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PERISHABLE AGRICULTURAL COMMODITIES

HEARING
BEFORE THE
SUBCOMMITTEE ON DOMESTIC MARKETING
OF THE
COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES
EIGHTY-SEVENTH CONGRESS
SECOND SESSION

ON
H.R. 5023

FEBRUARY 26, 1962

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PERISHABLE AGRICULTURAL COMMODITIES

HEARING

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PERISHABLE AGRICULTURAL COMMODITIES

MONDAY, FEBRUARY 26, 1962

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

The subcommittee met, at 10:05 a.m., pursuant to notice, in room 1301, New House Office Building, Hon. George Grant (chairman of the subcommittee) presiding.

Present: Representatives Grant, Hagen, Jennings, Matthews, Inouye, Harding, and Teague.

Also present: Representatives McIntire, May, Reifel, and Findley.

Also present: Christine S. Gallagher, clerk; Hyde H. Murray, assistant clerk; and John Heimbürger, counsel.

Mr. GRANT. The committee will come to order.

We are meeting this morning to continue an adjourned hearing on H.R. 5023. And in order that we may be brought up to date on this, I am going to ask Committee Counsel if he will, to make a statement concerning this legislation.

Mr. HEIMBURGER. Mr. Chairman, several days of hearing were held on 5023 last summer in the previous session of Congress. A number of witnesses appeared on the measure. Virtually all were in favor of the bill in general.

But the Food Brokers Association and the National Association of Retail Grocers proposed some amendments to the bill.

Now, the committee considered those at its previous hearings, and felt that it needed further study on the subject matter of these two amendments, so it reported the bill to the full committee without the amendments, with the recommendation that the bill be enacted with the amendments not in, but with the proposed increase in fee to operate only a short time, during which time the Department of Agriculture would be asked to conduct a further study of the subject matter of the amendments and report back to the committee.

The full committee, instead of reporting the bill as recommended by the subcommittee, deferred action on the bill, but instructed the chairman of the full committee to ask the Secretary of Agriculture by letter to conduct the study. This was done, and the results of that study were reported to the committee early in January, making certain recommendations as a result of the study.

So the meeting this morning is for the purpose of considering specifically the amendments proposed by the National Association of Food Brokers, by the National Association of Retail Grocers, and the further study of the Department on these two proposed amendments.

Mr. GRANT. Thank you very much, sir.

I believe the first witness we have this morning is Mr. Watson Rogers of the National Food Brokers Association.

Mr. Rogers, we will be glad to hear from you, sir.

Mr. McINTIRE. Mr. Chairman, I think the record will also show a list of other bills of a similar nature which were introduced. There was more than one, and I think I should mention this so that the record will show it.

Mr. GRANT. Yes, we will take judicial notice of it.

STATEMENT OF WATSON ROGERS, PRESIDENT, NATIONAL FOOD BROKERS ASSOCIATION

Mr. ROGERS. Mr. Chairman and gentlemen of the committee, I want to tell you that I again appreciate the opportunity to appear here before you.

If I may, I would like to tell you and the committee a little of my food background. I started in the wholesale grocery business when I was 18 years old. I started traveling on the road when I was 19. I was with this house 13 years. I was on charge of the first voluntary group of stores in the State of Oklahoma when I was still in my 20's handling their advertising and merchandising, then organized and ran the Oklahoma Retailers Association for 5½ years, started the Oklahoma Food Journal, and was its editor.

I have been with the Food Brokers Association for the past 18 years, and have served as their president since 1946. And I feel I have a rather close knowledge of the food industry of this Nation, and I want you to know that as I am making some of my statements here.

Mr. GRANT. We believe you qualify as a witness.

Mr. ROGERS. Thank you very kindly, sir.

I appreciate the opportunity to again appear before you to discuss H.R. 5023. You may remember from my previous appearance that our members are greatly concerned about this bill and feel very strongly it should be amended to be in harmony with present day methods of food distribution. For example, I told you of the tremendous growth and development of the frozen food industry that took place after the Packers Agricultural Commodity Act was passed.

There is no segment of the economy of this Nation that has changed more in the last 31 years than has the food industry. That is why laws passed 31 years ago do not necessarily apply today. That is why we beg of you gentlemen to take into consideration these vast changes when you are amending the Perishable Agricultural Commodities Act.

I don't intend to repeat the statements I made when I appeared before you at the previous hearing. But there are a few additional points I would like to call to your attention. As you may know, the National Food Brokers Association was organized in 1904. It is one of the oldest food groups in the Nation. Our members are made up of what we call the legitimate food brokers and they handle the sales of the majority of the processed foods of this Nation. That includes frozen foods. For a great many of our members, however, frozen foods make up a very minor part of their sales.

We feel that our members have carried on a very reputable business, representing in many instances the same manufacturers for a great many years. We are proud of the relationship we have with our

buyers and sellers. We are also proud to say there has been a phenomenal growth in food brokers' sales in the last 10 years. This is because the food manufacturers, the food processors in this Nation, are discovering the food broker is in a position to do an economical and marketing job that they cannot do for themselves.

These manufacturers employ food brokers on a regular continuous sales basis—not for occasional hit-or-miss deals. Our members do not deal with one packer today and another one tomorrow. They maintain a continuous relationship with the firms they represent much the same as a salaried employee works for his employer regularly.

According to a recent survey, the average member food broker represents 20.3 manufacturers. He is their exclusive sales agent in his small trade territory. Because of the very nature of their business it is most difficult for our members to see why they have to pay a Government tax for a right to sell processed farm products. The processor who employs them is the one who purchases the raw materials from the farmers and growers. This processor is licensed and must abide by all the provisions of the Perishable Agricultural Commodities Act.

Having been continuously in the food business myself for almost 38 years, I have personally seen the value of the Perishable Agricultural Commodities Act and what it has done to protect the growers of these products. I am sure no one in the food industry would want you to take any action that would weaken that act or destroy the safeguards it was designed to establish.

The amendment we propose will not remove any of these safeguards and will not weaken the law. In our opinion 99 percent of the food industry of this Nation, the people who know what goes on in this business, would approve of our suggested amendment.

However, I will admit we have one large exclusive frozen food broker who said he was in favor of remaining under the license provisions. When questioned by another broker about it, he indicated it helps freeze out the little brokers and thus is a great help to his type of operation. But I am sure that it is not the intent of Congress to force many of these fine marketing people to refrain from selling the farmers' products.

I have heard it said that the problem in this country may not be so much one of overproduction but one of underconsumption. If this is an example of the programs regularly advocated by the Department of Agriculture, I can see why the farmers of this Nation face a chaotic condition. Their job, it appears to me, is to encourage the expansion of marketing the farmer's products rather than discouraging it.

There is a vast difference between the operations of the true frozen food brokers and brokers in the produce field. The frozen food broker acts solely as the agent of the packer or the processor. He does not act as the agent of the buyer even though he provides the buyer with many services on behalf of this principal, the processor. His full allegiance is to the seller. It is the seller who sets the price.

The true frozen food broker performs the same service as the manufacturer's own salaries sales organization. The salesman is paid a salary, the food broker a commission. Yet the broker is presently required to have a Perishable Agricultural Commodities Act license, but the salaried salesman is not.

In trying to keep the frozen food broker under its licensing provisions, it has been argued that they should be licensed because of the perishability of frozen fruits and vegetables. This is not a valid argument because frozen food items covered by the Perishable Agricultural Commodities Act are only a minor part of the total frozen food brokers' sales. Items such as fish and fish products, frozen citrus concentrates, beef and poultry products, bakery products, TV dinners, all types of meat pies, plus hundreds of other frozen food items found in today's modern supermarket are not covered. In not one instance can be shown where these other frozen food industries would have been better served had the legitimate true food broker been operating under a license. It is estimated that less than 10 percent of the frozen food brokers' sales are items covered by the Perishable Agricultural Commodities Act.

Further, items covered by this act will be far less than 1 percent of food brokers' total sales. As one member pointed out, the only item he sold that came under the act was frozen okra. Others have given examples where only one of their items comes under the act, and that their total brokerage received on this item was not more than the license cost them. This, you can understand, would be very irritating.

In the grocery industry, as distinguished from the produce field, the seller who employs the food broker has complete responsibility. He is responsible for his products, their method of processing, their quality, and the method and terms of sale.

The food broker does not buy or sell in his own name and does not have custody or possession or other control over the products sold by him for his sellers.

