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PERISHABLE AGRICULTURAL COMMODITIES

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HEARINGS
BEFORE THE
SUBCOMMITTEE ON DOMESTIC MARKETING
OF THE
COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES
EIGHTY-SEVENTH CONGRESS
FIRST SESSION
ON
H.R. 5023

AUGUST 9 AND 10, 1961

Serial P

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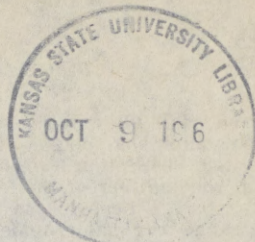
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PERISHABLE AGRICULTURAL COMMODITIES

WEDNESDAY, AUGUST 9, 1961

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC MARKETING
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met at 10:10 a.m., pursuant to notice in room 1310, New House Office Building, the Honorable George Grant (chairman of the subcommittee) presiding.

Present: Representatives Grant, Jennings, Matthews, Inouye, Harding, Teague of California, Findley, and Beermann.

Also present: Representatives Hagen and McIntire, Christine S. Gallagher, clerk; Hyde H. Murray, assistant clerk; and John Heimburger, counsel.

Mr. GRANT. The subcommittee will come to order.

The Subcommittee on Domestic Marketing is met this morning to consider H.R. 5023, a bill by our colleague Mr. McIntire, of Maine.

Mr. McIntire, we will be glad to hear from you.

(H.R. 5023 and the report of the Department, dated April 27, 1961, follows:)

[H.R. 5023, 87th Cong., 1st sess.]

A BILL To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Perishable Agricultural Act, 1930 (7 U.S.C. 499a), is amended by adding at the end thereof the following new paragraphs:

"(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 association;

"(10) The terms 'employ' and 'employment' mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment."

SEC. 2. The third sentence of section 3(b) of such Act (7 U.S.C. 499c(b)) is amended to read as follows: "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 \$50. 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: *Provided*, That 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."

SEC. 3. Section 3 of such Act (7 U.S.C. 499c) is further amended by adding at the end thereof the following new subsection:

"(c) 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. Section 4(a) of such Act (7 U.S.C. 499d(a)) is amended by inserting before the period at the end thereof ": 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."

SEC. 5. Section 4(b) of such Act (7 U.S.C. 499d(b)) is amended to read as follows:

"(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 a person who, or is or was responsibly connected with a person who—

"(A) has had his license revoked under the provisions of section 8 within two years prior to the date of the application or whose license is currently under suspension;

"(B) within two years prior to the date of application has been found after notice and 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;

"(C) within two years prior to the date of the application, has been found guilty in a Federal court of having violated the provisions of the Act of March 3, 1927 (7 U.S.C. 491-497), relating to the prevention of destruction and dumping of farm produce; or

"(D) has failed, except in the case of bankruptcy and subject to his right of appeal under section 7(c), to pay any reparation order issued against him within two years prior to the date of the application."

SEC. 6. Section 4(c) of such Act (7 U.S.C. 499d(c)) is amended to read as follows:

"(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."

SEC. 7. Subsections (c) and (d) of section 6 of such Act (7 U.S.C. 499f) are amended by striking out "\$500" each place it appears and inserting in lieu thereof "\$1,500".

SEC. 8. Section 7(c) of such Act (7 U.S.C. 499g(c)) is amended by striking the second sentence thereof and substituting therefor the following: "Such ap-

peal shall be perfected by the filing with the clerk of said court a notice of appeal, together with a petition in duplicate which shall recite prior proceedings before the Secretary and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with proof of service thereof upon the adverse party. Such appeal shall not be effective unless within thirty days from and after the date of the reparation order the appellant also files with the clerk a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States."

SEC. 9. Section 7(d) of such Act (7 U.S.C. 499g (d)) is amended by striking the proviso at the end of the section and substituting therefor the following: "Provided, That if on the appeal the appellee prevails or if the appeal is dismissed the automatic suspension of license shall become effective at the expiration of thirty days from the date of the judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied."

SEC. 10. Section 8(b) of such Act (7 U.S.C. 499h (b)) is amended to read as follows:

"(b) Except with the approval by the Secretary, no licensee shall employ 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 shall pay all reparation awards, subject to its right of 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."

SEC. 11. The Act of June 10, 1933 (48 Stat. 123; 7 U.S.C. 581-589), popularly known as the "Export Apple and Pear Act", is amended by adding at the end thereof a new section as follows:

"SEC. 10. There are hereby authorized to be appropriated such sums as may be necessary for the administration of this Act."

APRIL 27, 1961.

HON. HAROLD D. COOLEY,
Committee on Agriculture,
House of Representatives.

DEAR CONGRESSMAN COOLEY: This is in reply to your letter of March 2, 1961, requesting a report on H.R. 5023, a bill to amend the provisions of the Perish-

able Agricultural Commodities Act of 1930, relating to practices in the marketing of perishable agricultural commodities.

The Department recommends passage of the bill.

The major purposes of the bill are to (1) improve and clarify the provisions relating to relicensing or employment of persons who have violated the act or have been affiliated with such persons, (2) provide that an oral hearing need not be held when the amount claimed as damages in a reparation complaint does not exceed the sum of \$1,500, (3) provide authority for the Secretary to increase the annual license fee to a maximum of \$50 if necessary to meet the expenses for administering this act and the so-called Produce Agency Act, and (4) provide that PACA license fees will not be used to finance the cost of administering the Export Apple and Pear Act and authorize appropriations for this purpose.

The bill revises provisions relating to relicensing or employing a person whose license has been suspended or revoked, or who has otherwise violated the act, as well as persons affiliated with such persons. These provisions as now written are ambiguous and inconsistent. For example, the minimum license debarment period following violation of the act presently ranges from 1 year to forever, although the nature of the different offenses does not justify the great disparity. Since the act is not a criminal statute, the only enforcement vehicle is the economic sanction of controlling a person's right to do business for himself or to be employed by another licensee. Most persons engaged in the industry are limited by training and experience to the fruit and vegetable business in seeking their most gainful livelihood. Consequently, frequent attempts are made to circumvent the law following revocation or suspension of a license. Effective enforcement of the act, therefore, rests on having comprehensive, clear, and equitable provisions relating to relicensing and employment which fully cover the situations encountered in this area in the fruit and vegetable industry.

The PAC Act presently provides that, in reparation proceedings, an opportunity for an oral hearing must be afforded at the respondent's place of business whenever the damages claimed exceed the sum of \$500. Otherwise a hearing need not be held and proof in support of the complaint and in support of the respondent's answer may be supplied by depositions or verified statements of facts. The bill increases this sum to \$1,500. The sum of \$500 represented about the average value of a carload of fresh fruits and vegetables in 1930 when the act was passed. The average value today is nearer \$2,000. Handling of formal complaints can be expedited if the shortened procedure is authorized for those small sums involving not more than \$1,500 which no longer justify the time and expense incurred by the parties involved. The bill does not preclude the Secretary from granting an oral hearing where a complaint involves a sum less than \$1,500 whenever he concludes that a hearing is desirable in order to develop the evidence satisfactorily.

The bill deletes reference to the Export Apple and Pear Act approved June 10, 1933 (7 U.S.C. 561-589) with regard to the use of PACA license fees for administrative expenses. The Export Apple and Pear Act establishes minimum standards for export and has no connection with the PAC Act. The PACA special fund in which license fees are deposited should not be used for carrying out nonrelated activities. Such a change would entail financing the administrative costs of the Export Apple and Pear Act approximating \$25,000 per year from funds appropriated under the "Marketing services" appropriation. The change in financing would not require a budget increase. These costs would be those related to the development, promulgation, and enforcement of the required export standards.

There is an error of omission in the bill as it is printed. The title of the act is "Perishable Agricultural Commodities Act, 1930." On page 1, line 3, the word "Commodities" should be inserted after the word "Agricultural" to correct this error.

Administration of the PAC Act, except for the cost of legal services and partial coverage of retirement costs from appropriated funds, is financed from the license fees which are now fixed by the statute at a maximum of \$25 per year. PACA administrative expenses have exceeded collections for the past 2 years, necessitating withdrawals from the limited reserve fund. Under current operating costs, it would be impossible to provide effective and timely service to the industry at the present rate of assessment. An increase in the license fees, therefore, is urgently needed.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN.

STATEMENT OF HON. CLIFFORD G. McINTIRE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MAINE

Mr. McINTIRE. Thank you, Mr. Chairman and members of the committee.

H.R. 5023, a bill which I introduced on February 28, 1961, amends the provisions of the Perishable Agricultural Commodities Act. This act was passed in 1930, and under this act there has been and continues to be established a code of fair trade practices governing the distribution and marketing of fresh and frozen fruits and vegetables in interstate commerce.

Mr. Chairman and members of the committee, I think it is going to be much better if I conserve the time for other witnesses.

My experience in the fresh vegetable business, the shipping end of it, is the basis of my continuing interest in the act and its amendments.

The act is self-supporting. The fees that are collected are intended to be adequate to finance the expenses of administering the act. This is the purpose of one of the amendments in the bill I have introduced, because there is need for some adjustment in these fees.

One thing in particular I would like to point out to the committee is that the provisions of this bill are the result of very extensive conferences between the Department of Agriculture and the elements of the trade that are subject to the Perishable Agricultural Commodities Act.

To that point, Mr. Chairman, I would like to offer for the record three statements which have been prepared by S. R. Smith, Director of the Fruit and Vegetable Division. I think these three statements would be a very constructive addition to the record.

Mr. Chairman and members, that concludes my statement. The Department, and those representing elements of the trade, will be giving the committee a great deal of detail and ideas as to the need of amendment to the act and, also, the necessity of making some adjustment in the fees.

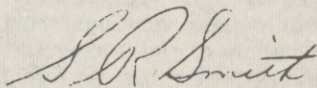
Mr. GRANT. Without objection, the statement offered by the gentleman from Maine will be received for the record.

(The statements dated April 10, 1959, April 26, 1960, and April 24, 1961, follow:)

April 10, 1959

TO INDUSTRY PACA CONFEREES:

It is not our intention to give the enclosed report general distribution or to publish it. On the other hand, in accordance with the view expressed by the conferees, the report is not intended to be restricted only for the use of the conferees. It will be made available, on request, to any interested party in the industry. All recipients of this report should recognize that it does not necessarily reflect the final views of the industry or governmental conferees because it has not been possible to give full and complete consideration to each of the subjects discussed.



S. R. Smith, Director
Fruit and Vegetable Division

Report of Conference Proceedings
on
Perishable Agricultural Commodities Act
January 30-31, 1959
Dallas, Texas

A second conference with fresh fruit and vegetable industry leaders and USDA representatives was held on January 30 and 31, 1959, to review the objectives and administration of the Perishable Agricultural Commodities Act. The primary purpose of this conference was to discuss in further detail certain major problems which were not fully covered or resolved at the conference held with the same group in June 1958 at Washington, D. C.

Mr. S. R. Smith, Director, Fruit and Vegetable Division, AMS, and Mr. F. R. Wilcox, General Manager, Sunkist Growers, again served as Co-Chairmen of the conference. The same industry leaders were invited to attend this second conference and, except for a few unavoidable absences, their response was excellent in contributing their time and money needed to attend this 2-day conference. Most of the conferees had discussed with their local trade groups the subjects covered by the conference agenda and were thus able to present the views of such groups rather than expressing only their own personal opinion.

Changes in Market Structure and Practices

There are a number of problems associated with changes in market structure and practices due to the concentration of purchases by large-scale buyers. These problems include pricing policies, procurement methods, types of contracts, rate of purchases, and related matters. Conference discussion, however, centered primarily around the subject of unjustified or questionable rejections by large buyers. Restated briefly, it is the viewpoint of many persons that PACA, as now written and applied, is ineffective in dealing with such violations of the Act by large buyers. The reason for this viewpoint is that complaints under the Act by individual sellers against large buyers are practically non-existent because of the alleged fear of alienating such customers. The net result, therefore, is that PACA rules and remedies governing unjustified breach of contract are not utilized by sellers when dealing with such buyers. This subject was discussed extensively at the June 1958 conference when USDA representatives agreed to look into possible remedial measures and to report further to the industry group.

Reporting Rejections. Industry representatives proposed at the June conference that a regulation be issued requiring all sellers and buyers to report all rejections to the Department, regardless of the alleged reason for the rejection. USDA officials have concluded that such a regulation, to be meaningful, would require an amendment to the Act. A regulation might now be issued as authorized by Section 15 but there is a substantial legal question whether a person who refused to make such reports could be penalized under the Act as it is now written. It would be undesirable to

issue a regulation of this type unless the law provided an adequate means of enforcement.

Such an amendment to the Act might be as follows: "Every commission merchant, dealer, or broker shall from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to carry out the provisions of this Act. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this section or for the purpose of obtaining the information required in any report, where it has been requested and not furnished, the Secretary is authorized to examine such accounts, records, and memoranda which he deems relevant. Whenever the Secretary determines that any commission merchant, dealer, or broker has failed to furnish complete, accurate, or timely reports, pursuant to this section, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender for a period not to exceed ninety days."

An amendment of this type would make it possible for USDA to issue regulations requiring that reports of rejections be furnished. The type of report would have to be spelled out in detail by the regulation. The industry might not want to initiate and support legislation which leaves entirely to the discretion of the Secretary the nature and type of reports which would be required. (Comparable authority, however, has been given to him in other regulatory laws. Also, a general reports provision might have several advantages because it could aid greatly in keeping up with changes in the industry and, consequently, in administration of the Act.) There does not appear to be any practical alternative because it is impossible to predict what information would be necessary. The first step might be to obtain a report on volume purchased for a definite period of time in order to determine who to place on the reporting list. Information on f.o.b. purchases might have to vary from wholesale market purchases because of differences in contract terms. The same situation might apply to different commodities or groups of commodities.

With only one or two exceptions, the industry representatives expressed the view that it would be highly desirable for the Act to contain a general reporting provision. As the discussions progressed to other subjects pertaining to licensing and bonding, the conclusion was reached that this authority for requiring reports from licensees would be useful. However, the industry group deferred for later consideration the question of whether reports of rejections should be initiated if the necessary legislative authority is granted. Most of the men who expressed an opinion on this subject favored some type of a reporting system to cover rejections. Several shippers stated that the faults did not lie entirely with the buyers and that a rejection report should help to pin down exactly what type of sales contract or agreement was involved. Many of the shippers seemed to believe that the sales policies were so loose that some shippers do not, in fact, negotiate an enforceable contract, but ship

merchandise to prospective buyers on a "look--see basis" with the understanding that if the buyers like the merchandise a contract for purchase and sale will be made after the prospective buyers' inspection. If this is true, and the prospective buyer does not enter into a purchase and sale contract after his inspection, there is, of course, no question of a rejection. It was agreed that if a reports system on rejections is adopted, such reports would not be considered as reparation complaints unless one of the parties specifically requested that the report be so considered. This means that the Department would not use the reports as a basis for handling the matter further with the parties for the purpose of recovery of any monies claimed due because of an evident breach of contract.

It was also agreed that, if reports of rejections are initiated, all parties to the transaction, including brokers, should be required to file a report. It was generally concluded that such reports should be kept as simple as possible and that some selectivity by commodities, areas, or type of buyers and sellers might be desirable in undertaking such a program. It was agreed that, if the Act was amended to give the Department authority to request reports, no request of a specific nature would be made until after the proposed report forms were made public under rule-making procedure so that all segments of the industry would know and understand what was involved and have an opportunity to comment on the proposal before it was established as a requirement.

Considerable attention was given to the question of whether or not a reporting requirement would result in changing the usual transaction from a purchase and sale contract to an option to buy so that, in effect, regardless of the buyer's actions he would have no rejections on his record. Some conference members believed that this would be the result because certain large buyers hold such a dominant position that the normal independent shipper or wholesaler will agree to any terms in order to obtain and retain their business. Others believed that reporting rejections would not encourage more Inspection and Acceptance on Arrival contracts, delivered selling, or options to purchase. It was their belief that these large merchandising organizations must plan ahead and, therefore, arrange for a continuity of supply. Also, frequently their operations are geared to various consumer advertising and other promotion programs. The men who took this view concluded therefore that most of these organizations were primarily interested in obtaining an adequate supply of top quality, properly packaged merchandise and could not operate under a hit-or-miss arrangement which would result from a large-scale shift away from firm contracts.

Although some of the pros and cons of a rejection reports system have been outlined above, it should be emphasized that the industry group as a whole deferred taking a position on it until the matter could be given further study and consideration. However, they definitely recommended that a change in the legislation should be sought which would give USDA the optional authority to require such reports if it is decided in the future that action

along these lines should be taken. It was agreed by the industry group, that, regardless of what action may be taken on reporting rejections, it would be highly desirable for other purposes to amend the PAC Act to include authority for requiring reports from licensees. As indicated later, these purposes include reports which would be needed to carry out effectively provisions of the Act and regulations relating to multiple trade names, bonding standards, and other licensing operations.

Greater Use by USDA of its Present Investigatory Powers. A combination of the various provisions of the Act clearly gives USDA authority for initiating investigations if it desires to do so. Section 6 states that any USDA employee may file a complaint of any violation. Section 13 states that the Secretary has the right to inspect such accounts, records, and memoranda that may be material in the investigation of complaints or to ascertain if the required accounts, records, etc., are being maintained. As discussed at the June conference, however, the USDA has consistently followed the practice of not initiating an investigation in the absence of a specific complaint by one of the parties involved in the transaction.

It would be possible for USDA, acting on general information, to open complaints against selected sellers and buyers to provide the legal basis for investigating their records to ascertain if unjustified rejections are being made. Even though both industry representatives and USDA have endorsed its current policy of only acting on those complaints involving specific transactions, it is difficult to rationalize not taking this direct approach if the matter of unjustified rejections is serious enough to warrant full support by the industry for such investigatory action by USDA.

At present, USDA has had so little opportunity to review the records of large, direct buyers that it has little specific knowledge of the type of records being maintained concerning contracts, warehouse inspection reports, notices to sellers, etc. Many questions exist as to whether a reporting system can be designed and enforced which can get at the rejection problem. The job is made increasingly difficult when the system is planned in the dark as the result of lack of information concerning existing contractual arrangements and records pertaining thereto. Use of the Department's present investigatory authority would offer one means of obtaining this information.

Any program of investigating records to develop information on unjustified rejections should cover both shippers and buyers. Probably the full story on many transactions would not be told unless the records of both parties were examined. The logical starting point might be the examination of the records of selected large shippers who sell to a number of direct buyers for delivery to different warehouses or regions. Examination of buyers' records could then be more selective, thus lessening the chance of getting bogged down at the start by possible differences in practices between different warehouses or districts within the same corporation. It is possible, however, that the selected shippers would regard an involuntary

examination of their records for this purpose as being personally harmful because the information obtained might jeopardize their relationship with such buyers.

Adoption of this procedure would be a departure from the policy which USDA has consistently followed of not initiating an investigation in the absence of a specific complaint by one of the parties involved in the transaction. After a thorough discussion of the subject, the conference group concluded that independent investigations by USDA should not be used at this time in trying to solve this problem. The industry representatives stated that they regard highly the industry-government relationship which has resulted from not using PACA regulatory authority as a policing tool in the absence of specific complaints concerning a particular transaction. They expressed the belief that this relationship should not be jeopardized by deviating from this principle even to try to solve this special problem of unjustified rejections. The approach might be successful, but they believed that the end would not justify the means. It was recognized, however, that it might eventually be necessary to employ this method if other alternative approaches prove to be unsuccessful.

Amend Act to Prohibit Discrimination. The PAC Act does not now contain any general prohibition against discriminatory practices. The word "discriminatory" is mentioned only in Paragraph (1) of Section 2 and is limited to methods of weighing, counting, or other means of measuring quantity. In fact, the only general prohibition contained in Section 2 deals with failure to perform any express or implied duty. This prohibition cannot be construed to cover the types of discriminatory action which might be taken in retaliation for a complaint under the Act.

It might be helpful to the industry to have the Act contain a general prohibition against unfair or discriminatory practices. Of course, such a prohibition would apply equally to sellers and buyers. The existence of such a prohibition might, in itself, discourage the use of retaliatory actions available through mass selling or buying power. Further, it would make possible appropriate disciplinary action in those cases where substantial evidence of such actions was available.

Such an amendment to the Act might be made by deleting Paragraph (1) of Section 2 and inserting the following:

"(1) For any commission merchant, dealer, or broker to engage in or use any unfair, unreasonable, discriminatory, or deceptive practice; or to make or give any undue or unreasonable preference to any particular person in any respect whatsoever, or subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever in connection with any transaction in interstate or foreign commerce of any perishable agricultural commodity;"

The industry group recommended that no action be taken at this time on an "anti-discrimination amendment" because further study and consideration should be given its possible application and effectiveness before deciding if it would be desirable.

Other Methods. Other possible methods of approaching the problem of unjustified rejections by large buyers were discussed including research studies and a conference between USDA with the principal buyers. It was concluded that a research study would not be productive in view of the nature of the problem. The industry group believed that a conference between the principal buyers and USDA representatives might be quite helpful in clarifying the issues and in pointing the way toward possible remedies. It was recommended that USDA try to arrange for such a conference particularly if an expression of interest is obtained from the buyers.

Licensing and Employment

There was a detailed and extensive discussion of the requirements of the Act relating to relicensing or employment of individuals who have had their licenses revoked as compared with those whose licenses have been suspended for failure to pay reparation orders. The wording of the Act is complex and, in some cases, inconsistent or ambiguous dependent upon the type of violation involved. It was necessary, therefore, for the group to discuss the matter thoroughly in order to analyze the intricacies and ramifications of the problem. At the conclusion of this discussion, it was unanimously agreed that it would be desirable for the Act to be amended both to clarify the limitations regarding licensing and employment and to remove the existing inequities and inconsistencies.

The objective of such amendments would be to establish a clear-cut, definite basis for relicensing or employing individuals who have lost their license or who have committed an action prohibited by the Act at a time when they did not have an effective license. Questions regarding relicensing or employment arise quite frequently because most persons whose licenses are suspended or revoked are limited by training or experience to the fruit and vegetable business in seeking gainful employment or livelihood. The industry group agreed that such persons should not be kept out of the fruit and vegetable business indefinitely but, on the other hand, reasonable penalties must be provided if the Act is to be effective. (It should be borne in mind that the PAC Act is not a criminal statute and the only penalty which can be imposed against a licensee is the economic sanction of controlling a person's right to do business on his own or as an employee, officer, or partner of a licensee. He may, of course, be fined for doing business without a valid license.)

Recommendations on licensing and employment provisions were as follows:

Summary of Present and Proposed Time Periods and Bonding
Requirements for Different Types of Violations

Type of Violation	Relicense		Employment	
	Present	Proposed	Present	Proposed
1. Revocation <u>and</u> Unpaid Reparations/ <u>1</u>				
A. Mandatory debarment period	Forever/ <u>2</u>	2 years	1 year	1 year
B. Waiting period with bond	Forever/ <u>2</u>	2 years	1 year	1 year
C. Waiting period W/O bond	Forever/ <u>2</u>	3 years	Indefinite	2 years
D. Length of bond/ <u>3</u>	N.A. / <u>4</u>	4 years	No Limit	4 years
2. Revocation Only				
A. Mandatory debarment period	1 year	2 years	1 year	1 year
B. Waiting period with bond	1 year	2 years	1 year	1 year
C. Waiting period W/O bond	1 year	3 years	Indefinite	2 years
D. Length of bond/ <u>3</u>	2 years	4 years	No Limit	4 years
3. Unpaid Reparations Only/ <u>5</u>				
A. Mandatory debarment period	2 years	2 years	None/ <u>6</u>	None
B. Waiting period with bond	No Auth.	2 years	1 year/ <u>6</u>	None
C. Waiting period W/O bond	2 years	3 years	Indefinite	2 years
D. Length of bond/ <u>3</u>	No Auth.	4 years	No Limit	4 years

1. Whenever reparations are paid, the person automatically moves into Category 2 - "Revocation Only".
2. The PAC Act now states that, following revocation, a person may be re-licensed after 1 year if he posts a bond guaranteeing payment of all past reparation orders. This has the effect of making payment mandatory before such a person can ever be relicensed.
3. Length of bond refers to number of years it remains in effect after date of relicensing or employment.
4. Not Applicable. Cannot be relicensed until reparations are paid.
5. If licensee pays reparation order, he is automatically reinstated. If licensee goes into bankruptcy, he may be relicensed immediately upon posting a bond.
6. There is no mandatory debarment period but a bond cannot be required during the first year.

Basis for Above Recommendations. The above recommended changes in the Act relating to relicensing and employment are for the purpose of correcting inconsistencies. Restrictions would be more lenient in some instances and tighter in others. Surety bonds would have to be posted in a number of

situations where they are not now required. On the other hand, persons in certain instances could be relicensed or employed sooner than now permitted. The important factors involved in changes recommended are:

Establish the mandatory debarment period of 2 years for relicensing following revocation, automatic suspension for failure to pay reparation orders, or a combination of revocation and automatic suspension. Presently, these mandatory periods range from one year to forever. The nature of the offenses does not justify this great disparity. The debarment period after revocation should not be less than it is after automatic suspension. Also, Department may revoke licenses for flagrant or repeated violations even though creditors may not choose to file formal complaints and follow them through to conclusion knowing that the respondent is insolvent. Therefore, it is obviously inequitable to have a debarment period of from one year to forever following revocation, dependent upon whether unpaid reparation orders are also involved.

No authority now exists for bonding a person who does not pay a reparation order and applies to be relicensed. It is recommended that an appropriate bond be required or, otherwise, make him wait an additional year (3 years altogether) before he can be relicensed. (Note of explanation concerning the conference discussion. The specific period of 3 years for relicensing following suspension for failure to pay a reparation order was not discussed at the conference. However, it was agreed that such a person should be required to wait one additional year if he does not post a surety bond. It was also agreed unanimously that the waiting period with bond should be two years and therefore the waiting period without bond automatically becomes 3 years.)

The bonding provision following revocation now covers payment of reparation orders which "may be issued against him within two years following the date of the license." This is an extremely short period of protection because it often takes more than a year following the date of the transaction for a reparation order to be issued. It is believed that a four-year bonding period would be more realistic and desirable.

There are a number of inconsistencies regarding employment of persons whose license has been revoked or suspended. There is no limit on the period intervening between the date of revocation or suspension and the date employment may be permitted nor is there any limitation on how long the bond can be required to be maintained. This is much broader than the present bonding provision relating to relicensing following revocation. If a surety bond is not posted, it is believed that the mandatory waiting period should be 2 years (as compared with 3 years in the case of relicensing).

Employment during the first year following automatic suspension may be prohibited but a bond cannot be required until after one year has elapsed. It is believed that a person should not be barred from employment by another licensee for a minimum period of one year. The primary intent of

this 1956 amendment to the Act was to prevent him from evading the penalty by continuing to do business under the shield of another person's license through a dummy or figurehead arrangement. However, experience has shown that it is not possible in many instances to ascertain if the arrangement is a subterfuge or a legitimate employer-employee relationship. It is believed that employment by another licensee should be permitted immediately following automatic suspension provided the employer posts an adequate surety bond. This should effectively rule out most of the dummy-front cases but still permit legitimate employment by financially responsible firms. This provision would also apply to a person who is an officer or holds a position with another licensed firm since he would be permitted to continue his affiliation without interruption if the other firm posted a satisfactory surety bond. (In the case of revocation, such a person would have to resign from the other firm for a period of one year following the date of revocation.)

There were three additional recommendations applicable only to the provisions of the Act relating to employment, as follows:

Change the definition of employment by deleting the term "responsible position" and make the limitations applicable to any position.

Clarify the language of the Act to indicate that self-employment (i.e., owner of a firm) is under the same limitations as are imposed on a person who is employed by another firm.

Clarify the language of the Act to indicate that a person whose license had lapsed or who had failed or refused to obtain a license, at the time the violation occurred or the Department's order was issued, is in the same category as those who had a valid license.

Basis for Above Recommendations. The Act, as now written, places no limitations on the employment by another licensee of a person who has violated the Act unless he is employed in a "responsible" position. Experience has demonstrated that it is not possible to obtain satisfactory evidence to prove that a person holds a "responsible" position if his employer and he want to hide their working arrangement. Therefore, the application of limitations on employment in dealing with violators varies dependent on the willingness and interest of the employer (often a relative) in hiding the actual arrangements. (For example, it is hard to believe that a wife can step in after her husband's license has been suspended or revoked, hire him in a subordinate position, and not permit him to be responsible for any significant business decisions or actions.) It is believed that the limitations on employment should apply to anyone on the payroll of a licensee with the standard debarment periods or bonding requirements dependent on the nature of the violation.

There is some legal doubt that self-employment constitutes "employment" within the meaning of the Act as now written. This question arises when a firm has its license suspended or revoked and the officers or partners also hold licenses as individuals. There is even more reason to place restrictions on a person who is running his own business than there is on one who is working for another licensee. Therefore, the language of the Act should be clarified in this respect.

The present wording of the Act relating to employment refers to a person "whose license has been revoked or is under suspension." There is some doubt that there is a legal suspension or revocation unless there is a valid license on the effective date of the Secretary's order. Persons sometimes do not renew a license on its anniversary date when formal reparation complaints or disciplinary actions have been filed against them. Consequently, such licenses may lapse prior to the effective date of the Secretary's order. A person should not be permitted to escape the consequences of his actions by allowing his license to lapse or by failing to obtain a license in the first place. Therefore, any possible legal deficiency in this respect should be corrected by clarifying the language of the Act.

Licenses for each Legal Entity. It was pointed out to the conference group that the PACA regulations always have contained the requirement that a person engaged in business in more than one name must have a license for each trade name that he uses. However, the Act lists "individuals, partnerships, corporations, and associations" in referring to those who require a license. Therefore, there is considerable legal doubt that a person (i.e., each separate legal entity) can be required to have more than one individual license regardless of how many trade names he uses in conducting his business. The conference group agreed that the regulations should be revised to coincide with the provisions of the Act to permit firms conducting business under more than one trade name to be covered by one license. If separate legal entities are involved, separate licenses will be required. The conference group also recommended that all licensees be required to submit proposed trade names to USDA for approval prior to their being used. Such a procedure is desirable in order to avoid the use of trade names which are similar to those of established firms operating in the same general trading area. The authority of the proposed general reporting provision of the Act would be used by USDA to obtain information from licensees concerning any changes in trade names or new trade names prior to their being adopted.

Bonds. The conference group endorsed the existing requirement that bankrupts be required to furnish acceptable surety bonds whenever a license is granted within 3 years following the date of adjudication or discharge in bankruptcy. The practice was approved of basing the amount of such bonds on the volume of business being conducted and not on the past history of the bankrupt. The group recommended that the Act be amended to authorize increasing or decreasing the amount of the bond, dependent upon the volume of business rather than as now having to fix this amount permanently at the time the application for license is received. The authority of the proposed general reporting provision of the Act would be used to require licensees to provide the necessary information on their volume of business.

Retailer Licenses. Questions concerning retailer licensing were considered in four separate parts:

1. What authority is there to consider that a retailer is a "dealer" under the Act and thereby subject to license?

The authority for and congressional intent to include retailers is clearly expressed in the Act. There is a separate provision specifically covering retailers which states that "no person buying any such commodity solely for sale at retail shall be considered as a dealer . . . in any calendar year until his purchases (in wholesale quantities) are in excess of 20." Therefore, the only distinction between a retailer and a regular wholesaler is that retailers must purchase at least one ton or more of produce per day for at least 21 days in a calendar year before he is subject to license, whereas a wholesaler is subject to license when he engages in business.

2. Why should purchases by retailers from local wholesale dealers be considered as "transactions in interstate commerce" and thereby subject to the Act?

The PAC Act uses the term "part of that current of commerce usual in the trade" in defining interstate or foreign commerce. The Federal courts have consistently held that the current of interstate commerce is not limited just to the transaction which moves the goods from one State to another State. There may be one or more transactions before a lot is shipped from the State of origin or after it arrives within the State of destination and all of these transactions are part of the current of interstate commerce. This same situation applies to other dealers or wholesalers and is not limited to retailers. Many of the complaints under the PAC Act involve disputes between two licensees located in the same State involving lots of produce which have moved or are moving in interstate commerce. The coverage of the Act would be significantly restricted if it were amended to limit its jurisdiction to only those transactions involving direct purchases or shipments from one State to another State.

3. What justification is there for defining a wholesale quantity as purchases and sales of not less than one ton in weight per day and thereby require many "small retailers" to be licensed?

The Act requires that the Secretary establish a definition of a "wholesale quantity" for the purpose of determining which dealers are subject to license. The definition of one ton per day has been in effect since 1932 and applies to all other dealers as well as to retailers. It has been claimed that this definition is now archaic because of changes in retailer procurement practices and schedules, thus making many "small grocers" subject

to license.

