

**INCREASE LICENSE FEES UNDER  
PERISHABLE AGRICULTURAL  
COMMODITIES ACT OF 1930. HEARING,  
NINETY-FIRST CONGRESS, FIRST  
SESSION, ON H.R. 9857. JULY 17, 1969**

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Increase license fees under Perishable agricultural commodities act of 1930. Hearing, Ninety-first Congress, first session, on H.R. 9857. July 17, 1969 by Various

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**VARIOUS**

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**INCREASE LICENSE FEES UNDER PERISHABLE  
AGRICULTURAL COMMODITIES ACT OF 1930**

THURSDAY, JULY 17, 1969

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON DOMESTIC MARKETING  
AND CONSUMER RELATIONS  
OF THE COMMITTEE ON AGRICULTURE,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman of the subcommittee) presiding.

Present: Representatives Foley, Vigorito, Jones, Mrs. May, and Myers.

Also present: William C. Black, general counsel; Hyde H. Murray, associate counsel; John A. Knebel, assistant counsel; Christine Gallagher, clerk; and Martha S. Hannah, subcommittee clerk.

Mr. FOLEY. The Subcommittee on Domestic Marketing and Consumer Relations will come to order.

The committee meets today for consideration of H.R. 9857 by Mrs. May of Washington, to amend the Perishable Agricultural Commodities Act.

(H.R. 9857 by Mrs. May follows:)

[H. R. 9847, 91st Cong., first sess.]

A BILL To amend the provisions of the Perishable Agricultural Commodities Act, 1930, to authorize an increase in license fee, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That paragraph (6) of the first section of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. 499a(6)), is amended by striking out "\$90,000" and inserting in lieu thereof "\$100,000".

SEC. 2. Paragraph (7) of the first section of such Act (7 U.S.C. 499a(7)) is amended by striking out "\$90,000" and inserting in lieu thereof "\$100,000".

SEC. 3. The third sentence of section 3(b) of such Act (7 U.S.C. 499c(b)) is amended by striking out "\$50" and inserting in lieu thereof "\$100".

Mr. FOLEY. The first witness will be Mr. Floyd F. Hedlund, Director of the Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture.

**STATEMENT OF FLOYD F. HEDLUND, DIRECTOR OF THE FRUIT AND  
VEGETABLE DIVISION, CONSUMER AND MARKETING SERVICE,  
U.S. DEPARTMENT OF AGRICULTURE**

Mr. HEDLUND. Mr. Chairman, members of the committee, I am Floyd F. Hedlund, Director, Fruit and Vegetable Division, Consumer and Marketing Service of the U.S. Department of Agriculture. I

appreciate the opportunity to appear before this subcommittee to present the views of the Department of Agriculture on H.R. 9857, a bill to amend the provisions of the Perishable Agricultural Commodities Act, 1930, to authorize an increase in license fee, and for other purposes.

This bill would raise the authorized ceiling on the annual license fee required under the Perishable Agricultural Commodities Act to \$100 from the present maximum of \$50. It also would broaden the exemption from license now provided in the act for certain retailers and frozen food brokers by raising the level of the exemption from \$90,000 to \$100,000.

Background: Before discussing the provisions of H.R. 9857 further, I would like to outline briefly the purpose of the Perishable Agricultural Commodities Act and the method of its administration.

Because of the highly perishable nature of fresh fruits and vegetables, rapid harvesting, packing and distribution are essential. It is a financially hazardous business due to the risks of weather, uncertain growing conditions and unpredictable fluctuations in market prices. There are many opportunities for unethical persons to take advantage of these conditions and engage in unfair and fraudulent practices. For several years prior to 1930, unsuccessful attempts had been made to establish an industry-operated system prohibiting unfair trade practices and enforcing contracts. When these efforts failed, the leading trade associations in the fresh produce industry united in sponsoring enactment of the Perishable Agricultural Commodities Act.

The basic objective of the act is to establish a code of fair trading practices governing the marketing in interstate and foreign commerce of fresh and frozen fruits and vegetables and cherries in brine and to aid in the enforcement of contracts for marketing these commodities. Under this act, it is unlawful for any commission merchant, dealer or broker in connection with any transaction in interstate or foreign commerce to engage in certain unfair trade practices. Among these are:

- (1) To reject or fail to deliver in accordance with terms of his contract, without reasonable cause;
- (2) To dump, discharge or destroy without reasonable cause any lot received on consignment;
- (3) To fail or refuse to account correctly and to pay promptly for any lot;
- (4) To fail to perform any specification or duty arising out of a contract without reasonable cause;
- (5) To misrepresent or misbrand as to character, kind, grade, quality, quantity, size, pack, weight, condition, degree of maturity, or state, country, or region of origin; and
- (6) To fail to maintain adequate records and accounts.