I can cite a recent example which confirms our statement that true frozen food brokers are not a part of the produce industry and should not be considered subject to this act. On February 9, USDA held a Perishable Agricultural Commodities Act Conference in New York. We were not invited. The sponsors felt it was not applicable to us. Yet when it comes to licensing, these same people want the frozen food brokers covered. It is very odd that we are not considered a part of the industry when it comes to plans and programs but only considered a part when they want our money.

The USDA representatives have told you, and I quote from a statement of Mr. George Grange at your last hearings, that the exemption of frozen food brokers—

would mean that no requirements could be established concerning the type of confirmations which they issue or the records which they are required to maintain.

That statement is the crux of the matter they say, implying that without the frozen food brokers' records there is no way of knowing what goes on in many of these transactions.

They do not have a correct working knowledge of the actual operations of the food industry as distinguished from the produce field. The food broker regularly maintains the information relating to the order. This is true for all products sold by food brokers and not just frozen foods. In other words, food brokers do not need to be licensed to force them to prepare proper records. They do so in any case and their records are available.

Furthermore, the law requires all licensees to keep appropriate records. That means the processor must keep such records as well

as the buyer. If any controversy comes up, the needed information will be available in three places even if the frozen food broker is not licensed.

Mr. Grange mentioned that they were afraid that if food brokers were exempted it would mean that—

no requirements could be established concerning the type of confirmations which they issue * * *.

In the processed food industry it is not customary for the food broker to issue such confirmation. They submit an order memorandum to the seller with a copy to the buyer. The actual confirmations are customarily issued by the sellers. Our industry feels that from a legal standpoint the food broker is not authorized to make such confirmation without involving other liabilities and responsibilities. And the packer wishes to reserve these for himself.

At this point, I want to give each of the committee members sample copies of two versions of the forms used by food brokers. Keep in mind that these were refined and developed from forms that were in use for possibly a century or longer—long before there was a Perishable Agricultural Commodities Act. And as I said earlier, these were used for all products sold by food brokers and not just the comparatively small volume of frozen fruits and vegetables.

Another reason why our members do not want to be licensed is that the Perishable Agricultural Commodities Act administrators have gone far beyond the actual provisions of the law in order to strengthen their control over the licensees. I am sure that is not what you in Congress want or sanction.

For example, in the regulations they wrote they state:

Brokers may operate as the agent of the buyer, seller, or of both parties (sec. 46.25(a)).

In another part of their regulations they wrote:

Brokerage fees may be charged to only one of the parties to the contract unless by mutual agreement the parties agree to split the brokerage fees (sec. 46.26(b)).

Gentlemen, the Perishable Agricultural Commodities Act itself does not make these statements and another law of the land, the Robinson-Patman Act amendment to the Clayton Act, which Congress passed in 1936, specifically prohibits this kind of action under section 2(c). Furthermore, the courts, including the Supreme Court, have upheld the validity of section 2(c). The courts have held that the broker could not serve two masters. He could not act as agent of both parties in the same transaction whether or not these two parties agreed. Furthermore, the courts held that the agent of one party to the transaction could not be compensated by the other party whether in whole or in part. Yet these USDA people want to go over the heads of Congress, the Supreme Court, and the lower courts and write the law as they want it to be. And that is another reason why our people want to get out from under this Perishable Agricultural Commodities Act licensing.

There is still another danger to these interpretations of the Perishable Agricultural Commodities Act regulations which we want to eliminate by removing the true frozen-food broker from these licensing provisions. Because they represent a Federal department, they are looked to as authorities by various State agencies. Their inter-

pretations are regarded as gospel and are adopted by the State agencies whether or not sound. This just compounds the injustice.

I am sure you will agree it is a most unfortunate situation and one that should not be permitted to continue. The answer to it is to remove the true frozen-food broker from the provisions of the Perishable Agricultural Commodities Act as we outline in our amendment. I should like to give to each of you gentlemen a copy of the amendment which we propose. It is attached to your statements, gentlemen. I hope you will agree that it is a most necessary one and one that will not in any way weaken the effectiveness of the Perishable Agricultural Commodities Act.

In our opinion this amendment would satisfy the needs of practically everyone in the food industry and would in no way change the act's application to growers, packers, and to those in the produce field. I hope that you will agree this is a logical and just amendment and will serve as a credit to this Congress when it is passed.

And I have one or two other comments I would like to make. I mentioned our concern over USDA's interpretation of the law as regards section 2(c) of the Robinson-Patman Act. This is just another example of the difficulty of operating under this law.

NEBA's constitution and bylaws mainly spell out the definition of a food broker as follows:

A food broker is defined as an independent sales agent who performs the services of negotiating the sale of food and/or grocery products for and on account of the seller's principal, and who is not employed or established by, nor an affiliate or subsidiary of, any trade buyer, and whose compensation is a commission or brokerage paid by the seller.

The USDA talks about brokers representing buyers and sellers. I know of no broker in our industry who represents the buyer. I cannot emphasize too strongly that it is unfair to our industry to make it operate under rules and regulations that are mainly established for an entirely different industry.

In my statement I referred to our concern over the contradiction in the Robinson-Patman Act. I would like to inform you that 5 or 6 years ago some of our people had a discussion with the officials of USDA on this matter, in fact we wrote them a letter in June of 1957. We just got the standard reply, that they would take our recommendations into consideration when they were revising the rules. But they did not do anything about it, and we feel, again, that mainly their decisions are entirely for the fresh fruit and vegetable industry.

The USDA people have indicated that as long as a product is under the act, all people dealing with that product should be under the act.

I believe if you will check you will find that is not the case today. Some of our largest purchases of frozen foods are not under the act. It is my understanding that hotels and restaurants are not required to take out licenses. I could be wrong, but that is my information. Yet they are tremendously large purchasers of frozen foods.

Now, in USDA's report, dated January 12, it says:

The act itself cites five separate provisions covering unfair practices in which brokers may not engage. Excluding brokers from the licenses would remove all effective means of enforcing the applicability of the act to brokers.

In checking these sections to which this quote refers I cannot see anything which would change our operations regardless of whether or not true food brokers were licensed.

In my statement I especially referred to recordkeeping, and feel it is not a problem at all as far as we are concerned.

These main provisions do not apply to frozen foods as handled by food brokers any more than they apply to canned foods or other products sold through the grocery outlets. They are mostly written for the fresh fruit and vegetable industry.

And speaking of the fresh fruit and vegetable industry, I hope that when Mr. Rains testifies he will tell you we should not be covered by this act. I feel such a statement from him would certainly be in line with the reports from their recent convention held in New York City.

I would like to quote from Supermarket News referring to this meeting. This is a well-known trade paper which almost everybody in the food industry reads, and I would like to quote from this article here in big headlines, "Fear of Growing Federal Role in Industry Highlights Parley."

Fear of increasing Federal controls over the production industry marked the 58th annual meeting of the United Fresh Fruit & Vegetable Association here last week. Nearly 2,000 wholesale distributors and suppliers, shippers, brokers, and other representatives of the fresh produce industry were warned of Government's plan to play a larger role in the control of their activities. Several bills pending in Congress came under attack.

To keep true frozen food brokers under the act would be the best example I know of of fostering needless Government control.

Mr. Rains' group is not the only food convention criticizing needless Government control.

As president of this association it is my responsibility to attend most of the major food conventions held in this Nation. I have never before seen the concern and the critical speeches on these convention programs. The food industry feels it has done a marvelous job in serving the consumers of this Nation.

Evidently, there is a fear of a trend of needless Government control which would hamper it from continuing this streamlined operation. I feel it is the attitude such as the U.S. Department of Agriculture in opposing this needed amendment to the Perishable Agricultural Commodities Act that is contributing to this great fear among food industry leaders.

Mr. Chairman, I could probably go on for a long time, but I know your time is limited. I appreciate the opportunity of appearing here. I would be glad to try to answer any questions you have.

Mr. GRANT. Mr. Hagen?

Mr. HAGEN. Mr. Rogers, what is the history of complaints under the act against food brokers?

Mr. ROGERS. I mentioned, I think, at the previous hearing that I personally hadn't heard of one in 10 years. Now Mr. Grange, I think, brought some out before. I forget now the details. We never hear of this act in our shop. And I am sure if there was any trouble from the members they would be screaming to us.

Mr. HAGEN. What is this emphasis on confirmation? What is a confirmation?

Mr. ROGERS. The reason I said this is because they have made a big statement about our records, and they claim they need our records where we confirm the orders. What I have tried to point out is that in most instances we don't confirm the orders, we are sales agents, we

place their order on this memorandum like we gave you. That is submitted to the manufacturer or the processor; it is his responsibility to confirm it to the buyer.