USDA employed a nationally-known firm to conduct a statistical survey in 1955 to determine the number of independent grocers which would be subject to license at various levels of daily procurement. The results of this survey indicate that, for practical purposes, only supermarkets (stores with total sales of \$375,000 per year) are subject to license under the existing one ton per day definition. It was estimated that these stores represented about 2.4 percent of the independent retail firms by number and 43 percent by volume of business. When combined with chain stores, this coverage represented 64 percent of the total volume of business. It was concluded that the existing one ton per day definition was realistic and practicable in its application to retailers and that "small grocers" were not being unnecessarily subjected to PACA licensing costs and requirements. With 97.6 percent of the independent retailers excluded, no other conclusion is logical. It probably would be desirable if a "wholesale quantity" for retailers could be defined in terms of value instead of quantity. All of their records normally are kept in dollars and many do not know the net weight of their purchases of fresh and frozen fruits and vegetables. The Act as now worded, however, does not authorize a different standard or definition for wholesalers than for other dealers.

4. Why should not each individual outlet in a chain store organization be required to purchase a separate license rather than only one license for an entire chain?

The Act as now written requires a separate license for each legal entity, which the Act defines as each individual, partnership, corporation, or association. Therefore, there is presently no legal authority to require additional licenses or payment of additional fees dependent upon the number of stores operated by a retail firm or the number of outlets operated by other dealers. Furthermore, a retailer comes under the Act only in his capacity as a buyer . . . his retailing functions as such are not covered. Therefore, the number of stores operated by a firm is incidental. Action under PACA is taken against the firm or person involved not against an individual store and the seller usually does not know the different individual stores to which his product was distributed from a chain store warehouse.

The industry representatives expressed the view that the present coverage of retailers under the PAC Act appeared to be realistic and justifiable. They concluded that no changes were warranted in either the Act or the regulations except, if supported by the retailer trade groups, they would favor an amendment to the Act establishing a dollar value definition applicable to retailers which would be equivalent to the wholesale quantity definition applicable to other dealers.

Trade Terms and Definitions

Suitable Shipping Condition. The subject of suitable shipping condition was discussed thoroughly at the conference. There was unanimous agreement between the shipper and buyer representatives that a shipper's responsibility under a regular f.o.b. sale does not stop when goods meeting the contract specifications have been loaded at shipping point. The shipper also gives an implied warranty and guaranty that the goods are in satisfactory merchantable condition and, therefore, will stand normal transportation to the specified destination. On the other hand, the buyer has the responsibility of accepting all goods at full f.o.b. contract price which are delivered in good condition. It was unanimously agreed that it would be desirable, if possible, to clarify the definition of good delivery so that the determination could be made against a more exact set of guidelines than presently exists under the "abnormal deterioration" approach which requires evaluation of the circumstances pertaining to each individual lot.

In making an f.o.b. sale, the shipper does not guarantee that the lot will still be completely within grade at time of arrival. Some increase in defects caused by progressive condition factors is to be expected in transit. If the shipper was holding himself responsible for the lot remaining within specified grade tolerances, he would sell on a delivered basis. Therefore, assuming normal transit conditions, a lot which is certified on arrival as "now fails to meet grade only on account of condition factors" does not mean that the lot necessarily fails to comply with an f.o.b. contract for such grade. The principle involved may be summarized by stating that an f.o.b. sale is similar to a delivered contract in certain respects. The seller is still responsible for delivering produce which is reasonably fit for the purpose for which it is intended even though the buyer pays the freight and assumes all risks of loss or damage in transit not caused by the seller.

Consideration was given by the industry group to the feasibility of establishing specific tolerances at time of delivery on the amount of damage caused by condition factors which would be acceptable to both shippers and receivers. If this were done, it would not be necessary to draw the line between "normal" and "abnormal" deterioration for each particular shipment in order to determine if good delivery has been made. It was agreed that if specific delivery tolerances were adopted they would have to be the same for all markets. It was also agreed that such standards should not allow any more decay or breakdown in an ungraded lot than one sold on the basis of a U. S. grade unless descriptive terms were used to indicate poorer merchandise (e.g., ordinary quality). If a shipper specified the percentage of damage by condition defects at time of sale, then the good delivery standard should permit a definite percentage increase in such factors at time of arrival in the market. Such a system would place a premium on complete and accurate descriptions of produce at the time of sale because the good delivery tolerance would vary accordingly, depending on the type and content of damage at time of loading. In order to adopt such a system, it would be necessary for shippers

and receivers to reach agreement on acceptability levels for progressive condition factors. Once such an agreement had been reached the USDA could publish the established tolerances for each commodity or groups of commodities so that they would be incorporated in the PACA regulations under "Trade Terms and Definitions." It would be possible to amend the definition of f.o.b. contracts in such a way to permit a gradual change-over to this system as good delivery standards for different commodities were developed.

Several industry representatives commented that the trade had been too slow in recognizing trends and in keeping grade standards and regulations in harmony with present marketing conditions. They also stated that more consideration should be given to the retail requirements because so much of the produce is now moving directly through to the consumer in pre-packaged form. It was concluded that the trade should be encouraged to work more closely with USDA in reviewing the standards and regulations with the view of doing a better job of keeping them up-to-date. It was also concluded that specific good delivery tolerances in lieu of suitable shipping condition in defining f.o.b. sales might have considerable merit and individual commodity groups concerned should determine if they wish to try to develop such standards. Representatives from lettuce and potato production areas indicated that they would like to explore the possibility of developing specific tolerances for their commodities and would discuss the matter further with their trade groups and associations. USDA representatives said they would be interested in working closely with any industry group who wanted to develop specific tolerances for good delivery and such groups should take the lead in reconciling differences of views which probably will develop between areas and between markets.

Other Trade Terms and Definitions. The industry group endorsed the USDA interpretation of the present definition of an f.o.b. contract, i.e., a shipper assumes no obligation for any deterioration in transit unless the destination of the shipment is specified in the contract. Rulings on this have been made constantly ever since PACA has been in effect, but the question has arisen more frequently in recent years because of increasingly heavy movement by trucks. Frequently, shippers who sell for truck movement are not informed concerning the destination of the load. Under such circumstances the shipper has no obligation for any deterioration in transit under the existing f.o.b. contract definition. It was agreed, however, that it would be desirable to revise the PACA regulations in order to make it crystal clear that this ruling applies.

Standard Application of Trade Terms. The industry conferees agreed that it would be desirable to revise the PACA regulations to make it clear that the trade terms and definitions whenever used have the specified standard meaning for all interstate transactions coming within the scope of the PAC Act. This, of course, is the basis for having standard trade terms and definitions and USDA has always taken the view that they applied to all such transactions. However, the wording of the regulation is somewhat ambiguous in this respect and occasionally a question has arisen in a court case concerning the scope of the terms and definitions.

Inspections En Route. The industry group discussed in detail the increasing practice of stopping cars for inspection en route to their ultimate destination. A car on which refrigeration has been broken en route may become a distress car and many shippers regard such a practice as being unfair and prejudicial to their interest. USDA has always interpreted the definition of "acceptance" in the PACA regulations as including any act of diversion by the buyer. Since orders to a railroad to stop a car for inspection is technically a diversion order, this action constitutes acceptance and the buyer is not authorized to reject regardless of the condition of the merchandise upon inspection. The industry group heartily endorsed this interpretation whenever the shipper had not given his advance consent for performing inspections en route. Therefore, stoppage en route constitutes acceptance but does not bar recovery of damages for breach of contract if good delivery at the inspection point has not been made. It was also agreed that, if the buyer does not register a complaint at the inspection point, there would be only limited cases under which he would be justified in complaining of the condition of the goods at time of arrival at the ultimate destination. These would be limited to condition factors which could not be attributed to an inspection stopover. The reason for restricting the shipper's responsibility beyond the inspection point is that details usually cannot be developed concerning the opening of the car, how long it was open, what temperatures prevailed, how many containers were opened or handled, etc. The conferees agreed that, if a shipper agrees to stoppage en route for inspection and the car is stopped only for a reasonable time, then the shipper is fully responsible for the car arriving at the ultimate destination without abnormal deterioration. If the car is held beyond a reasonable time at the inspection point, then the buyer would not be authorized to reject regardless of condition on arrival at the ultimate destination and the shipper would be responsible only for those condition defects which clearly could not be attributed to the inspection stopover.

The industry conferees concurred in the USDA interpretation that diversion out of the line of haul for inspection constituted acceptance and the buyer was not authorized to reject the load. However, the buyer still may recover damages for breach of contract if the inspection shows that the goods were not in suitable shipping condition with the determination of allowable deterioration being based on the location of the diversion point in relation to the original destination. In other words, if the distance and running time to the inspection point significantly exceed those to the original destination, the shipper's responsibility for making good delivery no longer applies.

Status of Revised Regulations

The industry group endorsed the proposal that revised PACA regulations be issued at an early date in order to correct numerous deficiencies which exist. Many comments were received from the industry relating to the proposed revised regulations which were published in 1957. It will be necessary to redraft these proposed regulations and again issue them for

industry review and comment. The group suggested that certain industry members be designated as a working committee to help the Department develop proposed regulations, particularly in fields of specialized operations such as brokers. In discussing revised regulations, the group recommended that the interpretation relating to the designation of State of origin on containers be placed on the agenda for a future meeting. The use of the shipper's home office address or the designation of several States as part of the brand marking on a container is believed by some members of the trade to be a violation of the misbranding requirements of the PAC Act.

Report on Action of June Conference Recommendations

Proposed Amendment to Raise \$500 Hearing Amount to \$1,500. The industry group recommended that the PAC Act be amended to raise from \$500 to \$1,500 the amount which must be involved in a complaint before the respondent must be granted an oral hearing at his place of business if he so requests. Several of the industry members stated that they had discussed this matter with others since the June conference and reported that the reactions were favorable toward the amendment. Its purpose is to obtain a more realistic dollar value standard and to avoid the additional time and expense which is caused by having to hold oral hearings on relatively small cases.

Review of Formal Procedures. USDA representatives reported that only limited action had been taken on this recommendation made at the June conference to determine if formal procedures could be speeded up. There is evidence that much of the delay in some formal cases is the result of the parties themselves delaying the action by failing to reply in time, asking for extensions of time, etc. Some of the extensions of time which have been granted by USDA have been so extreme that they appear to indicate dilatory tactics on the part of the parties involved. The question of whether USDA has been too lenient in granting extensions was discussed and there was general agreement that it would be desirable for USDA to adopt tighter requirements in this regard. It was agreed that if one of the parties does not comply with the established time schedules then the other party should be permitted to move for the issuance of an order based on the evidence at hand.

Study of Current Trade Practices as Related to Credit. No action has been taken by USDA on this matter to date.

Special Press Releases. USDA reported that it had issued 7 press releases since the June conference, summarizing the reparation orders which had been issued against licensees involving more than one unpaid order. (Heretofore a press release had been issued only concerning the first unpaid reparation order which resulted in the automatic suspension of a firm's license.)

In accordance with a recommendation made at the June conference, a press release was issued covering the 3 licenses which were issued under bond

since the conference. The name of the firm, its principals, and the amount of the bond were given in the release. It is planned that such information will continue to be made available through press releases each time a license with bond is approved. In addition to these 3 licenses, USDA reported that 15 applications for license had been denied since the June conference because the applicants had been discharged in bankruptcy within the last 3 years but did not furnish the required bonds.

Misbranding. USDA reported that it has continued to give increased attention to enforcement of the misbranding provisions of the Act. Starting in September 1958 most of its efforts had been concentrated on making terminal market misbranding checks. Produce branded by grade or by State of origin has been checked in about 130 cities as it arrives in the wholesale markets, at repacker's plants, or in retailer warehouses. Hundreds of inspections have been made and numerous misbranding violations were detected. In each case the receiver corrected the misbranding either by obliterating the incorrect markings or by regrading the product. In each case the shipper was warned of the misbranding violation and in most instances he was charged the cost of correcting the violation which the receiver incurred. In some instances, the shipment was rejected after the misbranding violation indicated that the lot did not meet the grade requirements of the contract even though the violation was corrected. USDA reported that the terminal market spot checks are being well received and that apparently the activity is becoming rather widely known in the different shipping areas.

Publicizing PACA Requirements and USDA Procedures. USDA reported that seven trade meetings and/or PACA clinics had been held since the June conference with others scheduled for the near future. These meetings have been sponsored by trade associations and have been well attended. Most of them have been with shipping point groups and the conferees discussed methods of developing greater interest on the part of terminal operators in arranging for PACA trade meetings. The conferees complimented the United Fresh Fruit and Vegetable Association for carrying a regular PACA column in its weekly publication. It was agreed that the educational activities and exchange of information between the Department and the industry should be carried forward as a continuing program. USDA representatives stated that its activities during the past year have constituted a full agenda for its available personnel, but it would continue to participate in these programs to the fullest extent possible.

Conclusions

It was concluded that a report on the conference should be prepared and that it should be made available, on request, to all interested members of the industry. Also, it was concluded that some of the highlights of both the June 1958 and January 1959 conferences should be made available to the industry by appropriate press releases to the trade papers. The



industry group recommended that USDA reduce the proposed changes in the Act to proper language and submit them to the established trade associations for discussion and action. Similar action should be taken on revised regulations. The group also recommended that another conference be held in the reasonably near future and expressed the opinion that periodic conferences would be highly desirable.

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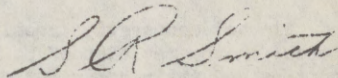
April 26, 1960

TO INDUSTRY PACA CONFEREES:

There is attached a copy of the report on the PACA Conference held in Chicago on January 29-30, 1960.

It is not our intention to give the attached report general distribution or to publish it. On the other hand, in accordance with the view expressed by the conferees, the report is not intended to be restricted for use of the conferees only. It will be made available, on request, to any interested party in the industry.

All recipients of this report should recognize that it does not necessarily reflect the final views of the industry or governmental conferees because it has not been possible to give full and complete consideration to each of the subjects discussed.



S. R. Smith, Director
Fruit and Vegetable Division

Attachment

Report on Conference Proceedings on PACA
January 29-30, 1960, Chicago, Illinois

A third conference with fruit and vegetable industry leaders and USDA representatives was held on January 29-30, 1960, to review the objectives and administration of the PACA. The conference had three main purposes. The first was to review and discuss progress and developments during 1959. The second purpose was to review a legislative draft of amendments to the PAC Act in line with recommendations made by the industry conferees at the Dallas meeting in January 1959. The third purpose was to review and discuss the proposed revised PACA regulations.

Mr. S. R. Smith, Director, Fruit and Vegetable Division, AMS, and Mr. F. R. Wilcox, General Manager, Sunkist Growers, again served as co-chairmen of the conference. There is attached a list of the industry representatives who attended the conference.

Review of 1959 Progress and Developments

Department representatives outlined the following matters in reviewing the 1959 PACA operations:

1. Changes made in the PACA Rules of Practice designed to expedite the handling of formal complaints. The procedure in default cases has been simplified and shortened. Additional changes under consideration were discussed and will be proposed for formal adoption at a later date.
2. The help and cooperation received from the large buyers (chain stores) on the revision of U. S. Grade Standards for various commodities and their contribution in commenting on the revised PACA regulations. It was pointed out that a number of these firms had requested and had been sent copies of the reports on the two preceding PACA conferences.
3. The development and reaction to the series of articles on "Doing Business the PACA Way", which was published in The Packer and recently issued as a USDA informational bulletin.
4. Discussion of the bulletin "What Retailers Should Know About Being Licensed under the PAC Act."
5. Review of 1959 disciplinary and misbranding actions under PACA.
6. Review of 1959 trade meetings and clinics held on PACA.

The industry conferees reacted favorably to the bulletins "Doing Business the PACA Way" and "What Retailers Should Know About Being Licensed under the PAC Act." They urged that all trade associations be informed of these bulletins and that their distribution be encouraged as widely as possible. The importance of continuing to hold PACA clinics and discussion meetings was stressed by the conferees. They requested that

more clinics be held in terminal markets. Department representatives requested the assistance of the organized trade groups in arranging for such meetings.

The industry conferees again expressed their interest in providing maximum assistance in acquainting independent retailers with the provisions and requirements of the PAC Act. They inquired concerning any new developments during 1959 with regard to the participation of retailer associations in carrying out this objective. Some of the conferees expressed the view that potential liability for accrued license fees extending back for many years might deter retailers from applying for license. They inquired concerning the possibility of placing some limitation on the charges for past-due fees in those instances where failure to obtain a license has been due solely to lack of knowledge of the requirements of the PAC Act. Department representatives stated that their primary interest was in having all firms licensed which are currently subject to the PAC Act. Also, they reviewed the provisions of the Act relating to the payment of accrued fees and pointed out their lack of authority to waive this statutory requirement.

(Since the Chicago conference, some retailer associations have distributed copies of the retailer bulletin to all their members, have discussed PACA requirements at their meetings, and have included information on the subject in their house organs. Department officials are hopeful that other associations will take a comparable interest and, through this means, that individual retailers will obtain a better understanding of their rights and responsibilities under the PAC Act.

Certain conclusions by Department officials concerning the determination of accrued fees for past-due licenses have been reached since the Chicago conference. The question of when a retailer first became subject to license would require the maintenance of records for past years showing the quantity purchased each day. This type of record is necessary because retailers do not become subject to license until they purchase one ton or more of fruits and vegetables on at least 21 days during a calendar year. PACA regulations require that all persons subject to license shall preserve for a period of 2 years the accounts and records required by the Act. Therefore, if failure to apply for a license is due to inadvertence and and if the applicant is not certain when his operations reached the level which would require him to obtain a PACA license, the Department will consider payment of \$50.00 in accrued fees to cover the past 2 years of operations as constituting satisfactory settlement of his liability. In this event, the applicant is advised to submit a total payment of \$75.00 with his application and to insert the words "at least 2 years" in answering the question on the application as to what date he first became subject to the Act.)

There was more discussion by the industry conferees concerning misbranding of produce than on any other subject connected with 1959 PACA operations. In answer to questions, USDA representatives advised that most of the

misbranding was found to be the result of shippers selling on U. S. grades without obtaining inspection. They also reported that, despite rumors of misbranding by repackers, very few such violations had been found. The principal misbranding topic related to the practice of marking the home office of the packer on the container when the particular shipment in fact originated in a different State. An illustration was given of California lettuce shippers who have all of their cartons marked with their California main office address but who also grow and ship lettuce from other States. It was explained to the industry conferees that such a practice was not considered to "misrepresent the State of origin" under the provisions of the PAC Act. It was explained that the PAC Act does not contain any positive requirements relating to the designation of the State of origin but simply prohibits misrepresentation if the State of origin is designated by the seller. Other Federal statutes require that the name and address of the packer be placed on the container and use of the home address is not construed as being misrepresentation under these statutes. The conferees discussed the desirability of an amendment in the PAC Act either (1) to prohibit the use of the home address when it differs from the State of origin or (2) to insert a positive requirement that the State of origin must be designated on the container. The industry conferees recommended that this topic be included on the agenda of a future meeting.

One of the industry representatives brought up the subject of grade labeling of produce without Federal or Federal-State inspection to assure compliance with the grade designated on the container. Department representatives pointed out that they had no authority to require official inspection as a prerequisite to the use of official grade marks on fresh fruits and vegetables. They pointed out that any packer can make use of these grade marks and he does not violate any Federal statute as long as the product meets the designated grade. Fresh fruits and vegetables are the only major food product where inspection is not required before official grade marks can be used. Official inspection is required as a prerequisite for using official grade marks on processed fruit and vegetables, meat, eggs, poultry, and most other food products. It was pointed out to the industry representatives that a number of States require that certain fruits and vegetables be labeled with a U. S. or State grade, but only three States require inspection to determine compliance with the grade designated. Of course, a number of production areas operate under Federal or State marketing orders which require inspection of the fresh fruits or vegetables involved as part of the marketing regulations which are in effect.

The Department representatives said that the pros and cons of requiring inspection whenever U. S. grade marks are used have been reviewed particularly with attention to potatoes. Legislative hearings have been held on certain proposals in this regard. The industry conferees inquired concerning the possibility of seeking legislation to provide that fresh fruits and vegetables bearing U. S. grade marks which had not been officially inspected would have to be stamped "NOT GOVERNMENT INSPECTED." There are about 19 States which require U. S. grade markings on the containers of certain fruits and vegetables. This system would not cut

across the application of these State laws and inspection would still be optional in these States as long as the designation "NOT GOVERNMENT INSPECTED" was placed on the containers. The conferees expressed an interest in giving further consideration to this subject at a future meeting. Department representatives agreed to prepare a summary of the views and statements which had been made in the past concerning grade labeling and inspection requirements on potatoes for the information of the conferees.

Review of Legislative Draft of Amendments to the PAC Act

The legislative draft needed to carry out the amendments to the PAC Act in accordance with the recommendations made at the January 1959 conference in Dallas was reviewed and discussed. The conferees endorsed the legislative draft and recommended that steps be taken to obtain the support of trade associations and other industry groups in supporting this legislation. There is attached a copy of a draft bill of amendments to the PAC Act and a brief explanatory statement setting forth the purpose of these amendments. Further details on the background and discussions on this subject are given in the report on the January 1959 PACA conference.

Review and Discussion of the Proposed Revised PACA Regulations

Discussion of the proposed revised PACA regulations took up most of the time at the conference. It was understood by the industry representatives that these discussions were not for the purpose of arriving at final decisions as to the content of the regulations but their comments and suggestions were being sought in the same manner as they were from all interested parties in the industry. Department representatives stated that the final regulations would be prepared after the period for receiving industry comments had expired on March 31, 1960.

The proposed regulations were reviewed section by section. Most of the comments consisted of suggestions for clarifying the technical language of some of the provisions. Department representatives stated that it was their objective to publish the final regulations not later than July 1, 1960.

Some of the major points on which comments were made were as follows:

The industry conferees recommended that non-working hours be clarified in the definition of "reasonable time" setting limits for acceptance or rejection of lots. They stated that, although their warehouses may be open 24 hours a day, during some of these hours there is no responsible person on the job who knows the provisions of the contract or who has authority to reject the shipment. It was pointed out that the act of unloading a truck or car constitutes acceptance even if no responsible person was present when this was done. Once a lot has been accepted, the receiver cannot later reject it but his

legal remedy would then be to recover damages from the seller if the goods did not meet the provisions of the contract.

The industry representatives recommended that the definition "full payment promptly" of 5 to 10 days, dependent upon the different types of transactions, be clarified to indicate that payment in a shorter time was desirable and in line with good business practices. Department representatives explained that the exact words "full payment promptly" had to be used in the regulations because these were the same words set forth in the Act. It applies only in the absence of a specific agreement between the parties as to time of payment and its purpose is to establish a definite time when a violation of the Act has occurred because of failure to pay in accordance with the provisions of the law. It was agreed that the revised regulations should clarify the significance and meaning of this definition.

The industry representatives unanimously favored the requirement that written confirmations be issued by all brokers. They recognized that some brokers have not been following this practice but believed that a broker cannot reasonably fulfill his specified duties unless he issues written confirmations in all instances.

There was extensive discussion of the proposed requirement which would prohibit charging or receiving a commission or brokerage fee whenever a person purchases or sells produce for his own account. Also, the proposed regulations would prohibit such fees whenever the person is subject to the direct or indirect control of any party to the transaction other than his principal or where the other party is subject to the person's direct or indirect control. One purpose of these proposed requirements is to bring the PACA regulations in line with the provisions of the Robinson-Patman Act. Industry representatives indicated that captive firms or other interlocking arrangements were becoming more common in the produce business. They expressed the view that commission or brokerage fees involving transactions between such firms constituted unethical and illegal competition for regular brokers and commission merchants. There was an extensive discussion of anticipated problems and issues which would arise in the interpretation and enforcement of this limitation. It was concluded that these points should be carefully considered in determining how best to handle this matter under PACA regulations.

The question was raised whether the proposed regulations would extend the scope of the PAC Act in regard to the relationships between growers and shippers. It was pointed out that the coverage of the Act would not be changed in any

respect by the proposed regulations. The duties and responsibilities of shippers to growers are spelled out in more detail in the proposed regulations in order to set forth these requirements more clearly. A grower has always been authorized to file a complaint under the Act against his shipper or agent if he has suffered damages because of a breach of contract.

Discussion of Future Meetings

The industry representatives recommended that the PACA conference group continue to hold future meetings to review and discuss the objectives and operations of the PAC Act. They further recommended that representatives of retailers be requested to attend future conferences. It was their thought that such participation on the part of retailers would be helpful in discussing mutual problems and arriving at possible solutions.

The conference was closed with an expression of appreciation by the Government Co-chairman for the contribution of time, effort, and advice received from the industry members and the statement that much of the progress to date in meeting industry problems was the result of the excellent cooperation the Department has received from them.

Attachments

List of Industry Representatives in Attendance at the
PACA Conference, Chicago, Illinois, January 29-30, 1960

Robert L. Berner	Robert L. Berner Company	Chicago, Illinois
A. W. Bodine	Bodine Produce Company	Phoenix, Arizona
Lehm L. Brown	Wells & Wade Fruit Co.	Wenatchee, Wash.
Harold M. Buzek	Flatow, Riley & Company	Cincinnati, Ohio
Peter Cancelmo	John B. Cancelmo Co.	Philadelphia, Pa.
J. Abney Cox	H. L. Cox & Son	Princeton, Fla.
Stephen A. D'Arrigo, Jr.	D'Arrigo Bros. Co. of N.Y.	New York, N. Y.
M. J. Davis	California Fruit Exchange	Sacramento, Calif.
Perrin Edmunds	C. A. Powers & Company	Fort Fairfield, Me.
R. D. Erwin	Ben E. Keith Company	Fort Worth, Texas
Ralph C. Lally	Brennan Pre-Pared Potato Co.	New Orleans, La.
S. B. McCubbins	McCubbins Brokerage Co.	Oklahoma City, Okla.
J. F. MacNulty	J. F. MacNulty, Inc.	Albany, New York
Henry W. Miller	Consolidated Orchard Co.	Paw Paw, West Va.
A. C. O'Donnell	O'Donnell Fruit Co. of Pittsburgh	Pittsburgh, Pa.
R. V. Phillips	Haines City Citrus Growers Assn.	Haines City, Fla.
E. J. Raffetto	K. R. Nutting Company	Salinas, Calif.
Merlin Schatz	M. E. Carter & Company	Memphis, Tenn.
F. R. Wilcox	Sunkist Growers	Los Angeles, Calif.
Fred W. Burrows	International Apple Assn.	Washington, D. C.
T. C. Curry		DeBary, Florida
A. E. Mercker	National Potato Council	Washington, D. C.
Alan T. Rains	United Fresh Fruit and Vegetable Association	Washington, D. C.

PACA CONFERENCE PROCEEDINGS
Chicago, Illinois
January 29-30, 1960

Explanatory Statement on Proposed Amendments to the
Perishable Agricultural Commodities Act of 1930

The major purposes of the proposed amendments to the Perishable Agricultural Commodities Act are to (1) improve and clarify the provisions for relicensing or employment of persons who have violated the Act, (2) provide that an oral hearing need not be held when the amount claimed as damages in a reparation complaint does not exceed the sum of \$1,500, and (3) provide authority for the Secretary of Agriculture to obtain from PACA licensees such reports or other information as the Secretary deems necessary in administration of the Act.

Relicensing and Employment

The proposed amendments establish a clear-cut basis for relicensing or employing individuals who have lost their license or who have otherwise violated the Act. The matter of relicensing or employment is important because most persons whose licenses are suspended or revoked are limited by training or experience to the fruit and vegetable business in seeking gainful employment. Such persons should not be kept out of the fruit and vegetable business indefinitely but, on the other hand, reasonable penalties must be provided if the Act is to be effective. It should be noted that the PAC Act is not a criminal statute and the only penalty which can be imposed against a licensee is the economic sanction of controlling a person's right to do business on his own or as an employee, officer, or partner of a licensee.

The provisions of the PAC Act pertaining to licensing and employment, as now written, are ambiguous and inconsistent. For example, the minimum debarment periods following violation of the Act presently range from one year to forever. The nature of the offenses does not justify this great disparity. Although a license may be revoked only in the case of flagrant or repeated violations, the minimum debarment period following revocation is one year, while it is two years for failure to pay a reparation order. Also, the authority for requiring the posting of surety bonds by a violator who is relicensed is not uniform or consistent for the different types and combinations of violations.

The proposed amendments would establish the following time periods and bonding requirements for relicensing and employment:¹

Type of Violation	:Relicense	:Employment
1. Flagrant Violation or Revocation ²		
(a) Waiting period with bond	2 years	1 year
(b) Waiting period without bond	3 years	2 years
(c) Length of bond ⁴	4 years	4 years
2. Unpaid Reparation Order ³		
(a) Waiting period with bond	2 years	None
(b) Waiting period without bond	3 years	2 years
(c) Length of bond ⁴	4 years	4 years

- ¹. These are minimum time periods and the Secretary could refuse to issue a license or refuse to approve employment for a longer period if he finds that the past violations were of a nature to warrant such action.
- ². This includes revocation of an existing license and flagrant or repeated violations which would have resulted in revocation if a license had been in effect.
- ³. If a licensee pays the reparation order, he is automatically reinstated. If a licensee is discharged in bankruptcy, he may be relicensed immediately upon posting a bond.
- ⁴. Length of bond refers to the number of years it remains in effect after date of relicensing or employment.

It is necessary to rewrite entirely the sections concerning licensing and employment in order to incorporate the provisions given above. Requiring a bond for employment by another licensee is necessary in order to guard against dummy or figurehead arrangements. This still permits legitimate employment by financially responsible firms. "Employment" has been re-defined to cover all types of positions because experience has shown that it is not possible to prove that a person holds a "responsible" position if his employer and he want to hide their working arrangement. Provision is made for automatic termination of a license upon bankruptcy. Presently, a bankrupt applicant is required to post a surety bond whereas a bankrupt with an existing license can continue in business simply by paying his annual license fee, since the bankruptcy action does not affect his license status. There are a number of related or clarifying changes so that the application of penalties or requirements is consistent and reasonable for all the different types and combinations of violations.

Give Opportunity for a Hearing if Damages Claimed Exceed \$1,500

The PAC Act presently provides that, at the request of the respondent, an oral hearing must be held at the respondent's place of business whenever the damages claimed exceed the sum of \$500. Otherwise a hearing need not be held and proof in support of the complaint and in support of respondent's answer may be supplied by depositions or verified statements of fact. The sum of \$500, which has not been changed since the Act was adopted in 1930, no longer justifies the time and expense of participating in an oral hearing. Also, it would expedite the handling of formal complaints if shortened procedure was authorized up to the sum of \$1,500 which represents 55 percent of the cases on which oral hearings have been held during the past four years. The sum of \$500 represented about the average value of a carload of fresh fruits and vegetables in 1930. The average value today is nearer \$2,000 per carload. Some respondents make the practice of requesting a hearing in disputes involving a small sum of money in order to deter the complainant from proceeding because of the costs. The proposed amendment does not preclude the Secretary of Agriculture from granting an oral hearing involving a sum less than \$1,500 whenever he concludes that a hearing is desirable in order to develop the evidence satisfactorily.

Add a General Reports Provision to the PAC Act

Most regulatory laws give the administrative agency authority to require the submission of reports or other information. The Packers and Stockyards Act, Agricultural Marketing Agreement Act, Commodity Exchange Act, and Federal Trade Commission Act are examples.

A general reports provision in the PAC Act would contribute significantly toward its effective administration. Information concerning the volume of business, trade names, and other factors will be needed in order to administer the amended provisions relating to licensing and employment. Changes in trade practices could be appraised and analyzed. Regulations and trade terms could be better fitted to meet the needs of the industry if based on selective pertinent reports. Certain buying and selling practices could be readily ascertained without having to resort to an investigation of books and records of licensees, which is authorized under the present statute.

Miscellaneous Amendments

It is proposed that PACA funds should not be used for the administration of the Export Apple and Pear Act. This Act establishes minimum standards for export and has no connection with the PAC Act. Administration of the PAC Act is financed from the annual fees paid by licensees and this fund should not be used for carrying out non-related activities.

PACA CONFERENCE PROCEEDINGS
Chicago, Illinois
January 29-30, 1960

A BILL

To Amend the Provisions of the Perishable Agricultural
Commodities Act, 1930, Relating to Practices in the
Marketing of Perishable Agricultural Commodities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. § 499a), is amended by adding at the end thereof the following new subsections:

- "(9) Any person affiliated or connected with a commission merchant, dealer, or broker as (1) owner, (2) partner in a partnership, (3) officer, director, or holder of more than 10 percent of the outstanding stock of a corporation or association, shall be considered 'responsibly connected' with such commission merchant, dealer, or broker;
- "(10) The terms 'employ' and 'employment' mean any affiliation of an individual with the business operations of a licensee, with or without compensation, including ownership or self-employment."

Sec. 2. The third sentence of section 3(b) of such Act (7 U.S.C. § 499c(b)) is amended to read as follows: "Upon the filing of the application, and annually thereafter, the applicant shall pay a fee not to exceed \$25 which 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 the Act, and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497): Provided, That 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."

