2 vided for by section 3(b). The Secretary may alter
3 the fees specified in this paragraph by rulemaking
4 under section 553 of title 5, United States Code.”.

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

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

13 **SEC. 9. CONSIDERATION OF COLLATERAL FEES AND EX-**
14 **PENSES.**

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

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

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

1 (1) by striking “commerce—” in the matter be-
2 fore paragraph (1) and inserting “commerce:”;

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

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

10 **SEC. 10. CLARIFICATION OF MISBRANDING PROHIBITION.**

11 Section 2(5) of the Perishable Agricultural Commod-
12 ities Act, 1930 (7 U.S.C. 499b(5)), is amended—

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

15 (2) by adding at the end the following new sen-
16 tence: “A person other than the first licensee han-
17 dling misbranded perishable agricultural commod-
18 ities shall not be held liable for a violation of this
19 paragraph by reason of the conduct of another if the
20 person did not have knowledge of the violation or
21 lacked the ability to correct the violation.”.

1 **SEC. 11. IMPOSITION OF CIVIL PENALTY IN LIEU OF LI-**
2 **CENSE SUSPENSION OR REVOCATION.**

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

6 “(e) ALTERNATIVE CIVIL PENALTIES.—In lieu of
7 suspending or revoking a license under this section when
8 the Secretary determines, as provided by section 6, that
9 a commission merchant, dealer, or broker has violated sec-
10 tion 2 or subsection (b) of this section, the Secretary may
11 assess a civil penalty not to exceed \$2,000 for each viola-
12 tive transaction or each day the violation continues. In as-
13 sessing the amount of a penalty under this subsection, the
14 Secretary shall give due consideration to the size of the
15 business, the number of employees, and the seriousness,
16 nature, and amount of the violation. Amounts collected
17 under this subsection shall be deposited in the Treasury
18 of the United States as miscellaneous receipts.”.

19 **SEC. 12. EXTENSION OF SANCTIONS TO PERSONS RESPON-**
20 **SIBLY CONNECTED TO A COMMISSION MER-**
21 **CHANT, DEALER, OR BROKER.**

22 (a) EXCEPTION TO DEFINITION.—Section 1(b)(9) of
23 the Perishable Agricultural Commodities Act, 1930 (7
24 U.S.C. 499a(b)(9)), is amended by adding at the end the
25 following new sentence: “A person shall not be deemed to
26 be responsibly connected if the person demonstrates by a

1 preponderance of the evidence that the person was not ac-
2 tively involved in the activities resulting in a violation of
3 this Act and that the person either was only nominally
4 a partner, officer, director, or shareholder of a violating
5 licensee or entity subject to license or was not an owner
6 of a violating licensee or entity subject to license which
7 was the alter ego of its owners.”.

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

15 (c) CONFORMING AMENDMENT REGARDING LICENS-
16 ING SANCTION.—Section 4 of such Act (7 U.S.C. 499d)
17 is amended—

18 (1) in subsection (b), by inserting “is prohibited
19 from employment with a licensee under section 8(b)
20 or” after “with the applicant,” in the matter preced-
21 ing subparagraph (A); and

22 (2) in subsection (c), by adding at the end the
23 following new sentence: “The Secretary may not
24 issue a license to an applicant under this subsection
25 if the applicant or any person responsibly connected

1 with the applicant is prohibited from employment
2 with a licensee under section 8(b).”.

Passed the House of Representatives July 28, 1995.

Attest: ROBIN H. CARLE,
Clerk.