Mr. HAGEN. Say that a seller had a complaint from the ultimate purchaser, the retail store, now, they have to be licensed, is that correct?

Mr. ROGERS. Yes.

Mr. HAGEN. His complaint would lie really against the seller, not against you, because you are his agent?

Mr. ROGERS. We are an agent of the seller. We have to tell the people what the manufacturer tells us are in those packages. You can't see what they are; this merchandise is packaged. We have to take the processor's words, and we have to pass that on to the buyers. So it is the seller's responsibility if something is wrong.

Mr. HAGEN. Can you conceive of a situation where a seller, employing you as his agent, would ever have a complaint against you under the Perishable Agricultural Commodities Act?

Mr. ROGERS. Never, because they wouldn't let us represent them, if we had to be under Government control to do what is right we couldn't represent them. Most of these sellers we have represented for years and years, we have a close relationship with them, and any time a broker does anything wrong with one seller, that is against his reputation, and more than likely he would be fired by all of the principals he represents.

Mr. HAGEN. I would think under those circumstances the only people who would seek to keep you in would be the buyers.

Do you know of any desire among buyers of frozen foods, for example, to keep the brokers licensed?

Mr. ROGERS. None whatsoever. I don't know of a single one.

Mr. HAGEN. Thank you.

Mr. GRANT. Any questions?

Mr. McINTYRE. Mr. Rogers, what are the provisions in these bills which expand the authority of Perishable Agricultural Commodities Act? You were quoting from the trade journals as to the fear of expansion of Federal authority and making reference to bills that were before the Congress—

Mr. ROGERS. I just read that much. They have got a bunch of bills here. I don't think that was specifically referring to Perishable Agricultural Commodities Act.

Mr. McINTYRE. What are the provisions of the bills which we are considering here which expand the authority of Perishable Agricultural Commodities Act?

Mr. ROGERS. I don't know of any.

Mr. McINTYRE. I don't either.

Mr. ROGERS. I don't know of any.

But I have said that their interpretations in our opinion expanded the authority that they had when this bill was passed years ago. I say they have gone far beyond what Congress intended in their interpretations.

Mr. McINTYRE. I realize that. But the bill doesn't extend the authority for increasing the fee?

Mr. ROGERS. That is right.

Mr. McINTYRE. Largely because this program is self-financed, and always has been, and I don't think anybody proposes that it be otherwise, do you?

Mr. ROGERS. No. I will tell you frankly, Mr. McIntire, the balance of your bill, I don't know whether it is good or bad, we didn't even get into it, because we think it applies to the produce field, it just shouldn't apply to us, and what you and these people want is certainly all right with us. We have no comments to make on it.

Mr. McINTIRE. I make this observation, and this isn't any criticism in any sense of the word, but the fact that the act is opened up for amendment by virtue of this legislation offers an opportunity which you folks have every right to take advantage of to amend the act in your own interest, and this is really the crux of the matter, is it not?

Mr. ROGERS. This is an action that we feel should have been taken several years ago. We have been talking about this, and others have been talking about this act. It may have been good 31 years ago, but it isn't good today, that is all the provisions.

So that is true, we have been talking about this, our members asking why should we be under it. While you are rewriting the law anyway, why don't you bring it up to date to meet modern day food distribution.

Mr. McINTIRE. Has your organization in the recent past passed any resolutions proposing amendments to the Perishable Agricultural Commodities Act?

Mr. ROGERS. The only amendments we suggested were to their interpretations. And that was in 1957.

Mr. McINTIRE. But not amendments to the act?

Mr. ROGERS. Not amendments to the act. We discussed this at our last convention in Chicago—which, incidentally, is the largest food convention held in the world.

And at our officials' insistence I devoted a considerable part of our annual report to this problem. And the convention went on record as authorizing our executive and advisory committees to establish this policy, which they have done.

Mr. McINTIRE. It is a matter of timing, the act is open for amendment, it is a matter of timing in the interest of your people?

Mr. ROGERS. That is right.

Mr. McINTIRE. And not that the proposals are expanding the jurisdiction of the act or changing the eligibility or anything of that sort?

Mr. ROGERS. Mr. McIntire, we haven't even gone into it, we are not produce people, we are not in that business, we are in a separate business, we feel this is mainly for them, and anything you feel they need and they feel they need, we have no quarrels with at all, we just want out from under.

Mr. McINTIRE. But so far as the proposed legislation is concerned, it neither subtracts nor adds to the jurisdiction of the act as far as it is applicable under present interpretation to your industry, is that right?

Mr. ROGERS. As far as we know, that is true.

As I said, though, our industry has changed in 31 years. That is what someone said before, we passed the law 31 years ago, and we shouldn't change it now. But why do we have Congress here today? Conditions change and we need different laws.

Mr. HAGEN. Has there been some change in food brokerage in that 31 years. For example, an original mixed type of operation justifying inclusion but which has now disappeared.

Mr. ROGERS. Not so much. Thirty-one years ago we did have some of our members in fresh fruit and vegetables. But now we have a rule that you can't speculate, and we have expelled some for doing that. And because of the nature of fresh fruits and vegetables that has eliminated our people from selling those products. We are in an entirely different type of business.

Now, the frozen food industry has changed materially.

Back in 1931 when this bill was passed the frozen food industry was in its infancy. Mostly it was packing big barrels of strawberries and other fruits for the preserve industry, or something like that. So there wasn't a big difference between products fresh and iced and those that were frozen. That is why I think they decided then to put frozen in the law.

But the frozen food industry has changed. We handle them mostly under brand products just like the other products. So there has been a big change in the frozen food industry.

Mr. GRANT. Thank you very much. Your time is up.

Mr. Henry Bison, the National Association of Retail Grocers.

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

Mr. BISON. Mr. Chairman and gentlemen of the committee, we appreciate your kindness in allowing us to appear here today and offer additional views on H.R. 5023.

Last August, we testified before this subcommittee on the pending bill. At that hearing, we requested you to approve inserting in the bill an exemption from the licensing provisions of the Perishable Agricultural Commodities Act covering those retailers who purchase 90 percent or more of their fresh and frozen fruits and vegetables from one or more wholesalers licensed under the act.

The purpose of this proposal is to eliminate the Perishable Agricultural Commodities Act license tax on retailers who purchase the bulk of their requirements from their local wholesalers who are licensed. The retailers would have no appreciable dealings with growers, growers' agents, commission merchants, truckers, or terminal markets. They would be buying almost all of their merchandise in local transactions from local licensed wholesalers. This change, we said, would not conflict with the purpose of the act to protect growers, shippers, and terminal receivers from unwarranted rejections and failure to carry out contracts. The retailers we want exempt are not primary receivers.

Since the original hearing on H.R. 5023 last August, two new developments have taken place.

First, the Department of Agriculture has conducted a survey of Perishable Agricultural Commodities Act licensees. A report on this survey is now before you.

It is interesting to note that while the Department requested licensees to provide information and views on various aspects of the law's operation, it did not ask for an opinion on the retailer's proposal. I think it is a reasonable assumption that this omission was not accidental, and that if the question had been asked it would have resulted in material evidence adverse to the views of those who prepared the questionnaire.

On page 2 of the survey report, it is stated that no one has proposed that all retailers, regardless of how large, should be excluded from the Perishable Agricultural Commodities Act. This is certainly true and we are happy to see the Department recognize this fact.

We also agree with the statement on page 3 of the survey report that—

the present formula (used to determine when retailers are subject to licensing) of "purchases of 1 ton or more of fresh or frozen fruits and vegetables in excess of 20 times per year" results in some licensing quirks in relation to total annual value of purchases by these firms.

The survey report further states on page 3:

Evidently variations in the pattern of purchases (e.g., deliveries once a week versus three times per week) have caused some retailers to be licensed whose total annual purchases were relatively small.

This admission by the Department of Agriculture that both the present law and the pending bill covers retailers who should not be required to purchase a license is greatly appreciated by us. As you know, this is precisely what we have contended for some time.

On page 7 of the survey report the Department of Agriculture recommends that dollar value of purchases rather than tonnage purchased be used to determine which retailers are subject to license. It also recommends that all retailers be exempt from the license requirements whose dollar purchase of commodities covered by the act are \$50,000 or less annually.