Sec. 3. Section 3 of such Act (7 U.S.C. § 499c) is further amended by adding at the end thereof the following new subsection:

- "(c) A licensee may conduct business in more than one trade name or change the name in which business is conducted without requiring an additional or new license. The Secretary may disapprove the use of a trade name if, in the opinion of the Secretary, 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. Section 4(a) of such Act (7 U.S.C. § 499d(a)) is amended by inserting before the period at the end thereof ": 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."

Sec. 5. Section 4(b) of such Act (7 U.S.C. § 499d(b)) is amended to read as follows:

"(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 was responsibly connected with any person -

- (1) whose license was revoked under the provisions of section 8 within two years prior to the date of the application or whose license is currently under suspension; or
- (2) who has been found after notice and hearing to have committed any flagrant or repeated violation of section 2 within two years prior to the date of the application: Provided, That this 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) who, within two years prior to the date of the application, has been found guilty in a Federal court of having violated the provisions of the Produce Agency Act (7 U.S.C. secs. 491-497); or
- (4) who has failed except in the case of bankruptcy and subject to his right of appeal under section 7(c), to pay any reparation order issued against him within two years prior to the date of the application."

Sec. 6. Section 4(c) of such Act (7 U.S.C. § 499d(c)) is amended to read as follows:

"(c) At the expiration of the two-year period specified in paragraph (b) of this section, the Secretary may issue a license to such applicant if the 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 the 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): Provided, That if 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: Provided further, That if the surety bond so furnished is terminated for any reason without the approval of the Secretary the license shall be automatically cancelled 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."

Sec. 7. Section 6 of such Act (7 U.S.C. § 499f) is amended by striking out "\$500" each place it appears and inserting in lieu thereof "\$1,500."

Sec. 8. Section 8(b) of such Act (7 U.S.C. § 499h(b)) is amended to read as follows:

"(b) Except with the approval of the Secretary, no licensee shall employ any person who was 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 the Act and that it will pay all reparation awards, subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval: Provided, That 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."

Sec. 9. Section 13 of such Act (7 U.S.C. § 499m) is amended by adding at the end thereof the following new subsection:

- "(g) Every commission merchant, dealer, or broker shall from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to carry out the provisions of this Act. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this section or for the purpose of obtaining the information required in any report, where it has been requested and not furnished, the Secretary is authorized to examine such accounts, records, and memoranda which he deems relevant. Whenever the Secretary determines, after notice and opportunity for a hearing, that any commission merchant, dealer, or

broker has failed to furnish complete, accurate, or timely reports, pursuant to this section, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender for a period not to exceed ninety days."

United States Department of Agriculture
Agricultural Marketing Service
Washington, D. C.

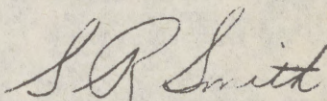
April 24, 1961

To: Fresh Fruit and Vegetable Industry
Conference Group

There is attached a copy of the report on the USDA-Industry Conference on improved trade practices for fresh fruits and vegetables held in New Orleans on January 20, 1961.

This report does not necessarily reflect the final views of the industry or government conferees on each of the subjects discussed.

Copies of the report will be made available, on request, to any interested party in the industry.

A handwritten signature in cursive script, reading "S. R. Smith".

S. R. Smith, Director
Fruit and Vegetable Division

Attachments

Report of USDA-Industry Conference on Improved Trade
Practices for Fresh Fruits and Vegetables
New Orleans, Louisiana
January 20, 1961

The fourth annual conference of fresh fruit and vegetable industry leaders and USDA representatives was held on January 20, 1961. The purpose of this conference was to discuss the matter of improved trading practices in fresh fruits and vegetables. Therefore, the scope of the conference was broadened from the earlier ones to include, in addition to the operation of the Perishable Agricultural Commodities Act, U. S. grade standards and inspection, and related industry-government matters.

Mr. S. R. Smith, Director of the Fruit and Vegetable Division, AMS, Mr. S. T. Shaw, Vice President of Safeway Stores, Inc., and Mr. F. R. Wilcox, General Manager of Sunkist Growers, served as Co-Chairmen of the conference.

The industry conference group was expanded to include retailer representatives in addition to the shippers, carlot receivers, and brokers who participated in the preceding conferences. Unfortunately, the heavy snowstorms in the midwestern and eastern parts of the country on January 19 and 20 disrupted transportation schedules so that several of the conferees were absent for all or a portion of the conference. There is attached a list of the industry representatives who attended the conference.

Review of 1960 PACA Developments

The discussions on this subject centered largely around the revised PACA regulations which became effective on August 1, 1960. These regulations do not apply to transactions which occurred prior to that date, and at the time of the conference only a few such complaints had been received. Until more experience is obtained in the application to actual cases, no appraisal of the regulations could be made. However, Department representatives reported that the revised regulations have been well received by the industry and they represent a significant accomplishment of the conference group. There are no immediate plans for further changes in the regulations until the Act is amended, which will necessitate some changes. Department representatives pointed out the desirability of developing supplemental regulations which would be more specifically adapted to the frozen fruit and vegetable industry.

Most of the reactions to the revised regulations reported by the industry conferees were connected with the requirement that brokers issue written confirmations or memorandums of sale. Several of the representatives stated that, in their opinion, the majority of the brokers were complying with the regulations. Evidently, there is some variation between areas with shipping point brokers still constituting the main problem in this regard. It was reported that some shippers have been dissatisfied with the vague or indefinite terminology used by some brokers at shipping point in describing the grade, quality, and other terms of the contract

in their memorandum of sale. There has also been some difficulty in having the brokers specify definite destinations for the shipments, since some of the buyers would prefer to have the "suitable shipping condition" warranty carry to any destination in the U. S. Some shippers have been rejecting such contracts, but apparently others have not been insisting that brokers issue adequate confirmations or memorandums of sale. USDA representatives urged that all parties to the contract promptly examine the memorandums of sale and object to the broker when the terms are not clearly and properly stated. It was pointed out that the regulations require brokers to issue confirmations "setting forth all the essential details of the agreement between the parties."

Industry representatives observed that the current investigations and citations by the Federal Trade Commission with respect to the payment or collection of illegal brokerages has encouraged compliance by brokers with the PACA regulations. They pointed out that, if a broker issues a written confirmation to both the seller and the buyer, all parties concerned then have prima facie evidence in their files that the broker was acting in his proper capacity under the FTC laws and was entitled to receive a brokerage fee from one of the parties.

An industry representative suggested that it would be desirable if the USDA could prepare a draft of a smaller form of a Memorandum of Sale for use of shipping point buying brokers. The standard form is too large and a "pocket size" form would be more convenient to carry. The USDA will endeavor to prepare such a form for use in the industry.

Retailer representatives stated that their firms require the issuance of a memorandum of sale by their buyers so that both parties will have evidence in writing regarding the terms of the sale. The question was then raised as to what could be done to have a good contract record on sales between shippers and buyers if the buyer does not issue a written sales agreement. (The PAC Act has not been interpreted to authorize the Department to make it mandatory that buyers issue written memorandums of sale and, therefore, the regulations in this regard apply only to brokers.) In answer to the questions, USDA representatives stated that their only recommendation was the usual one that the shipper should promptly confirm by wire or letter to the buyer the terms of sale agreed to verbally, in person, or over the telephone. The written confirmation should contain all of the essential points covered by the oral agreement. Such confirmation to the buyer is not conclusive evidence that the buyer has agreed to these terms but, in the absence of a prompt reply to the contrary, it would probably be considered as sufficient evidence to establish that the contract was made on the terms stated in the wire.

The question was raised by industry representatives as to what action the Department intends to take to encourage or to force brokers to issue written confirmations or memorandums of sale in all instances. USDA representatives replied that, in accordance with the investigatory procedure outlined in the proceedings of prior conferences with the industry

group, it was not their present intention to initiate independent investigations to determine compliance with this provision of the regulations. USDA is reviewing each reparation complaint on transactions after August 1, 1960, involving a broker to ascertain if written confirmations have been issued covering such transactions. As violations are detected following this procedure, warning letters will be issued to violating brokers with the notice that a check will be made at a future date to determine if they currently are complying with the regulations. Disciplinary action will be taken if there are instances of persistent or repeated violations after the broker has been duly warned and notified. This procedure is similar to the one followed regarding inadequate records of commission merchants, which is outlined on page 10 of the conference proceedings covering the June 27-28, 1958, conference in Washington, D. C. Relatively few complaints had been received at the time of the conference involving transactions on or after August 1, 1960.

The subject of future PACA clinics and trade meetings in production areas and terminal markets was discussed by the group. It was suggested that the Department notify the various trade associations and organizations that its personnel would be available for such meetings and to encourage them to make the necessary arrangements. Retailer representatives inquired concerning the possibility of smaller meetings with buyers, warehousemen, and supervisory personnel within the same organization. They were assured that the Department desired to cooperate with all industry groups and to the maximum extent possible would participate in any such meetings which retail organizations arranged.

The next subject discussed was the proposed amendments to the PAC Act which were incorporated in a bill introduced by Senator Holland of Florida in the 86th Congress. The Government Co-Chairman gave a background statement explaining how these amendments to the Act were developed. He outlined the fact that this bill was the direct outgrowth of the 1958, 1959, and 1960 USDA-Industry conferences. Based on the industry representatives' recommendations made at the 1958 and 1959 conferences, a bill was drafted which was considered at the 1960 conference in Chicago. Following certain changes and approval by the conferees, the bill was introduced on June 30, 1960, by Senator Holland at the request of the United Fresh Fruit and Vegetable Association and the Florida Fruit and Vegetable Association. It was recognized by these sponsors that action on the bill was unlikely at that session of Congress but it was their desire to obtain an official bill which could be circulated within the industry and on which an official USDA position could be obtained.

The Department filed a report with the Senate Committee on Agriculture in 1960 approving the bill but recommending three additional changes. One was a substantive change having to do with increasing the maximum annual license fee from the present \$25 amount. The other two were technical corrections. Senator Holland, before reintroducing the bill in the 87th Congress, requested that the Department recommendations be taken up with the industry conference group to see if a "clean" bill could be agreed upon

which he could then introduce.

The industry representatives had no questions concerning the technical corrections which had been made either by the Senate Staff or by the Department and they approved these changes. There was considerable discussion concerning the annual license fee and the reporting provision of the bill. With continued increases in costs of personnel, equipment, transportation, communication, etc., the present \$25 annual fee is inadequate to meet the costs of administering the law. Therefore, it has been necessary to draw on the PACA reserve fund which has been built up over a period of years and, at the current level of costs and receipts, this fund will be completely depleted sometime in 1962. The conferees considered three alternative approaches to providing for increased fees. It was their conclusion that the most desirable approach would be to increase the maximum fee to \$50 per year, with the provision that the Secretary shall give public notice and an opportunity for interested persons to file views and objections prior to the effective date of any increase. It was recognized by the conferees that the current operating costs would necessitate an increase in the fee of about \$10 per license but it was their view that the maximum should be set at \$50 in order to make adequate provision for possible increases in operating costs which may occur in the future.

The majority of the industry representatives recommended that the reporting provision be deleted from the bill. It was their view that virtually all of the essential information needed by USDA for the effective administration of the Act could be obtained through the voluntary cooperation of the industry and through the authority for examining books and records now contained in the Act. However, it was their further conclusion that the matter should be kept under continuing appraisal by the industry conference group.

The conferees again discussed many of the points which have been previously considered at the prior conferences which led to their earlier endorsement of this reporting provision. Several observed, however, that the situation with regard to "unjustified rejections" which was the principal reason for this proposal had improved considerably during the past couple of years. Also, some of the conferees referred to "mail order investigations" which conceivably could be adopted on a large scale under the proposed reporting provision. In view of these circumstances and not wishing to jeopardize support for the bill, which contains many other highly desirable features, the conferees reached the conclusion as set forth above that this feature of the proposed amendment should be shelved at this time.

(Following the conference, the United Fresh Fruit and Vegetable Association adopted a resolution endorsing the proposed revised bill and urging that it be passed. The revised bill was then presented to members of the Senate and House Committees on Agriculture by industry representatives and identical bills are now pending in the 87th Congress, which are S. 1037 introduced by Senator Holland of Florida and H.R. 5023 introduced by

Congressman McIntire of Maine. These bills contain all of the provisions and features which were approved at the New Orleans conference.)

Discussion of U. S. Grade Standards and Inspection

The attached set of six tables formed the basis for discussing the merits and shortcomings of U. S. grade standards and the government inspection service. The data given in these tables show a significant difference in the use of U. S. grades and inspection. Conferees analyzed and discussed various reasons which might account for these differences and suggested certain improvements or actions which might make the U. S. grades and inspection service more useful.

There was general agreement that the volume of inspection at shipping point was an indication of the usefulness of the U. S. grades and inspection service but, on the other hand, the volume of market inspections could not be used for this purpose. Most purchases are made on an f.o.b. basis and, therefore, the volume of inspection at shipping point provides an indication of the relative use of the U. S. grades. Market inspections are primarily an indication of trouble shipments and, as expressed by a chain store representative, having no market inspection by USDA meant that they were having little or no trouble. Conversely, since market inspection certificates are used to settle disputes, then a large number of inspections means that they are having a large number of disputes.

Both shippers and receivers expressed dissatisfaction with the present U.S. grades for certain commodities. Apples and lettuce were particularly singled out in this regard. A chain store representative said that his firm depended largely on their buyer's observations on the quality of the produce rather than on the U. S. grades. A shipper pointed out that there were variations between and within different chains as to what would or would not be accepted. It was acknowledged that some chain store warehousemen were more technical and harder to please than others.

There was considerable discussion of ways and means of obtaining constructive suggestions and criticisms from the industry on proposals for revising U. S. grades. Department representatives emphasized that generalized comments were not very helpful. The Department's present procedure for circularizing the industry for comments was outlined. This consists primarily of furnishing copies of printed material for distribution to all trade associations and making as many personal contacts as possible with members of the trade both at shipping point and in the terminal market. Certain associations and trade groups have been very helpful in this regard while others have displayed little interest. It was suggested by an industry representative that a better job could be done if the Department would prepare a list of specific questions which it would like to have answered in order to evaluate a proposed grade revision. In this way the significant points or issues could be singled out by the industry members when they are reviewing proposed revisions. It was suggested that proposed grade standards, accompanied by such a list of questions, be sent to the United Fresh Fruit and Vegetable Association, National Association of Food

Chains, and other trade associations for distribution to their members. It was generally believed that this procedure should be adopted as one of the methods designed to obtain as much definite information as possible so that the views and needs of all segments of the industry could be considered in developing and amending U. S. grades. USDA representatives stated that they would follow this procedure whenever significant or multiple changes in a standard were being proposed.

The feasibility of having a small working group from the industry to review changes in U. S. grades was discussed. It was recommended that this approach should be followed whenever it appeared that it would make an effective contribution in arriving at final decisions on proposed grade changes. USDA representatives indicated that they would try this approach on some future revision of grade standards.

The conference group reviewed the "Statement on Inspection and U. S. Grade Labeling of Fresh Fruits and Vegetables", which was prepared in response to a request made at the January 1960 Conference. (Copies of this report are available upon request from the Fruit and Vegetable Division.) This statement outlines some of the pros and cons of requiring inspection whenever U. S. grade marks are used. Fresh fruits and vegetables are the only major food products on which inspection is not required before official U. S. grade marks can be used. The conferees decided not to make any recommendation at this time on this matter.

Conclusions

The Government Co-Chairman concluded the conference by thanking the industry representatives for the cooperation and assistance they had rendered the Department. He pointed out that the industry representation had been broadened at this meeting by inviting retailers to participate so that all major segments of the industry are now represented in the discussions. It was generally agreed that the expanded representation had significantly contributed to the effectiveness of the group and that continued conferences should be held to discuss mutual problems and to seek satisfactory solutions.

Attachments



Industry Conferees at USDA-Industry Conference
Roosevelt Hotel, New Orleans
January 20, 1961

Shippers

A. W. Bodine	Bodine Produce Company	Phoenix, Arizona
J. Abney Cox	H. L. Cox & Son	Princeton, Florida
M. J. Davis	California Fruit Exchange	Sacramento, Calif.
Perrin Edmunds	C. A. Powers & Company	Fort Fairfield, Me.
*J. S. McManus	J. S. McManus Produce Company	Weslaco, Texas
Henry W. Miller	Consolidated Orchard Company	Paw Paw, West Va.
R. V. Phillips	Haines City Citrus Growers Assn.,	Haines City, Fla.
*E. J. Raffetto	K. R. Nutting Company	Salinas, California
Paul W. Scea	H. S. Denison & Company	Wenatchee, Wash.
F. R. Wilcox	Sunkist Growers	Los Angeles, Calif.

Carlot Receivers

*Robert L. Berner	Robert L. Berner Company	Chicago, Illinois
*Peter Cancelmo	John B. Cancelmo Company	Philadelphia, Pa.
Stephen A. D'Arrigo, Jr.,	D'Arrigo Bros. Co. of N.Y., Inc.,	New York, N. Y.
R. D. Erwin	Ben E. Keith Company	Fort Worth, Texas
Ralph C. Lally	Brennan Pre-Parred Potato Co.	New Orleans, La.
Merlin Schatz	M. E. Carter & Company	Memphis, Tennessee

Brokers

*J. F. MacNulty	J. F. MacNulty, Inc.	Albany, New York
S. B. McCubbins	McCubbins Brokerage Company	Oklahoma City, Okla.

Retailers

*J. E. Davis	Winn-Dixie Stores, Inc.	Jacksonville, Fla.
M. A. Ellison	Super Valu Stores, Inc.	Hopkins, Minnesota
Peter Gunner	The Kroger Company	Cincinnati, Ohio
Ronald L. Hileman	Jewel Tea Company, Inc.	Melrose Park, Ill.
Malcolm J. Reid	Reid Stores, Incorporated	Staunton, Virginia
Seth T. Shaw	Safeway Stores, Inc.	Oakland, California
*Harry P. Wehman	The Great Atlantic & Pacific Tea Company	New York, N. Y.

Observers

J. E. Adams	Winn-Dixie Stores, Inc.	Jacksonville, Fla.
Guy Bear	Safeway Stores, Inc.	Oakland, California
Fred W. Burrows	International Apple Assn.	Washington, D. C.
*Kent Christensen	National Assn. of Food Chains	Washington, D. C.
T. C. Curry	Fruit and Vegetable Bureau of Service	DeBary, Florida
A. E. Mercker	National Potato Council	Washington, D. C.
Carl Miller	Jewel Tea Company, Inc.	Melrose Park, Ill.
Alan T. Rains	United Fresh Fruit and Vegetable Assn.	Washington, D. C.
Gordon N. Smith	United Fresh Fruit and Vegetable Assn.	Washington, D. C.

* Absent

Summary of Tables

Table 1 - Variations within Shippers' Brands of Apples, 1959-60 Season.

This table shows a significant difference in the amount of variation within 9 private brands of apples in terms of grade defects, decay, firmness, and color. All lots were Government inspected and were certified as meeting a designated State or Federal grade.

Table 2 - Number of Carlots and Percentage of Commercial Shipments Inspected on Voluntary Basis in Selected States during 1959.

This table shows the variation in the use of Government inspection by shippers in different production areas. The 4 selected commodities are indicative of the wide variations which apparently are caused by different marketing practices, different customs, variation in suitability of U. S. grades, or other reasons.

Table 3 - Variation Between Selected Commodities in Use of Inspection in Florida during 1959.

This table shows that, in the same production area with many of the same shippers, there is a wide variation between products in the use of Government inspection. Apparently, inspection in accordance with existing U. S. grades is of greater value to the shipper for marketing or quality control for some products than it is for others.

Table 4 - Fresh Fruit and Vegetable Inspections Performed in Terminal Markets, July 1, 1959-June 30, 1960.

This table shows separately the estimated percentage of wholesale market and chain store receipts inspected (either grade or condition) in 19 major markets. There is a wide variation between markets and between these two receiving groups in the use of inspection.

Table 5 - Government Inspection for Chain Stores in Selected Cities - 1959-60.

This table shows the number of carlot equivalents of 9 different products inspected in 15 major cities. Inspection of most products in most cities is evidently negligible in relation to the volume of direct chain store receipts.

Table 6 - Government Inspection for Certain Chain Stores in Selected Cities During One Month in 1960.

This table shows that there is as much variation between different warehouses operated by the same chain store as there is between different chain stores in their comparative use of inspection.

Table 1
Variations within Shippers' Brands of Apples
1959-60 Season

Item	Brand													
	A	B	C	D	E	F	G	H	I	J	K	L	M	N
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
	percent of lots													
U. S. No. 1 Grade or Better	99	100	99	92	98	100	100	23	66	99				
Grade Defects														
0-4 percent	100	2	2	1	0	0	0	66	73	88				
5-10 percent	0	98	98	99	100	100	100	34	27	12				
Decay														
0 percent	100	35	79	72	81	99	100	100	100	92				
1/2 percent	0	52	21	28	19	1	0	0	0	7				
1 percent	0	13	0	0	0	0	0	0	0	1				
Firmness														
Hard	85	9	54	11	30	7	90	8	21	0				
Firm	14	9	31	55	38	26	6	67	42	37				
Firm Ripe	1	54	7	34	32	63	4	25	27	42				
Ripe	0	28	8	0	0	4	0	0	10	21				
Minimum Good Red Color														
25-49 percent	15	0	19	17	2	7	13	77	78	5				
50-74 percent	85	97	80	74	39	89	81	13	22	94				
75-100 percent	0	3	1	9	59	4	6	10	0	1				

1. Through October 20. 2. After October 20.

Source: Compiled from Federal-State Inspection Certificates.

Prepared by: Fruit and Vegetable Division, AMS, USDA.

Table 2

Number of Carlots and Percentage of Commercial
Shipments Inspected on Voluntary Basis
in Selected States during 1959

State	: Carlots/1 : Inspected ::	: Estimated : Percent of : Shipments
	: 1	: 2
	<u>carlots</u>	<u>percent</u>
<u>Potatoes</u>		
Alabama	4,448	95
Arizona	3,172	70
North Carolina	1,933	55
Florida	4,965	50
Delaware	1,828	40
New Jersey	2,687	30
Pennsylvania	682	5
<u>Lettuce</u>		
Arizona	12,994	40
California	13,690	20
<u>Peaches</u>		
South Carolina	5,827	85
Arkansas	968	50
Michigan	131	5
<u>Apples</u>		
Washington	18,336	72
Pennsylvania	542	18
Virginia	809	12
Michigan	852	9
New York	1,043	8

1. Both rail and truck.

Prepared by: Fruit and Vegetable Division, AMS, USDA

Table 3

Variation Between Selected Commodities in Use
of Inspection in Florida during 1959

Commodity	: Carlots/1 : : Inspected : : Shipments	Estimated Percent of Shipments
	1 carlots	2 percent
Celery	7,969	73
Green Corn	7,269	71
Potatoes	4,965	50
Cabbage	3,030	35
Green Peppers	180	5
Green Beans	52	1

1. Both rail and truck.

Prepared by: Fruit and Vegetable Division, AMS, USDA.

Table 4

Fresh Fruit and Vegetable Inspections
 Performed in Terminal Markets
 July 1, 1959-June 30, 1960

City	: Percent of : Wholesale Market :Receipts Inspected	: Percent of :Chain Store Direct :Receipts Inspected
	: 1	: 2
Pittsburgh	38.9	1.8
New Orleans	28.5	3.8
Detroit	8.8	1.4
Chicago	5.5	3.3
Atlanta	4.5	1.2
Boston	4.1	2.1
New York	3.9	2.1
St. Louis	3.7	1.1
Washington, D. C.	3.3	1.1
Louisville	3.1	1.5
Cleveland	3.1	0.9
Cincinnati	2.9	2.1
Dallas	2.3	2.6
Philadelphia	2.3	1.0
Baltimore	2.3	.07
Denver	2.1	.04
San Francisco	2.1	.09
Portland, Oregon	0.7	0.7
Los Angeles	0.5	0.08

Prepared by: Fruit and Vegetable Division, AMS, USDA.

Table 5
Government Inspection for Chain Stores in Selected Cities
1959-60

City	Apples	Cantaloupes	Grapefruit	Lettuce	Oranges	Peaches	Potatoes	Tomatoes	Watermelons	Total Products
	1	2	3	4	5	6	7	8	9	10
	Number of Carlots/100									
Atlanta	4	4	-	17	-	-	29	-	2	56
Baltimore	2	5	4	12	20	-	10	1	1	55
Boston	-	13	2	11	6	13	21	14	1	81
Newark	7	27	5	74	27	8	73	8	12	241
New York	13	9	21	58	29	16	36	53	21	256
Philadelphia	4	10	6	45	13	4	22	4	7	115
Pittsburgh	5	1	5	23	3	5	58	3	3	106
Chicago	23	17	29	119	44	13	101	13	49	408
Detroit	16	5	22	22	12	4	44	10	28	163
Cincinnati	8	3	4	19	11	6	9	-	7	67
Cleveland	3	4	2	7	3	4	22	-	12	57
New Orleans	13	2	3	9	5	5	79	-	1	117
St. Louis	2	4	-	9	11	4	4	1	2	37
Los Angeles	1	-	1	-	-	-	2	-	1	5
San Francisco	-	-	1	2	2	-	7	-	-	12
Total - 15 Cities	101	104	105	427	186	82	517	107	147	1,776

1. Both rail and truck.

Prepared by: Fruit and Vegetable Division, AMS, USDA.

Table 6

Government Inspection for Certain Chain Stores
in Selected Cities During One Month in 1960

Chain	City				
	:	:	:	:	:
	A	B	C	D	E
	1	2	3	4	5
- Percent of Receipts Inspected -					
1	10	*	*	3	13
2	6	1	0.2	*	*
3	7	0	*	*	0.3
4	*	*	3	*	3

* Does not operate in this city.

Prepared by: Fruit and Vegetable Division, AMS, USDA.

Mr. GRANT. Are there any questions?

Mr. TEAGUE of California. Since Mr. McIntire is a member of the full Committee on Agriculture, I ask unanimous consent that he be asked to sit with the subcommittee and to direct any questions he cares as the witnesses appear.

Mr. GRANT. We will have to take that under conference. [Laughter.]

Mr. McINTIRE. I will stand by, Mr. Chairman, thank you.

Mr. JENNINGS. As I understand, the present charge, Mr. McIntire, for this inspection service is \$25.

Mr. McINTIRE. That is right.

Mr. JENNINGS. Your bill provides that it may be increased to \$50?

Mr. McINTIRE. That is right.

Mr. JENNINGS. As I understand the act, it does not matter whether a chain has 25 stores, or whether it is an individual grocery store which has 1 store that the cost is exactly the same?

Mr. McINTIRE. That is right. There is an exemption set forth administratively which includes a great many of the smaller retail outlets. This is something I hope the committee will examine so that there can be a complete understanding as to how the act is administered and the necessity for increasing the fees.

I point out that since its very inception the administration of the act has been self-supporting through income from fees.

The \$50 figure is simply an upper limit. It is not intended that it shall be changed from \$25 to \$50, because the Department has the responsibility to assess on the basis of the license fee only such sums as are adequate to soundly finance the cost of the service.

Mr. JENNINGS. Would you have any objection to exempting a small retail operation who purchases, say, 90 percent of their products from one central wholesaler or distributor who comes under this act?

Mr. McINTIRE. I think that this is an area in which the retail association has a specific proposal, and an amendment, I think the committee should take that under serious consideration. I think the committee should bear in mind that this act is intended to provide a vehicle whereby those who receive fresh fruits and vegetables and frozen fruits and vegetables in conformity with the transaction, must pay for them. I think we want to be a little careful how we take some of these issues and not just say, "this is inequitable," or "that is inequitable." We want to be a little careful that we do not lose sight of the real purpose of the Perishable Agricultural Commodities Act, and that is, that those who receive their commodities in a condition that is in accordance with the terms of the transaction are going to have to pay for them. I believe this should not be lost sight of as you give very careful consideration to some of the details.

Mr. JENNINGS. I just wanted to bring this question up at the beginning, so that we might have an opportunity to delve into its many ramifications. That is one in particular that was brought to my attention.

Mr. McINTIRE. Those representing the retail trade have some specific language in this regard to which I sincerely hope the committee will give careful consideration.

Mr. JENNINGS. Thank you.

Mr. GRANT. Thank you very much, Mr. McIntire.

Mr. McINTIRE. Thank you.

Mr. GRANT. Our first witness is Mr. George R. Grange, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture. We will be glad to hear from you now.

STATEMENT OF G. R. GRANGE, DEPUTY DIRECTOR; ACCOMPANIED BY NATHAN KOENIG, SPECIAL ASSISTANT TO THE ADMINISTRATOR; J. J. DIAMOND, CHIEF, REGULATORY BRANCH; WILLIAM E. PAULSON, HEAD, LICENSE SECTION, REGULATORY BRANCH, FRUIT AND VEGETABLE DIVISION, AGRICULTURAL MARKETING SERVICE; AND JAMES E. HORTON, OFFICE OF THE GENERAL COUNSEL, U.S. DEPARTMENT OF AGRICULTURE

Mr. GRANGE. Mr. Chairman and members of the committee, I have a statement that covers the highlights of H.R. 5023, and with your permission, I would like to read it.

Mr. GRANT. As you desire, but if you would like to submit it for the record and then comment on it, that would be very well.

Mr. JENNINGS. Since it goes into the details and the operation of this Perishable Agricultural Commodities Act, I think that the witness should read it, so that we may have the background.

Mr. GRANT. Very well.

Mr. GRANGE. This bill would amend the Perishable Agricultural Commodities Act of 1930. The Perishable Agricultural Commodities Act establishes a code of fair trading practices governing the distribution and marketing of fresh and frozen fruits and vegetables in interstate commerce. To make this code effective, the act provides that (1) each commission merchant, dealer, and broker subject to the act obtains a license; (2) false accounting, failure to make full payment promptly, unjustified rejections or failure to deliver, misbranding, and other unfair practices are violations of the act; (3) each licensee shall keep complete and correct accounts and records on all transactions; and (4) the Secretary may investigate complaints, issue reparation orders, and refuse, suspend, or revoke licenses. Each licensee must pay an annual license fee. The fees are deposited in a special fund from which the cost of administering the act, other than legal services, is paid.

The fruit and vegetable industry has undergone significant changes in both its market structure and distribution practices since 1930. The act has previously been amended several times to keep its provisions in alinement with existing industry needs. The purpose of this bill is to effect certain improvements in the act in recognition of existing practices and problems.

As Mr. McIntire indicated, one of our primary ways of doing that is with an industry conference group that we have been working with for the past several years trying to keep the act and its operations under surveillance and determining those elements of the act or regulations under the act which require modification or changes in order to be able to do as effective a job as possible in carrying out the objectives of the act. These objectives are solely and simply a code of fair trading practices.

There are two main phases of activity in administering the act. The first provides that any person may complain to the Secretary concerning any violation of the fair trading principles and, if the facts warrant, the Secretary shall then call upon the person complained against to satisfy or answer the complaint. The act further provides that the Secretary shall investigate all reasonable complaints. If the Secretary concludes from the evidence submitted by the parties that a violation has occurred, he shall determine the amount of damages which were sustained and he shall then issue 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 is authority for the Secretary to suspend or revoke licenses as a disciplinary measure. The act provides that the Secretary may suspend licenses for not more than 90 days for any violation and may revoke licenses for repeated or flagrant violations.

The following information presents briefly the scope of activities under the act. There are approximately 25,000 licenses in effect. Approximately 2,500 complaints are received annually and amicable settlements average in excess of \$1 million annually. Last fiscal year 368 formal orders were issued covering reparation awards totaling approximately \$425,000. In addition, our offices receive in the neighborhood of 8,000 inquiries annually which are not listed as complaints but contribute to the settlement of a large number of disputes between the parties involved.

Of course, the majority of disputes in the trade are settled between the parties concerned, without referral to this impartial umpire or referee.

The fact that there is such a code, in the opinion of the great majority of the industry, gives them a basis for being able to work it out themselves; in other words, they know that this is here to resort to if the occasion warrants. So we do not want to imply that these are the only times where there are misunderstandings between the parties to a transaction. Of course, we recognize the great majority of them are settled between the parties without referral to the Department of Agriculture, but this is the basic code. They make reference to it. Many people try to make their settlements in accordance with these requirements without the necessity of referring them to us for a decision or a determination.

Mr. TEAGUE of California. Since the witness has interrupted his prepared statement, I would like to ask him to give us one or two typical examples referred to.

Mr. GRANGE. I have as a part of my statement at the end a few examples. They bear on the subject of retailers which we understood would come up and, also, frozen food brokers. If that does not cover it adequately, I will be glad to add to those at that time, if that is all right with you.

Mr. TEAGUE of California. Yes; that is very satisfactory.

Mr. GRANGE. As stated in Secretary Freeman's report on H.R. 5023, one of the main purposes of this bill is to establish a clear-cut

basis for licensing or employing a person whose license has been suspended or revoked or who has otherwise violated the act. In order to accomplish this, the bill rewrites entirely the sections concerning licensing and employment of such persons. The more important revisions are:

1. Clarify the language of the act to indicate that a person whose license had lapsed or who had failed or refused to obtain a license at the time the violation occurred or at the time the Department's order was issued is in the same category as one who had a valid license.

