

Union Calendar No. 106

104TH CONGRESS
1ST SESSION

H. R. 1103

[Report No. 104-207]

A BILL

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

JULY 26, 1995

Reported with amendments, committed to the Committee
of the Whole House on the State of the Union, and or-
dered to be printed

Union Calendar No. 106

104TH CONGRESS
1ST SESSION

H. R. 1103

[Report No. 104-207]

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 1995

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

JULY 26, 1995

Additional sponsors: Mr. GALLEGLY, Mr. HOLDEN, Mr. EHLERS, Mr. CHAMBLISS, Mr. WELDON of Florida, Mr. GORDON, Mr. UPTON, Mr. DOOLEY, Mrs. CLAYTON, Mr. MCHUGH, Mr. HERGER, Mr. HASTINGS of Washington, Mr. JONES, Mr. RADANOVICH, Mr. HASTINGS of Florida, Mrs. SEASTRAND, Mr. COOLEY, Mr. FOGLIETTA, Mr. EVERETT, Mr. FAZIO of California, Mr. CRAPO, Mr. CALVERT, Mr. GEKAS, and Mr. BOEHNER

JULY 26, 1995

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 1, 1995]

A BILL

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

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

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

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

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

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

22 (3) by inserting “(5) *PERISHABLE AGRICUL-*
 23 *TURAL COMMODITIES ACT FUND.—*” before the start of
 24 the fifth sentence and adjusting the margin to con-
 25 form to paragraph (3);

1 (4) by striking the last sentence; and

2 (5) by inserting before paragraph (5) (as so des-
3 ignated) the following new paragraphs:

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

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

3 *“(A) For anniversary dates occurring dur-*
4 *ing the one-year period beginning on the date of*
5 *the enactment of the Perishable Agricultural*
6 *Commodities Act Amendments of 1995, the li-*
7 *icensee shall pay a renewal fee in an amount*
8 *equal to 100 percent of the applicable renewal fee*
9 *(subject to the \$4,000 aggregate limit on such*
10 *payments) in effect under this subsection on the*
11 *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 shall*
15 *pay a renewal fee in an amount equal to 75 per-*
16 *cent of the amount paid by the licensee under*
17 *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 re-*
3 *quired to pay any fee if the licensee seeks re-*
4 *newal of the license.”.*

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

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

9 **“SEC. 3. LICENSES.**

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

12 *(2) in subsection (b), by inserting “APPLICATION*
13 *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 Agricultural*
22 *Commodities Act, 1930 (7 U.S.C. 499c(b)), is amended by*
23 *inserting after paragraph (1), as designated by section*
24 *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 ag-
4 gregate, as the Secretary determines necessary to meet
5 the reasonably anticipated expenses for administering
6 this Act and the Act to prevent the destruction or
7 dumping of farm produce, approved March 3, 1927 (7
8 U.S.C. 491–497). Thereafter, the licensee shall pay
9 such license fees annually or at such longer interval
10 as the Secretary may prescribe. The Secretary shall
11 take due account of savings to the program when de-
12 termining an appropriate interval for renewal of li-
13 censes. The Secretary shall establish and alter license
14 fees only by rulemaking under section 553 of title 5,
15 United States Code, except that the Secretary may
16 not alter the fees required under paragraph (3) or (4)
17 for retailers and grocery wholesalers that are dealers.
18 Effective on the date of the enactment of the *Perish-*
19 *able Agricultural Commodities Act Amendments of*
20 *1995* and until such time as the Secretary alters such
21 fees by rule, an individual license fee shall equal \$550
22 per year, plus \$200 for each branch or additional
23 business facility operated by the applicant in excess
24 of nine such facilities, as determined by the Secretary,
25 subject to an annual aggregate limit of \$4,000 per li-

1 *censee. Any increase in license fees prescribed by the*
2 *Secretary under this paragraph shall not take effect*
3 *unless the Secretary determines that, without such in-*
4 *crease, the funds on hand as of the end of the fiscal*
5 *year in which the increase takes effect will be less*
6 *than 25 percent of the projected budget to administer*
7 *such Acts for the next fiscal year. In no case may a*
8 *license fee increase by the Secretary take effect before*
9 *the end of the three-year period beginning on the date*
10 *of the enactment of the Perishable Agricultural Com-*
11 *modities Act Amendments of 1995.”.*