From a technical point of view, the proposed wording of the amendment to the present act, as stated in paragraph A on page 7, is ambiguous and confusing. It does not define what measure is to be used in determining the monetary value of purchases. Enumerable questions on how the value of purchase is to be calculated are left unanswered. Is the figure to be net invoice cost of the merchandise paid by the retailer minus all discounts, allowances, and service charges? Or does it include additional charges, fees, allowances, discounts, et cetera, aside from the value of only the merchandise? It might even be questioned whether the retail sale value of merchandise is the proposed basis for calculation. It is extremely difficult to know with any certainty. The words "cost" or "value" are, as you will see, missing from the Department's proposed amendment. The question of how a retailer is to calculate when his purchases exceed \$50,000 is left totally unanswered.

We suggest that the Department's proposal is so vague and uncertain that it will produce tremendous confusion for retailers with all the potential liabilities that go with it. This is certainly no solution.

We also call attention to the fact that the Department's proposal is based on purchases in any consecutive 12-month period. This means retailers must make a tedious and expensive calculation every month of the year covering the previous 12 months purchases. The act's coverage provisions for retailers are presently based on a calendar year. The words "in any calendar year" are now in subparagraph (6)(B) of the first section of the act which the Department's proposal amends. But it now proposes that retailers be covered based on their purchases over any consecutive 12-month period rather than a calendar year basis. This places retailers in a more difficult position than they are under the present law.

As a matter of practical operation, the Department's proposal places still another difficult burden on retailers. The \$50,000 purchase proposal applies to Perishable Agricultural Commodities Act commodities only, and provided also that each commodity at some time was shipped across a State line. Retailers would be required to know all the commodities under Perishable Agricultural Commodities Act and the transportation history of each. To protect themselves from being required to purchase a license, retailers would have to keep records on each month's purchases of Perishable Agricultural Commodities Act commodities that crossed a State line. In some cases they could not determine this information without checking with their wholesaler. It is unrealistic to expect retailers to know all the commodities that are under Perishable Agricultural Commodities Act, as well as those that are exempt because their form is materially changed by processing. People who have been in the produce industry all their lives and handle nothing but such products do not have such knowledge.

We believe that it would be less expensive for retailers to pay for a Perishable Agricultural Commodities Act license each year than to attempt to prove their exemption under the Department's proposed amendment. Its practical effect in exempting retailers—which at least in some degree the Department now concedes is desirable—will be a mere trifle. We urge the committee not to be misled by the Department's proposal.

Gentlemen, an analysis of the situation will show that the basic reason why the Department of Agriculture is opposing retailers' efforts for an exemption from the license tax under the Perishable Agricultural Commodities Act is money. The heart of the matter before you is who is going to pay for the administration of this law. This is the crux of the argument.

The prime desire is not so much to license local retailers as it is to collect license fees from them. The license itself is not as important as the fee. This is what really counts.

If you doubt this, ask the Department if it will consent to reducing the license fee for retailers buying 90 percent or more of their Perishable Agricultural Commodities Act commodities from licensed wholesalers to some nominal sum, such as \$1 per year.

Or ask if they would approve requiring such retailers paying only one license fee, instead of making payment on a yearly basis.

The Department does not want any more retailers exempt because they fear it will mean operating on a reduced budget. Some large fruit and vegetable shippers and receivers take the same position because they might be required to pay more for their license.

As you know, the law is supposed to be self-financing. This means that the money for its administration must come from license fees. It is easy to see that the more people licensed the less each has to pay. It is also obvious that the more people licensed, the more funds the Department will have to spend.

We wonder why those in the fruit and vegetable industry who benefit from this law and regard it as a necessary Government function are not more willing to pay for the cost of its administration.

One of the major reasons we object to the present law is that independent food retailers and their wholesale suppliers are forced to pay for duplicate licenses. Whereas, in contrast, a completely

integrated operation performing both retail and wholesale functions is taxed only once. This results in a ridiculous and indefensible situation where an independent food store is taxed the same amount for the cost of Perishable Agricultural Commodities Act as an entire company operating thousands of supermarkets with total sales running into billions of dollars. And the situation is the same for large shippers and receivers handling many millions of dollars of Perishable Agricultural Commodities Act merchandise each year. They, too, can escape with just one license covering their entire operation and pay the same fee as a grocer purchasing a few thousand dollars of merchandise each year.

I would like to depart from my statement to say this, gentlemen, that today many of the food brokers operate in groups where their wholesalers are in close alliance with them. The wholesaler must be licensed and each of the retailers must be licensed. This is multiple licensing, whereas if they operated as an integrated corporation owning all the warehouses and all the stores they would only have to have one license. We claim that that is indefensible.

When the act was passed in 1930, the vast majority of retail food distributors were not organized into voluntary and cooperative buying groups as they are today. These retailers are closely joined or associated with their supply house. In essence, they are one operation tied together in close harmony. These retailers have more than adequate financial arrangements to cover payments for their purchases. In many cases they have a deposit with their suppliers equal to three times their weekly purchases. There is no need for a Federal law to license them so they will pay their bills.

The same can be said for retailers supplied by independent service wholesalers. Here, too, there is a close—almost daily—contact between both parties operating in the same trading area.

Gentlemen, to prove that many wholesalers of fresh and frozen fruits and vegetables are not in favor of their retail customers being forced to pay a Perishable Agricultural Commodities Act license tax, I ask permission to submit for the record at the conclusion of my testimony letters from almost 70 such wholesale suppliers from 19 States supporting our position.

And may I depart from my statement a moment to submit to you one of the letters that I will ask you to incorporate in the record. It comes from the Pacific Fruit & Produce Co. It is one of the largest wholesalers of fruit and vegetables in the country. They have branches in all medium- and large-sized towns in the West, and they have 16 such branches in the State of Washington. And I will submit to you a letter from this company signed by its vice president supporting our proposal.

In addition, I will, with your permission, submit a letter of support from the Produce Packaging Association, Inc., and from the Oakland Wholesale Fruit & Produce Merchants' Association of Oakland, Calif. In addition, the record will show that the National American Wholesale Grocers Association, the United States Wholesale Grocers Association, the National Frozen Food Association, the National Association of Wholesalers and the Cooperative Food Distributors of America also support our position. This should leave no doubt in your mind where the majority of wholesalers stand on this issue.

Before concluding, allow me to emphasize that the gross injustice of the Perishable Agricultural Commodities Act license tax has aroused thousands of retailers as never before. Their sense of fairplay has been rightly outraged by the efforts of the Department of Agriculture and a small minority in the fruit and vegetable industry to perpetuate what must be the most unfair, inequitable, and discriminatory tax ever enacted into Federal law.

It has been said that the amount of the Perishable Agricultural Commodities Act tax involved is not very large. In answer, I can only remind you that the same was true of the infamous tea tax imposed on the colonies in 1773, and it provoked something more than mild disapproval.

Since our last appearance before the committee, and in an effort to be constructive, we have endeavored to improve our proposed amendment to H.R. 5023. At this time, I would like to offer a suggested draft as a part of this statement.

And I depart from my statement a moment to say that in our amendment attached to our statement we are providing that in order for a retailer not to be licensed, he would have to buy from a wholesaler that is licensed under the act, and a wholesaler that has his place of business in the State where the retailer is located, or in the same standard metropolitan area.

Now, standard metropolitan area is defined by the Bureau of the Budget, and it is clearly defined by the geographic demarcations, and there is no question about what the standard metropolitan area means. We have introduced that in order to assure you that what we are trying to stop is the Federal Government interfering in local commerce, in our opinion. And this is what we are trying to stop, the local transactions should be exempt from Federal control.

I hope, gentlemen, that we can settle this disagreement, because we would like to see this law continue. We think it has a very useful purpose. And I can tell you that many of our people, indeed all of them, will continue this battle against what they think is an unfair and inequitable and unjust tax for so long as it remains on the books.

May I conclude with this statement, that I am reliably informed that the chairman of the full committee, Mr. Cooley, will introduce this afternoon a bill which incorporates the amendments offered by the National Food Brokers Association and the National Association of Retail Grocers, a bill that will be introduced some time this afternoon.

I want to conclude by thanking this subcommittee most sincerely for the fair hearing and for the exhaustive consideration you have given this matter. We are very, very grateful to you for listening to our statement.

Thank you again.

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

Do you feel that with the elimination of both of these groups that there would be sufficient funds to carry on the activities of the Department in administering this law?

Mr. BISON. I think, Mr. Chairman, that that effort ought to be made. And if there is more money needed, they can report it back to your subcommittee and to the full committee and then make their case, substantiate it, and then you will make the changes if the case is made. That is our opinion, that this is the way it ought to be,

and if there is something wrong with that there is a remedy available without delay.