2. Clarify the language of the act to indicate that self-employment (that is, owner of a firm) is under the same limitations as are imposed on other persons employed in the business.

3. Change the definition of employment by deleting the term "responsible position" and make the limitations applicable to any position.

4. Establish realistic and equitable debarment periods and bonding requirements for relicensing or employment of a person against whom there is an outstanding reparation award or who has otherwise violated the provisions of the act.

5. Change the length of time that a surety bond would have to be maintained following the time of relicensing or employment from the present 2-year period to 4 years.

These proposed changes in the act reflect the view that, except in extremely aggravated cases, a person should not be denied a license indefinitely either under the mandatory provisions of section 4(b) or by exercising the option of questioning fitness for license under section 4(d). In general, if he posts a satisfactory surety bond, a person would be relicensed after 2 years following revocation or failure to satisfy a reparation order. If his employer posts a satisfactory surety bond, such a person would be eligible for employment by another licensee after 1 year following failure to pay a reparation order. The bonding requirement would bar persons from being relicensed for 3 years who, due to poor financial status, were not able to obtain a surety bond. We believe that it is reasonable to require some measure of assurance that such persons will carry out their future obligations better than they had in the past and, if they cannot obtain a satisfactory bond, they should not be licensed. Persons who could not obtain a bond would have to wait at least 3 years following the effective date of the Secretary's order before they would be eligible to be relicensed and would have to wait at least 2 years before they would be eligible to be employed by another licensee.

I would like to inject at this point the statement that the matter of licensing and employment constitutes the major revisions that are proposed in this bill. These are rather technical matters because of all of the various arrangements we encounter in administering the act, attempts, deliberate or otherwise, to circumvent the provisions of the statute, in reviewing all of the different situations with our conference group, the specific proposals have been developed, which, in our opinion, and in the opinion of these industry representatives, would strengthen the act considerably in this field. As you can well imagine, the matter of relicensing after a license has been lost, or the matter of employment by another licensee, after that per-

son being employed has lost his license, is with us every day because most of the people in this trade are limited by training, background and education to this particular field, in trying to seek their most gainful employment. They do not leave the fresh-frozen fruit and vegetable trade and become a real estate salesman or something of that nature. So the matter of how we handle and what kind of limitations we impose, to make the law effective, is a very critical question.

The bill provides that an oral hearing in reparation proceedings need not be afforded unless the damages claimed exceed the sum of \$1,500. We believe that this increase from \$500 to \$1,500 is reasonable and realistic. Last year about 50 percent of the cases on which oral hearings were held involved sums of less than \$1,500. Handling of formal complaints would be expedited significantly if the shortened procedure, under which written submissions of evidence are made, was authorized for these smaller cases and would result in substantial savings in costs of hearing to the parties and to the Government.

The bill provides that PACA funds would no longer be used to pay for the costs of administering the Export Apple and Pear Act. Since there is no connection between these two acts, we do not believe that PACA licensees should be required to finance the administration of the Export Apple and Pear Act from their annual fees. We, therefore, agree with the proposal that appropriated funds should be made available to cover the cost of administering this latter act. As stated in the Secretary's report, this change in financing would not require a budget increase.

The bill clarifies the provision which requires that a bond in double the amount of the award to be filed by the appellant in appealing a reparation order to court. It also specifies the type of bond which would be acceptable. The bill corrects a deficiency in the act relating to automatic suspension of a license following an appeal if the district court sustains the reparation order. The act now provides that a license shall be automatically suspended after 10 days from the date of judgment on the appeal unless prior thereto the judgment of the court has been satisfied, and makes no provision for withholding the suspension if the judgment of the district court is appealed to the court of appeals. The bill takes care of this point by providing that the license will not be suspended while a stay of the judgment is in effect.

The bill provides authority for the Secretary to increase the annual license fee to a maximum of \$50 if necessary to meet the expenses of administering this Act and the Produce Agency Act. Under the current \$25 fee, PACA administrative expenses have exceeded collections for the past 2 years, necessitating withdrawals from the limited reserve fund which has been built up over a period of years. An increase in the license fees, therefore, is urgently needed. Otherwise, our enforcement operations will have to be sharply curtailed. Current costs would necessitate an increase in the fee of about \$10 per license. It is highly desirable, however, to set the maximum fee at \$50 in order to make adequate provision for further increases in operating costs which may occur in the future. We approve of the provision requiring the Secretary to give public notice and an opportunity for interested parties to file their views or objections prior to the effective date of any increase in the fee.

We understand that proposals will be made to provide broader exemptions for retailers and for frozen food brokers under the act. We further understand that two major reasons are given in support of these proposals. The first reason is that exclusion of independent retailers and frozen-food brokers would not impair the effectiveness of the act. We strongly disagree with this view. The second reason is that the license fee is not equitable because a variable fee is not assessed depending on the relative size or volume of business of each licensed firm. We are not opposed to the principle of variable fees if the fruit and vegetable industry favors such an arrangement. We do not believe, however, that the question of a flat fee versus variable fees is justifiable grounds for excluding any important segments of the industry, such as retailers or brokers, from the provisions of the act.

Over 95 percent of all single unit retail stores are now exempted from the PAC Act. The remaining 2 or 3 percent, which are subject to license, are virtually all supermarkets whose purchases of fresh and frozen fruits and vegetables average over \$50,000 per year per store.

Every segment of the fruit and vegetable industry—shippers, brokers, truckers, jobbers, wholesalers, and retailers (I should say large retailers who are subject to license) must observe the fair trading rules of the PAC Act if the industry is to function in an orderly manner. In their capacity as wholesale buyers, retailers are one of the most important links in the chain of distribution. Retail functions, as such, are not covered by the act, but retailers are operating in a manner similar to other dealers in making wholesale purchases of fruits and vegetables. It is as essential for retailers to live up to their contractual bargains as it is for their suppliers. Complaints under the act have been filed by retailers against suppliers and vice versa. No one part can be left out and still expect the whole to operate smoothly and efficiently.

I would like to add at that point the fact that a retailer, or any other licensee, procuring his supplies from someone who, also, is licensed does not, in our judgment, constitute grounds for saying that the buyer does not have to have a license. This whole chain of distribution is important in carrying out these fair trading principles. The matter of a questionable rejection, when the goods actually meet the terms of the contract, has just as much impact and effect all the way down through the channel of distribution, regardless of who it was that did not live up to the fair trading principles of PACA.

The question of failure to pay has the same effect, whether it is failure to pay another licensee or failure to pay someone, such as a grower who is not subject to license in his capacity as a grower. In our judgment you cannot distinguish between the different elements of the trade solely on the basis of whether they are trading with others who are licensed.

Many of the complains under the PAC Act involve disputes between two licensees located in the same city on commodities which have originated outside the State. The coverage of the act would be significantly restricted if it were amended to limit its jurisdiction to only those transactions involving direct shipments from one State to another State. There is no more justification for exempting a supermarket which happens to buy the majority of its produce from a local

wholesaler than there would be to exempt wholesalers, many of whom receive all their produce from local carlot jobbers.

The fact that the two parties to a transaction are located in the same general area or city has no bearing on whether or not a PACA complaint is filed. As long as the product has moved or is in the process of moving in interstate commerce. We receive, for example, complaints by farmers against dealers or shippers located right in their home town where they have not been able to obtain, in their judgment, an adequate accounting from that shipper, or the shipper has not lived up to the contractual terms they have agreed to. In the same manner, we receive complaints between two wholesalers located in the same city involving the sale of a shipment that has originated outside of the State, or as I have stated earlier, we receive complaints by wholesalers against supermarkets or retailers located in that city. I will point out specific examples of such cases at the end of this statement.

Coverage of brokers is essential in order to obtain effective enforcement of the act. This is especially true in frozen fruits and vegetables because of the widespread use of brokers in this industry. Exemption of brokers would mean that no requirements could be established concerning the type of confirmations which they issue or the records they are required to maintain. The Department would not have access to the brokers' records which is essential in many cases in order to determine the facts in investigating individual complaints. If buyers and sellers of frozen fruits and vegetables are to be covered by the act, then it is essential that brokers also be covered.

There are about 450 frozen food brokers out of a total of 25,000 firms holding PACA licenses. Most of these brokers specialize in frozen foods and negotiate contracts amounting to thousands of dollars.

There has been an increased number of complaints under the act involving frozen foods and brokers have been the complaining party in a number of these cases. Reparation orders have been issued by the Department in favor of brokers calling for the payment of brokerage fees, some of which have amounted to several thousand dollars. Also, compliance by the parties with the terms of their contract is of vital importance to a broker. It would appear, therefore, that frozen food brokers are benefiting from the PAC Act.

The question of the possible inequity of having the same annual fee for each licensee regardless of his size or volume of business is not confined to retailers and brokers. It would apply equally well to shippers, wholesalers, truckers, commission merchants, and other types of licensees. We believe it is the common practice to assess a standard fee for each type of Federal, State, or local business license. Whether a flat fee or a variable fee based on volume of business is more equitable could be argued either way. We believe that a \$35 or even a \$50 annual fee, which amounts to 10 or 15 cents per day, is not unreasonable for any firm which is engaged in business subject to the act. Many members of the industry believe that the small operators receive the greatest amount of benefit and protection from the PAC Act because large firms are naturally in a stronger position when it comes to protecting themselves from unfair trading practices.

As stated earlier, we have no reason to object to the principle of variable or graduated fees if the industry desires to make such a

change. Of course, we would not like to have a system adopted which would be difficult or costly to administer. Fees based on the quantity or dollar value of commodities handled each year would require additional reports from licensees. Quite aside from the administrative difficulties involved, it is problematical if the industry would welcome the necessity of having to furnish such information. The problem of inaccurate reports coupled with fluctuations in volume, prices, and profits for fruits and vegetables makes the practicability and equity of this approach highly doubtful.

An alternative approach, which would provide a rough measure of size of operations, would be to assess a supplemental fee for each outlet, packing plant, office, or trade name operated by each licensee. Some of the largest firms have only a few outlets or operating units so this approach, although workable, would not fully accomplish the objective of relating fees to volume of business.

Unless there is widespread industry support for assessing supplemental fees, we recommend that H.R. 5023 be enacted without change. We believe that the provisions of this bill are highly desirable and urge that favorable action by Congress will be taken as soon as possible.

As I stated earlier, I have a few examples of specific cases I would like to include as a part of this statement. The first example has to do with retailers. They show, that during the past 2 years, we have had 133 complaints filed against retailers and 119 of those were for failure to pay; 14 were because of unjustified rejection. It was alleged the rejection was unjustified.

The specific examples, which are actual cases taken from our records, are as follows:

1. Supermarket in New Jersey bought a load of South Carolina watermelons from wholesaler in New Jersey. I might say a licensed wholesaler in New Jersey. Supermarket accepted melons and did not object to their quality until wholesaler asked for payment 2 weeks later. Supermarket then said melons were poor and asked for large allowance from invoice price. PACA found supermarket had no evidence to support its contention and obtained check for \$575 in full payment of load.

Mr. TEAGUE of California. What would you do in a situation in California, for instance, where there must be many brokers who deal only with purchases made in California and sales are for consumption in California, in other words, does the Department claim any jurisdiction when the parties do not engage in interstate commerce?

Mr. GRANGE. If the transaction is solely in intrastate commerce we do not have jurisdiction under the PAC Act. In California, the great majority of the dealers, brokers, or commission merchants of any size are, also, handling transactions in interstate commerce, and they, therefore, are subject to license. If we receive a complaint on a specific transaction one of the first things we do is to establish whether or not that particular transaction was involved in interstate commerce.

Mr. TEAGUE of California. When a dealer, part of the time, deals in interstate commerce, you do have jurisdiction over that particular transaction, but when it involves the sale of oranges from Los Angeles

County for sale to someone in Los Angeles, to a supermarket there, you do not have jurisdiction there?

Mr. GRANGE. We have to determine in each case whether we have jurisdiction. Insofar as his licensing liability, if he is handling part of the transaction in interstate commerce, then he is required to be licensed.

2. Supermarket in West Virginia bought mixed load of potatoes and oranges for \$135.40 from wholesaler in Baltimore on April 20. After failing to get reply to numerous statements and letters, wholesaler filed PACA complaint on October 23. Retailer remitted full payment of \$135.40 on October 28.

I might add in the intervening time, between October 23 and October 28, there had been a contact made by PACA representative with the supermarket.

3. Supermarket in Pennsylvania bought load of U.S. No. 1 Maine potatoes from wholesaler in Harrisburg, Pa. Retailer rejected load claiming potatoes failed to meet grade on delivery. Truck returned to Harrisburg; wholesaler obtained Government inspection which showed potatoes were in fact U.S. No. 1 grade; wholesaler sold potatoes to another buyer for \$137.30 less than original invoice price; and filed PACA complaint for recovery of damages. Retailer remitted payment of \$137.30 after PACA investigation.

4. Supermarket in Pennsylvania bought a load of Florida watermelons at an agreed price of \$200 f.o.b. Supermarket told shipper that it was going to reject melons because 90 percent of them were damaged by scarring on arrival. Shipper complained to PACA. Investigation showed that scarring damage occurred in transit. Since this was an f.o.b. sale the buyer was responsible for the transit change, rather than the seller. Supermarket accepted melons; paid shipper full invoice price; and filed claim against the carrier.

Mr. BEERMANN. May I ask a question?

Mr. GRANGE. Yes.

Mr. BEERMANN. On example No. 3, where the load was sold for \$137.30 under the original invoice price, how did that come about?

Mr. GRANGE. The wholesaler disposed of the load of potatoes to the best advantage he could. Under our regulations he had to exercise normal care and diligence in disposing of it. I know in this instance he sold them for the account of whom concerned until he could establish his claim. The total loss he suffered from the invoice price on his original sale amounted, in this instance, to \$137.30. He then filed a claim with us for damages, and because he had supporting evidence to show the potatoes he offered did, in fact, meet the terms of the contract, we, naturally, held that it had been an unjustified rejection; and, therefore, the supermarket was responsible for payment of the damages.

Mr. BEERMANN. Could a situation like this arise, that a buyer after purchasing found out that he had paid too much according to the price in his local area for the merchandise and then rejected them on some other basis, but, in fact, it was because of the price; would you help the seller to collect? Would you become a party to that?

Mr. MCINTIRE. Will you yield on that point?

Mr. BEERMANN. Yes.

Mr. McINTIRE. May I say that your question goes to the basic purpose of this act. Many receivers would arbitrarily refuse to accept goods on arrival even if these goods met grade specifications set forth in the confirmation of sale. Unless there is some vehicle similar to the PAC Act, then the shipper is completely out in the woods. Oftentimes the receiver would take advantage of a price decline and try to deny his responsibility in receiving the shipments. None of these receivers are required to accept the shipment if it fails to meet the specifications of the confirmation, but if it does meet the specifications, then they are obligated to pay.

Mr. BEERMANN. Thank you for that explanation.

Mr. GRANGE. It is known in the trade as market disease or market rot, rather than a disease or rot of the product. As Mr. McIntire stated, and I assume he knows from personal experience, if you get a carload of a perishable commodity, such as potatoes, shipped from Maine to Detroit, Mich., and at a delivered price of \$3.50 per hundred-weight, when the potatoes are received the market price has dropped, and since it is now down to \$3, it could well be that if that buyer combed those potatoes long enough and hard enough he could find some kind of rot or disease, allegedly, and could inform the shipper that he was not going to accept the shipment. If these were not perishables it would not be quite so much of a problem, insofar as the seller is concerned. If it were grain or shoes or something that you could put in storage and then find out what, if anything, was wrong with it and make some disposition of it, it would be different. That is basically the situation, as the long record back in the late twenties, when this act was being first formulated, amply bears out. In the case of perishables, you are pretty much at the mercy of the buyer under circumstances like that. And it was an attempt on the part of the industry, and approved by Congress, to set up some type of a specialized vehicle that would try to provide a means of obtaining effective enforcement of what is known as a code of fair trade practices.

Mr. BEERMANN. We have had experiences like that, too. I believe in the buyer and seller honoring their contract.

Mr. GRANGE. The other examples have to do with the matter of frozen food brokers, and during the last 3 years we have had a total of 37 complaints where the broker has been the complainant. We have awarded to frozen food brokers, the amount of \$36,426. We have had 18 cases where the frozen food broker has been the respondent and have awarded to them \$5,262. I will run quickly through these examples.

1. Two brokers filed PACA complaints against a third broker for payment of brokerage fees due on sale of frozen cauliflower. Sale was made in April 1960. Complaint was filed in January 1961. Payment in full of \$1,161 was made to the two complaining brokers in April 1961.

2. Associate broker filed PACA complaints against originating broker for payment of brokerage fees due on sale of frozen apricots and cherries. Sale was made in July 1960. Complaint filed on December 8, 1960. A complaint under the act has to be filed within 9 months after the date of the transaction. Payment in full of \$608 was made on December 30, 1960.

3. Broker, in name of his principal, filed PACA complaint against buyer for failure to pay for load of frozen strawberries. Sale was made in July 1960. Complaint was filed in November 1960. After several contacts by PACA, buyer made payment in full of \$1,479 and broker then received his brokerage fee from the seller.

4. Buyer filed PACA complaint against seller seeking rebate of freight charges to intermediate point on carload of frozen corn. Broker's written confirmation of sales showed sale was made f.o.b. point of storage—not f.o.b. of original shipment. Seller rebated \$977 to buyer. Broker was not directly involved in this case but it shows necessity of having access to broker's records and means of enforcing PACA requirement that brokers issue written confirmations of sale in order to properly investigate and handle complaints.

Mr. Chairman, there is just one other item that I would like to refer to, if I may. There have been some statements made concerning the fact that in our dealings with retailers many of the retailers we contact in person and by writing have not known of the existence of the Perishable Agricultural Commodities Act or their licensing responsibility under it. I would just like to say we have and are doing as much as we know how to acquaint all segments of the industry, including retailers, concerning the PACA Act and their rights and responsibilities under it. In that regard I would like to refer to a special bulletin which we have issued entitled, "What Retailers Should Know About Being Licensed Under the Perishable Agricultural Commodities Act."

I have a supply of these bulletins here in the event the committee members are interested in scanning it. It covers such subjects as: "What is PACA?" "How Does PACA Affect Retailers?" "What is the Purpose of PACA Licenses?" "What Retailers Are Required To Have a PACA License?" "Wholesaling or Jobbing Quantity," "Purchases From Local Distributors," "How Many Retailers Are Subject to License?" and a paragraph entitled, "Must Each Supermarket Be Licensed?"

These have been supplied to all of the trade associations we know of in the retail field. There has been wide distribution made of this bulletin in certain areas. Some of the State associations have been very helpful and cooperative in distributing this material and other material to their members. Some of the State and local associations have asked representatives from my agency to appear on their programs at their annual meetings. We think there is, in general, rather good information concerning PACA available to the retail industry, and we think that, in general, in many areas that information has been disseminated and made known to the retail organizations concerned.

That, Mr. Chairman, completes my statement.

Mr. GRANT. Your bulletin will be made a part of the record at this point.

(The bulletin entitled, "What Retailers Should Know About Being Licensed Under the Perishable Agricultural Commodities Act" is as follows:)



WHAT RETAILERS SHOULD KNOW about being licensed under the Perishable Agricultural Commodities Act

Some food retailers and others do not understand why retailers should be licensed by the U. S. Department of Agriculture under the Perishable Agricultural Commodities Act. They construe this requirement as an unnecessary imposition, and a needless tax from which they derive no benefit.

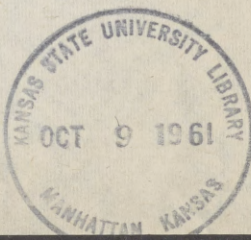
If retailers were not an integral part of the produce business, there would be reasonable grounds for such a position. But they are a most important sector in the business of buying and selling fresh and frozen produce. They have an important stake in seeing that their purchase transactions in these commodities conform to sound trading practices. It is this simple but basic thesis which makes all retailers doing more than a specified amount of purchasing of fresh and frozen produce subject to the Act.

The purpose of this pamphlet is to provide basic information on the Perishable Agricultural Commodities Act (PACA) so that food retailers can better understand how and why it relates to their activities.

U.S. DEPARTMENT OF AGRICULTURE
AMS-357

AGRICULTURAL MARKETING SERVICE
FRUIT and VEGETABLE DIVISION

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WHAT IS PACA?

The Perishable Agricultural Commodities Act sets up a system for enforcement of contracts in the marketing of fresh and frozen fruits and vegetables. The PAC Act does not tell buyers and sellers what kind of contracts they can make. It does say, however, that once a contract has been made, the parties involved must carry out their bargain unless they have some better reason for not doing so than a change in the market or a change in their own personal situation.

There aren't many Federal laws like the PAC Act. Congress passed it after extensive hearings in which representatives of the fruit and vegetable industry pressed vigorously for special machinery to cope with their special problems. They presented evidence to show that such machinery was needed because of abuses which otherwise could not be effectively curtailed in the marketing of perishable fruits and vegetables. The buyer or seller dealing in these products is especially dependent upon the good faith of the other party to the contract. Most of these perishable products can't be held on track or in a truck for any length of time or diverted to storage while a dispute about the transaction is being settled.

Although the PAC Act was enacted in 1930, it has been amended a number of times and the reasons for having the law are just as sound today as they were when it was first enacted. This is evidenced in the general support for the Act throughout the fruit and vegetable industry.

HOW DOES PACA AFFECT RETAILERS?

Every segment of the fruit and vegetable industry--shippers, commission merchants, brokers and dealers, including truckers, jobbers, wholesalers, and retailers--must observe fair trading

rules such as those spelled out in the PAC Act if the industry is to function in an orderly manner. In their capacity as wholesale buyers, retailers are one of the most important links in the chain of distribution of fresh and frozen produce. Retailing functions, as such, are not covered by the Act, but retailers are operating in a manner similar to other dealers in making wholesale purchases of fruits and vegetables. It is as essential for retailers to live up to their contractual bargains as it is for their suppliers. Complaints under the Act have been filed by retailers against suppliers, and vice versa, in the same manner as complaints involving other types of licensees. No one part can be left out and still expect the whole to operate smoothly and efficiently.

Moreover, in the past several years there have been significant changes in the methods of marketing fresh fruits and vegetables and in the marketing channels through which they flow from growers to retailers. One of these changes has been the rapid growth of independent supermarkets -- both in numbers and in average size. Another has been the sharp increase in direct buying by retailers. Many supermarket operators have found it advantageous to purchase all or part of their supplies directly from shippers, thus minimizing their purchases on local terminal markets, while the same trend also has been evident in purchases by many voluntary retailer groups and corporate chains. With retailers being an integral part of the fruit and vegetable business, they enjoy the same benefits and should assume the same responsibilities under the PAC Act as other parts of the industry.

WHAT'S THE PURPOSE OF PACA LICENSES?

The system of licenses provided for in the PAC Act is the method of enforcing the law. Any

person subject to the Act is required to obtain a license and penalties are established for doing business without a license. Since a license may be suspended or revoked for failure to observe the fair trading standards, the licensing requirement provides the basis for action against violators.

Practically all complaints under the Act are those alleging that damages have been suffered because a licensee breached his contract without legal justification. The Department investigates each of these complaints and, based on its findings, tries first to reach an amicable and equitable settlement between the parties. If this is unsuccessful, the Department will entertain a formal complaint, give both parties an opportunity to submit further evidence, and then issue an order either dismissing the complaint or requiring one of the parties to pay the damages caused by his illegal breach of his contract. The Act states that the respondent's license to do business is automatically suspended if he doesn't either pay an order awarding damages or appeal it to court within 30 days.

The Act requires all commission merchants, dealers, and brokers doing business in fresh or frozen fruits and vegetables in interstate or foreign commerce to secure a license, for which the annual fee is \$25. The license remains in effect so long as the annual renewal fee is paid, unless it is suspended or revoked on order of the Judicial Officer of the U. S. Department of Agriculture. License fees collected under the PAC Act are used for administration of the Act.

WHAT RETAILERS ARE REQUIRED TO HAVE A PACA LICENSE?

Retailers are classified as "dealers" under the PAC Act and, therefore, are subject to license when they purchase fresh or frozen fruits and vegetables in wholesale or jobbing quantities on at least 21 days in a calendar year, whether the purchases are made directly from outside the State or from persons who have received the commodities from outside the State.

The authority for and Congressional intent to include retailers under the licensing provision is clearly expressed by the Act [Sec. 1 (6)]. It first defines a dealer as being any person engaged in the business of buying or selling fresh or frozen fruits or vegetables (in wholesale or jobbing quantities) in interstate or foreign commerce. Next, certain exemptions are granted for growers, canners, and retailers.

The provision of the Act applying to retailers states that "no person buying any such commodity solely for sale at retail shall be considered as a dealer . . . in any calendar year until his purchases (in wholesale quantities) are in excess of twenty." Therefore, the only distinction between a retailer and other dealers is that the retailer must purchase produce in wholesale or jobbing quantities on at least 21 days in a calendar year before he is subject to license, whereas other dealers are subject to license when they engage in business.

"WHOLESALE OR JOBBING QUANTITY"

A "wholesale or jobbing quantity" under the PAC Act has been defined to mean aggregate quantities of fresh and frozen fruits and vegetables totaling one ton (2,000 pounds) or more in weight per day shipped or received or contracted to be shipped or received. This definition applies to all dealers--truckers, jobbers, and wholesalers, as well as retailers.

PURCHASES FROM LOCAL DISTRIBUTORS

Retailers frequently ask whether they are subject to license when they make all their purchases of fresh and frozen produce from local distributors. The Federal courts have consistently held that interstate commerce is not limited to just the transaction which moves the goods from one State to another State. There may be one or more transactions before a lot is shipped from the State of origin or after it arrives within the State of destination and all these transactions are part of interstate commerce. For example, the sale of Washington apples by one dealer in Chicago to another dealer in Chicago is a transaction in interstate commerce. Thus, even though a retailer may purchase only from a local wholesaler, if the products originated in another State, his purchase is a part of the movement in interstate commerce.

HOW MANY RETAILERS ARE SUBJECT TO LICENSE?

The number of independent retail grocers subject to license was estimated for the Department in 1955 by a qualified marketing research organization which conducted a survey of a national sample of independent retail food stores. This survey showed that approximately 7,550 independent retail firms, or slightly more than 2 percent of the total of such firms, were subject to license at that time. These firms do approximately 43 percent of the total independent retail food business in the United States.

It was found that very few stores smaller than the supermarket category buy enough fruits and

vegetables to require a PACA license. On the other hand, a large percentage of supermarkets purchase a sufficient volume to be subject to license.

Many retail food firms have records of their purchases more readily available on a dollar basis than a tonnage basis. For this reason, the USDA has provided retailers with an informal "rule of thumb" that they may find helpful as a guide to whether the firm is subject to a PACA license. The index is based on purchase data from the survey of independent retail food stores. This survey showed that few firms purchasing less than \$600 per week¹ of fresh and frozen fruits and vegetables would be subject to license. On the other hand, it showed that practically all firms with purchases valued at more than this amount would be subject to license--that is, they have purchases of fresh and frozen produce aggregating one ton during any one day more than 20 times during the year.

MUST EACH SUPERMARKET BE LICENSED?

Questions sometimes are raised about the requirement that each independent supermarket operator subject to the Act must obtain a license, while a corporate chain operating multiple outlets need have only a single license to cover its entire organization. The PAC Act provides for the licensing of each "person" carrying on the business of a "commission merchant, dealer or broker", as these terms are defined in the Act. The term "person" is defined as including "individuals, partnerships, corporations, and associations" which means each separate legal entity. Under the law, a corporation is a "person" or legal entity in the same way as an individual proprietorship or a partnership. Thus, an independent operator with 3 or 4 supermarket outlets or with only one store -- if he does a sufficiently large volume of business -- has the same liability for a license as a corporation with a larger number of outlets.

Of course, since a retailer is licensed only in his capacity as a wholesale buyer of fruits and vegetables, any complaints under the PAC Act would be against the entire firm and not against one of his individual stores.

¹This index may be modified from time to time with changes in price levels of fresh and frozen fruits and vegetables handled by retailers.



FOR ADDITIONAL INFORMATION

To obtain additional information about PACA licenses or other activities under the Perishable Agricultural Commodities Act, contact any of the following offices of the:

Regulatory Branch
Fruit and Vegetable Division
Agricultural Marketing Service
U. S. Department of Agriculture

Room 2932
South Agriculture Building
Washington 25, D. C.
Phone: DUDley 8-2272 or
DUDley 8-4180

Room 1119
U. S. Customs House
610 S. Canal Street
Chicago 7, Illinois
Phone: HArrison 7-6910
Extension 323 or 324

Room 2129
300 W. Vickery Street
Fort Worth 4, Texas
Phone: EDison 5-5341
Extension 401 or 423

Room 457
Western Pacific Building
1031 So. Broadway
Los Angeles 15, California
Phone: RIchmond 9-4711
Extension 397

Room 702
139 Centre Street
New York 13, New York
Phone: REctor 2-3100
Extension 390 or 391

14 Old Postal Arcade Building
Winter Haven, Florida
Phone: CYpress 3-1091



Mr. GRANT. Let me ask you one question as to the first paragraph of your statement as to the fees charged, does that mean that fees that are received pay the cost of the salaries and expenses of those employed by the agency?

Mr. GRANGE. Yes, sir.

Mr. GRANT. That is under this act?

Mr. GRANGE. Yes.

Mr. GRANT. Does your agency pay the cost when you have to go to court on these cases?

Mr. GRANGE. No, sir. We handle complaints, conduct an oral hearing, if necessary, do the investigation work from PACA funds. The cost of any legal fees—of course, it is not necessary to have a lawyer to present a PACA complaint or case—is paid by the parties involved. Of course, if an order is appealed to court there are no payments made out of PACA funds to individuals for that purpose.

Mr. GRANT. Mr. Jennings?

Mr. JENNINGS. I think that you pretty well answered some of these questions in your pamphlet which you referred to entitled, "What Retailers Should Know About Being Licensed Under the Perishable Agricultural Commodities Act," but just as a matter of record, referring to the first paragraph of your prepared statement, who constitutes the commission merchant dealer or broker subject to the act?

Mr. GRANGE. They are defined in the act itself. A commission merchant is any person who handles goods for or on behalf of another person.

A broker is anyone who negotiates a sale or purchase of produce in commerce for or on behalf of another person.

And a dealer is defined by the act as any other person engaged in the business of buying or selling, except growers who are handling only their own produce, except canners who are buying the raw product only within the State where they are located, and except retailers unless they purchase in wholesale or jobbing quantities more than 20 times per year. So, it includes a trucker who is going out and buying for his own account. It includes what we commonly call the regular shipper who is buying from growers and shipping in interstate commerce. It includes wholesale receivers, jobbers, and anybody who is purchasing or selling fresh or frozen foods and vegetables in interstate commerce.

Mr. JENNINGS. Coming to the matter of the license, I think you have pretty well made your position clear when you say that you are not opposed to the variable fee if the food and vegetable industry favors such an arrangement. Do you see some advantage in the variable fee arrangement, that is, levying fees on a variable basis?

Mr. GRANGE. I said in my statement, sir, that the pros and cons of whether a variable fee was the most equitable, probably, could be argued on both sides. I guess that would indicate that like most everything we can see advantages and disadvantages to such an approach.

Whether the income tax principle of ability to pay should apply to business licenses is something we really have not tried to explore.

I have made reference, as Mr. McIntire did, to the industry conference group which has been extremely helpful to us. This subject has not been discussed with them.

We can see where a variable fee, if based on certain factors, would be extremely difficult to administer. Take income, for example, some people might have the initial reaction, "Well, that should be pretty simple—practically everybody is preparing income tax returns;" but this law, of course, covers only perishable agricultural commodities. Practically all licensees would have expenses and income outside the field of perishable agricultural commodities. It would necessitate getting into something quite different from just using the records that were kept for income tax purposes.

Of course, we have a lot of records we require in accordance with the PACA regulations.

There would be the matter of investigation of the kind of reports we would get in, whether it was based on volume or dollar value. And, there would be the question of how much money we would have to spend to make sure that everybody was paying his fair share as laid down by the requirements.

Mr. JENNINGS. Let me say I agree with you and some of the pitfalls this might have, but by the same token the merchant's capital license is based upon that same premise, on the premise of the volume of business that each person or each outlet does.

I am intrigued by your alternate approach here which you suggest or discuss, supplemental fees for each outlet. That would seem to me to be fair, because each outlet of a chainstore or a larger organization is in direct competition with an individual supermarket or an individual retailer. It would appear to me that to have a supplemental fee, for instance, for each of these outlets would be in keeping with the spirit of the law. Would you like to comment on that?

Mr. GRANGE. I will comment. We would not object, Mr. Jennings, to exploring the feasibility and ramifications of such an arrangement. This would not only apply to retailers, of course, if we were doing it. We have many other factors in the industry who have multiple types of operations.

Mr. JENNINGS. I understand that.

Mr. GRANGE. I am bringing up these others.