Enforcement of the act is through a system of licenses. Every commission merchant, broker and dealer, including certain retailers and processors, operating subject to the act is required to be licensed. Most applicants encounter no problems in obtaining licenses under this act. However, the Secretary may deny licenses to certain individuals for specific reasons spelled out in the law, including false or misleading statements in the application; a history of repeated

violations of the act; the criminal record of the applicant; the failure to pay reparation awards or the failure to furnish required surety bonds. Licenses may be suspended or revoked for violations of the act.

There are two main phases of activity in administering the act. First, the Secretary is authorized to hear and decide disputes which involve claims for damages resulting from any violation of the fair trading principles. Complaints are filed with the Secretary; investigations are made as warranted; and, if possible, amicable settlements are worked out between the parties. If a dispute cannot be settled informally, it may become a formal proceeding in which the parties are given an opportunity to submit evidence in support of their positions, either at an oral hearing or by written submissions of evidence. If the Secretary concludes that a violation has occurred, he determines the amount of damages sustained and issues an order requiring the offender to pay such damages to the injured party by a specified date. The offender's license is automatically suspended unless he pays the amount of the award or appeals the Secretary's decision to a district court of the United States, as provided in the act.

The second main phase of activity relates to disciplinary measures. These include administrative proceedings by the Secretary to suspend or revoke licenses for violations of the act, and court actions to collect civil penalties for operating without a license, together with injunctions to restrain further operations.

The Perishable Agricultural Commodities Act is an unusual regulatory law inasmuch as it is self-supporting from annual license fees. These fees are deposited in a special PACA fund and all costs of administration of the act—except for legal services—are financed from these fees.

The Secretary is authorized to set the level of the annual license fee, within the maximum provided in the act, at an amount sufficient to provide the revenue to meet anticipated expenses for administering the act. Before the license fee has been raised, the Secretary has published the proposed rate and given all interested persons an opportunity to file their comments or objections. The present maximum fee authorization of \$50 was established in an amendment to the act of October 1, 1962. Under this authorization, the annual license fee was increased to \$36 on January 1, 1963, to \$42 on January 1, 1965, and to \$50 on January 1, 1969.

Increase in license fee ceiling: The statutory ceiling on license fees must be raised because of two factors: (1) the declining number of firms operating subject to license and (2) the increasing cost of administering the act. At present, the number of firms licensed is approximately 19,285, compared with an alltime peak of about 27,000 in 1956. This trend toward fewer licensees results from the continuing mergers and consolidations in the fruit and vegetable industry and the closing of many small firms. During the past 5 years, for example, the net decline in the number of firms licensed has averaged over 670 per year.

Despite the decline in number of firms licensed, the number of complaints filed under the act and the requests for advice and assistance have remained relatively constant. During the past fiscal year,

for example, a total of 2,272 reparation complaints were handled by the Department under this act. Informal amicable settlements were arranged in 930 such cases resulting in payments to the parties of approximately \$2.3 million. In addition, 341 formal orders were issued by the Department's judicial officer awarding reparations amounting to over \$777,000. The Department makes no charge for the handling of these complaints.

Also, more than 9,800 requests for advice were received last year from members of the industry seeking assistance, mostly with problems concerning marketing contracts. Many disputes are settled on the basis of these informal recommendations by the Department and the necessity of filing complaints is avoided. The Department also conducted 15 marketing seminars for various trade groups during this period to encourage compliance with the law, minimize marketing disputes, and discuss procedures followed in administering the act.

Costs of administration have been increasing, largely because of adjustments in employees' salary scales and fringe benefits which account for over 80 percent of the expenditures under this act. The costs have increased even though there has been a reduction in the number of employees engaged in the administration of the act, and this number now is at the lowest level in over 10 years.

The PACA fund incurred a deficit of over \$12,000 in fiscal year 1968 and a deficit of approximately \$58,000 during the first 6 months of fiscal year 1969. With the increase in the license fee that became effective January 1, 1969, it is estimated that income and expenditures for fiscal year 1969 as a whole about balanced out. With continued decline in numbers of licensees, it is likely that deficits will occur in fiscal years 1970 and 1971. We estimate it will be necessary to increase the license fee again in the amount of approximately \$10 about January 1, 1971, in order to obtain sufficient revenue to meet the anticipated costs of administration. The small reserve in the PACA fund would soon be depleted if such deficits continue.