Mr. GRANT. Any further questions?

Mr. HAGEN. I would like to ask you to give an example by name of one of these integrated operations where they do both their own wholesaling and retailing.

Mr. BISON. Well, a classic example—and I don't wish to name one particular organization, there are many of them—a classic example is the A. & P. Tea Co. And, mind you, gentlemen, I am not making a case against A. & P., but the question was asked, and I feel I should respond.

The A. & P. Co. has annual retail sales of well over \$5 billion a year. This is not just their produce, this is all sales. And they have over 4,000 stores. And they have I don't know how many warehouses.

No; it isn't fair in our opinion to tax that giant organization—and we are not arguing against bigness, don't misunderstand me—but it isn't fair to tax that organization that buys as much produce as they do on the same basis as you tax a small grocer buying from a wholesaler. The wholesaler is licensed, he deals with the terminal market.

Mr. HAGEN. What percentage, if any, of their business is done with wholesalers?

Mr. BISON. I don't know, but more and more, as the Perishable Agricultural Commodities Act conference will show, Mr. Hagen, more and more purchases are direct, they bypass the wholesaler. This goes on more and more.

So, actually, this would help wholesalers. If you say to our retailers, if you buy from a wholesaler, then you don't have to have a license, but if you bypass the wholesaler and buy direct from a grower, shipper, commission shipper, or terminal market, then you are going to have to get a license. Then you can see there that this would encourage distribution through wholesalers.

And we feel that wholesalers are very efficient in all these industries.

Mr. HAGEN. A. & P. for example, they just have one license, is that right?

Mr. BISON. I don't know that, Mr. Hagen. They may have subsidiaries. A. & P. may have one corporation incorporated in Delaware and one in New Jersey, but they only have one license for the corporation.

Mr. HAGEN. And they need very few in relation to the total volume?

Mr. BISON. They need very few.

And let me say this, gentlemen, if there is any way to defend that method of taxation, I have yet to hear of it. I don't think you can defend it, I don't think the Department can defend it, I don't think anybody can. And it certainly arouses our people to know that the effort is being made to perpetuate that taxation.

Mr. TEAGUE. Mr. Bison, I have an entirely open mind on this. You have made a very forceful presentation. I understood you to say that you were going to offer some 70 letters for the record.

Now, I see no necessity of printing 70 letters in the record and causing the Government that expense, so I suggest that you pick out two or three typical ones, if you want any of them.

Mr. BISON. I agree, we wouldn't want 70. But I would like, if you or your colleagues want to look at these letters, we are going to make them available to you, because we want you to understand, it

is not just the retailers that are asking you to do it, it is our suppliers and the wholesalers who are asking it, too.

Mr. GRANT. Mr. McIntire?

Mr. McINTIRE. Mr. Bison, what provisions in the bill would you consider are provisions expanding the authority of the PACA beyond its present authority in the act?

Mr. BISON. Mr. McIntire, I didn't hear the very first part of your question.

Mr. McINTIRE. What provisions in the bill do you interpret as amendments expanding the authority of the Perishable Agricultural Commodities Act beyond the present statute?

Mr. BISON. Mr. McIntire, there is no provision in H.R. 5023 that expands the jurisdiction of the Department. But may I qualify my statement by saying this, that our concern is on the basis of principle. We think that the law is wrong as is, and we are trying in the best way we can to seek an amendment to it so that local commerce as we define it—not as the Department defines it, but as we define it—is exempt from this Federal regulation and control, because not only is it unnecessary but it is discriminatory.

Mr. McINTIRE. I appreciate your statement.

But my interest was to further inquire as to the extent you have communicated with your members. Have you pointed out that the legislation before the committee is not an expansion of the act?

Mr. BISON. To what extent? From memory I can't give you any concrete example of that, but in every statement we have issued on this bill we have always pointed out that the issue here, that is, that the bill proposes an increase in the annual license fee.

I think some of our people, Mr. McIntire, feel this way about it, too, that while the proposed bill doesn't increase the jurisdiction of the Department in this area, as those fees go up—and they went up from \$10, they started out at \$10, and now the effort is to give the Secretary the authority to make it \$50—this creates a problem which we think should have the serious consideration of Congress.

Mr. McINTIRE. Well, this is another point. The interest that I have in making this inquiry is because like other Members of Congress, I have had many letters in response to your communications to your membership, and this is entirely appropriate. I have written back two of these people who have written me asking them two questions: One is, Are they not required to have a license? And the other one is what their understanding is of the proposals. They have come back in many instances saying that they are not required to have a license. They wrote to me because they were afraid that this bill was expanding the authority of Government in connection with the jurisdiction of the act. This is the understanding that they have conveyed to me.

Do you think this is an appropriate understanding on their part?

Mr. BISON. Well, Mr. McIntire, let me say, first of all, that nothing we have said would give—would be a basis for that conclusion on their part, if such is—

Mr. McINTIRE. Where would they have gotten it?

Mr. BISON. I don't know.

But let me point out that when they say they are not subject to a license, they don't have to take out a license, this could be wrong, they might very well have to take out a license and not know it.

Mr. McINTIRE. The only thing is they are not licensed now?

Mr. BISON. Right. That may be because an inspector hasn't visited them.

Let me point something else out, gentlemen. As you get into this matter you will find that there are retailers who are on the borderline, and maybe they are subject to having a license, and maybe they are not, it is very hard to say, as the Department itself admits in its statement, on one, two, or more per day, 21 times or more a year.

The question, of course, is so difficult for these retailers to decide whether they covered or not. When a Perishable Agricultural Commodities Act inspector comes into their store and says, do you have a Perishable Agricultural Commodities Act license and he doesn't know that he is talking about, then this question always comes up, which is easier, is it easier to give in and buy the license or try to fool the Government? And a lot of times they will buy the license though they don't know what it is all about, and even though they may not be covered.

I really do not know. But our basis, Mr. Matthews, as a principle we just do not want the Federal Government getting into local commerce, and we do not want it particularly when the tax is so unfair as this is.

Mr. HAGEN. I want to ask you a delicate question.

If we exempt some retailers as you propose, would you object to making chains pay a license fee on every retail outlet?

Mr. BISON. We would not object, no.

I would say this, Mr. Hagen: that if you do it on the basis of number of stores, you might run into some difficulty, because an operator may have 10 small stores, and he might be purchasing as much as an operator with 1 big store. So if you are going to do it on the basis of the amount of interest he has in the law, maybe you ought to do it on the basis of the value of purchases, not stores, because, as you know, a store can be a small store or a tremendous store, and you would be counting it on the same basis, and it would not be fair.

We have no objection to that at all; I am just pointing that out. We are not suggesting it, because, as I said, in the earlier hearing, gentlemen, we are not trying to get somebody else's license fee raised, we are not trying to do that. We are simply asking for our freedom, that is all we are asking for. And that is why we are here.

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

Mr. Rains, the next witness, please, sir.

STATEMENT OF ALAN T. RAINS, FRESH FRUIT & VEGETABLE ASSOCIATION

Mr. RAINS. Mr. Chairman and gentlemen, I am going to speak off the cuff this morning.

You will recall, I prepared a statement for you gentlemen when we discussed this legislation last summer, and as was the case then, I am speaking for the Western Growers Association by authority of a wire received from Mr. Frank Castiglione, executive vice president of that organization:

This is your authority to represent Western Growers Association in support of H.R. 5023, Perishable Agricultural Commodities Act bill, February 26.

I have a similar telegram from Mr. Joffre David, executive vice president of the Florida Fruit & Vegetable Association in Orlando, Fla.:

Will greatly appreciate your representing Florida Fruit & Vegetable Association in your testimony in support of H.R. 5023, Perishable Agricultural Commodities Act bill, February 26.

I intend to speak rather briefly this morning, gentlemen. I think that our position was fairly well covered in the testimony that I submitted previously. There are two or three things, though, that I attach considerable importance to, and that is the reference to local transactions, and the connotation that goes with such reference.

Now the fresh fruit and vegetable industry is a huge and involved industry, as you gentlemen well know. About 1,500,000 carlot or carlot equivalents of these products are in commerce each year, with a retail volume of about \$8.5 billion.