Mr. JENNINGS. I am speaking of the retail outlets.

Mr. GRANGE. I am bringing up these others to explain my statement that I think it would be necessary to go into the matter in some detail before we would be in a position to state with any degree of confidence how we think such an arrangement should be established, if any, or what its impact might be.

Mr. JENNINGS. I am very much intrigued by that idea. I think it is, probably, the best I have heard suggested so far. I like it better than the volume of business idea. I think you would have fewer administrative difficulties with it, and it would be more actable than the present law. I believe there are some inequities in the present law so far as license fees are concerned.

Mr. GRANGE. I might make just one further observation. If something like this ever were to be done I think it would be necessary to give the Secretary of Agriculture rather broad authority in making determinations of what is going to be defined as a separate operating unit or outlet. An example that occurs to me is in Mr. McIntire's district where some of the potato shippers may be operating two or more doors, as they call it there, in the potato houses on the railroad

sidings. Are we going to call them separate operating units or not? Just where do you set up your dividing line, you see. And with all of the various types we have within the industry, if you try to nail that down specifically in the statute itself, I would believe it would not be nearly as workable or desirable as establishing a principle, if it were to be done, and then giving the Secretary the authority to work within that principle.

Mr. JENNINGS. There is wide discretionary powers under the present act. I do not believe it would be curtailing those wide powers.

Mr. GRANGE. That is a thought that occurred to me that I wanted to mention in line with your statement.

Mr. JENNINGS. What would be the Department's position on an amendment to this act excepting those retailers who purchase 90 percent or more of their perishable agricultural commodities from licensed wholesaler supplies?

Mr. GRANGE. We think that would materially curtail our effective administration of the act.

Mr. JENNINGS. Have you had many complaints directed toward that relationship between the retailer and the wholesaler—the wholesaler having been covered by the act, as well as the retailer, too, but who purchases 90 percent of his supplies from that particular wholesaler or licensed wholesaler? I notice that you did not give a single example where that would be applicable in that case.

Mr. GRANGE. I believe there are some, Mr. Jennings.

Mr. JENNINGS. Which one?

Mr. GRANGE. I would say that example No. 1 would fit the case. Those purchases made by that supermarket were made from a licensed wholesaler located in that State.

The same thing would be true in example No. 2, where the purchases were made from a licensed wholesaler.

Mr. Jennings, we have not had a large number of complaints of this nature. I do not know what the total would be. Our total complaints per year for the entire industry is not large. I do not think that anyone should take the number of complaints themselves as a final measure of the benefit or effectiveness of the act.

Mr. JENNINGS. I quite well agree with you there. You prevent a substantial amount of abuses that might take place if the law were not in effect. I will not argue with you on that point. That is all. Thank you.

Mr. TEAGUE of California. I am sure you realize that there are two factors, one is the matter of the license—as a tax deductible business expense.

Mr. JENNINGS. Yes, I am aware of that.

Mr. TEAGUE of California. I do not think that the license, whether \$25 or \$50 would be unreasonable or would constitute an undue burden on anybody who comes under the act.

Mr. JENNINGS. My problem is that this license fee does not provide a differential between the small dealer as compared to the large dealer. The small independent market in my hometown, for instance, will have to pay exactly the same fee as the A. & P., the large supermarket. If they had to pay the same proportionately as an individual store which is located in my hometown, I would see no objection to it, but to have an individual operator pay the

same fee as the large operator with several outlets does not seem quite proper.

Mr. TEAGUE of California. I can see the merit to that. On the other hand, it seems to me it can be said that the small operator needs the protection more than the large operator does.

Mr. JENNINGS. I think it is well to have the law on the books. I am not asking for its repeal. I am advocating a more equitable distribution of the license fee.

Mr. McINTIRE. Will you yield?

Mr. JENNINGS. Yes.

Mr. McINTIRE. I would like to make the observation that this bill is not a correction to the basic act.

The agency in itself is not a collecting agency, but——

Mr. JENNINGS. It does have that effect.

Mr. McINTIRE. It is to cover the cost of going in to investigate the violations.

Mr. JENNINGS. That is right.

Does the Federal Government provide any other collecting agency outside of the courts—do you know of any?

Mr. McINTIRE. Yes, the Packers and Stockyards Act is a very good example of the same purpose.

Mr. JENNINGS. Outside of the agricultural field, do you know if the Federal Government provides an agency like this?

Mr. TEAGUE of California. How about the National Labor Relations Board?

Mr. JENNINGS. I do not think that is exactly the same kind of case.

Mr. McINTIRE. If you were subject to a decision on the part of the National Labor Relations Board in connection with the violation of pay for overtime, you would find it a very effective collecting agency on the part of the Government, would you not?

Mr. JENNINGS. Perhaps—yes.

Mr. McINTIRE. I think so, too.

Another point that Mr. Grange makes is that of the total number of retailers, very few are involved.

Mr. HAGEN. What is the magnitude of the amount involved?

Mr. GRANGE. Let me give you that figure. Our receipts last year were \$693,000. These include the fees and the arrearages for those who have operated for a period of time prior to applying for the license.

Mr. HAGEN. Could you not avoid the matter of the fee, and make it a matter of an appropriation from the Congress?

Mr. GRANGE. We would then have another problem, sir.

Mr. HAGEN. You mentioned in your statement, I believe, that only retail units of a certain size are required to pay a license fee. It would seem to me that the percentage you mention is rather small.

Mr. GRANGE. A wholesaler of jobbing transaction is defined in the regulation as being 1 ton per day. A retailer in order to be subject to the license has to have 21 or more such transactions per year.

Mr. HAGEN. Of a specified tonnage?

Mr. GRANGE. Of a ton.

It is a rather discriminating limitation in the sense that the great bulk of the single-unit operators which I assume you are referring to,

Mr. Jennings, are excluded from the licensing provision of the act. If they are excluded from the licensing provisions, keep in mind they are likewise excluded from any of the responsibilities or rights that are established by the statute.

Mr. HAGEN. Could a retailer who might otherwise be excluded voluntarily seek coverage?

Mr. GRANGE. The act provides that anyone may obtain a license voluntarily.

Mr. HAGEN. Does a chainstore, for example, obtain just one license for the \$50?

Mr. GRANGE. I cannot answer you specifically—

Mr. HAGEN. Does Safeway, for example, get one license for \$50 covering all these stores?

Mr. GRANGE. Let me answer you in this manner: Each separate legal entity is required to have a license. There are a number of larger organizations that have subsidiary corporations. For those, there is a separate license for each subsidiary corporation.

There are some large corporations that have a rather large number of licenses.

On the other hand, there are large organizations that have only one or, perhaps, two licenses to cover their entire operation.

Mr. HAGEN. If 1 corporation had 100 retail outlets they would have 1 license, would they?

Mr. GRANGE. Yes, sir.

Mr. HAGEN. Even though the individual store manager might do its own procurement for each individual store?

Mr. GRANGE. They would be procuring in the name of their principal. That is the point that I want to make. A retailer is licensed in his capacity as a wholesale buyer. His retailing operations are not covered by the provisions of the act. If I were to file a complaint against a retailer I am filing it against that firm. I do not know what store the produce went to. We, certainly, would not want to change this so that they would have to have separate licenses for each outlet.

When the question of gearing the fee to the number of outlets is brought up, I think, personally, the number of outlets in a sense is incidental to carrying out the provisions of the law.

Mr. JENNINGS. I would agree with that in carrying out the provisions of the law, but I am directing my remarks strictly to the revenue that it produces, and the inequities involved between them.

The present information I have is that the A. & P., with more than 4,000 stores pays a license fee of \$25; Safeway with more than 2,000 stores pays a license fee of \$25; while 4,000 independent supermarkets would pay \$100,000. That is just one example.

Mr. GRANGE. The only thing wrong with the example is that we do not have 4,000 independent licensed supermarkets. We have licensed solely as retailers approximately 3,500 firms.

Mr. JENNINGS. You have as retailers and wholesalers—I imagine that you would have a number of the independents of the individuals licensed as retail and wholesale, would you not, so you have 3,500 retailers. How many wholesaler-retail combinations do you have?

Mr. GRANGE. We have licensed as retailers in combination with some other activity, probably wholesale, although we do not have that information, approximately 1,600.

Mr. JENNINGS. How many do you have just wholesale per se?

Mr. GRANGE. About 12,000. That includes shippers and market dealers. The wholesaler category is the broad one based on Webster's definition, anybody dealing in mass or large block without regard to thinking of them only as a terminal market wholesaler, which is the common definition.

Mr. JENNINGS. Do some of the larger chain operations come under this 12,000 category?

Mr. GRANGE. I do not believe so—not following the court decision regarding the activity of some of the retail organizations in the wholesaling field with which you are undoubtedly acquainted. I do not know of any wholesaler activity on their part.

Mr. HAGEN. Are these New York City people, for example, who buy California oranges at auction in New York—are all of those dealers required to have a license?

Mr. GRANGE. Operating strictly as an employee of a licensed firm they would not be. They would be required to have a license in their own name if they are operating independently.

Mr. HAGEN. Do you attempt to police collusion between buyers in setting prices?

Mr. GRANGE. The act, as has been pointed out in earlier discussion among the committee members, is a unique one in that the PAC Act does not tell anyone what kind of a contract they should enter into. All it says is that if you have entered into a contract then you shall live up to the terms of the contract, unless you have some justifiable reason under the statute for not doing so. And, if you do not do it and somebody files a complaint and shows they suffered damages because of your breach of contract, then we may exercise the provisions of the statute seeking to recover damages.

So to answer your question, if buyers discriminate by collusion or other means and charge different prices it would not be covered by the provisions of the Perishable Agricultural Commodities Act.

Mr. HAGEN. If a group of buyers decided to lay off the market for a few days to depress the price you would not cover that, either?

Mr. GRANGE. We would not have jurisdiction over that.

Mr. HAGEN. Thank you. That is all.

Mr. MATTHEWS. As I understand it in the bill we are discussing it contains a proposal that the fees be increased. Can you give us some statement as to the justification of the fee increase or have you already done that prior to my coming in?

Mr. HAGEN. Yes, he did that.

Mr. MATTHEWS. Nevertheless, will you give me a brief statement as to the justification for that?

Mr. GRANGE. The fees we collect, sir, are used solely for the purpose of administering the act. Our expenses have increased, as others have, during the last few years. Currently, our expenses of administering the act exceed our receipts. The reserve fund in our PACA special trust fund is now reaching a dangerously low point, and within the very near future if something is not done we will be faced with the proposition of sharply curtailing our staff and activity in enforcing the act.

Mr. MATTHEWS. Thank you very much, sir. That is exactly what I wanted.

Mr. HARDING. I notice that most of the examples you gave us were complaints concerning brokers in frozen foods. Is that true with most of your complaints, that they are in this area?

Mr. GRANGE. No, sir. I selected those as examples because of the fact that there is a proposal that the frozen-food brokers be exempt from the provisions of the statute.

Mr. HARDING. There is nothing perishable about brokerage, is there?

Mr. GRANGE. There is nothing perishable about the dollars that are involved in any of these transactions.

Mr. HARDING. Under the provisions of the act I can see the desirability of protecting the parties concerned in the transactions involving perishable commodities. I think that this is the purpose of the act, but from some of these examples you have listed here concerning the collection of brokerage it appears to me that the Department is getting into the field of a collection agency. If I were a broker selling a commodity, and the person for whom I was selling refused to pay me brokerage, I just would not sell for him again. I do not believe that the Department should collect or try to collect brokerage. That is much different than what I would determine to be the original purpose of the PAC Act.

Mr. GRANGE. That is an incidental part of the activity. I think it is still part of the original purpose, sir. The importance of brokers is simply this, whether we are talking about a fresh product or a frozen product, if we have a complaint and a broker has participated in the transaction, usually there is a dispute concerning the terms of the contract; such as what quality or grade or delivery terms did they actually agree to. Most of the time that element is part of the complaint or the dispute. If a broker has been involved in the transaction the broker is the best source we have of being able to find out just what the terms of the contract actually were, and that is why we go into so much detail in our regulations in establishing requirements concerning brokers, the type of written confirmation which they have to issue, and the kind of records which they are required to maintain.

Again, if we exempt brokers from the licensing provisions we exempt them from all of these responsibilities.

Of course, brokers are very widely used in the frozen food business. Brokers are used widely, also, in the fresh produce business, although not to the extent proportionately that they are in frozen foods.

Mr. HARDING. Let me ask you another question. How about processed foods other than frozen foods—do the provisions of the act extend, for example, to processed potatoes?

Mr. GRANGE. Not to the processed product itself. Practically all potato processors in the country are subject to license because they are obtaining potatoes in interstate commerce for use in the manufacture of their products. The PACA as now written says, "Fresh fruits and vegetables whether or not frozen." Instant frozen potatoes are not "fresh" potatoes in frozen form, according to the legal interpretations and constructions that have been placed on the act over the period of time. Of course, as you can well imagine, you get to a rather narrow dividing point as to when a product moves from the field covered by the act.

Mr. HARDING. Going back to this brokerage matter, if there was not an element pertaining to the quality of the produce being sold or the

conditions of the sale you would not enter into the dispute simply over the collection of brokerage—you would not enter into a simple dispute over brokerage payment, would you?

Mr. GRANGE. No, sir, that is not correct. We would accept such a complaint. Nonpayment is one of our most common complaints.

Mr. HARDING. Thank you.

Mr. GRANT. Thank you very much, Mr. Grange.

Mr. GRANGE. Thank you.

Mr. GRANT. Our next witness is Mr. Alan T. Rains, executive vice president of the United Fresh Fruit & Vegetable Association.

We will be glad to hear you now.

**STATEMENT OF ALAN T. RAINS, EXECUTIVE VICE PRESIDENT,
UNITED FRESH FRUIT & VEGETABLE ASSOCIATION**

Mr. RAINS. Mr. Chairman and members of the committee, I would like the record to show that I am speaking for the Florida Fruit & Vegetable Association of Orlando, Fla., and for the Western Growers Association representing cantaloupes and vegetables in California and Arizona. I did not bring my communication of authority with me, but I can send them to you, if you wish.

My name is Alan T. Rains and I appear here today as the executive vice president of the United Fresh Fruit & Vegetable Association. This is a national association representing all factors in the fresh fruit and vegetable industry with a membership of approximately 2,700. We endorse H.R. 5023 and concur with Secretary Freeman's report. We respectfully urge the favorable action of this committee.

The fresh fruit and vegetable industry is proud of its record of developing, fostering, and operating under the Perishable Agricultural Commodities Act more than 30 years and for having supported the previous eight amendments to the act which strengthened or clarified it or authorized an increase in the license fee. We are also proud of the fact that this is not only an industry-initiated statute but also one that is self-supporting except for the legal administrative services which are paid for out of appropriated funds.

While we do not suggest that this committee act with undo haste, we do feel that there is considerable urgency here. In the first place, the Department of Agriculture has had to call on a rather small reserve to administer the act for the 2 years and since we do not want the Department's PACA services reduced, there appears to be only one solution and that is to increase the license fees. In this connection, I believe it should be emphasized that while this bill authorizes a maximum license fee of \$50, an increase of approximately \$10 is presently contemplated. We believe the requirements that the Secretary must meet in order to increase the license fee are adequate protection, particularly in view of the Department's excellent administrative record and understanding of the industry's problems.

In the second place, there is need for clarifying the licensing and employment provisions of the act where a license has been revoked or suspended. Or, for that matter, where a licensee has violated the act in any way. This bill undertakes to accomplish this and the sections of the act dealing with these subjects have been substantially rewritten.

We attach considerable importance to the licensing and employment sections of the bill because we believe they plug up some loopholes that have long been in need of attention. For instance, a licensee may have his license revoked and then arrange for his wife to take out a PACA license. She may be gainfully employed as a bookkeeper or secretary or a schoolteacher for that matter and may only concern herself with the activities of her newly formed firm by executing those documents that require her signature. In the meantime, her husband would run the firm even though his title might be janitor or truckdriver. The Department conceivably could be hard pressed to prove that the so-called truckdriver or janitor husband was, in fact, acting in a responsible position in which case the "wife-licensee" would need to comply with the bonding requirements of the statute. This may sound like a farfetched example but, I think it would not be difficult to find cases in the records of the Department that would be practically on all fours with the one I have just described. In other words, we urge that the Department be given the authority to make it impossible for persons with a record of suspensions or revocations to engage in the fresh fruit and vegetables industry in a responsibly connected position unless the bonding requirements of this bill are met.

It is my understanding that there will be some opposition to this bill expressed in terms of amendments that would release certain classes of licensees from the act. While I have not seen the actual language which may be submitted to this committee, I believe the underlying plea will be that the small licensee is being unduly burdened by a license fee without receiving commensurate benefits or services. In this connection, I should like to call to the attention of the committee that to my best information and knowledge during the more than 30 years that this statute has been in effect, and during the hearings before the committees of the Senate and House of Representatives on amendments to the act, there has not been one witness who has urged that any group of licensees be exempt from the provisions of the act and allowed to trade in commerce in the commodities covered by the act.

I think it should be borne in mind that probably the small licensee should be more interested in the protection he is afforded by PACA than the larger licensee for the simple reason that by virtue of his smallness and likely lack of financial strength, he is hardly in position to retain legal counsel in order to protect his rights in the case of a controversy involving terms of the contract, good delivery, or variety of other questions that arise regularly in the course of trading in these highly perishable commodities. A PACA licensee, large or small, is as close to good, sound advice as his telephone because all he needs to do is to call PACA, either in Washington or one of the field offices, to get advice or an opinion from a qualified representative. PACA handles some 8,000 informal inquiries such as this each year with the result that most of the misunderstandings and disputes are settled amicably. It would seem, I believe, that the reasonable license fee that is charged is, indeed, a small amount for such a valuable service.

Perhaps it should be pointed out here that PACA serves every factor trading in the commodities covered by the act, and neither

by design nor practice is it of special benefit to any one group of operators.

My authority for appearing here in support of H.R. 5023 is a resolution adopted by the United Fresh Fruit & Vegetable Association at its annual convention in New Orleans, January 26, 1961. This resolution was endorsed unanimously by this association's advisory board which acted upon the recommendation of the PACA-Industry Conference Group which has been studying this problem since the middle of 1958. The industry conferees unanimously approved the substance of this bill at their meeting in New Orleans on January 20, 1961. It may be of interest to the committee to know that the Industry Conference Group is composed of approximately 25 industry members engaged in various activities including shipping, wholesaling, and retailing. In each category, there are representatives of the small and large firms and each, I believe, understood thoroughly the objectives of the conference group. The Department of Agriculture has been meticulous in seeing to it that reports of all the conferences have been sent to all members of the group. As case in point, on April 24, 1961, a complete report was sent to all of the conference members who attended the New Orleans meeting, as well as to all who requested a report. I call this to your attention, gentlemen, because I thought you would be interested in learning of the great care that the Department of Agriculture has taken in soliciting the suggestions and recommendations of persons who operate their businesses under the Perishable Agricultural Commodities Act.

In urging your favorable action, I would like to repeat a statement that was made early in PACA history—a statement, which I believe, not only applies today but will be applicable through the ages and that is this: "PACA says thou shalt not steal and thou shalt not lie." This would not seem to burden unduly any businessman.

Mr. GRANT. Thank you. That is a very good motto, and I take it from your statement that the United Fruit & Vegetable Association is for this legislation 100 percent?

Mr. RAINS. Yes; that is true.

Mr. GRANT. Thank you very much for your statement.

Mr. RAINS. Thank you.

Mr. GRANT. Our next witness is Mr. John C. Datt, representing the American Farm Bureau Federation.

We will be glad to hear you now.

**STATEMENT OF JOHN C. DATT, ASSISTANT TO THE DIRECTOR,
WASHINGTON OFFICE, THE AMERICAN FARM BUREAU FEDER-
ATION**

Mr. DATT. Mr. Chairman and members of the committee, in the interest of time I will file this statement for the record and indicate that as far as the Farm Bureau is concerned we support the passage of H.R. 5023 and hope it will be favorably enacted at an early date.

As far as our membership is concerned we have many who produce and market substantial quantities of perishable agricultural commodities. As producers they are not directly registered and licensed under the act, but they do have a vital concern in the marketing

practices that occur in the handling of their products as they move to market.

Over the years we have supported and worked with the fruit and vegetable industry to see that the Perishable Agricultural Commodities Act has been kept up to date.

We understand the amendments that are proposed are designed to bring it more up to date. Therefore, we urge this legislation be enacted.

Thank you.

Mr. GRANT. Without objection your statement will be made a part of the record and the committee is glad to receive the recommendations of the American Farm Bureau Federation.

(The statement referred to is as follows:)

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION PRESENTED BY
JOHN C. DATT, ASSISTANT TO THE DIRECTOR, WASHINGTON OFFICE

We appreciate this opportunity to present the views of the American Farm Bureau Federation on the proposed legislation to amend provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

We have a particular interest in this legislation because many Farm Bureau members produce and market substantial quantities of perishable agricultural commodities. As producers of many of the perishable agricultural commodities, they are not directly regulated by the provisions of the Perishable Agricultural Commodities Act. However, they have a vital interest in the act because as producers they are concerned about the practices governing the distribution and marketing of fresh and frozen fruits and vegetables in interstate commerce. The kind and type of marketing rules that exist are very important to producers.

The Perishable Agricultural Commodities Act provides for the establishment of certain rules and regulations governing the distribution and marketing of fresh and frozen fruits and vegetables in interstate commerce. We have been vitally interested in these rules and regulations and have worked with the fruit and vegetable industry on several occasions to see that changes have been made in the act so that it meets our current marketing conditions.

Under the rules and regulations of the act producers are provided with a certain amount of protection in the marketing of their products. They have the assurance that the practices that occur at later stages in the marketing and distribution system will not be abusive and harm the handling of their produce.

The proposed amendments to the Perishable Agricultural Commodities Act are designed to bring the act up to date. In September 1960, the American Farm Bureau Federation board of directors recommended that farm bureau support amendments to the Perishable Agricultural Commodities Act to include the following points:

- "(a) A clear-cut basis for relicensing or employing individuals who have lost their license or who have otherwise violated the Act;
- "(b) An opportunity for hearing if damages claimed exceed \$1,500;
- "(c) A general reports provision to enable closer appraisal of trade practices;
- "(d) A provision to withdraw Perishable Agricultural Commodities Act funds from support of the Export Apple and Pear Act".

It is our understanding that the proposed legislation includes these as well as other changes. We, therefore, support the passage of this legislation. We hope that it will be given early favorable consideration.

We appreciate the opportunity of presenting the viewpoint of Farm Bureau members on this matter.

Mr. GRANT. Are there any questions?

Mr. JENNINGS. Would you favor the present proposed license fee increase or would you favor an alternate approach that would assess supplemental fees for each outlet?

Mr. DATT. Of course, you understand, Mr. Jennings, most of our members are producers; and, therefore, are not directly licensed under the act.

I would say as far as we are concerned, I think our folks are satisfied with the present system of licensing and the basis for assessing the fees. Therefore, I think it would be fair to say that we would support the continuation of the present system so far as the assessment of fees is concerned.

Mr. JENNINGS. Are you in favor of an increase or the present system?

Mr. DATT. My reference to the present system I am thinking in terms of where you have a flat fee, this would, also, include what increases are necessary in order to finance the act.

Mr. JENNINGS. Thank you.

Mr. HAGEN. In your statement you referred to general reports provision.

Mr. DATT. Yes.

Mr. HAGEN. Is that in this bill?

Mr. DATT. As you will note, this is a statement of our board of directors which was adopted last September, and this was in connection with the proposed amendments that were before our board at that particular time. At that particular time there was a general report provision in the proposal. That has since been eliminated.

Mr. HAGEN. What kind of reports were those?

Mr. DATT. As I understand it this general report provision as was in the earlier proposal provided for reports from the people who were licensed with more detail as to the type of transaction they were carrying on. I think in the subsequent discussions by others who were more involved than we were in this, it was agreed that this general report provision, probably, was not necessary.

Mr. HAGEN. I think that it might be very valuable to have that.

Mr. DATT. I might say that we felt that way ourselves, but there were others who did not share this point of view and it was, subsequently, not included in the proposed legislation.

Mr. HAGEN. Do you have any objection, Mr. McIntire, to having such a provision?

Mr. MCINTIRE. The matter of general reporting was the subject of discussion at various conferences between the Department of Agriculture and the fresh and frozen fruit and vegetable trade. The fact that from these conferences there was a decision not to include it as a part of these amendments would seem to me ample reason to leave it out at this time.

Mr. TEAGUE of California. Is it fair to say that the amount of the license fee, as established, whether it is on a fixed or on a variable basis is not a matter of particular materiality to the American Farm Bureau Federation?

Mr. DATT. I think that that is correct, sir; I think that is correct.

Mr. TEAGUE of California. Thank you.

Mr. GRANT. Thank you very much for your testimony.

Mr. DATT. Thank you.

Mr. GRANT. The committee stands adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 12, noon, the committee was recessed, to reconvene at 10 a.m., Thursday, August 10, 1961.)

PERISHABLE AGRICULTURAL COMMODITIES

THURSDAY, AUGUST 10, 1961

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC MARKETING
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, at 10 a.m., pursuant to recess in room 1310, New House Office Building, Hon. George Grant (chairman of the subcommittee) presiding.

Present: Representatives Grant, Jennings, Matthews, Inouye, Harding, Teague of California, Findley, and Beermann.

Also present: Representatives Hagen and McIntire.

Christine S. Gallagher, clerk; Hyde H. Murray, assistant clerk; and John Heimburger, counsel.

Mr. GRANT. The subcommittee will come to order.

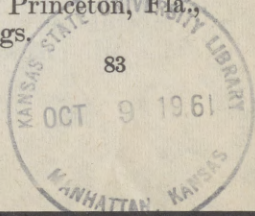
Our first witness is Mr. A. E. Mercker, executive director of the National Potato Council. We shall be glad to hear from you now.

STATEMENT OF A. E. MERCKER, EXECUTIVE DIRECTOR, NATIONAL POTATO COUNCIL

Mr. MERCKER. Mr. Chairman and members of the committee, the National Potato Council is appreciative of the opportunity to present this statement on the proposed legislation to amend the provisions of the Perishable Agricultural Commodities Act of 1930. The act deals with the practices in the marketing and distribution of fruits and vegetables.

As potatoes are the major vegetable commodity, the potato industry is vitally interested in these amendments. Formerly nearly all potatoes were marketed in the fresh form or for seed purposes. The upsurge in process has been tremendous so that now more than 25 percent of the crop produced is processed for food purposes. The remainder is used largely for food in the fresh form, seed, and some is lost through shrinkage and waste. The producers, handlers, processors, and receivers have operated under the Perishable Agricultural Commodities Act with a minimum of inconvenience. The act has been most helpful.

The Department, in its very fair consideration, has discussed with members of the perishable commodities industry, their problems and the need for amendments to improve the administration of this act. In this connection, the U.S. Department of Agriculture appointed our past president, E. Perrin Edmunds, C. A. Powers & Co., Fort Fairfield, Maine, J. Abney Cox, H. L. Cox & Sons, Princeton, Fla., as conferees, and myself as an observer at these meetings.



The problems in connection with the act were discussed at the National Potato Council's 11th annual meeting at Chicago, Ill., in 1959, and the following resolution was passed:

The council commends the PACA for its effort and the helpful work which has been done for the industry as a whole, and asks that the program be strengthened and continued. The council recognizes and endorses the actions which have been taken to date for improving the Perishable Agricultural Commodities Act.

Therefore, we wish to go on record as approving H.R. 5023 as proposed.

Mr. GRANT. Thank you very much for your statement.

Mr. McIntire?

Mr. McINTIRE. May I, as a member of the full committee, but not a member of the subcommittee, express to Mr. Mercker my appreciation for his appearance here this morning. From your long experience in the Department of Agriculture dealing with fresh fruits and vegetables this act has been very helpful, has it not, in establishing some vehicle whereby appropriate consideration could be given to the integrity of contracts and the fulfillment of contracts on the part of the local shipper and receiver?

Mr. MERCKER. The potato industry and the perishable industry has always favored such action.

I dislike to tell you how far back I go, Mr. McIntire, but I happened to have been in the produce business before World War I. And when Mr. Hoover came in as Food Administrator, he found all of this chaos in the industry, he said, "Well, we have got to set up arbitration committees." And he did that. And Mr. Percy Miller, of Albert Miller & Co., was a head of one big part of it. They were the biggest potato handlers in the country at that time.

And then Mr. Hoover said, "We need additional things. We need standards."

That started the Fresh Fruit and Vegetable Inspection Service. And from then on it grew.

After World War I, why the industry got into difficulties. Inspection grew. We had the standards, but then we did not have these arbitration approaches except through expensive legal procedure. This has practically all been eliminated by a very smooth functioning of their handling of it now.

I recollect correctly, it has only three, possibly four folks handling it. It started in with Mr. Truman, and then Mr. Curry and now Mr. Grange.

Mr. McINTIRE. Thank you.

Mr. GRANT. Thank you very much for your statement.

Mr. MERCKER. Thank you.

Mr. GRANT. Our next witness is Mr. Henry J. Bison, general counsel for the National Association of Retail Grocers of the United States. We will be glad to hear you now.

STATEMENT OF HENRY BISON, JR., GENERAL COUNSEL, NATIONAL ASSOCIATION OF RETAIL GROCERS OF THE UNITED STATES

Mr. BISON. Mr. Chairman and members of the committee, we are grateful for this opportunity to express our views on H.R. 5023. This bill, authorizing an increase in the annual license fee under the

Perishable Agricultural Commodities Act from \$25 to \$50, is of great concern to our members.

The National Association of Retail Grocers of the United States (NARGUS) represents local food store operators across the Nation. The association is a federation of over 200 State and local associations of food retailers. Three quarters of NARGUS members are located in towns and cities of less than 100,000 population. Eighty percent are affiliated with voluntary or cooperative buying groups.

First, let me make it clear that we are here seeking an amendment which provides after line 4 on page 2 of the pending bill as follows:

(11) No person buying any perishable agricultural commodity solely for sale at retail shall be considered as a "dealer" in respect of any such commodity in any calendar year: *Provided*, That not less than 90 per centum of his purchases of such commodity in such year are from one or more licensed wholesale suppliers. For the purpose of this subsection, the amount of such purchases shall be determined on the basis of net invoice cost to the retailer.

The purpose of this amendment is to exempt from coverage under the Perishable Agricultural Commodities Act those food retailers who purchases 90 percent or more of their fresh and frozen fruits and vegetables from one or more wholesalers licensed under the act. Such wholesale suppliers include independent service wholesalers selling fresh produce to retail customers, frozen-food wholesalers, cooperative, and voluntary groups selling fresh or frozen fruits and vegetables to retail distributors.

At present, food retailers buying their fresh and frozen fruits and vegetables from wholesalers are nevertheless required by the Department of Agriculture to have a license under the act when they purchase 1 ton or more in weight per day on at least 21 days in a calendar year. Under the act, each purchase must be in interstate or foreign commerce. But the Department of Agriculture applies the act to retailers buying a commodity that has at any time moved across a State line as being in interstate commerce, even though the retailer made the purchase from his wholesaler in a purely local transaction.

The proposed amendment would not exempt large retailers who perform the wholesaling function in the purchase of their fresh and frozen fruits and vegetables. Such retailers purchase a large part of their produce requirements directly from producing areas for shipment to their central warehouses. In so doing, they bypass the wholesale markets where their stores are located.

According to a recent survey made by USDA's Agricultural Marketing Service, 26, percent of all receipts of fresh fruits and vegetables in 23 leading terminal market areas of the country are delivered directly from producing areas to central warehouses of large-scale food retailers. These receipts do not pass through wholesale markets.

In 10 market areas of Cleveland, Cincinnati, Detroit, Chicago, Louisville, St. Louis, Kansas City, Minneapolis-St. Paul, Dallas, and New Orleans, 32 percent of total receipts of fresh fruits and vegetables during the period September 1960 and March 1961 were delivered direct from producing areas to warehouses of large-scale food retailers.

Retailers exempt under the proposed amendment would be required to purchase at least 90 percent of their requirements from licensed wholesalers. They would therefore make the vast percentage of

their purchases from wholesale suppliers licensed under the act. Retailers having appreciable dealings with growers, growers' agents, commission merchants, and terminal markets would not qualify for the exemption.

We believe that the proposed amendment is not in conflict with the purpose of the Perishable Agricultural Commodities Act. The law was primarily designed to protect grower, shippers, and terminal receivers of fruits and vegetables against unwarranted rejections and failure to carry out contracts.

It can hardly have been the intent of Congress in passing the Perishable Agricultural Commodities Act to provide machinery for the enforcement of contracts made between produce and frozen food wholesalers and their retail customers. In the event of failure on the part of a retailer to pay his bill, or to live up to his contract with his wholesaler, there is certainly no need for Federal control or regulation. And if the Government does so in the case of a sale of fresh or frozen fruits and vegetables, then the same principle of Federal intervention would seem to apply with equal validity to sales of meats, dairy products, and many other articles or commodities sold in a food store. There is no justification for the Federal Government concerning itself with the enforcement of contracts involving the sale of fresh or frozen fruits and vegetables between a wholesaler and his retail customer.