**Exemption for retailers and frozen food brokers:** As pointed out earlier, H.R. 9857 would broaden the exemption from license for certain retailers and frozen food brokers from \$90,000 to \$100,000. Since the Perishable Agricultural Commodities Act was enacted in 1930, the great majority of food retailers have always been exempt from the licensing provisions. From 1930 to 1962 this exemption was expressed in terms of tonnage of perishable agricultural commodities purchased by retailers. When the act was amended in 1962, the exemption was broadened and was converted from a tonnage to a dollar volume basis. At present, all retailers are exempt whose purchases of perishable agricultural commodities amount to \$90,000 or less per year.

Also, in 1962 an exemption from license was added for the first time for frozen food brokers who negotiate sales for and on behalf of vendors and whose sales of frozen fruits and vegetables have an invoice value of \$90,000 or less per year.

The bill now under consideration would raise the exemption for both retailers and frozen food brokers to \$100,000. The proposed increase in the amount of the exemption would approximate the increase in the index of wholesale food prices that has taken place since 1962 when the \$90,000 exemption was established.



There are an estimated 200,000 retail food firms operating at present. Only approximately 4,000 of these firms currently are licensed under PACA in view of the exemption which excludes all those whose purchases of perishable agricultural commodities total less than \$90,000 per year. Since fresh and frozen fruits and vegetables account, on the average, for about 9 percent of retail food store gross sales, this means that raising the exemption to \$100,000 would exclude most retail firms with gross sales of less than \$1.5 million per year. Therefore, it is estimated that fewer than 2 percent of all food retail firms would be subject to license under the bill as proposed.

The Department's records indicate that there are fewer than 300 frozen food brokers currently subject to license under PACA. Consequently, an increase in the exemption for these brokers from \$90,000 to \$100,000 would affect a relatively small number of such firms.

When this act was amended in 1962, there were various proposals to broaden even further the exemption for food retailers and certain frozen food brokers. It was alleged at that time the exemption of such essential segments of the industry would not impair the effectiveness of the act. We cannot agree with this analysis. Shippers, carlot receivers, brokers, wholesalers, jobbers, and retailers are all licensed under this act in order that protection against unfair trade practices may extend throughout the marketing system.

Retailers, in their capacity as buyers of produce in wholesale quantities, are one of the most important links in the chain of distribution. Although sales at retail are not covered by the PAC Act, retailers have been licensed because of the heavy volume of produce they purchase. It is as essential for retailers to live up to their contractual bargains as it is for their suppliers. During the 3 fiscal years; 1967, 1968, and 1969, a total of 189 reparation complaints were filed involving retailers. Some involved retailers as complainants, others as respondents. If the industry is to function in an orderly manner, all segments must observe the fair trading rules of this act. No one part can be omitted and still expect the industry to function efficiently.

It is sometimes suggested that there is no need for retailers buying from licensed wholesalers to be covered by this act. Without such coverage, the protection which it offers would be most inadequate. For example, complaints often are filed under this act between two licensees located in the same city involving commodities which have originated in other States. There appears to be no more justification for exempting from license a retailer who happens to buy most of his produce from a licensed local wholesaler than there would be to exempt wholesalers who may buy a substantial part of their produce from licensed local carlot receivers.

Turning now to the role of frozen food brokers, there is a wide use of brokers in the marketing and distribution of frozen fruits and vegetables. The regulations issued under the PAC Act specify the duties of brokers in negotiating valid and binding contracts, including the type of confirmations to be issued and the records to be maintained on these transactions. Brokers have an unusual responsibility since they act as agents for their principals in contract negotiations and the brokers' records are vital in determining the details of these contracts. If the buyers and sellers of fruits and vegetables are to be covered by this act, then it is equally essential that brokers be covered.

Recommendation of PACA Industry Conference Group: The question of future financing of PACA was considered at length by the PACA-Industry Conference Group at its meetings in February 1968 and again in February 1969. The conference group is an official advisory committee appointed by the Secretary of Agriculture and is representative of all segments of the fruit and vegetable industry including growers, shippers, brokers, wholesalers, terminal market receivers, and retailers. Its purpose is to advise with the Department on problems arising in the administration of the PAC Act. In its considerations of the problem of financing, the conference group examined various possible levels of license fees, as well as the alternative of financing by appropriation instead of fees. At the conclusion of its deliberation, the conference group reaffirmed its view that this act should be self-supporting, that is, not financed from appropriated funds. It also recommended that the license fee should remain at a uniform rate but that the act be amended to raise the ceiling on the annual fee to \$100.