Now, our people, the fresh fruit and vegetable fraternity, transact most of these sales by conversation, either personally or on the phone. A local transaction can very well be a conversation personally on the curb in a market, in a gateway market such as Chicago, let us say, between a carlot distributor and a buyer, relating to a car of merchandise in Wyoming on its way to Chicago. The specifications of that car, the manifest, the size, grade, quality, what have you, would be a subject of discussion, and the first buyer, for economic reasons, either to make a profit or to reduce a loss, or he may feel that he has too much of a particular commodity, would sell to this second buyer on a negotiated basis, as you and I are carrying on a conversation right now.

That, in my opinion, could be classified as a local transaction. Yet it is not the exception, this sort of thing goes on regularly in this business. Certainly that sort of a transaction should be covered. It is basic to trading in fresh fruits and vegetables.

I could recite any number of instances. Let's take the one of a salaried representative of a big buyer at a shipping point. As he was in the office of the shipper or seller, he would negotiate for the purchase of a carlot or several carlots of merchandise. I am afraid some people would consider that to be a legal transaction. Certainly it is not, in my opinion, and would need to be covered under Perishable Agricultural Commodities Act if our industry is to be protected.

The other reference that has been made in the record refers to Perishable Agricultural Commodities Act as a collection agency. Well, nothing could be further from the truth. It is true that Perishable Agricultural Commodities Act resolves differences of opinion, controversies, and the result is a payment of an invoice. But that is secondary to the basic function.

If you and I were in a controversy over any sort of a transaction, if I felt that what you sold me was not what you represented it to be, I would be reluctant to pay you, and we might end up in court. Here we have a situation where licensees may and do resolve their differences through this agency, they are respected, they are honored, and if Perishable Agricultural Commodities Act says to the buyer, the contract specifications were met, you owe the seller, the controversy is closed and the payment is made. To that extent it is a collection agency.

I would say that in contrast to a great many Federal laws that the Perishable Agricultural Commodities Act is not a WPA for lawyers, because I cannot calculate the millions of dollars of legal expenses that have been saved our industry as the result of a privilege of a licensee to take a controversy to Washington.

And, incidentally, this can be done on a telephone basis, and differences of opinion can be resolved in the matter of two or three telephone calls.

Now, the retailer amendment has caused considerable concern in my industry. And if you will recall, my testimony related basically to the amendment that our industry had developed with the Department.

Now, we do not want to tell the Department nor you gentlemen where to draw the line in licensing retailers. Despite the fact that retailers have been covered since the inception of the law, we have great confidence and abiding faith in the Department, the Administrator of Perishable Agricultural Commodities Act, and the General Counsel's Office. And the amendment that was under consideration when we met before, in the opinion of the Department, would open the floodgates and allow even the largest national chains to trade without a Perishable Agricultural Commodities Act license.

That, gentlemen, we simply could not stand. And I do not believe that you would want it that way either.

I am not debating the merits of the Perishable Agricultural Commodities Act amendment as submitted by Mr. Bison at all. All I say is, gentlemen, we cannot—this huge industry of ours which is self-sufficient is not favored with price supports, it maintains its own dignity, maintains its own economic foundation, and it could not operate if this Perishable Agricultural Commodities Act bill is emasculated.

I believe that the differences of opinion can be resolved. I believe that the Department and you gentlemen can work out language of an amendment that would be satisfactory to Mr. Bison and his group, and not injure the fresh fruit and vegetable industry.

We have an abiding faith in you gentlemen, too, I might add.

Now, with respect to the food brokers, I did not expect the notice that Mr. Rogers gave me. I appreciate reference to my convention. Here again we are sort of bystanders. But a great many of our service wholesalers particularly handle a great volume of covered frozen foods.

I would suggest that if the frozen food brokers have a problem, they would be well advised to follow the same procedure that my industry followed several years ago when we were discussing some problems with the Department relating to Perishable Agricultural Commodities Act administration. And there evolved from those discussions the Perishable Agricultural Commodities Act Conference Group which has been referred to this morning. That was organized, created at the request of my industry, so that we could resolve differences of opinion, and it has worked beautifully. A year ago it was expanded and retailers were invited.

I see no reason why it cannot be expanded further, or why individual groups interested in Perishable Agricultural Commodities Act could not be granted the same courtesy that we have been granted.

I would say this, however: So far as the wholesalers that I am familiar with and whom I represent are concerned with respect to their

purchases of covered frozen foods, that they would prefer, I think they would almost be adamant to maintain that all functionaries dealing with in any respect at all covered merchandise, covered foods, should be licensees.

One personal reference to my retiring president, who is the chairman of the board and chief executive officer of one of the largest service organizations in the Southwest, who said that he would not consider dealing with a broker that was not licensed.

Now, I recognize Mr. Watson's organization as being one of the finest in the business, it is under very, very fine management, that I am sure of. But I am not sure whether all of the food brokers presently engaged in handling transactions in covered frozen foods are his members, or that all of such functionaries will in the future be members of Mr. Watson's organization.

So we will have to bear in mind that we are considering legislation that would affect all people operating in the capacity of a broker regardless of their trade association affiliation.

One more thing, and that is the reference to the theme of my convention just concluded in New York. We did, as Mr. Rogers has reported, maintain a theme that we felt there was a rapprochement of Government in our industry and we resented it. That did not, however, relate to the Perishable Agricultural Commodities Act; it related particularly to labor.

I believe, Mr. Chairman, that that concludes my statement, and I would be happy to undertake to answer any questions you gentlemen might have.

Mr. GRANT. Thank you, Mr. Rains.

Any questions?

Mr. TEAGUE. Mr. Rains, I believe you stated that you hope this committee, and you felt this committee could work out an amendment which would be satisfactory to Mr. Bison and to your group.

I might suggest it would be very helpful to us, to this committee, if you and Mr. Bison could get together and give us a draft of something which is satisfactory to both of you.

Mr. RAINS. Well, I would be very happy to assist in any way possible. But we would be operating under a very heavy handicap, because I am not a lawyer, and as you know, Mr. Bison is a very able lawyer.

I made that suggestion because honestly, gentlemen, I believe that this is a matter of semantics and an understanding of how my industry operates. Reference to the local transaction would probably present a picture in the minds of many people, a wholesaler who regularly serves a retailer down the road. Well, that is one thing. But when you start to define that and put it into law, then you are going to have to call on able lawyers. And that is why I say we have an abiding faith in you gentlemen and in the General Counsel's Office and in the Department. And I am sure that Mr. Bison, working with these gentlemen, can work something out.

The only thing we ask, do not open the floodgates, do not emasculate this law.

Mr. GRANT. Further questions?

Mr. Inouye.

Mr. INOUE. Mr. Rains, I have a letter here from a broker. I would like to read two paragraphs and ask for your comments:

Food brokers who have represented the canned food principals for many years are now handling the same commodities in frozen form, and selling them to the same buyers. To require Perishable Agricultural Commodities Act licensing of food brokers who sell such frozen products is most unfair, for it singles out one form of produce food from another.

In addition, there are some frozen food producers 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 and the other a commission. Yet the broker must have a license, but the salaried salesman does not.

Mr. RAINS. I will try to recall the first part of your question, sir. What commodity was it that this gentleman referred to in the letter?

Mr. INOUE. I have no idea, sir.

Mr. RAINS. The reason I asked, sir, was that one of my broker members called me and recited virtually the same set of circumstances, and it happened that this broker was handling the Dole account. And of course the canned pineapple and what-have-you would not be covered. But he said now that they have expanded their line to frozen pineapple concentrate, if I am to continue to have their business and handle their account, they insist that I handle the frozen pineapple concentrate, which means that I have to have a Perishable Agricultural Commodities Act license, and he resented it.

My informant was considerably relieved when I told him under the law this gentleman would not need a Perishable Agricultural Commodities Act license to handle the frozen concentrate.

On the reference to the licensed salary representative of the frozen food packer as opposed to the independent food broker handling frozen covered products, I can say only this: That from the point of view of the buyer, the buyer would be protected under Perishable Agricultural Commodities Act, for dealing with a salaried representative, because the salaried representative would be responsible—or rather, the frozen food packer would be responsible for the acts of his salaried representative, and he in fact is acting as a licensee.

I would think that the frozen food broker would not bear the same responsibility as to either party to the transaction as would the salaried representative.

Mr. INOUE. Thank you very much.

Mr. GRANT. Questions?

(No response.)

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

I believe the next witness is Mr. George Grange.

We will be glad to hear from you, Mr. Grange.

STATEMENT OF GEORGE GRANGE, AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. GRANGE. Mr. Chairman and gentlemen, I do not have a prepared statement to submit this morning.