Retailers purchasing 90 percent or more of their fruits and vegetables from licensed wholesalers in purely local transactions were not the concern of Congress when it passed the act 31 years ago. These retailers are not large direct buyers from producing areas. They are not direct receivers of shipments from producing areas.

If there is a dispute over a shipment between a retailer and a wholesaler, both the buyer and seller are quite capable of adjusting their disagreement without the intervention of the Federal Government. Furthermore, the size of a claim that might arise in such a situation would ordinarily not justify the expense of a Federal inspector and processing the case through the procedures provided.

There is no question that wholesalers rarely—if ever—file complaints under the act against their retail customers. In fact there is some question about the lack of complaints filed by shippers or terminal market operators against large chain buyers. This point was discussed at a conference with fresh fruit and vegetable industry leaders and officials of the Department of Agriculture in 1958. The following comment is taken from a report of this conference proceeding:

The question is whether or not the scope of the act is now adequately led into a lively and extensive discussion of unwarranted rejections by chainstores and other large buyers. It was pointed out that, because PACA complaints usually are not filed against such buyers, the application of the act in this respect is almost entirely confined to other dealers, commission merchants, and brokers. As stated by one industry representative, big buyers and chainstores get away with rejecting shipments when they do not want them, but the small buyers have to take the shipments or otherwise complaints under PACA will be filed against them by the shippers. It was recognized that when the parties to such transactions do not complain, even though they are unhappy with a particular rejection, then USDA has no specific basis for knowing of the alleged violation and, consequently, does not enter into the matter. Industry representatives all acknowledged that the complaints and threatened complaints against such large buyers are practically nonexistent because the individual shipper or terminal market operator believes that he cannot take the risk of alienating such customers even though he might be successful in forcing them to accept the particular shipment in question.

If, as seems to be the case, many shippers and terminal receivers are reluctant to file complaints against large chain buyers, it is difficult to see the justification for licensing food retailers who purchase most of their requirements from licensed wholesale dealers. What benefit such retailers receive for the \$25 annual license fee they now must pay, or the \$50 proposed in the pending bill, is hard to imagine.

May I add this comment, in departing from my statement; yesterday, a representative of the Department of Agriculture testified, I believe, that many small operators receive the greatest amount of benefit and protection from this law, because large firms are in a stronger position and can employ attorneys to defend themselves. This position was, also, taken by another witness, the United Fresh Fruit & Vegetable Association. The statement was made that the small licensee should be more interested in the protection he is afforded under PACA than the larger licensee.

Gentlemen, as a representative of these retailers, we are not asking for such protection. We represent them. Our members, our retailers are not asking for such protection. So it hardly seems reliable evidence to have someone on the outside tell us that we need this law, that we do not know our own business.

We do not need it, and we do not want it.

I may say, also, that there seems to be some inconsistency in the position taken, both by the Department and by some of the proponents of this legislation, in that they, also, argue that it is only the large retailers who are covered. The Department witness yesterday testified that over 95 percent of all single unit retail stores are now exempt from the PAC Act, and the remaining 2 or 3 percent, which are subject, are virtually all supermarkets. Well, now, you cannot have it both ways. Either the larger retailers are only covered under this law, or the small ones are covered and they need protection. It is inconsistent to argue both ways.

The plain fact of the matter is that retailers relying on licensed wholesale dealers for the vast percentage of their fresh and frozen fruits and vegetables should not be licensed under the act at all. Such application of the law serves no useful purpose at all.

Enforcement of contracts between retailers and wholesalers is not a proper function of the Federal Government. The Department of Agriculture has more than enough to do in meeting its responsibilities to assist the advancement and development of American agriculture in these unsettled times, without wasting its resources by attempting to license and regulate thousands of retailers in the purchase of perishable fruits and vegetables from licensed wholesalers.

Imposition of the licensing provision of the act on retailers purchasing 90 percent or more of their fruits and vegetables from licensed wholesalers constitutes a hardship on such retailers. In 1930, when the act was originally passed, the annual license fee was \$10. In 1950 it was raised to \$15. Six years later it went up to \$25. Now the proposal is to authorize a 100-percent increase to \$50. Undoubtedly, in a few years the fee will need to be raised again.

Another factor of considerable concern is that every person, firm, or corporation licensed under the act pays the same annual fee. A food retailer licensed under the act who purchases as little as \$20,000 worth of fresh fruits and vegetables a year is required to pay the

same fee as a large shipper handling many millions of dollars worth of produce every year. A large retailer with hundreds of supermarkets pays the same license fee as a small-store operator.

Another hardship on independent retailers is that the use of weight of purchases for the purpose of determining coverage under the act makes it difficult for many to avoid violating the law. It is only when a retailer purchases 1 ton or more in weight per day on 21 days in a calendar year that the law requires him to have a license. It is hard for many retailers to know when the level of their operations requires a license. When they fail to apply for a license through inadvertence, the Department says it will consider payment to cover the past 2 years of operations as constituting satisfactory settlement of their past liability under the act.

This means that thousands of food retailers who do not now have a license may be required at some time in the future to pay an initial fee of \$150 (\$100 in accrued fees for 2 years of operations and \$50 for the year in which the retailer applies for a license) if the license fee goes up to \$50.

There are food retailers presently covered by the act who have never applied for a license. In a study made for the Department in 1955, it was conservatively estimated that 7,550 independent grocery and combination store firms were subject to license under the act. In 1959, there were only 2,787 retailers (including chains) licensed. If 200 of these are chains, it leaves roughly 2,587 independents licensed in 1959 out of a potential of 7,550, according to the study made for the Department. In effect, if these figures are correct, there are at the very least 5,000 independent food retailers in the country who could be forced to pay an initial license fee of \$150 plus \$50 per year thereafter if the pending bill is approved in its present form.

The Department follows the practice of contacting retailers by mail and suggesting that they file an application for a license (which is attached to the letter the retailer receives) if they are covered. But the act does not apply unless they buy fresh or frozen fruits and vegetables that originate from out of State, aggregating 1 ton or more during a day, or any single transaction of a ton or more during a day, or any single transaction of a ton or more, and have more than 20 such transactions in a calendar year.

This method of determining coverage is enormously difficult for retailers. They either need to spend a great amount of time, money, and effort checking their purchase records, or pay the license fee demanded. And since weight of each purchase—as well as origin of each commodity—and the aggregate weight of both fresh and frozen fruits and vegetables purchases per day are all factors which determine coverage, it frequently happens that the retailer's records are not at all adequate to determine coverage.

In such letters sent by the Department to retailers the following statement is made:

If your business comes within the provisions of the act, you should complete the application and forward it to this office together with the \$25 annual fee. If you have been operating subject to the act without a license and the violation has not been willful, you may settle your license liability by paying the fees that accrued during the period of such operations. These fees are to be computed using the table on page 2 of the application.

Because of the "20 transaction exemption," it may not be feasible for some retailers to determine when their purchases of fruits and vegetables first

reached the level to require a license. If this is true in your case, and you have been operating more than 2 years, you should furnish on page 3 of the application a statement of your inability to determine the date you first became subject to license. You should answer question 13 by stating, "at least 2 years." You may then settle your license liability for past operations by paying \$50 plus \$25 for the current fee. If you have been operating for less than 2 years, it is probable that your records will show when you became subject to license.

If you believe that you are not required to have a license, please give us your reasons.

In view of the penalties for operating illegally without a valid license, this matter should be given your prompt attention.

Consider for a moment what practical chance many retailers receiving such a letter as this have in showing that they are not required to purchase a license. In most instances they have never heard of the Perishable Agricultural Commodities Act, and never imagined that a Federal license was necessary to operate a food store much less understand the complex method by which coverage of retailers under the act is determined.

Our plea is certainly not one based on opposition to the basic purpose of the act. Neither do we oppose the pending bill except as it fails to carry out that purpose.

Application of the license provisions of the act to retailers buying 90 percent or more of their fresh and frozen fruits and vegetables from wholesalers licensed under the law serves no useful purpose and imposes an unjustifiable tax on thousands of retail businesses.

We respectfully urge that the proposed amendment is reasonable and not in conflict with the basic purpose of the act, or its efficient administration.

We ask that the pending bill be amended as we have recommended. Both justice and good sense require this action to secure sound legislation in the matter.

Gentlemen, I have some additional comments I would like to make which depart from my statement.

I attended the hearing yesterday morning and listened to the testimony with respect to uniform versus variable fees. I would like to say that, so far as I am able to determine, the Department of Agriculture says it is not opposed to the principle of the variable fee, if the fruit and vegetable industry favors such an arrangement. I would hope the Department would have some independent judgment on this matter. Certainly, it seems that the Department has a higher duty—a duty to Congress and others—which goes beyond any duty that any member of the industry would have. It, certainly, has a responsibility for the administration of this law in accordance with the intent of Congress. Of course, our point of view is always outvoted within the industry, because we are the lone dissenter within the industry councils.

This, we think, is one of the things wrong today, that is, the minority interest within the industry is given very little opportunity to present its case, except when the matter comes before Congress and then we are given this right. We appreciate the opportunity of being here today.

There have been suggestions made for supplemental fees based on each outlet operated by the licensee. I listened to this testimony yesterday from the Department representative.

I would like to make the following comments with respect to that suggestion.

First, our basic objection to the licensing fee is that we believe the Federal Government should not license retail grocers who purchase the vast bulk of their produce and frozen foods from a local wholesale supplier licensed under the act. That is our basic position. We do not think it is sound national policy for the Federal Government to go that far regulating local transactions licensing retailers who acquire their merchandise from wholesalers.

And if it does so in the case of fruits and vegetables, then could it not some day be applied to meats? Meats are perishables. Or to dairy products, or even bread, which is a very perishable product?

This is the only license—the only Federal license of its kind, gentlemen, that applies to a food retailer. There is no other example or precedent for this.

There is an alcoholic beverage control license which is a Federal license. Retailers who deal in alcoholic beverages have to have a Federal license, but that is for the purpose of administering the alcoholic beverage tax, a Federal tax. It applies to alcoholic beverages. I do not believe that you can find a similarity between fresh fruits and vegetables and alcoholic beverages.

So this is the only license that has ever been applied to the retail level, to the retail grocers. And we are very much afraid of this precedent, because if the Federal Government can regulate a local retailer in common, everyday transactions, where is the Federal Government control over local transactions ever to stop? And could they not apply the license even to the sale by a grocer of fresh fruits and vegetables to the consumer? It is only one small step further. And this is what frightens us. So our basic objection here today is one of principle and not of dollars.

We think, again repeating ourselves, that it is not good policy for the Federal Government to go this far. And some time or another Congress is going to have to take a firm stand against encroachment of Federal power over local transactions.

We have taken a firm stand here. We will always oppose this. We will continually oppose it. This is our position.

Going further, the object of our effort here today is to secure our freedom, to retrieve our freedom from this Federal licensing control. It is not our purpose today here to impose a higher license fee on any other member of the industry. We are not seeking a higher license fee on the large chains, because that will not satisfy the basic principle of our objection here. It will have very little effect on us insofar as our competitive position is concerned whether a large chain pays \$50 a year or \$1,000 a year. It will not make a great deal of difference to our members in their competitive position in the market.

We are firm and resolute, and we do not believe we can compromise our basic principle. We think it is wrong for the Federal Government to regulate local intrastate transactions.

Let me make one other comment. If the fee were a variable fee, based on the number of outlets, it would substitute one unfair basis for another, because an outlet in the retail food and distribution business can have a sales volume under this act of \$200,000 a year and it can go all the way up to \$16 million or \$20 million under one roof. A food store can be very small, as I say, with annual sales amounting to very little, or it can be a tremendous supermarket. We believe a retailer

who might have 10 very small establishments, drive-in establishments, if you please, each one with very small annual sales and very small annual purchases of produce, should not be taxed based on the fact that he has 10 units, whereas his competitor, another retailer in the area, might only have 1 unit and have more sales with that 1 unit than the first retailer did with 10 units. So that a store as such is not a very good criteria, and we think that it would result in unfairness in many instances within the industry.

The uniform fee for all retailers regardless of size, gentlemen, is a symptom of our problem. It is not the cause. The cause of our problem is the fact that the Federal Government is licensing a local intrastate transaction. We do not believe that should be permitted any longer.

It is quite true that this is the first time we have appeared before this subcommittee, or any subcommittee of the Congress and this is our responsibility. We should have appeared before.

I know our position here today is not popular with the industry. I do not know whether we will have the ability to succeed, but I do know that the strongest case we have is the logic of our argument and the principles which we are asserting. We are resting our case on that basis.

That completes my statement.

I just want to say that I appreciate tremendously, on behalf of our many thousands of members across the country, the opportunity of being here.

Mr. GRANT. Thank you for your statement. I am sure that there are questions.

Mr. Jennings?

Mr. JENNINGS. First, I want to compliment the witness on his very complete and sincere statement. I, certainly, have no quarrel with you on the basis of your presentation, but going beyond that for just one moment, do you not feel that a license based on the number of units of outlet would be an improvement over the present mode of operation, that is, the present method of licensing?

Mr. BISON. I really do not know, Mr. Jennings, because it takes some study to assess the problems that would arise from it. I will tell you the reason why.

The food distribution industry, both at the wholesale and the retail level is very complex. It is hard to generalize, because there are so many different ways of doing business.

I would hesitate to say whether it would be better or worse right now. I think it requires a considerable amount of study if any change is to be made.

I would urge this subcommittee not to rush this legislation through, because there are many people in this industry today whose interests are involved and it is going to take some time to find out what effect this would have on their interests. This is a very large industry, as you well know.

So I would say that if changes are going to be made, act with caution and with study and consideration.

Mr. JENNINGS. In effect, you are saying that you think the graduated scale, based on the amount of business, the volume of business transactions, would be more equitable?

Mr. BISON. I do not know whether it would be or not. The Department witness raised one objection yesterday to that, that is, there would be more forms required from business.

Mr. JENNINGS. I realize that would be true as to the administration of this act, but I was not going into that question. I was going into the subject—

Mr. BISON. You might say, too, that there is another alternative, Mr. Jennings, to this, that is, to do away with the license fee entirely and make it an undertaking under the general appropriations of the Department. That is an alternative.

Mr. JENNINGS. Perhaps I should direct this question to the Department. How many people are employed in the enforcement of this act?

Mr. BISON. I do not know—I would not be competent to say. I might say this. Nothing that we have said here is personal with these people. We have the greatest respect for them. It is that we disagree on principle.

Mr. JENNINGS. Do you know whether or not they carry on this work with other duties, or whether they do this exclusively?

Mr. BISON. I had better not answer that question because I just do not want to answer unless I know the facts, which I do not.

Mr. JENNINGS. You give one example here, I notice. You state:

In 10 market areas of Cleveland, Cincinnati, Detroit, Chicago, Louisville, St. Louis, Kansas City, Minneapolis-St. Paul, Dallas, and New Orleans, 32 percent of total receipts of fresh fruits and vegetables during the period September 1960 and March 1961 were delivered direct from producing areas to warehouses of large-scale food retailers.

That is on pages 2 and 3 of your statement.

You pick there a period which would appear to me as being one in which fruits and vegetables, that is, fresh fruits and vegetables, flow less to the market and the retail outlets than in any other period. That is during the winter months. Why not use from March 1960 to September 1961?

Mr. BISON. I think that the same relative conclusions could be drawn regardless of what period is selected. The amount of the receipts would vary, that is, in volume and the total amount. I do not think that the percentage would vary. I think that large-scale buyers follow the same practice generally, in all seasons of the year.

I might, also, add that the period reported on is taken from a report made by the Department of Agriculture. I thought that it was important to bring this to your attention, to show that as time goes on we will have more and more direct shipments. And that if you stop licensing these retailers you will encourage them to deal with their wholesalers, instead of bypassing the wholesale markets.

Mr. JENNINGS. The only point I wanted to get to was why do you want to encourage the retailer to deal with the wholesaler, rather than to deal in a direct manner, if he so desires. In effect, what you would be doing is that you would be encouraging, under your amendment, an individual retailer or the retailers, to deal with the wholesale house that happens to be licensed under the act, rather than to deal direct. What is the advantage? Why would you want to encourage that?

Mr. BISON. We are not particularly interested in encouraging or discouraging that. Our principal concern is that, again stating the principle of our objection, that we do not think that the Federal Government should license a local retailer in local transactions. If he

buys in interstate commerce—if he goes to the State of Florida, for example, and orders a shipment of fresh produce, that is an interstate transaction and we think the Federal Government, certainly, has every right to intervene in that kind of a transaction. So it is the principle that has motivated our position here.

Whether it is good business for a retailer to buy direct, or whether it is good business for him to buy from the wholesaler is determined on the facts of each individual situation. We would not be able to make a generalization.

Mr. JENNINGS. The mere presence of this law, and I am asking you this question for your position, that of the independent retailers—has made for a better relationship between the retailer and those he purchases from, whether it be direct or whether it be from the wholesaler, because it would appear to me that he has some protection and he is going to get exactly what he orders and what he contracts for—would not the mere fact that we have this law, even though, as you have pointed out, there have been very few complaints, be of help, for example, I, as a larger shipper or wholesaler or commission merchant or broker, knowing that you as a small retailer have that privilege—would that not have its effect in carrying out the intent and the spirit of good business relations?

Mr. BISON. Let me answer your question in several parts.

First of all, I have been associated with and representing this organization now for about 10 years, and I have never heard any member of our organization ever having filed a claim or making an inquiry under PACA. That is not to say it has not happened. I am not alleging that.

Secondly, our position is as stated to you today, which was unanimously adopted at our convention in Philadelphia last June. Every one of our members, every one of our State association executives heartily support it. There was not one dissenting vote in this association of 40,000 or 50,000 members.

Thirdly, if a retailer receives a shipment from his wholesaler and it is not up to standard, he is going to deal with his wholesale supplier himself. He can quickly make his views known without any Federal interference or any Federal regulation. I doubt very much, except in rare situations, that he would even think of going to a PACA office and having a complaint filed against his supplier. He can handle the matter better with his own supplier. If people who sell us goods do not do what we want, we have means for controlling that, as long as we have competition. That is why we want to preserve competition.

Mr. JENNINGS. There is no lack of competition in the wholesale fruit and vegetable business, is there?

Mr. BISON. There is no lack of competition in the food industry as such.

Mr. JENNINGS. A great deal of this bill deals with the responsibility of the commission merchant, in defining the terms. It also deals, as I understand it, with the relicensing of those in the produce business. You have directed your testimony to that portion of the bill. I assume that you would have no objection to clarifying the language of that portion of the bill?

Mr. BISON. I am glad that you asked me that question. We have no objection to any of those provisions in the bill, for this reason: We

never have any complaints filed against our members. There may be some exceptions that I do not know about, but they must be very rare. Our members never file any complaints. They do not have anything to do with this law except that they have secured a license and they have to pay their \$25.

So far as the rest of the law is concerned we do not know anything about it. We have never had anything to do with it. It is that irritating license that comes up every year. It is very irritating when the retailer gets a letter which says, "You have been under this law since you have been in business and you have to figure how many tons you have bought per day, and where it came from, and so on and so forth and you have to give us \$75 and then pay \$25 from here on out."

We have no objection to the bill. If it would please the subcommittee to adopt our amendment, we would support the bill.

Mr. JENNINGS. In other words, what you are saying in effect is that the only reason and the only benefit that is derived by having these retailers who purchase 90 percent of their commodity from a wholesale outlet who is licensed—the only thing that you contribute is the license fee?

Mr. BISON. Precisely.

Mr. JENNINGS. I think that is all I have. Again, I want to compliment the witness, because I think you have given us a very good view of your position. Frankly, I think I can say that while I do not agree with it in its entirety, I agree with most of it. I do not know whether we can go as far as you would like to have us go. Certainly, on this license feature, if we are going to get something that is more equitable than the present one is, that is what we need to do.

Mr. FINDLEY. Mr. Chairman, first of all I feel that I have reached a new plateau here today. I have only been a Congressman for 6 months, and here I am a senior Republican on this subcommittee [Laughter.]

I want to compliment you on your statement. You, certainly, touched on some topics that are dear to my heart, particularly when you speak about the unnecessary encroachment of the Federal Government on responsibility that should be reserved to the State and local governments.

I am wondering what the effect of your amendment might be on competition in the wholesale business. I am somewhat of a merchant myself. I am a newspaper publisher. I deal with many independent grocers. It is my observation that many of them deal with several different sources for fresh fruits and vegetables in their purchases.

In order to get the exemption under this act, by dealing with one source for 90 percent of their purchases, would that not tend to reduce competition in the wholesale business?

Mr. BISON. Our amendment refers to one or more licensed wholesale suppliers.

Mr. FINDLEY. I misunderstood your amendment then.

Mr. BISON. Yes.

Mr. FINDLEY. It is one or more?

Mr. BISON. One or more.

Mr. FINDLEY. Providing that 90 percent of their business is with firms that have licenses?

Mr. BISON. The wholesale supplier is not licensed and this would count toward purchases that might put them under the act.

Mr. JENNINGS. I cannot imagine any wholesaler who would not come under the act because of the ton limitations, that is, the tonnage limitations—it would not be a very large wholesaler if he did not come under the act.

Mr. BISON. I am sure that the wholesalers would be licensed. I cannot imagine that they would not be. If they were not licensed they would be in violation.

Mr. FINDLEY. Why does your association not oppose this problem from the interstate commerce context rather than the 90 percent volume basis—why not provide that the retailer who has his sales within the confines of one State would be exempt?

Mr. BISON. For this reason the fact that he is operating in one State would not necessarily mean that he was not engaged in interstate commerce. For instance, suppose that this retailer had a truck and he sent the truck to a producing area in another State and said, "I want you to bring back this shipment of produce for me." I think that would be interstate even though he operated in one State. We are trying to be as fair as we possibly can about this. We leaned over backwards in proposing our amendment. Ninty percent is a very high percentage. Some people have said, "You are really more strict than you should be," but we realize that we have a tough road and we want to show our good faith in the matter.

I went back to a congressional date 31 years ago and read all of that—and this is my own opinion—I would say that the purpose of the act was primarily one of protecting growers, not exclusively, but primarily of protecting growers and grower agents, because buyers were ordering shipments of commodities and they would arrive and they would have some reason for not wanting them. They would say, "This does not meet the specifications. I reject the shipment."

Let me emphasize, I am not saying that this is the sole purpose of the act at all. This is one of the purposes—one of the primary purposes and, from our own point of view we see a great deal of wisdom in the Federal Government intervening in the situation where this could be a real problem where growers were finding shipments rejected for no reason at all.

And we are not opposed to the basic purpose as we understand it of this law.

FINDLEY. The basic purpose then is as you see it to use the license system to enforce contracts?

Mr. BISON. Yes. It is true that receivers have benefited from this law, too. There is no question that the receivers have. Sometimes a shipper will claim that the contract has been met when it has not. So the receivers do get something out of the law.

I think the primary purpose was to protect the grower who could not protect himself. He is in a distant part of the country, shipping a perishable commodity to a buyer many miles away. Congress felt that the grower needs some protection.

To get back to the point where interstate commerce is involved, this law should apply.

Mr. FINDLEY. I, also, get from your testimony you have the feeling that only a third of those who should be under the licensing system actually have a license?

Mr. BISON. May I say this. I was taking a survey made for the Department by a very competent research firm, Neilson. I do not

know the standards by which they conducted this survey. I do not know how accurate it is. I am not testifying that it is either right or wrong, because I have no knowledge of it myself and have not made a study of it.

It must have some credibility, or the Department would not use it. If it is right, 5,000 independent food merchants in this country today do not have a license, and should. My guess, however—and it is only a guess—is that the number is more than that. It is hard to estimate—because of the method of coverage under this law. One ton or more fresh or frozen, per day, 21 tons or more a year. It is hard to estimate how many are covered under that. If one bought twenty 100 pound sacks of potatoes, they would have a ton right there.

The Department witness yesterday stated that only supermarkets were covered—only the large retailers.

First, let me say that we would not be here today if that were so. We are not appearing on this matter just for the fun of it.

There is a great deal of difference in opinion within the industry on how much sales volume a store must have to be called a "supermarket."

The Department has said with some basis, because of the Neilson study that if it does \$350,000 worth of business a year it is a supermarket. Gentlemen, \$350,000 a year is not very much in the food retailing. A very small store can have sales of \$350,000 a year.

Our definition of a supermarket is something much closer to \$1 million, because we feel that a \$1 million operation would be necessary to make the investment in a supermarket pay.

You have to have a high volume to make the investment pay. One cannot make it pay on \$350,000 a year.

So our point is simply this, there are many small merchants, retail food merchants, who are covered under this act and are required to take out a license.

There is a difference of opinion over what a supermarket is. We think that \$1 million is more realistic to define a supermarket than \$350,000. Many small stores, gentlemen, will do a volume of \$350,000.

Mr. FINDLEY. Are there any other precedents for using licensing of stores to enforce contracts?

Mr. BISON. No. I have searched the statute books. I told you I only found one other Federal license proposition.

Mr. FINDLEY. I am speaking of other local governments, too.

Mr. BISON. No, that is not to say that there are not any.

Mr. FINDLEY. Do they use State licensing of retail stores as a lever to enforce compliance of contracts?

Mr. BISON. I know of none.

Mr. McINTIRE. May I say that it might be so in connection with milk marketing orders.

Mr. FINDLEY. Is that part of the Marketing Order Act?

Mr. BISON. I think that we are talking about two different things here. I understand that milk commissions do set minimum prices, and some set the maximum price, but this law provides for the enforcement of a contract.

All we are saying is simply this, again, getting back to our basic principle, we are saying that when a local transaction is involved, the Federal Government should not be concerned with it. It may be that

the State government should be, maybe the local government should be. We do not know. But the Federal Government should not. This is not the proper approach for the Federal Government. The Federal Government has more things to do right now than it can possibly handle.

Mr. FINDLEY. Is the license used to enforce the payment for the milk? Is it used for that purpose?

Mr. McINTIRE. No.

Mr. FINDLEY. That would be going a step further, is that correct?

Mr. McINTIRE. It would, in the context in which you are putting it, but the real context of the PACA is the performance of the contract, not to pay for the commodity.

The real crux is the performance of the contract, to live up to the agreement that you have made. That does involve money, because nobody is in business in this country except for money. The real crux of the PACA is the performance of the contract.

Mr. FINDLEY. I hope that you come back often.

Mr. HAGEN. Mr. Bison, you seek an exemption based on purchases from a "wholesaler" yet you do not define wholesaler. Is there an adequate definition of "wholesaler" elsewhere in the act?

Mr. BISON. The act does not define "wholesaler," unfortunately. I have been concerned about that problem. I think that a good definition of "wholesaler" is one who sells exclusively to retailers and a retailer is one who sells for resale to the consumer. We are talking about the legitimate produce and frozen-food wholesaler who sells to retailers and the voluntary and the cooperative who sell produce and frozen foods to their members—we are talking about those three classifications—and we, certainly, would be anxious to work with the subcommittee in further defining that term if you think it is needed. We are not looking for any back-door escape from this thing.

Mr. HAGEN. I think it might be needed if we adopt your amendment.

Mr. BISON. Let us work on it.

Mr. HAGEN. In your view is the wholesaler by definition one who takes title to the produce?

Mr. BISON. Yes.

Mr. HAGEN. That he sells?

Mr. BISON. Yes; he does take title.

Mr. HAGEN. In other words, by the time the retailer buys from the wholesaler, there has been one complete sale between the producer and the wholesaler. The point I am getting to is that it appears that if the retailer rejected a carload of potatoes, for example, for some reason, this arbitrary rejection would not operate adversely to the man who is growing the potatoes; would it?

Mr. BISON. No; it would not.

Mr. HAGEN. That would be clearly a transaction between the wholesaler and the retailer.

Mr. BISON. It would be. It is the wholesaler's property until he transfers title to the property to the retailer. The means by which this title is transferred is the contract. This is a transaction between the retailer and the wholesaler and nobody else is involved.

Mr. HAGEN. I understand that the broker gets paid for his service. There was one illustration presented by Mr. Grange where a retailer had refused shipment. And there was a broker in this transaction

and the broker never got paid and consequently the growers never got paid.

Mr. BISON. No; it would not involve that. There may be a broker involved before the wholesaler acquires title to the merchandise—we do not know—that is entirely something beyond the scope of what we are talking about.

Mr. HAGEN. I agree with you that this act is primarily for the protection of the grower, say, out in California who is shipping to a market in Boston, Mass., and is in no position to protect himself there.

I think there is a lot of merit in what you say about the relationship between the wholesaler and the retailer. The wholesaler takes the title and is the sole loser if the retailer breaks his contract.

Another question, is it not foreseeable that large outfits could set up a separate wholesaling corporation and thereby avoid coverage under this act if you exempt retailers under the formula you propose?

Mr. BISON. I do not see how. The large operator is going to be engaged in interstate commerce as we all think of interstate commerce. He has a warehouse. He is his own wholesaler. He is integrated. That is where the distinction comes in. He is doing his own wholesaling, has his own warehouse. He has a direct shipment made to the warehouse.

Mr. HAGEN. Of course, you are exempting 10 percent of the transaction by your definition whether or not the deal is with a wholesaler or a farmer.

Mr. BISON. Yes.

Mr. HAGEN. And say that the alter ego, the chainstore runs the wholesaler corporation, and whatever the parent wants for the wholesaler will do. The producer could be imposed upon. Should we not have some criteria to meet that sort of thing?

I agree with you that if you have a clearly independent wholesaler who takes title to the property and then deals at arm's length with the retailer, why that kind of transaction perhaps would not be covered. However, we do not want to weaken the protection for the grower.

Mr. BISON. We certainly do not. That is not our objective either.

If there is any weakness in this proposal, so far as protecting the grower is concerned, we want to know about it, and we would agree to any reasonable proposal on that. I do not believe we have a problem there. You may be right and if you are right, let us correct it—let us correct it so that we do not have the problem, because that is not our purpose.

Mr. HAGEN. Thank you very much.

Mr. BEERMANN. You say that this is your first appearance before the committee. Is your appearance before this committee at this time prompted because of the fear you have of additional Federal controls?

Mr. BISON. In part.

Mr. BEERMANN. In part?

Mr. BISON. Yes, sir.

Mr. BEERMANN. In that light then, is your amendment a compromise rather than the attitude you might prefer not to have this Perishable Agricultural Commodities Act?

Mr. BISON. No; I think it is not a compromise. I think what we are trying to do in our amendment is to assert the principle of our objection; namely, we do not think that the Federal Government should license the retailers who do the bulk of their buying in local

transactions. I do not believe it is a compromise; 90 percent may be a compromise. The reason we use the figure of 90 percent is that we were afraid that some unusual purchase in commerce say, of water-melons or something of that nature may happen only once in a whole year. We did not think that one such small purchase ought to throw them under the act. Something ought to be done for the de minimis transaction. We are trying to avoid the minor purchases of no consequence. That is what we are trying to do. I do not believe it is a compromise.

Mr. BEERMANN. You are in favor of the act; just want to clarify it for the people who have to live under it.

Mr. BISON. Yes.

Mr. BEERMANN. I am glad that you appeared here. Thank you.

Mr. McINTIRE. Mr. Bison, may I join with the members of the sub-committee in expressing my appreciation of your appearance, also.

In looking at the amendment which you propose you use the term "90 percent of purchases," do you mean by that volume or dollar transactions?

Mr. BISON. Dollar transactions, not weight, but value.

Mr. McINTIRE. Am I correct in my understanding that what you are attempting to suggest here is a clarification of the interpretation of interstate commerce? This act has been in effect since 1930. I assume your organization is that old or older. How much has been done to acquaint the retailer with the act in the years past in order that they would understand the law—How much time has been spent giving the retailers some understanding of this act?

Mr. BISON. By us?

Mr. McINTIRE. Yes.

Mr. BISON. We have not spent a great deal of time trying to educate our retailers to apply for a license under this law. When a retailer receives a letter from the Department—or when an inspector comes to his stores and says, "You have got to take out a license," we advise him whether we think he had better pay up or whether he can resist it. We do not affirmatively carry on an educational program. The Department has. You saw the evidence yesterday.

Mr. McINTIRE. The Department has worked the past 3 years or more in conferences with those who come under the purview of the act. Has your association attended these conferences?

Mr. BISON. Yes; we attended the last conference for the first time. This took place in New Orleans in January of this year. That was the first time one of our members was invited. We were glad to cooperate in so doing.

I might say that our member dissented to the proposal for increasing the fee.

Mr. McINTIRE. Did your representative at this conference raise the question of the definition which the department had submitted?

Mr. BISON. I do not know whether he did or not—it is not shown in the summary of the meeting—he might have done it—I do not know that he did.

Mr. McINTIRE. In connection with this definition you feel it should be put on a dollar basis rather than on a volume basis?