In view of the various considerations involved, the Department favors passage of this legislation.

Thank you, Mr. Chairman.

Mr. FOLEY. Thank you, Mr. Hedlund.

Mrs. May?

Mrs. MAY. Mr. Hedlund, thank you for a very clear statement of the purposes and the reasons for the bill which I have introduced on behalf of your Department.

I have a couple of questions, clarifying questions, Mr. Chairman.

Now, I can understand the rationale, as you presented it, for the increasing costs of administering this act. I notice that you said in 1968 you had run up a deficit of \$12,000.

Mr. HEDLUND. Yes, ma'am.

Mrs. MAY. What I am curious about is why in 1969 was there a \$58,000 deficit in the first 6 months? That seems a huge jump and I am curious about why the deficit rose so rapidly.

Mr. HEDLUND. You will recall, Congresswoman May, that in July 1968 an increase in the pay scale became effective and increased our costs for that fiscal year. That is one of the primary reasons.

I did also say that since we raised the fee on January 1, 1969, that for the fiscal year 1969 as a whole, we will about balance out on income and expenses.

Mrs. MAY. I see. In other words, Congress has to bear its share of the blame, then, for the pay raise.

Mr. HEDLUND. Well, I do not want to blame anyone. It is just one of those facts of life.

Mrs. MAY. Now, as I understand your statement, you went on to say in your financial projections for the future you still anticipate it will be necessary to raise the fees further? Above the \$100 in 1971?

Mr. HEDLUND. No, ma'am. I did not mean to infer that at all. I meant that it would be necessary for the Secretary to raise the actual fee from \$50 to approximately \$60 in a couple of years. It would be a raise from what it is now but not more than the \$100 which is being asked here for Congress to approve.

Mrs. MAY. Yes. I think we should make it clear for the record the raise from \$50 to a \$100 merely places a ceiling, is that not right?

Mr. HEDLUND. Absolutely.

Mrs. MAY. Of a \$100. And then it will be up to the Secretary to determine on the basis of the fiscal facts at what point in any one year he feels it is necessary raise the fees within the limitations under \$100.

Mr. HEDLUND. That is correct.

Mrs. MAY. I think that is all, Mr. Chairman.

Mr. FOLEY. Mr. Vigorito?

Mr. VIGORITO. I do not have any, Mr. Chairman. Mrs. May brought out a couple of points that I was interested in.

Thank you.

Mr. FOLEY. Mr. Myers?

Mr. MYERS. Thank you, Mr. Chairman.

Mr. Hedlund, you spoke in your presentation about there being 300 retailers that are now under license. If you should increase the exemption to \$100, do you know how many retailers would be exempted?

Mr. HEDLUND. Congressman Myers, we have made some estimates naturally, but it is difficult to predict these things. Information available to us on the volume of business conducted by various categories of licensees is kind of sketchy, but we have made an estimate, good or bad, that the increase to \$100,000 will exempt approximately 165 additional retail firms.

Mr. MYERS. You are cutting it down to 145 firms that will be carrying licenses, are you not?

Mr. HEDLUND. Oh, no.

Mr. MYERS. Retailers.

Mr. HEDLUND. The 300 that you mentioned, sir, relates to brokers.

Mr. MYERS. Oh, brokers.

Mr. HEDLUND. We have about 4,000 retailers now licensed.

Mr. MYERS. I misunderstood your—

Mr. HEDLUND. No. That relates to frozen food brokers. We have about 4,000 retailers now licensed.

Mr. MYERS. Why are you increasing from \$90,000 to \$100,000? What is the reasoning behind this?

Mr. HEDLUND. The reasoning behind it is to give those retailers about the same exemption rate as they had in 1962.

Mr. MYERS. You are accommodating inflation, then.

Mr. HEDLUND. Exactly.

Mr. MYERS. How do you know that a retailer is complying with the license requirement in his sales of perishable products?

Mr. HEDLUND. We are constantly checking for unlicensed firms who may be operating subject to license. For example, we check all the published lists of retailers. Those that are unlicensed but which appear to be large enough to be subject to license are contacted, usually by mail, to determine if they require a license. In some cases, we also make a check in person.

Mr. MYERS. You audit them, then, is that right?

Mr. HEDLUND. We audit their purchases of perishable agricultural commodities.

Mr. MYERS. Now, does this expense come out of this fund?

Mr. HEDLUND. Yes, sir.

Mr. MYERS. Have you ever thought about a graduated fee schedule according to the number of sales that they have? A small one, just barely doing the \$100,000 or \$90,000 today pays the same rate as that that does a million dollars of sales, is that correct?