The Department's report in response to your request for further information on certain specific questions has, as you have previously indicated, been filed with the committee.

This report, to the best of our ability, bears directly on the subject matter at hand, and contains much factual material based on replies received from the licensees who responded to our questionnaire con-

cerning some of the elements that you have heard this morning from the previous witnesses.

Therefore I will not try at this juncture to repeat or paraphrase the material which is included in the Department's report.

I would like to mention just a few important items.

It has bothered us during the past month, as brought out here this morning, that for some reason or other there has been an impression created that the bill under consideration broadens the scope of the act. We too have received many letters from different firms and individuals around the country, primarily retailers, and we, among other things, have checked to see whether those that we heard from had a Perishable Agricultural Commodities Act license. A very high percentage of those we have heard from do not have a Perishable Agricultural Commodities Act license, and to the best of our knowledge are not subject to a Perishable Agricultural Commodities Act license under the present law.

What actually is under consideration is what firms should be subject to the Perishable Agricultural Commodities Act. We are not concerned here with a tax, we are concerned not with a license as such, we are concerned simply with the question of which ones should be subject to the responsibilities that are laid down by the Perishable Agricultural Commodities Act. And, the means of implementing that of course is through the licensing. All firms who deal in wholesale quantities in interstate commerce are now subject to the act. This includes shippers, wholesalers, jobbers, brokers, commission merchants, and retailers.

In our opinion, each one of them is extremely important if we are to carry out the basic fair trading principles which are laid down by the Perishable Agricultural Commodities Act. The fact that they buy from another licensee does not relieve them from their responsibilities under the act.

For example, it is just as illegal and unfair to reject without reasonable cause when purchasing from a licensed wholesaler as when purchasing from an unlicensed grower.

Most of our complaints are between two licensees, a complaint on the part of a shipper or a wholesaler that a buyer rejected without reasonable cause, a complaint on the part of a buyer that another licensee failed to ship in accordance with his contract.

In our opinion, it would be entirely fallacious to exclude retailers or any other group from the Perishable Agricultural Commodities Act on the ground that they buy 90 percent or more of their produce from licensees.

This factor simply has nothing to do with carrying out the fair trade practices of the Perishable Agricultural Commodities Act. The great majority of retailers and terminal market receivers buy practically all of their production from licensees. To say that retailers do not need the protection of the Perishable Agricultural Commodities Act is telling only half the story. This is saying that they do not need protection in order to obtain their rights.

However, a licensee also has certain definite responsibilities under Perishable Agricultural Commodities Act. It has just as bad an effect on the market for a retailer to reject a load of produce without reasonable cause as it does for a wholesaler to reject a load. And it has just as bad an effect whether he bought it from a licensee who may have

been located around the corner from him a couple blocks away as if he dickered with someone on the street, as Mr. Rains was referring to, and the load happened to be located in Wyoming at the time their local deal was being made on the streets in Chicago.

Only the largest retailers would be subject to license under the Department's proposal, as contained in our report of January 10.

This would cover only about 1 percent of the 234,000 retail firms in this country, somewhere between 2,000 and 2,500 retail firms out of the total. However, this 1 percent of the firms probably do about two-thirds of the total grocery business in the country. The remaining 99 percent which would be exempted account for less than one-third of the total business.

These retail firms certainly should be regarded as large in our opinion.

Mr. Bison has belabored the difficulty of applying the recommended \$50,000 purchases per year. In my opinion the difficulty would not be nearly as great as he envisages. The question of what would be used for cost of purchases, as we discussed with Mr. Bison and his president at the February 9 meeting, is something certainly that should be spelled out in our regulations, and not in our judgment something that we should try to get into in sufficient detail in the basic legislation itself, whether we were using net invoice price or some other criteria.

Also, the great bulk of the firms are clearly going to fall below the \$50,000 or clearly above the \$50,000. It is only going to be in the very minority of cases where you have the question of whether they fall just over or just under the line.

So that as far as this causing difficulty for many firms, in my judgment that just would not be so.

Also, as you gentlemen will recall from the report, 78 percent of the retail firms that replied stated a preference for having the licensing criteria based on dollar value of purchases rather than on the present one, which is stipulated by law and not by the Department, as was implied, of 1 ton 21 times or more per year.

With regard, Mr. Hagen, to your question concerning the matter of the supplemental fees for each outlet, or perhaps charging an additional fee dependent upon volume of business, as we point out in our report, and give the reasons why, we think that either of those approaches would be rather inequitable in many cases, or rather difficult to administer.

And in our discussions at the February 9 meeting, as I recall, both Mr. Bison and the president of the National Association of Retail Growers who were there, supported, or certainly did not object to, the Department's recommendation that supplemental fees for each outlet should not be charged, and neither should the fee be varied, dependent upon the dollar value of business being done by each licensee.

With regard to the matter of the licensing of frozen food brokers, I would just like to say that the frozen food representatives were not invited to the February 9 meeting, because it was clearly understood that this meeting was confined to the fresh produce.

We realize there are differences between fresh and frozen produce. We have recommended to the various associations—and there are several of them in the frozen food field—for several years that we would like to form an advisory group with them in the same manner

as we have with the fresh fruit and vegetable industry. As yet that arrangement has not been consummated. We sincerely are interested in following it through. It goes considerably beyond the question of the legislation itself. It has to do with rules and regulations and interpretations under the act which would be as effective as possible in applying to the frozen food industry.

Many frozen food brokers who are now licensed, I am sure, are not members of the National Food Brokers Association. Much of the testimony that Mr. Rogers gave had to do with the fact that if they comply with the bylaws of his organization, then they would comply with many of the provisions of the Perishable Agricultural Commodities Act.

We have in the present law the provision that it is unfair for a broker to—this is in the statute itself—it is unfair for a broker to make a false or misleading statement, it is unfair for a broker to misrepresent grade or quality, it is unfair for a broker not to remit collections promptly to his principal, when he is doing the collecting for his principal.

As stated in the Department's report, it is simply our conclusion that as long as the product itself is covered by the Perishable Agricultural Commodities Act, then each of the important factors in the business, including brokers, should also be covered.

Insofar as the matter of contribution by brokers and retailers to the present receipts under the act, they are rather minor. We obtain about 2 percent of our total revenue from frozen food brokers. We obtain approximately 10 percent of our total revenue from the licensed retailers.

This, gentlemen, is not a question of money. I would like to re-emphasize that. It certainly is not a question of money. It is a question of having those factors in the industry continued under license whose volume of business is such or the nature of their business is such that it is necessary to have them covered in order to effectuate satisfactorily and properly the provisions of the Perishable Agricultural Commodities Act.

Thank you very much.

Mr. GRANT. Thank you very much, sir.

Any questions?

Mr. HAGEN. Are you familiar with this bill that Mr. Cooley is supposed to introduce?

Mr. GRANGE. No, sir.

Mr. HAGEN. What is your total budget?

Mr. GRANGE. Our total expenditures last year were slightly in excess of \$800,000.

Mr. HAGEN. I assume that these fees are deducted from income taxes and/or passed on to the consumer. So why don't we eliminate fees and support the program out of general appropriations? Would the various elements of the industry object to such a change which would seem to make the program less controversial?

Mr. GRANGE. Mr. Hagen, the Perishable Agricultural Commodities Act is a unique regulatory law in the fact that it is supported by collections rather than by appropriations.

Mr. HAGEN. Well, the NLRB handles essentially the same function in a different activity, and they are supported by appropriations?

Mr. GRANGE. Yes, sir; practically all regulatory laws to my knowledge are supported by appropriations. The industry representatives

that have appeared in the past—and I know that previous amendments to the law—have indicated that it is their desire to continue the present arrangement. Some of them have made the statement that they would rather take their chances with the House and Senate Agricultural Committees rather than the Appropriation Committees insofar as the adequacy of the revenue was concerned. This is something that was developed by the industry itself; they look at it as being their law and their act, and we are providing service to them under it.

They feel as we do, that they have a very definite interest at stake in this law. And we work with them as closely as we know how in carrying it out, just as satisfactorily and effectively as we possibly can.

Personally, I think the fact that they do support the administration of the act by the license fee has contributed, Mr. Hagen, very materially to this spirit of coordination and cooperation which, contrary to the impression you may have received this morning, I think basically has existed through the great bulk of the fresh and frozen fruit and vegetable industry.

Mr. HAGEN. Thank you.

Mr. GRANT. Does this legislation materially increase the license fees?