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

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

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

1 *pays the applicable renewal fee (if such fee is re-*
2 *quired)”;*

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

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

9 **SEC. 5. INCREASE IN PENALTIES FOR OPERATING WITHOUT**

10 **A LICENSE AND INCREASE IN LATE RENEWAL**

11 **FEE.**

12 *(a) LICENSE PENALTIES.—Section 3(a) of the Perish-*
13 *able Agricultural Commodities Act, 1930 (7 U.S.C.*
14 *499c(a)), as amended by section 3(b)(1), is further amend-*
15 *ed—*

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

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

20 *(b) LATE FILING FEES.—Section 4(a) of the Perish-*
21 *able Agricultural Commodities Act, 1930 (7 U.S.C.*
22 *499d(a)), as amended by section 4(c), is further amended*
23 *in the second proviso by striking “plus \$5” and inserting*
24 *“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 NOTIFICATION.*—
9 *Such paragraph is further amended by inserting after the*
10 *first sentence the following new sentence: “The written no-*
11 *tice to the commission merchant, dealer, or broker shall set*
12 *forth information in sufficient detail to identify the trans-*
13 *action 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 bene-*
21 *fits of the trust specified in paragraph (3), a licensee may*
22 *use ordinary and usual billing or invoice statements to pro-*
23 *vide notice of the licensee’s intent to preserve the trust. The*
24 *bill or invoice statement must include the information re-*
25 *quired 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 sub-*
2 *ject to the statutory trust authorized by section 5(c) of the*
3 *Perishable Agricultural Commodities Act, 1930 (7 U.S.C.*
4 *499e(c)). The seller of these commodities retains a trust*
5 *claim over these commodities, all inventories of food or other*
6 *products derived from these commodities, and any receiv-*
7 *ables or proceeds from the sale of these commodities until*
8 *full payment is received.'."*

9 **SEC. 7. AUTHORITY OF DEPARTMENT OF AGRICULTURE RE-**
10 **GARDING POSSIBLE VIOLATIONS.**

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

14 *“(b) DISCIPLINARY VIOLATIONS.—Any officer or agen-*
15 *cy of any State or Territory having jurisdiction over com-*
16 *mission merchants, dealers, or brokers in such State or Ter-*
17 *ritory and any other interested person (other than an em-*
18 *ployee of an agency of the Department of Agriculture ad-*
19 *ministering this Act) may file, in accordance with rules*
20 *prescribed by the Secretary, a written notification of any*
21 *alleged violation of this Act by any commission merchant,*
22 *dealer, or broker. In addition, any official certificates of*
23 *the United States Government or States or Territories of*
24 *the United States and trust notices filed pursuant to section*
25 *5 shall constitute written notification for the purposes of*

1 *conducting an investigation under subsection (c). The iden-*
2 *tity of any person filing a written notification under this*
3 *subsection shall be considered to be confidential informa-*
4 *tion. The identity of such person, and any portion of the*
5 *notification to the extent that it would indicate the identity*
6 *of such person, are specifically exempt from disclosure*
7 *under section 552 of title 5, United States Code (commonly*
8 *known as the Freedom of Information Act), as provided in*
9 *subsection (b)(3) of such section.”.*

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

12 *“(c) INVESTIGATION OF COMPLAINTS AND NOTIFICA-*
13 *TIONS.—*

14 *“(1) COMMENCING OR EXPANDING AN INVESTIGA-*
15 *TION.—If there appears to be, in the opinion of the*
16 *Secretary, reasonable grounds for investigating a*
17 *complaint made under subsection (a) or a written no-*
18 *tification made under subsection (b), the Secretary*
19 *shall investigate such complaint or notification. In*
20 *the course of the investigation, if the Secretary deter-*
21 *mines that violations of this Act are indicated other*
22 *than the alleged violations specified in the complaint*
23 *or notification that served as the basis for the inves-*
24 *tigation, the Secretary may expand the investigation*
25 *to include such additional violations.*