Mr. BISON. No; I feel that the coverage as stated in the law now 1-ton or more, 21 times or more a year, ought to remain the same, at least, for the time being, until a thorough study could be made of any

other proposal. We are very fearful of changing the standard on weight until we know exactly what the effect of that change would be. In the case of the retail exemption for purchases from the local wholesaler, this ought to be in terms of dollars.

Mr. McINTIRE. Administratively, it is the responsibility of the Department to make the definition, but you have not defined in your amendment nor have you proposed to the subcommittee a definition. You also make mention of the fact that you did not think this legislation should be enacted. It is my understanding that the legislation has been under consideration for 3 years. You are familiar with the fact that it is a self-supporting operation from a financial standpoint. You are familiar with the fact that the statement was made by the Department that the reserves were virtually used up. Do you think it is necessary therefore to take action promptly on this legislation?

Mr. BISON. I believe that my testimony went to the effect that if there should be any supplementary fee based on outlets or something of that nature where a substantial change is to be made, that it ought not to be rushed because we do not know what the effect will be.

I would say in answer to your question I understand that there is a deficit involved. I do not know whether it would be necessary to act on this legislation this year because of that deficit. I have not seen any evidence to indicate it. I do not believe there has been any evidence introduced before this committee to indicate that action on this bill this year is absolutely essential.

Mr. McINTIRE. That is the information I have. Funds will run out early in 1962.

Mr. BISON. We are not trying to undermine this law or its operation in any way.

Mr. McINTIRE. Do you not think that, in view of the suggestion you made, that it needs clarification on the point of definition? It seems to me that a truckdriver could be a wholesaler—it seems that if he crosses a State line he is in interstate commerce—would it not be better procedure to follow to get financial stability into this program if it is to continue, making authorization for these increased fees and for the committee to take into consideration at a later date some amendments to the act?

Mr. BISON. I simply say this: I do not think it would take very long to define what a wholesaler is. I can give you a pretty good definition right now, as a matter of fact.

Mr. McINTIRE. What is your definition?

Mr. BISON. One, that he sells to retailers and has an established place of business.

Mr. McINTIRE. Would a truckdriver who is buying from a producer, going across State lines, selling direct to a retailer, be a wholesaler?

Mr. BISON. No; not the way we would define it. No; I think he would not have an established place of business. I think that truckdrivers could be cared for by excluding them.

Let me make my point, however. I believe that the definition of a wholesaler could be defined without too much delay and that this matter could be concluded very quickly. There would be no reason to pass this bill and delay consideration of our objection. We think it is fundamental that we have the opportunity right now. We might never get separate legislation through Congress. It is a factor

of great concern to us. This is our best opportunity. We think it is a golden opportunity and we want to seize it.

Mr. McINTIRE. Basically, the proposition you and your association of retailers present is to define interstate commerce question so as to prevent retailers coming within the jurisdiction of the act except to such points you feel that retailer is in interstate commerce.

Mr. BISON. Some stores do.

Mr. McINTIRE. And your amendment also says, "any such commodity"?

Mr. BISON. Yes.

Mr. McINTIRE. Would that mean that you would have to show by records each variety of fresh fruit or vegetable?

Mr. BISON. The "any such commodity," I took precisely from the provision of the act defining a dealer now in section 1(6) where it defines the term "dealer," and such commodity is in the act today and has been in the act for 31 years.

Mr. McINTIRE. Then your interpretation is that this is the total commodity group which is classified as fresh fruit and vegetables or frozen foods?

Mr. BISON. Yes; definitely. It can be 1 commodity that is covered or it can be 10 or 15 or whatever it is.

Mr. McINTIRE. It is the total rather than one particular commodity?

Mr. BISON. Yes.

Mr. McINTIRE. Thank you.

Mr. GRANT. Will you yield to Mr. Jennings? He has to get away.

Mr. HARDING. Yes.

Mr. JENNINGS. Do you know of a counterpart to the PACA on a State level in any of our States?

Mr. BISON. No, but that does not mean that there are not any, because there are many State laws that may go this far. I am not saying that they do not.

Mr. HAGEN. California has laws along this order viz licensing and bonding requirements intrastate.

Mr. McINTIRE. We have a number of States wherein by State law there is a requirement of a bond be put up by the dealer, a vehicle by which the person selling to the dealer is assured of pay in case of default on the part of the dealer. I recall the bankruptcy of a certain concern in New England that was purchasing milk from farmers and was bonded.

Mr. JENNINGS. Did that work satisfactorily, that is, to the satisfaction of the producers?

Mr. McINTIRE. Where a valid bond was in effect—yes. In one State the State official had not required a bond. There the producers did not get their money.

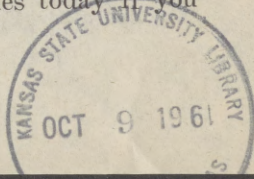
Mr. JENNINGS. Where those conditions existed did they also have Federal licenses?

Mr. McINTIRE. Not in those instances, no.

Mr. JENNINGS. Then should not this be left to the State where it works most satisfactorily, as it did in milk?

Mr. McINTIRE. It is my opinion that in the fresh fruit and vegetable business the PACA has been a very successful proposition.

You would have plenty of problems in vegetables today if you did not have it.



Mr. HARDING. I understand from your statement you object primarily to the interference of the Federal Government in transactions that are purely intrastate, is that correct?

Mr. BISON. That is correct.

Mr. HARDING. Could you tell us of some of these transactions?

Mr. BISON. I can give you an example.

Mr. HARDING. Please do, a specific example that involves a specific set of people or businesses?

Mr. BISON. Let me just say this, I would not be able to name any names.

Mr. HARDING. Could you furnish that for the record? The reason I ask is that we had a Department of Agriculture witness here yesterday who said that in every case they have to determine whether or not it was an interstate transaction—even though the wholesaler or the retailer or both were licensed under PACA, that if the transaction is purely intrastate, they would have no jurisdiction.

Mr. BISON. The Department's interpretation of "interstate commerce" is a very broad one. They consider interstate commerce as involving a purchase by a retailer from a wholesaler of an article that moved or has moved across State lines at any time. It does not make any difference whether the retailer purchased the commodity directly or not. If a retailer purchased the commodity from the wholesaler, so long as it originated from outside the State it is interstate commerce, according to the Department's view.

Mr. HARDING. That is a fair definition, do you not think?

Mr. BISON. No.

Mr. HARDING. Let me give you this example. If a retailer in Washington purchased Idaho potatoes from another wholesaler in Washington, but they did originate in Idaho, those potatoes are still in interstate commerce, do you not agree?

Mr. BISON. Let me say this or ask whether you are talking about the State of Washington now?

Mr. HARDING. I am talking about Washington, D.C.

Mr. BISON. That would be different, because I think that Congress has the power to regulate commerce within the District.

Mr. HARDING. Well, let us take the State of Washington, then.

Mr. BISON. If it is the State of Washington, a transaction between the retailer and the wholesaler within the State of Washington, in our judgment it ought not to be considered interstate commerce.

Let me make this further statement: As an attorney I am not challenging the power of Congress to regulate that kind of commerce if it wants to. The Supreme Court has sustained Congress in doing so. But I am saying that it is not good national policy to exercise control over commerce of that nature to the fullest degree possible. If this is done it will destroy the State and local governments.

So our argument is simply this: Under the law Congress has the constitutional power but the question here is, Is it good national policy to go that far? That is the question, the principle, and a debatable question, I am sure.

Mr. HARDING. You made a very broad statement at the bottom of page 5 which I am sure you would like to give a second thought. It is:

Enforcement of contracts between retailers and wholesalers is not a proper function of the Federal Government. The Department of Agriculture has more

than enough to do in meeting its responsibilities to assist the advancement and development of American agriculture in these unsettled times, without wasting its resources by attempting to license and regulate thousands of retailers in the purchase of perishable fruits and vegetables from licensed wholesalers.

You would limit this to apply only to intrastate commerce, wouldn't you?

Mr. BISON. As we defined it, yes.

Mr. HARDING. In other words, say that a potato company in the State of Idaho is shipping as a wholesaler a carload of potatoes to someone in Florida, would you have the Federal Government come in and regulate that transaction and see that all of the contractual agreements are carried out in full?

Mr. BISON. If I understood your example the retailer is buying direct from an out-of-State source?

Mr. HARDING. That is correct.

Mr. BISON. That should be covered—that should be licensed—that is interstate commerce.

Mr. GRANT. We have two more witnesses and about 15 minutes left in which to hear them. We thank you very much.

Mr. BISON. Thank you.

Mr. GRANT. Our next witness is Mr. Kenneth D. Naden, secretary of the National Council of Farmer Cooperatives.

We shall be very glad to hear you now, Mr. Naden.

STATEMENT OF KENNETH D. NADEN, SECRETARY, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. NADEN. Mr. Chairman and members of the committee, I am Kenneth D. Naden, secretary, National Council of Farmer Cooperatives. We appreciate the opportunity to present our views on H.R. 5023 to this committee.

The National Council of Farmer Cooperatives is an organization of 122 national, regional, State, and local farmer cooperative associations with which there are affiliated some 5,000 local farmer associations serving approximately 2.75 million farmer memberships for whom these associations purchase farm production supplies and market the commodities which their farmer members produce.

We welcome the opportunity to comment on the provisions of this bill, H.R. 5023, since the Perishable Agricultural Commodities Act (PACA) has been a constructive force in establishment of competitive rules of trading in the fruit and vegetable industry. The purpose of the PACA is to establish rules of fair trading and a mechanism of procedure whereby alleged violations of those rules can be investigated and "adjudged" by an impartial organization but without the time delays and expenses of regular court procedure. It is designed to protect either buyers or sellers who are in a weak competitive position and cannot enforce terms of sale. It is an instrument to make the Government an umpire in an industry program of fair competition. It is our view, based on the experience of members of our organization, that this law has achieved fair success in accomplishing its objective.

From our study of the bill before us, its purpose is to make minor revisions in the PACA in order to make the law more useful and effective. It does not change the intent of the law or the major operat-

ing procedures under which the PACA has been operating. It is designed to plug loopholes for evasion of the regulations, to clarify the operating procedures and to clarify the penalties imposed for violation.

In general, we support and urge the adoption by this committee of the recommendations contained in the bill with the exception of section 2 pertaining to the increase in fees which we will discuss in more detail later.

We especially want to applaud the method which the U.S. Department of Agriculture and the fruit and vegetable industry have used in seeking industry understanding and support for this law. The procedure of annual industry conferences at which all segments of the industry are represented, is one important method used for arriving at a consensus regarding revisions of the regulations. Some members of the National Council of Farmer Cooperatives participated in these annual conferences.

We will not give a detailed explanation and justification for each of the various sections of the bill which we support. The explanation of the need for these provisions are contained in the reports of the industry-PACA conferences for recent years. We will confine our attention therefore, to the only portion of the bill, section 2, which we question because of the related issue of multiple licensing. This provision to raise the fees charged for covering expenses for the administration of the PACA is disturbing to certain federated cooperatives.

The proposed increase in fees, although supporting a proper objective of covering costs of administration, becomes burdensome to federated cooperatives and their farmer members because the fee is simply multiplied by the number of local shipping organizations. The issue of multiple licensing of the local packing houses of a federated cooperative has been opposed by certain federated cooperatives for several years. This was considered by them to be completely unnecessary since multiple licensing did not afford any additional protection to buyers or appear to serve the public interest. About 2 years ago, after considerable negotiation with the USDA, these cooperatives agreed to licensing of each of their local shipping associations. Now there is considerable apprehension among these local associations that the \$50 maximum fee for each license, as listed in section 2, would immediately become the minimum and a doubling of license fees would be burdensome to a federated cooperative.

Previous discussion by PACA industry conferees had indicated that license fees might be raised by about \$10. It is our recommendation that the language of section 2 be amended to insure that PACA license fees be raised only in small increments no larger than \$5 or \$10 per year to a maximum of \$50. In this way licensees could be assured that fees would rise only in accordance with costs of administration and be assured that the \$50 maximum does not immediately become the minimum. In view of continually rising costs, it is important that these fees be spread over a number of years.

We understand that the decision by USDA for multiple licensing of federated cooperatives was based on the fact that the local shipping organizations are separate legal identities. Most of the large federations are composed of separately incorporated units, therefore, licensing was extended to each individual member organization. However,

a centralized operation, even with many individual unincorporated units, would still be required to pay for only one license—even though the total volume of business might be far larger than that of a federated cooperative. This could be true of either a farmer cooperative, a commercial shipper, or a retail chain organization. This situation, therefore, at least raises the question as to whether the fact of separate legal identification is a fully equitable and adequate basis for licensing. There is both an economic and legal relationship existing between a firm and the physical plants through which it performs certain operations. Perhaps membership or operational cohesion, as in the case of retail food chains, or even volume, might well be studied as a more valid basis for licensing.

In summary we believe the proposals in this bill for strengthening the PACA are constructive provided section 2 is clarified to prevent an immediate doubling of license fees.

We appreciate the opportunity to express our views to this committee.

Mr. GRANT. Thank you so much. Are there any questions?

Mr. NADEN. Thank you.

Mr. GRANT. Our next witness is Mr. Watson Rogers, president of the National Food Brokers Association. We will be glad to hear you now.

STATEMENT OF WATSON ROGERS, PRESIDENT OF THE NATIONAL FOOD BROKERS ASSOCIATION

Mr. ROGERS. Mr. Chairman and members of the House Agriculture Committee.

I want to thank you for giving me the privilege of appearing before you to present our views on the need for amendments to H.R. 5023, a bill which proposed amendments to the Perishable Agricultural Commodities Act. Before I proceed with a discussion of these views, I would like to explain that I am president of the National Food Brokers Association. Founded in 1904 this association today represents the leading food broker firms in the Nation. Our members are located in every market area. They sell a majority of the processed food and grocery products to the wholesale buyers of the Nation. A large majority of our members sell frozen food products, including fruits and vegetables.

Very few of our people sell fresh fruits and vegetables. We are not in that business.

Because it is so important to a full understanding of the position of our members I should like to point out how a true food broker, as we define him, and as he operates in the field, differs from other brokers. Our members act solely as the agent of the seller who is the packer or processor. They do not act as the agent of the buyer, even though they provide the buyer with many services on behalf of their principal, the processor. Further the true food broker does not buy or sell for his own account. His full allegiance is to the seller. He cannot speculate, for that would put his own personal interest in conflict with that of his principal. He does not set the price the seller charges. As the sales agent he takes orders from the buyers to be filled by his principals. These principals are served on a regular, longtime basis, and not on a temporary, hit-or-miss basis.

As you can readily see, this type of businessman is far different from the brokers in other industries and fields, particularly in the produce field. Undoubtedly the customs and marketing practices in the fresh fruit and vegetable industry require a different type of marketing man. Brokers in that field, by custom, represent either the buyer or the seller, as the need arises. It is not unusual that such brokers even buy for their own account. Undoubtedly such purchasing is required because of the nature of the product.

We believe the PACA was basically designed for the fresh fruit and vegetable industry, particularly to protect the interests of the grower. Since the time the PACA was passed in 1930 an entirely new industry has grown up and this has resulted in inequities in the licensing requirements under the act. Unless these inequities are corrected they will lead to growing discontent with the act and will in time cause many in the food industry to turn against it. This could lead to a loss of the helpful provisions of the act as they apply to the fresh fruit and vegetable industry and to the growers.

When the act was passed, frozen foods were in their infancy, barely past the experimental stage. No one could then foretell the direction this new industry would take. As you no doubt know, this industry has developed along the same lines as the older canned foods processing industry. In fact, many of the Nation's canning firms also do freezing of fruits and vegetables. That is why so many freezers have turned to the use of food brokers to sell their products, for that is the way the majority of canned foods are largely sold.

To require the PACA licensing of a food broker who negotiates the sale of frozen fruits and vegetables is most unfair, for it singles out one form of processed foods from another. Yet today there is little difference between the distribution and sale of one type of product from the other food products.

Thus there is no more justification for licensing the broker negotiating the sale of frozen fruits or vegetables than for the sale of canned or other processed fruits or vegetables, or other food products. All such products are packed by or for a processor who is solely responsible for the products, their quality, method of processing, method, and terms of sale. Likewise there is no more reason for requiring such an agent of the processor to be licensed than the salaried salesman of that same processor.

As more and more canners venture into the field of processing frozen fruits and vegetables they usually look to their regular brokers to sell these products, too. The volume per local market is small and often the broker who handles such sales usually does so in a limited way. Therefore, many brokers question if they should take out a license for the privilege of selling such a limited volume.

These brokers, who have been representing canners for a great many years find it difficult to understand why the Government would force them to take out a license merely because their established canner principal started freezing fruits and vegetables. They would be selling the same commodities, for the same processor, and to the same buyers under the same terms. But because one part of the pack was processed differently by freezing they would be required to have a license for selling that part of the pack.

There are frozen food processors who have their own salaried sales organizations in some areas and brokers in others. Both sales teams

are performing the same service. One is paid a salary, the other by commission. Both take the information supplied by the processor and work to make their sales to the customers in their respective markets. The broker has to have a license but the salaried salesman does not. It does not make sense.

That is why, gentlemen, we believe that the bill, H.R. 5023, should be amended to remove from the licensing provisions of PACA the independent-contractor sales agent handling frozen foods who does not buy or sell for his own account. We therefore recommend the following amendment to H.R. 5023:

After line 4 of page 2 of the bill insert the following:

Sec. 2. Section 1(7) of such Act (7 U.S.C. 499a) is amended to read as follows:

(7) The term "broker" means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively:—

and this is the change—

Provided, however, That no person shall be considered a broker subject to the provisions of this Act if he is an independent-contractor sales agent and the only sales of perishable agricultural commodities negotiated by him are sales of frozen fruits and vegetables packed by or for a processor, and who does not at any time take or have title to such commodities.

And then renumber subsequent sections of the bill.

Gentlemen, this amendment is most necessary now in the interests of fair and equitable treatment. With the growing increase in the licensing fee the burden becomes greater on the broker handling frozen foods. The feeling is growing on their part that they are being penalized, with their fees being used to finance the policing of other areas in the produce field.

With the different type of operation in the fresh fruit and vegetable field, such license and control may be necessary. In fact, we understand the act is most valuable to that industry. We would agree that an agent who takes title to merchandise, who represents either buyer or seller, depending on the circumstances, such an agent should be licensed. But to burden the bona fide sales agent of the processor who is himself licensed is unfair. It is particularly inequitable for a food broker who handles a small volume of frozen fruits or vegetables to have to pay the same license as some fresh fruit and vegetable shipper who ships thousands of carloads and thousands of truckloads annually.

We earnestly entreat you to incorporate our suggested amendment to your bill, gentlemen, so that when you authorize an increase in the licensing fees under PACA you do not at the same time compound an inequity. It is most unjust to continue such licensing requirements under an increased license fee.

I have just a minute or two further comment.

I would like to leave with you some material which I have here.

The statement has been made by representatives of the Department of Agriculture that brokers in frozen foods should be licensed in order that they must maintain proper records and have them available to the Department of Agriculture officials in the event a controversy arises.

I would like to leave with you for the record copies of the sales memorandum that practically most of frozen food brokers use.

I have copies for the subcommittee of these sales memorandums, you will see, by the nature of our operation, all of the needed information is always on these memorandums and they are kept in the brokerage office far longer than PACA requires. There will be no difficulty whatsoever whether or not the broker was licensed all of the information needed in the case of these controversies will be available. I would like to leave enough of these for all of you, if you do not mind.

Also, I would like to refer to the examples used by Mr. Grange yesterday. I am talking about where he outlined some cases they had against brokers.

There was a so-called field broker involved. I will explain that later, if you are interested. There are some frozen-food processors who use what some people refer to as "field brokers" as their national sales agents. In other words, rather than employing a salaried sales manager whom they would only be able to use for part of the year, they use field brokers as their sales agents.

These field brokers, in turn, appoint other local brokers as their local sales agents. In cases of this kind, we feel that the so-called field brokers should be licensed, for they, in effect, would be acting as the principal.

In example No. 3, Mr. Grange pointed out that the broker, in the name of his principal, filed a PACA complaint against a buyer for failure to pay for a load of frozen strawberries. The broker, regardless of whether or not he is licensed, would do this for his principal, as the principal's agents, just as he would if he were a salaried representative.

In example No. 4, he referred to the broker's written conformation being used by a buyer to file a PACA complaint against a seller. As I said earlier, these records would be available regardless of whether or not frozen-foods brokers were licensed. We are sure that the Department of Agriculture, in making this presentation to you to oppose our position, would use what in its opinion were the best examples to show that our position was not justified. So in checking all of the illustrations that could be used, not one of these examples points up the need for the true frozen-food broker to be under this licensing provision.

Mr. Chairman, I know that your time is short. I would be glad to try to answer any questions you or the members of the committee may have on our position here.

Mr. GRANT. One question comes to my mind. Since this is used primarily in the enforcement of the contract where a broker sells, or whatever it might be, frozen foods or anything he offers to sell, does he under State law have any liability, for instance, let us say this, that you sell some frozen foods, acting as a broker for the principal to a retailer and it comes up bad. Under State law is there any liability, or under common law, would the legal action have to be made by the retailer to the principal?

Mr. ROGERS. To the principal packer.

Mr. GRANT. He does not pay the broker anything?

Mr. ROGERS. No, the retailer or the wholesaler pays the packer, after 30 days' time, we get our brokerage.

Mr. GRANT. Is there any liability on the part of the dealers to the broker in making payment for what he has purchased?

Mr. ROGERS. You mean other than PAC Act?

It would be the responsibility of this dealer or wholesaler, whoever bought it, to the manufacturer.

Mr. GRANT. That is what I was trying to find out.

Mr. ROGERS. That is right.

Mr. GRANT. Is there any legal liability on the part of the broker in the contract between the manufacturer, or the principal, or whatever he is called, as between him and the retailer?

Mr. ROGERS. Yes, you are talking about just the general operation, not PACA?

Mr. GRANT. Yes.

Mr. ROGERS. We handled the sale of the majority of processors foods of this Nation. Frozen foods is just one part of it. I might say a rather minor part.

We are local salespeople. We sell for the manufacturer. The manufacturer bills the customer. We are just his local agent. We work on commission rather than salary.

Mr. GRANT. I understand that. What I am trying to bring out for the record is this: Is there any legal liability upon a broker for a breach of contract between the manufacturer, or the principal and the retailer?

Mr. ROGERS. All we can do is pass on the information the manufacturer gives us. If the retailer says that is not right, then he goes to the manufacturer.

Mr. GRANT. Are there any further questions?

Mr. JENNINGS. The only licensing you are required to have as a broker is the license required by the PACA?

Mr. ROGERS. Yes.

Mr. JENNINGS. You might be handling frozen meat, frozen fish?

Mr. ROGERS. That is right.

Mr. JENNINGS. And other frozen commodities?

Mr. ROGERS. That is right.

Mr. JENNINGS. You are not required to have a license for those, are you?

Mr. ROGERS. That is right.

Mr. JENNINGS. You are only required under PACA to have a license—

Mr. ROGERS. For fruits and vegetables. As a good example, there is the Florida citrus industry. We sell tons of citrus concentrate out of Florida. We handle all of the Minute Maid sales and other products. There is no license involved and no problem involved. The PACA, or I do not know who made the ruling, made the ruling that citrus concentrates do not come under it. There is no problem with us on that. But peeled and sliced peaches, sugared peaches, packed in California, come under it.

If one of our brokers now sells just a little of fresh fruits and vegetables, he should be under this act and should take out a license. I think all fresh fruits and vegetables should be under this, but we are talking about processed. The PACA is a good law. It has done a good deal for the industry. We do not want to see anything happen that would hurt it, but we do think, in our field of processed foods, it is most unfair the way the situation is now.

We think we are making a very reasonable request here.

Again, I say any of our members who take title to frozen foods should have a license. If they buy any frozen foods and vegetables, they should have a license. We have a member in the South who only sells fresh cranberries, for Thansgiving and Christmas, a limited business. He was asking about this amendment. I told him that we are not trying to get him out of having a PACA license—it gets into the fresh fruit and vegetable field. He says that he will quit selling cranberries. He will have to quit because I think he should stay under the bill.

We cannot afford to open it up just because it has worked a hardship on him.

Mr. HAGEN. How many people do you have in your organization, for example do you operate only with a desk, a secretary, and a telephone?

Mr. ROGERS. Our members, in handling the sale of processed foods not only have large organizations, but those of other sizes. The average brokerage firm has from 10 to 20. We not only sell to the wholesaler buyers, we get out into the supermarkets and we do retail merchandising. We represent people on a regular basis. It is not one of these deals where someone comes up and asks for a load of something. Many of our people in our office represent 40 and 50 people, the same people week in and week out. We know that we have to do the right thing with those manufacturers or we will be out.

We represent some of the biggest people, such as Procter & Gamble. We represent three or four big divisions of General Foods.

Mr. HAGEN. Do you have warehouses?

Mr. ROGERS. In the South many of our people have their own warehouses for consigned stocks so that they can sell in small quantities. They sell for the account of the principal. It remains the principal's merchandise. Our members do not buy and sell. If they do, we expel them from the association.

Mr. HARDING. I would like to compliment you on your fine statement.

The PACA has been invaluable to the producers and shippers of perishable agricultural commodities.

Mr. ROGERS. It certainly has.

Mr. HARDING. We are presently expanding our potato processing in the State of Idaho. A processing company, for example, that produces only instant mashed potatoes, selling them to members of your association, would it be necessary for those members to have a PACA license?

Mr. ROGERS. That has not come up. I do not think so because here again it says only fresh or frozen foods and vegetables. I do not know what their interpretation would be on that. I know that we are in this business quite a bit. We are very proud to see its development.

Mr. HARDING. There is not any doubt that frozen french-fried potatoes would be considered a frozen food, is there?

Mr. ROGERS. I suppose that would be frozen.

Mr. HARDING. I would appreciate it if you would get positive answers to these questions from the Department and make the answers a part of the record. (See p. 115.)

Mr. ROGERS. I will try to see what I can do. At first our brokers were taking licenses to sell frozen concentrate, but they ruled that it did not come under the act, and we were very happy for that ruling.

Mr. McINTIRE. May I express my appreciation as a member of the full committee and not of the subcommittee for your presence here today, Mr. Rogers.

Will you supply for the record how many frozen food brokers there are in the country—how many members of your association—how many of these frozen food brokers handle frozen fresh fruits and vegetables?

Mr. ROGERS. You want how many frozen food brokers first?

Mr. McINTIRE. Frozen food brokers there are in the country.

Mr. ROGERS. I can tell you now, Mr. McIntire. Here is the directory of the members in the Nation. Here is the book just off the press. It tells of the firms, all about them. It is keyed to designate the type of product handled. I will be glad to leave this directory with the staff.

Mr. McINTIRE. It would be simpler to give a definite number.

Mr. ROGERS. It will take a little time to go through this, but we will be glad to try to do it.

You want to know how many frozen foods brokers there are and how many are members?

Mr. McINTIRE. That is right. And how many of these brokers handle frozen fruits and vegetables.

Mr. ROGERS. Yes, I will try to do that.

(The information referred to follows:)

AUGUST 10, 1961.

HON. CLIFFORD G. McINTIRE,
*House Office Building,
Washington, D.C.*

DEAR MR. McINTIRE: As you requested at the hearing on H.R. 5023, we have attempted to accumulate information regarding the number of frozen food brokers.

I would like to point out that we have 1,977 members of the National Food Brokers Association. Some of these do not handle frozen foods. Some brokers handle frozen foods in a limited way and some of our members are practically exclusive frozen food brokers.

In checking our directory of members, which is properly keyed to designate the type of products handled, we find 1,151 of these offices handle some frozen foods. This is all types of frozen foods and not necessarily frozen fruits or vegetables that come under the provision of the PACA Act. A lot of these brokers handle frozen citrus concentrates which, as you know, is not under the provision of the act.

In addition to these 1,151 offices of ours that indicate they sell some frozen foods, we know of at least a hundred other brokers who deal in frozen foods. Since these are not members of the association we are not sure of their type of operation. If they buy and sell for their own account they would not be eligible for exemption from the PACA license as outlined in our suggested amendment to your bill. There may be a few other frozen food brokers with which we are not familiar.

You recall in the testimony of the Department of Agriculture they stated there were 450 frozen food brokers who now hold PACA licenses. I am assuming that covers most of the brokers who deal in frozen fruits or vegetables as outlined in the act.

We hope this furnishes you the information you desired. We are sending a copy of this letter to the House Agriculture Committee in the event they would like to include it in the official record.

Sincerely yours,

WATSON ROGERS, *President.*

P.S.—We base the number of nonmember frozen food brokers on the list of these types of brokers attending frozen food conventions who are not members of our association. As stated, there may be others we do not know about.

W.R.

Mr. McINTIRE. I would like to ask if the point which you are making, Mr. Rogers, is principally one of definition, as to whether or not frozen fruits and vegetables are under the Perishable Agricultural Commodities Act by definition?

Mr. ROGERS. That is mainly, I think, our concern. We feel they are processed foods and should not be under the act, so far as brokers are concerned.

Mr. McINTIRE. What is your opinion as to whether they are, in fact, perishables?

Mr. ROGERS. I suppose that you could say that canned foods are perishable, if you let them set long enough under certain climatic conditions, or that might be true of any other food practically that we use. Frozen foods kept under proper temperatures will keep a long time.

Mr. McINTIRE. I know your contention is that they are not perishable. Under your interpretation of the jurisdiction of the PAC Act, would you give us your idea of what ought to be in it?

Mr. ROGERS. The way food manufacturers have been on our people, getting them to rotate stock, they have got us sold that everything is more or less perishable.

Mr. McINTIRE. It is your contention that somewhere in this area of the definition that frozen fruits and vegetables are not or should not be classified as perishable?

Mr. ROGERS. They should not be in the same category as fresh fruits and vegetables, so far as perishability is concerned.

Mr. McINTIRE. Not by category—the act is definite as to whether they are in or whether they are out.

Mr. ROGERS. The purpose of their being frozen, in the first place, is so that they will keep over a longer period of time.

Mr. McINTIRE. I am not an authority.

Mr. ROGERS. I am just trying to explain.

Mr. McINTIRE. I am only thinking that the act must define its jurisdiction.

Mr. ROGERS. That is right. Let me make—

Mr. McINTIRE. Presently the act includes frozen fruits and vegetables within its definition.

Mr. ROGERS. Let me make one thing clear. I am not saying all frozen fruits and vegetables should come out of the act. I am saying that if one of our brokers, buys frozen fruits and vegetables, should be licensed. And I say that even a broker who acts as a principal should be licensed. I only say that where these local brokers are concerned, if they are merely acting as local sales agents and passing onto the buyers information the manufacturers give them—I say, they should not come under the provisions of the act. I am not advocating that frozen foods come out of this at all. I do not think they should.

Mr. McINTIRE. I thought the tenor of your statement was that.

Mr. ROGERS. No, no. As an example, I say that where we have been representing a canner for years and he starts freezing fruits and vegetables, we must take out a license. Yet we sell for the same processor to the same customers on the same terms. Our people find it hard to understand. We have been doing business the same way for years, suddenly we have to take out a license to do business under this act.

Mr. McINTIRE. Mr. Chairman, I am a little confused here.

Mr. GRANT. I thought you were. [Laughter.]

Mr. ROGERS. All I am saying is that the legitimate frozen food broker who does not buy and sell for his own account, does not speculate in foodstuff, should not be required to have the license. If that same broker has anything in the fresh commodity line, he should have a license. If the same broker buys and sells, he should have a license, even in frozen foods, because then he becomes in control of the merchandise. He then is the one who has the right to say what is in the package and what is not. He should be held responsible under the PACA.

Mr. McINTIRE. Mr. Chairman, I am certainly confused.

You say, on the one hand, that a canner of fruits and vegetables, because of a change of the times, goes over to freezing, that the broker is not then in the jurisdiction of the act—is that what you are saying?

Mr. ROGERS. No, you misunderstood me. Let us just give an example. I have been representing Green Giant peas for 10 or more years, selling to all of their customers in my area. Green Giant comes to me and says, "Look, we are going to start freezing some of our peas. We want you to handle those, too."

I say, "Fine, we will handle them."

But then I discover that to handle those peas I have to take out a license.

Mr. McINTIRE. All right, I follow you up to this point.

Mr. ROGERS. All right.

Mr. McINTIRE. I do not follow you when you say that frozen fruits and vegetables should not be under the act.

Mr. ROGERS. You have misunderstood me. I said repeatedly that they should be under the act—frozen fruits and vegetables should definitely be under the act, but just the exclusion of these local sales agents who cannot do anything but pass on to the buyer what this manufacturer gives him. That is all they can do.

Mr. McINTIRE. Thank you.

Mr. GRANT. We thank you.

Mr. ROGERS. Thank you.

Mr. GRANT. Mr. Heimbürger wants to ask a question or two for the record of the Department representative.

Mr. Grange, will you come up, please?

Mr. HEIMBURGER. Mr. Grange, I would like you to straighten me out on this intrastate jurisdiction. If a retailer in Baltimore buys some fresh vegetables from a wholesaler in Baltimore, is that within the scope of your jurisdiction? The wholesaler, of course, is licensed.