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

17 “(3) *SPECIAL NOTIFICATION REQUIREMENTS FOR*
18 *CERTAIN INVESTIGATIONS.*—*Whenever the Secretary*
19 *initiates an investigation on the basis of a written*
20 *notification made under subsection (b) or expands*
21 *such an investigation, the Secretary shall promptly*
22 *notify the subject of the investigation of the existence*
23 *of the investigation and the nature of the alleged vio-*
24 *lations of this Act to be investigated. Not later than*
25 *180 days after providing the initial notification, the*

1 *Secretary shall provide the subject of the investigation*
2 *with notice of the status of the investigation, includ-*
3 *ing whether the Secretary intends to issue a com-*
4 *plaint under paragraph (2), terminate the investiga-*
5 *tion, or continue or expand the investigation. The*
6 *Secretary shall provide additional status reports at*
7 *the request of the subject of the investigation and shall*
8 *promptly notify the subject of the investigation when-*
9 *ever the Secretary terminates the investigation.”.*

10 (c) *INCREASE IN THRESHOLD FOR SHORTENED PRO-*
11 *CEDURE CASES.—Subsection (d) of such section is amended*
12 *by striking “\$15,000” both places it appears and inserting*
13 *“\$30,000”.*

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

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

18 **“SEC. 6. COMPLAINTS, WRITTEN NOTIFICATIONS, AND IN-**
19 **VESTIGATIONS.”;**

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

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

1 **SEC. 8. FILING AND HANDLING FEES FOR REPARATION**
2 **COMPLAINTS.**

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

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

7 “(a) *REPARATION COMPLAINTS.*—

8 “(1) *PETITION; PROCESS.*—”; and

9 (2) *by adding at the end the following new para-*
10 *graph:*

11 “(2) *FILING AND HANDLING FEES.*—A person
12 *submitting a petition to the Secretary under para-*
13 *graph (1) shall include a filing fee of \$60 per peti-*
14 *tion. If the Secretary determines under paragraph (1)*
15 *that the facts contained in the petition warrant fur-*
16 *ther action, the person or persons submitting the peti-*
17 *tion shall submit to the Secretary a handling fee of*
18 *\$300. The Secretary may not forward a copy of the*
19 *complaint to the commission merchant, dealer, or*
20 *broker involved until after the Secretary receives the*
21 *required handling fee. The Secretary shall deposit fees*
22 *submitted under this paragraph into the Perishable*
23 *Agricultural Commodities Act Fund provided for by*
24 *section 3(b). The Secretary may alter the fees speci-*
25 *fied in this paragraph by rulemaking under section*
26 *553 of title 5, United States Code.”.*

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

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

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

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

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

18 **SEC. 11. IMPOSITION OF CIVIL PENALTY IN LIEU OF LI-**

19 **CENSE SUSPENSION OR REVOCATION.**

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

23 “(e) *ALTERNATIVE CIVIL PENALTIES.*—In lieu of sus-
24 pending or revoking a license under this section when the
25 Secretary determines, as provided by section 6, that a com-

1 *mission merchant, dealer, or broker has violated section 2*
2 *or subsection (b) of this section, the Secretary may assess*
3 *a civil penalty not to exceed \$2,000 for each violative trans-*
4 *action or each day the violation continues. In assessing the*
5 *amount of a penalty under this subsection, the Secretary*
6 *shall give due consideration to the size of the business, the*
7 *number of employees, and the seriousness, nature, and*
8 *amount of the violation. Amounts collected under this sub-*
9 *section shall be deposited in the Treasury of the United*
10 *States as miscellaneous receipts.”.*

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

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

1 (b) *EXTENSION OF EMPLOYMENT SANCTION.*—Section
2 8(b) of such Act (7 U.S.C. 499h(b)) is amended by adding
3 at the end the following new sentence: “The Secretary may
4 extend the period of employment sanction as to a respon-
5 sibly connected person for an additional one-year period
6 upon the determination that the person has been unlawfully
7 employed as provided in this subsection.”.

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

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

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

Amend the title so as to read: “A bill to amend the
Perishable Agricultural Commodities Act, 1930, to mod-
ernize, streamline, and strengthen the operation of the
Act.”.

HR 1103 RH—2