STATEMENT OF GEORGE R. GRANGE, DEPUTY DIRECTOR, FRUITS AND VEGETABLE DIVISION, AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE—Resumed

Mr. GRANGE. The act now says "any perishable agricultural commodity in the current of interstate commerce." It has been held in the courts and by the Department that a commodity that has moved or is in the process of moving in interstate commerce is still in the current of interstate commerce, even though the two parties involved may be located in the same State.

Mr. HEIMBURGER. Then to come back to the Baltimore example, you have to make a determination on the basis of the commodity itself. If the Baltimore retailer had bought some tomatoes from a wholesaler,

where the tomatoes originated in southern Maryland, it would not be subject to your jurisdiction, is that correct?

Mr. GRANGE. Right.

Mr. HELMBURGER. But, however, if those tomatoes were to come from the State of Delaware, the transaction would be subject to your jurisdiction and you would accept a complaint on the basis of a breach of contract?

Mr. GRANGE. That is right.

Mr. HELMBURGER. Will you accept a complaint from a licensee against a person who is not licensed under the act?

Mr. GRANGE. No, sir; we cannot.

Mr. HELMBURGER. Can you accept a complaint from a person who is not licensed against a licensee?

Mr. GRANGE. Yes, sir. May I modify my answer to your previous question?

Mr. HELMBURGER. Yes.

Mr. GRANGE. We will not accept a complaint against a man who is not licensed or who is not subject to license.

Mr. HELMBURGER. I can understand that. For example, if a licensed dealer in Florida had a complaint against an unlicensed retailer, a retailer not subject to license, you would not be able to take jurisdiction.

Mr. GRANGE. We would have no jurisdiction.

Mr. HELMBURGER. Of that complaint?

Mr. GRANGE. Yes.

Mr. HELMBURGER. However, is this true, then, that—the second question—the same two sets of characters, the licensed dealer in Florida and an unlicensed retailer in Maryland and one who is not legally subject to license, would you accept a complaint from him against the licensed dealer in Florida?

Mr. GRANGE. The act specifies that we may accept complaints against any person who is licensed or is subject to license, regardless of whether the complainant is himself a licensee.

Mr. HELMBURGER. Thank you, Mr. Chairman.

Mr. JENNINGS. Let me ask one brief question:

How many employees do you have in administering this PACA Act?

Mr. GRANGE. I believe we have 101, Mr. Jennings.

Mr. JENNINGS. Do they have other duties?

Mr. GRANGE. Except for persons like myself, no. We have a Regulatory Branch in the Fruits and Vegetables Division. Most of these are concerned with administering the Perishable Agricultural Commodities Act and other related statutes.

Mr. JENNINGS. Do others in the Department have a dual responsibility in the Enforcement Division, weights and measures, marketing, and so forth—do they overlap, or do they only enforce the PACA Act?

Mr. GRANGE. No, it is a separate administrative unit. We have related statutes. There is the Producing Agency Act, that is related to the PAC Act. We have a Standard Container Act that regulates the type and kind of containers.

Mr. JENNINGS. Those persons do not have overlapping responsibility?

Mr. GRANGE. These acts I am now naming are those that are administered by our Regulatory Branch.

Mr. JENNINGS. I understand that. You, perhaps, would have jurisdiction over the various branches you mentioned, but does the personnel in each of these various branches have overlapping responsibility or direct responsibility?

Mr. GRANGE. Direct responsibility.

Mr. JENNINGS. Thank you.

Mr. HARDING (presiding). I would like to clarify one more question.

Processed foods are not under the jurisdiction of PACA unless they are frozen, is that correct?

Mr. GRANGE. No, sir.

Mr. HARDING. That is not correct? I would like to take, for example, corn. I understand fresh corn would be covered by the act. However, is canned corn under the jurisdiction of the act?

Mr. GRANGE. No, sir.

Mr. HARDING. Let us put a little milk in with it, and we have creamed style corn. Is that under the jurisdiction of the act?

Mr. GRANGE. No, sir.

Mr. HARDING. So we freeze the corn and have a package similar to Bird's Eye frozen corn; is that under the jurisdiction of the act?

Mr. GRANGE. Yes, sir.

Mr. HARDING. Let us go back to the potato field.

We have instant mashed potatoes in the can—is that under the jurisdiction of the act?

Mr. GRANGE. No, sir.

Mr. HARDING. Neither are the ones containing potato chips, that is, those in boxes?

Mr. GRANGE. No.

Mr. HARDING. Frozen french fries?

Mr. GRANGE. No, sir.

Mr. HARDING. Frozen potatoes are not?

Mr. GRANGE. May I elaborate a little bit on that?

Mr. HARDING. Yes.

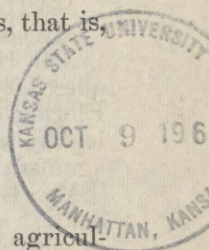
Mr. GRANGE. The act says or uses the term "perishable agricultural commodities." And then it goes on and defines perishable agricultural commodities to be fresh fruits and vegetables of any kind or character whether or not frozen or packed in ice. It does not say frozen or fresh fruits and vegetables.

The interpretation of that is if you take a product and change its form materially, such as instant frozen potatoes which have been dehydrated before they have been frozen, then it is not a fresh potato in frozen form. Something else has been done to it. It has been changed materially in kind or character.

The corn in your example, nothing much of anything has been done to it except to take it off the cob and freeze it. It is fresh corn which has been frozen.

The regulations contain a rather long paragraph drawing this rather fine dividing line between the products that are considered as processed by some other action in addition to freezing, and, therefore, are not covered by the statute as compared with the steps that you would permit and still construe it to be essentially a fresh fruit or vegetable in frozen form; and, therefore, are covered by the statute.

Mr. HARDING. Would you be kind enough to furnish me personally with a list of the frozen products which you consider are covered



by the act as compared with those that are not covered by the act?

Mr. GRANGE. Yes.

(The information referred to above follows:)

COMMODITIES UNDER THE PACA

The following commodities, whether or not frozen or packed in ice are perishable agricultural commodities and come under the PACA (see F-5).¹

FRUITS

Algaroba	Cherimoya	Olive (see D-21)
Apple (see C-1, D-1, D-2, D-3, D-12)	Cherry, sour	Orange (see C-5, D-12)
Apricot (see D-4)	Cherry, sweet	Orange, satsuma
Avocado	Choke cherry	Panapas
Banana	Citron	Panapen
Berries:	Crabapple	Papaya
Blackberry	Cranberry	Passion fruit
Blueberry, high-bush	Date (see C-7)	Paw Paw
Blueberry, low-bush	Feijoa	Peach
Boysenberry	Fig (see D-15)	Pear
Buffalo berry	Goumi	Persimmon
Currant, black	Grape (see C-9, D-12, D- 16, D-17)	Pineapple
Currant, red	Grapefruit (see C-5, D- 12)	Plantain
Dewberry	Guava	Plum
Elderberry	Jujube	Pomegranate
Gooseberry	Kumquat	Prunes
Huckleberry	Lemon (see C-5, D-12)	Prickly pear
Lingenberry	Lichi	Quenapa
Loganberry	Lime (see C-5, D-12)	Quince
Mulberry	Limequat	Raisin
Raspberry, blackcap	Loquat	Rose Apple
Raspberry, red	Mandarian	Sapodilla
Service berry	Mango	Sapote
Strawberry	Medlar	Sauer Kraut
Youngberry	Natal plum	Star apple
Carob	Nectarine	Tamarind
Ceriman		Tangelo
		Tangerine

VEGETABLES AND MELONS

Anise	Cabbage (see C-3)	Dandelion
Arrowroot	Cabbage sprouts	Dasheen
Artichoke, Chinese	Cantaloup	Dulse
Artichoke, globe	Cardoon	Eggplant
Artichoke, Jerusalem	Carrot (see C-4)	Endive
Asparagus	Cauliflower	Escarole
Bamboo shoots	Celeriac	Fiddlehead greens
Bean sprouts (see C-2)	Celery	Field salad
Bean, fava	Chard	French endive
Bean, horticultural	Chayote	Garlic (see C-8)
Bean, lima	Chervil	Gherkin
Bean, snap	Chicoria	Ginger root
Bean, vegetable soy	Chicory, root	Ground cherry
Beet	Chinese cabbage	Hanover salad
Beet greens	Chive	Horseradish (see C-10)
Bitter melon	Cipolino	Irish moss
Borage	Citron melon	Kale
Broccoli	Collard	Kohlrabi
Broccoli greens	Corn, green	Lambsquarter
Broccoli rabe	Corn salad	Leek
Brussels sprouts	Cress, garden	Lettuce
Burdock root	Cucumber (see C-6)	Lettuce, stem
Burdock tops	Daikon	Martynia

¹ Compiled by Fruit and Vegetable Division.

VEGETABLES AND MELONS—Continued

Melon, casaba	Orach	Rutabaga
Melon, crenshaw	Pak choi	Salsify
Melon, honeyball (see C-11)	Palm cabbage	Shallot
Melon, honeydew (see C-11)	Parsley	Sorrel
Melon, Japanese	Parsley, root	Spinach
Melon, Leopard	Parsnip	Spinach, New Zealand
Melon, Persian	Peas, green	Squash
Melon, Santa Claus	Peas, southern	Squash, greens
Melon, Spanish	Pepino	Sweet potato
Mushroom (see C-12)	Pepper Pigeon tree roke greens	Tampala
Muskmelon	Potato (see C-14, D-26)	Tanier
Mustard, Chinese	Pumpkin	Tomato
Mustard greens	Radish	Truffle
Mustard, spinach	Rape	Turnip
Okra	Rappini	Turnip greens
Onion (see C-13, D-22, D-23)	Rhubarb	Udo
Onion, green	Romaine	Water chestnut
	Roquette	Water cress
	Roselle	Watermelon
		Wonderberry

COMMODITIES UNDER THE PACA

C-1 Apples, frozen sliced, come under the act, as the character of the product has not been changed. However, frozen applesauce does not as the apples must be cooked, then mashed into a sauce, thus breaking down the tissues to a point that it no longer bears any of the distinguishable characteristics of the original fruit.

C-2 Bean (mung) sprouts: A vegetable used in making chow mein and increasing in popularity with other vegetables in raw salads and many other dishes. Comes under the act when marketed fresh. Persons buying the dry beans for sprouting should be considered in the same category as producers.

C-3 Cabbage for making sauerkraut comes under the act if shipped in interstate commerce before shredding and placing in brine.

C-4 Carrots, diced: Paragraph 46.2(1) of the regulations defines fresh fruits and fresh vegetables to include all products generally considered by the trade as perishable fruits and vegetables, whether or not frozen or packed in ice. Upon reviewing the *Harwood* case before the Interstate Commerce Commission (MC-C968) it is found that before the Commission appeared representatives of the U.S. Department of Agriculture, 11 scientists, 2 professors of Ohio State University, officials or agencies of 9 States, State and regional producers and shippers, and various associations of producers and shippers. Those present represented a large factor of the trade. It was concluded that slicing did not make the commodity a manufactured product. Therefore, dicing would be in the same category. (See F-5.)

C-5 Citrus segments, fresh packed in natural juices: The companies preparing this product advertise on the container, "Perishable," "Fresh * * *," "No preservatives have been added" and instructions to keep the product under refrigeration. The product has not been changed into an article of food of a different character, therefore comes under the act.

C-6 Cucumbers for making pickles come under the act if shipped in interstate commerce before placing in brine.

C-7 Dates: A perishable agricultural commodity within the meaning of the Perishable Agricultural Commodities Act.

C-8 Garlic: Designated as a perishable agricultural commodity in docket 4253.

C-9 Grapes, stemmed, crushed, frozen: In connection with E-6941 the matter was discussed with members of the Solicitor's staff who expressed the opinion that stemming and crushing of the grapes merely changed the form without changing the grapes into a product of a different character, and such grapes are a fresh fruit within the meaning of the act. (See C-16.)

C-10 Horseradish roots: A perishable agricultural commodity. (S-2347.)

C-11 Melon balls, frozen: Same category as diced or sliced. (See C-4.)

C-12 Mushrooms: Bureau of Plant Industry states that the tops of mushrooms are in the nature of a fruit and the bottoms a vegetable. A U.S. district

court in construing the Tariff Act held that mushrooms come within the terms of the act relating to vegetables not classified. Therefore, the Solicitor stated that it may be safely considered that mushrooms are a perishable agricultural commodity within the meaning of the act.

C-13 Onion, picklers: In S-3045 it was concluded that onion sets are not a perishable agricultural commodity within the meaning of the act. It is a common practice to remove a percentage of the onion sets ranging in size from three-fourths to 1 inch and selling them as picklers or cocktail onions. When sold for such purposes they are a perishable agricultural commodity within the meaning of the act. (See D-23.)

C-14 Potatoes, diced. (See C-4.)

C-15 Potatoes, seed: A perishable agricultural commodity and comes within the provisions of the act, fresh vegetables being defined in the regulations as all products generally considered by the trade as perishable (S-2839).

C-16 Grape, pulp, frozen: In the Pacific Northwest, frozen grape pulp, stemmed and washed, is known by the trade as a commodity containing seeds, some skins, stems, and leaves, while a product totally free from seeds, stems, and leaves is known as grape puree. Frozen grape pulp, stemmed and washed, is a perishable agricultural commodity. Where there is a question as to the meaning of descriptive words used in an f.o.b. contract, the interpretation should be governed by the general understanding at shipping point and not where the buyer is in business (S-4543; docket 5562).

COMMODITIES NOT UNDER PACA

D-1 Apples, caramel: Not a perishable agricultural commodity within the meaning of the act. However, persons buying apples for manufacturing caramel apples are subject to the act in the same manner as other processors.

D-2 Apples, dried: "Dried apples would not be called a manufactured article, though the apple is peeled and cored and sliced, and dried by exposure to the sun and manipulation. The substance of the dried apple is still apple * * *" (*Frazee v. Moffitt*, 18 Fed. 584, 587 (C.A. 2)).

However, dried apples do not come under the Perishable Agricultural Commodities Act as the regulation (46.21) exclude "perishable agricultural commodities which have been dried or manufactured into articles of food of a different character."

D-3 Apples, frozen sauce. (See C-1.)

D-4 Apricot puree is made by mashing the apricot into a pulp. It no longer bears any of the distinguishable characteristics of the original fruit. Therefore, it must be considered as one of the processed products which the act was not intended to cover.

D-5 Beans, dried: Regulations (46.21) exclude "perishable agricultural commodities which have been dried * * *." Therefore, dry beans do not come under the Perishable Agricultural Commodities Act.

D-6 Beets, sugar, are primarily grown for processing into sugar. Only in rare instances are sugarbeets substituted for table beets. They are not considered as table stock commercially. Our conclusion, therefore, was that sugarbeets are not covered by the act.

D-7 Cabbage (kraut). (See C-3.)

D-8 Cashew nuts: Not a perishable agricultural commodity within the meaning of the Perishable Agricultural Commodities Act.)

D-9 Cherries, maraschino: Cherries in brine are not a perishable fruit, but specifically covered by the act. Therefore, after the cherries are removed from the brine, they no longer come under the act.

D-10 Chestnuts are not a perishable agricultural commodity (S-3715).

D-11 Coconuts are not a perishable agricultural commodity within the meaning of the act (NY-3663).

D-12 Concentrates and juices (fresh or frozen): Only those buying fruit in quantities aggregating one ton or more during a day in the course of interstate commerce for making concentrates and juices are subject to the act. Transactions of the manufactured product not under the act.

D-13 Cones, sprays, and wreaths cannot be considered a perishable agricultural commodity within the meaning of the act (S-3400).

D-14 Cucumbers (pickles). (See C-6.)

D-15 Figs, stringed: From limited information available we are inclined to believe that the figs are dried before being shipped in foreign commerce, therefore, not a product that comes under the Perishable Agricultural Commodities Act.

D-16 Grape puree, frozen, is made by mashing with the pulp and juice passing through sieves holding back seeds, stem, some of the skin and similar waste material. The resulting product no longer bears any of the distinguishable characteristics of the original fruit. Therefore, must be considered a processed product not covered by the act (D-9939). (See C-16.)

D-17 Grapejuice. (See D-12.)

D-18 Holly wreath: Not a perishable agricultural commodity (S-1582).

D-19 Lily root, water: Little is known about this commodity, except that possibly it is used by the Chinese in cooking. It should be placed on our doubtful list.

D-20 Melons, zucca, brined (SO2): If the processing of zucca melons consists of brining (SO2) it removes the product from the classification of being "fresh." The same applies to the brining of cucumbers for pickling, and krauting cabbage. Cherries in brine are not a perishable agricultural commodity, but they are specifically covered as brought out in section 1, paragraph 4 of the act.

D-21 Olives, green: Shipments from Spain are in hogshead containing approximately 180 gallons; 45° to 50° of salt has been added. California olives are usually shipped in 50-gallon barrels. These shipments have lactic acid added at the time the original salt is put in barrels. Therefore, cannot be considered a perishable agricultural commodity.

D-22 Onion rings, frozen: The onions are cooked in oil prior to being frozen, therefore not a product coming within the act. (See D-24.)

D-23 Onion sets: Not a perishable agricultural commodity within the meaning of the act (S. 3045). (See C-13).

D-24 Peanuts do not come under the Perishable Agricultural Commodities Act. (S-4024.)

D-25 Peppers, sweet red, diced, packed in their natural juices with citric acid added, are a canned (hot pack) product not covered by the act.

D-26 Potatoes, french fried, frozen: The U.S. Court of Appeals, Ninth Circuit, under date of January 24, 1958, 15582, *Union Pacific Railroad Co. v. Ore-Ida Potato Products, Inc.*, held that potatoes which were washed, peeled, sliced, steamed, or washed, oil blanched at 350° F. for 1½ minutes and then quick frozen, were not fresh frozen vegetables, but were frozen cooked food. Therefore, the product is a food of a different character, which is not covered by the act.

D-27 Prunes: A dried plum. Not a perishable agricultural commodity within the meaning of the act.

D-28 Puree. (See D-4.)

D-29 Raisins: A dried grape. Not a perishable agricultural commodity within the meaning of the act.

D-30 Sauerkraut. (See C-3.)

D-31 Sprays: Not a perishable agricultural commodity (S-3400).

D-32 Vegetables, strained, frozen: Since the green beans, carrots, beets, spinach, peas, waxed beans, and sweet potatoes are cooked to some extent in addition to the blanch, then crushed into a pulp and strained before being frozen, they are not a perishable agricultural commodity within the meaning of the act.

D-33 Sugarcane: Webster defines sugarcane as a "well-known grass" and not as a fruit or vegetable. Based on this definition, we should say that sugarcane should not be considered as falling within the scope of the act.

D-34 Tomato plants cannot be considered as a perishable agricultural commodity (S-2402).

D-35 Wreaths cannot be considered a perishable agricultural commodity (S-3400).

(The following statements, letters, and telegrams were also submitted to the subcommittee:)

STATEMENT OF THE NATIONAL ASSOCIATION OF WHOLESALERS

The National Association of Wholesalers is a federation of 32 national commodity line wholesale associations. Several of our affiliated national groups distribute food and food products to the Nation's independent food retailers. The welfare of these retailers, our customers, is of vital concern to us, their supplying wholesalers.

The pending bill, H.R. 5023, authorizing an increase in the annual license fee under the Perishable Agricultural Commodities Act from \$25 to \$50, is therefore of great concern to us. If we correctly understand the original intent of the

Perishable Agricultural Commodities Act, it was designed to protect growers, shippers, and terminal receivers of fruits, vegetables, and frozen foods against unwarranted rejections of shipments and consequent failure to complete contract payments.

We do not quarrel with this objective. We do not believe, however, that the relationship between local food retailers and their local wholesale suppliers requires any Federal regulation or enforcement machinery whatsoever to prevent unwarranted rejections of shipments or enforcement of contracts. The day-to-day supplier-customer relationship that exists between local fresh fruit, vegetable, frozen-food wholesalers and their retail customers is for all practical purposes, an arm's-length series of transactions. If the customer is not satisfied with the supplier's products, he switches to another supplier. If the supplier is not satisfied with the promptness of payment of the customer, he ceases to solicit his business. No third-party arbitrator is necessary to the relationship, by the furthest stretch of the imagination to insure "performance of contracts" or "unwarranted rejections of deliveries."

The Nation's fresh fruit, vegetable, and frozen-food wholesalers are willing to continue to be covered by the law, and even to pay the proposed increased license fee if in the judgment of the committee this is necessary. We do feel very strongly, however, that our local independent retail customers should be exempt from the law provided they purchase a substantial portion of their fresh fruits, vegetables, and frozen-food stocks from wholesalers.

The proposal of the National Association of Retail Grocers of the United States, as set forth in the statement of their general counsel, Mr. Henry Bison, Jr., to your committee would seem to us to be a reasonable solution to the problem. If 90 percent or more of a retailer's purchases of fresh fruit, vegetables, and frozen foods are made from licensed wholesalers of these commodities, such retailer should be exempt from the license provisions of the law. If a retailer, or retail enterprise, purchases direct from growers, shippers, or terminal receivers, 10 percent or more of its fresh fruits, vegetables, or frozen foods, such retailer should be subject to the licensing provisions of the law.

We strongly recommend that your committee therefore amend the pending bill on page 2, after line 4, by adding the following language:

"(11) No person buying any perishable agricultural commodity solely for sale at retail shall be considered as a 'dealer' in respect of any such commodity in any calendar year: *Provided*, That not less than 90 per centum of his purchases of such commodity in such year are from one or more licensed wholesale suppliers. For the purpose of this subsection, the amount of such purchases shall be determined on the basis of net invoice cost to the retailer."

We can see no justification for inclusion of local retailers under the license provisions of this act except revenue requirements. Since local retailers purchasing 90 percent or more of their requirements from local wholesale suppliers in no way benefit from the inspection procedure, we cannot understand why they should be taxed, through license fees, to support that procedure.

If existing license revenues are inadequate to support the desired inspection procedures, we would suggest increasing the license fees to those who directly benefit. If nonbeneficiaries are to be taxed to support the program, why not all nonbeneficiaries? Why not support the entire procedure for inspection and contract enforcement out of general revenue funds through an increase in the U.S. Department of Agriculture appropriation?

Your serious consideration of the proposed amendment of the bill is respectfully requested.

STATEMENT OF THE UNITED STATES WHOLESALE GROCERS' ASSOCIATION, INC.

The United States Wholesale Grocers' Association, Inc., is the professional trade organization of wholesale grocers who supply approximately 125,000 independent supermarkets and food stores as well as institutional accounts throughout a large part of the United States. Many of our member firms sponsor retail voluntary groups totaling more than 9,000 affiliated independent retailers.

The retail customers of our wholesale firms for the most part either buy their fresh and frozen produce through our wholesalers or through produce wholesalers and frozen food wholesalers.

The pending bill, H.R. 5023, authorizing an increase in the annual license fee under the Perishable Agricultural Commodities Act from \$25 to \$50, is, therefore, of great concern to us. It is our understanding that the intent of the Per-

ishable Agricultural Commodities Act is to protect growers, shippers, and terminal receivers of fruits, vegetables, and frozen foods against unwarranted rejections of shipments and consequent failure to complete contract payments.

We do not believe that any useful purpose would be served by requiring such licensing of a retailer who looks to the wholesaler as his supplier of fresh and frozen fruits and vegetables and who does not make it a practice to buy direct from the growers or shippers. We feel certain that our wholesalers do not find it necessary that the Federal Government step in as a mediator to protect the wholesaler against unwarranted rejections of shipments and consequent failure to complete contract payments.

Requirement of an annual license fee whether \$25 or \$50 places an unnecessary burden on the local retailer except those retailers who deal directly with growers and shippers and do not receive the major part of their fresh and frozen perishables through a wholesale supplier.

We strongly recommend that your committee adopt the recommendations you received from the National Association of Retail Grocers of the United States, as set forth in the statement of their general counsel, Mr. Henry Bison, Jr.—“If 90 percent or more of a retailer's purchases of fresh fruit, vegetables, and frozen foods are made from licensed wholesalers of these commodities, such retailer should be exempt from the license provisions of the law. If a retailer, or retail enterprise, purchases direct from growers, shippers, or terminal receivers, 10 percent or more of its fresh fruits, vegetables, or frozen foods, such retailer should be subject to the licensing provisions of the law.”

Your favorable consideration of this proposed amendment to the bill is respectfully requested.

NEW YORK, N.Y., August 7, 1961.

Congressman GEORGE M. GRANT,
Chairman, Domestic Marketing Subcommittee,
House Office Building, Washington, D.C.:

Our 750 members in 50 States join in urging your committee to restrain an arm of the Federal Government from reaching unnecessarily into purely local transactions between a retailer and his wholesaler through H.R. 5023. Please consider favorable substance of provision advocated by Henry Bison, NARGUS general counsel, to exempt food retailers who buy frozen food requirements primarily from local wholesalers already licensed under Perishable Agricultural Commodities Act.

HARRY K. SCHAUFFLER,
National Frozen Food Association.

UNITED FRESH FRUIT & VEGETABLE ASSOCIATION,
Washington, D.C., August 9, 1961.

Representative GEORGE M. GRANT,
Chairman, Subcommittee on Domestic Marketing, Committee on Agriculture,
U.S. House of Representatives, Washington, D.C.

DEAR MR. GRANT: I am enclosing a telegram from Joffre C. David, secretary-treasurer, Florida Fruit & Vegetable Association, and a letter from Frank W. Castiglione, executive vice president, Western Growers Association, authorizing me to speak for their organizations in support of H.R. 5023.

As I indicated to you this morning during my testimony, I neglected to bring the letter and telegram with me and you suggested I send them to you.

Sincerely,

ALAN T. RAINS, *Executive Vice President.*

ORLANDO, FLA., August 1, 1961.

ALAN RAINS,
Executive Vice President,
United Fresh Fruit & Vegetable Association,
Washington, D.C.:

This will authorize United Fresh Fruit & Vegetable Association to speak for the Florida Fruit & Vegetable Association at the hearings before House Agricultural Committee on H.R. 7060 and H.R. 5023 on August 9 to 10. Since we concur with the views of your organization in support of this legislation.

JOFFRE C. DAVID,
Secretary-Treasurer, Florida Fruit & Vegetable Association.

WESTERN GROWERS ASSOCIATION,
Los Angeles, Calif., August 4, 1961.

Mr. ALAN T. RAINS,
Executive Vice President,
United Fresh Fruit & Vegetable Association,
Washington, D.C.

DEAR MR. RAINS: The Western Growers Association represents the vegetable and melon growers and shippers of California and Arizona, who ship to the Nation's markets in excess of 300,000 carlots and/or trucklots annually. California and Arizona produce approximately 40 percent of the Nation's total of this perishable foodstuff.

Our industry fully endorses the amendments to the Perishable Agricultural Commodities Act proposed by H.R. 5023.

I shall appreciate it very much if you will so certify for us at the hearings to be held on this bill.

Yours very truly,

FRANK W. CASTIGLIONE,
Executive Vice President.

HOUSE OF REPRESENTATIVES,
Washington, D.C., August 8, 1961.

Hon. GEORGE GRANT,
Chairman, Domestic Marketing Subcommittee,
House Committee on Agriculture.

DEAR COLLEAGUE: With regard to H.R. 5023, I respectfully bring to your attention that the Lyon Brokerage Co. of Minneapolis favors adoption of the amendment excluding sales agents handling frozen fruits and vegetables.

Sincerely,

CONGRESSMAN CLARK MACGREGOR.

UNITED STATES WHOLESALE GROCERS' ASSOCIATION, INC.,
Washington, D.C., August 11, 1961.

Re H.R. 5023.

Hon. GEORGE M. GRANT,
House Agriculture Committee,
Washington, D. C.

DEAR MR. GRANT: We trust you will agree that to require the licensing of retailers who do not ordinarily deal direct with growers, shippers, and terminal receives of fresh and frozen fruits and vegetables would serve no useful purpose.

Therefore, to avoid placing an unnecessary hardship on the many local food retailers in your State and throughout the Nation, we urge favorable consideration be given to the suggestion as contained in the enclosed statement.

Sincerely,

HAROLD O. SMITH, Jr.,
Executive Vice President.

NORTH CAROLINA FOOD DEALERS ASSOCIATION, INC.,
August 8, 1961.

CONGRESSMAN HAROLD COOLEY,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN COOLEY: House Resolution 5023 introduced in the House of Representatives recently, will be detrimental to the merchants of America. The only person who needs to be licensed under the agriculture administration, in our opinion, is the farmer selling at wholesale to retail grocers.

I agree 100 percent with the idea of protecting the farmer who raises the food stuff and protecting the consumer who purchases the stuff, but we all know full well that the merchandise should be inspected at the source, and that 400,000 retailers in the United States should not be penalized by having to pay this \$50 tax, as they are already overburdened with taxes at present.

It is conceivable that the large operators can pay this tax and not be materially affected, but to the thousands of small store operators in the country, many

of them who are barely making a living and who deserve much credit for not being on public welfare, they would feel the pinch very much if they had to pay an additional license.

We trust that you will use your influence in seeing that this bill is not passed. With kindest personal regards, I am,

Sincerely yours,

JAMES B. VOGLER,
Executive Vice President.

RALEIGH, N.C., August 11, 1961.

Congressman HAROLD D. COOLEY,
*Chairman of the House Agriculture Committee,
Congress of the United States, Washington, D.C.:*

As president of Tip Top Foods and vice president of the North Carolina Food Dealers, I have been authorized by the hundreds of independent food stores to ask you to put "thumbs down" on House Resolution No. 5023 asking for a \$50 license on retail grocers who are buying 90 percent or more of their produce from licensed dealers. We urge you to oppose this extra tariff on our group.

J. L. MORGAN.

KANSAS FOOD DEALERS' ASSOCIATION, INC.,
Arkansas City, Kans., August 17, 1961.

Hon. J. FLOYD BREEDING,
*Representative, Fifth District,
House Office Building, Washington, D.C.*

DEAR CONGRESSMAN BREEDING: As you know, S. 1037 in the Senate and H.R. 5023 in the House have been introduced to permit raising the license fee under the Perishable Agriculture Commodities Act from \$25 to \$50 a year.

We respectfully urge you to vote for a National Retail Grocers Association (Nargus) amendment, which would exempt food retailers who purchase 90 percent of their fresh and frozen fruits and vegetables from one or more licensed wholesale suppliers.

The USDA under this PACA are not rendering any direct service to our retailers. All they are doing is sending fieldmen out to collect the licenses. I doubt if in the last 10 years a single retailer has made any request for their services.

We believe the people wanting and using this PACA service (namely the producers and shippers), should have their licenses raised to a point where they are financing it—not the retailers who are more numerous and are being asked to pay the same fee.

I will be happy to relay your vote on this retailer exemption amendment to the grocers of our State and I am sure they will be pleased to learn of your favorable action.

Sincerely,

LEE E. CIRCLE, *Executive Secretary.*

KANSAS CITY, KANS., August 18, 1961.

Congressman J. FLOYD BREEDING,
House Office Building, Washington, D.C.:

Urgently request House bill H.R. 5023 be amended to exempt food retailers who purchase 90 percent or more of their fresh and frozen fruits and vegetables from licensed wholesale suppliers.

ROY CAMPFIELD,
Thriftway Stores, Inc.

MARTIN'S FINER FOODS,
Leawood, Kans., August 19, 1961.

Congressman J. FLOYD BREEDING.

DEAR SIR: I urgently request that House bill, H.R. 5023, be amended to exempt food retailers who purchase 90 percent or more of their fresh and frozen fruits and vegetables from licensed suppliers. I shall appreciate very much your help in accomplishing this necessary exemption.

GEORGE L. MARTIN.

RANDY'S MARKET,
Meade, Kans., August 18, 1961.

Mr. J. FLOYD BREEDING,
House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE: It has been called to my attention that there is a proposed amendment to bill H.R. 5023, which would exempt retail merchants that buy 90 percent or more of their fresh and frozen fruits and vegetables from one licensed supplier.

We urge your careful consideration on this matter and hope you can support the amendment.

Thanking you, we remain,
Yours truly,

R. H. RANDOLFE.

MURDOCK BROKERAGE Co.,
Albuquerque, N. Mex., August 16, 1961.

Hon. THOMAS G. MORRIS,
House of Representatives,
Washington, D.C.

DEAR MR. MORRIS: We understand the Senate Agriculture Subcommittee is urging an amendment to the proposed bill which would exclude frozen food brokers from the licensing requirement under the Perishable Agricultural Commodities Act.

We would greatly appreciate it if you would use your influence on those who will hear the bill and urge them to report S. 1037 with an amendment excluding independent-contractor sales agents handling frozen foods or vegetables.

In the past there was a time in which such licensing was necessary, but since all national food brokers are local businessmen, such licensing, etc., makes it more difficult to do business and we know you want to relieve small business of as much redtape as possible.

Thanks for your cooperation in helping the passage of S. 1037.

Sincerely,

MARTIN L. MURDOCK.

Mr. HARDING. Thank you. The committee stands adjourned.
(Whereupon, at 12:25, p.m. the committee was adjourned.)