Mr. GRANGE. The legislation would authorize the Secretary of Agriculture to charge up to \$50 per year license fee. The present limitation, Mr. Grant, is \$25.

Mr. GRANT. Is it the same on a retailer as a broker?

Mr. GRANGE. Yes, sir. We have stated that, based on our present costs, we would have to increase our license fee approximately \$11 per year. When the bill is enacted we would propose immediately, because we are running significantly into the red, and we are about to run out of money, to increase the license fee probably to \$36 per year. We would select the \$36 because it is evenly divisible by 12, and it facilitates the matter of carrying out our licensing operations.

Mr. GRANT. Counsel wishes to ask a question.

Mr. HEIMBURGER. Do the committee members have any further questions?

Mrs. MAY. I have a question for Mr. Grange.

Actually my question to Mr. Grange is to his entire Department, as we are considering this bill. Certain questions have arisen about the present administration of the act and regulations. This refers to a case I have in my own district. As a result, there has been a great deal of doubt expressed on this new legislation because of certain things that have transpired under the administration of the present act. In particular, Mr. Chairman and Mr. Grange, I am referring to a shipper of deciduous fruits and vegetables in the State of Washington who recently wrote me regarding a case that has been before your Department since 1960. I will discuss this case very briefly, if I may quote from Mr. White's letter.

In 1960 Mr. Dimond of the Department of Agriculture Regulatory Branch made a preliminary statement or finding in this case in favor of another fruitgrower, Mr. Joseph, of Yakima, Wash., Joseph Northwest of Yakima, Wash., and I quote from the opposing litigant's letter:

The decision rendered therein was against us on every point, and in studying it we found that the findings of fact did not conform to the real fact of record in most instances.

And it goes on in this paragraph of the letter to state his specific objections to the finding.

The White Co. prepared a 13-page statement setting forth their objections in detail, which in December of that year, 1960, the 31st, they submitted again to your Department through Mr. Dimond. And on January 13, 1961, they received a letter from your office acknowledging receipt of this statement of December 31, and granting a stay order for reconsideration. And then in just something like 60 days, about a month after there was a change in administration, they were all at once advised that decision had been made, that their application for reconsideration had been dismissed.

This dismissal order was signed, of course, by Mr. Flavin, who has originally granted the reconsideration order. My correspondent testified that when this decision was completely reversed that the dismissal order was very brief, it covered only four short paragraphs, and it did not refer in any way to this 13-page statement in support of reconsideration. He also points out that the Department had had a year to prepare their order, and certainly sufficient time to set forth in their findings of fact every important fact advanced by either party.

Then he felt that here they certainly, their company certainly had a real case for full consideration of the statement they had made and on which they had been granted original reconsideration.

According to this letter the firm took it up again with Secretary Freeman and was told that the decisions of Mr. Flavin were final, and I guess he has accepted this decision. But he comes to this conclusion in his letter to me:

The difficulty we have experienced in trying to secure justice for our growers has convinced us that there is a crying need for some changes in the laws and regulations of this particular Department, or changes perhaps in the way they are administered.

I would just like to say here that I am not familiar with all the details of this case, because I have not had a full statement from the Department. My point is that if we are experiencing difficulty under the present wording of the act, due to the way it has been administered we may jeopardize amendments to provide better regulations. This is an important Government department, and it has important protective responsibilities. It may be that we are creating a hostility and resistance that would not occur if there were more careful analysis of some of these decisions.

Again, may I assure you that I am not attempting to judge merits of the decision in this particular case. But it is a classic example of how misunderstanding thwarts good legislation. I do not quarrel with the Department's finding, I just feel that the respondent here has good basis for complaint and would appreciate a full statement from your Department on it so that I might answer him satisfactorily.

That is all, Mr. Chairman.

Mr. MATTHEWS. May I ask one brief question?

Mr. Bison at a previous hearing requested us to approve an exemption from the licensing provisions of the Perishable Agricultural Commodities Act those retailers who purchase 90 percent or more of their fresh and frozen fruits and vegetables from one or more wholesalers licensed under the act. Now, then, as I understand, the Department is willing to recommend that all retailers be exempt

from the license requirement whose dollar purchases of commodities covered by the act are \$50,000 or less annually.

Mr. GRANGE. Yes, sir.

Mr. MATTHEWS. Now, Mr. Grange, my question is, Could you give me an idea as to whether or not there would be more retailers covered under your recommendations or more covered under Mr. Bison's recommendations?

Mr. GRANGE. I don't know as I can give you a very good answer, Mr. Matthews. Under the Department's proposal it is our estimate, based on the information we have available, that approximately 1 percent of all retail firms in the country would be subject to license.

Mr. MATTHEWS. Let me emphasize that, just 1 percent of them?

Mr. GRANGE. Just 1 percent.

Now, as to the effect of the amendment recommended by Mr. Bison, he has changed it from the one that he previously submitted to include the location of the wholesaler. The original amendment as presented by Mr. Bison, as we stated in our report, in our judgment would exempt practically every retail firm in the country regardless of how large it is. With the modification, it would cover some firms now that would have been excluded under his original proposal. How many would be excluded I have no way of knowing. How would you deal with State lines and how would you ever learn whether a particular retailer was or was not subject to license I am not clear in my mind at this time. It would be extremely difficult without a survey or study, as Mr. Bison stated—I concur with him on this point, that it would be extremely difficult without such study or survey to make it an affirmative statement as to the impact of his proposed amendment.

Mr. MATTHEWS. Thank you, sir.

Mr. GRANT. Counsel?

Mr. HEIMBURGER. I have a few questions, Mr. Chairman.

Mr. Grange, do you know approximately what \$50,000 of this covered commodity would sell for at retail?

Mr. GRANGE. The usual figure for retail markup for produce based on sales price is 30 percent. That would mean that the total gross margin on \$50,000 would be approximately \$20,000 per year.

Mr. HEIMBURGER. So that what we are talking about here is a retail license of not to exceed \$50 a year for the purpose of selling \$20,000 a year or more roughly of the covered food?

Mr. GRANGE. The total sales price would be \$70,000, the gross profit would be \$20,000 a year, of which not more than \$50 tax deductible would be paid for a Perishable Agricultural Commodities Act license fee.

Mr. HEIMBURGER. Just one more-question. Mr. Bison seemed to believe that it would be difficult to figure out what retailers might be subject to licensing under the \$50,000 a year purchase requirement. Wouldn't it be substantially more difficult to figure out what retailer would be covered under the proposal that Mr. Bison has made with respect to purchase of 90 percent of covered commodities from particular wholesalers?

Mr. GRANGE. In my judgment it would be considerably more difficult. We have a difficult one to apply now. In our judgment the proposed \$50,000 would be much simpler than the present one. The retailer records are kept in terms of dollars and not in quantity. We do not anticipate any particularly troublesome problems in applying the \$50,000 criteria.

Mr. HEIMBURGER. In the case of the 90 percent criteria, however, no matter how large or how small a retailer was, you would have to determine, first, what his total purchases for any year were of the covered commodities, and then what percentage of these purchases he made from a licensed wholesaler in the State or in the standard metropolitan area, regardless of the size of the retailer, this would have to be done?

Mr. GRANGE. I think we would have many inequities too, because where they happened to be located would determine whether they were subject to license. And we could have some firms that were considerably smaller, I believe, than others, who would be required to be licensed, just because of the pattern of their procurement.

Mr. HEIMBURGER. That seemed to me to be possible too.

Thank you, Mr. Chairman.

Mr. GRANT. I notice there that you stated that on a retail handling of approximately \$50,000 worth of perishable fruits and vegetables he would probably have a gross net of \$20,000. Is that taking into account the loss through spoilage and decay, and so forth?

Mr. GRANGE. No; this is a gross markup, Mr. Grant, that is normally used in speaking of retail margins. This will vary considerably, depending upon the product. But on an overall basis I have been told that this 30 percent of their sales price is what is commonly accepted as being an estimate of the average gross markup.

Mr. GRANT. Thank you very much.

Before we close, I have a statement here from Senator Carroll of Colorado that he wants inserted in the record, which will be done, if there is no objection.

(The statement of Senator Carroll follows:)

STATEMENT OF HON. JOHN A. CARROLL, A U.S. SENATOR FROM THE STATE OF COLORADO

PROPOSED AMENDMENTS OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT TO PROTECT INDEPENDENT COLORADO GROCERS

Mr. Chairman, I appear before you this morning on behalf of the small, independent grocers in Colorado.

The small, independent grocers in my State have what I consider to be a valid grievance against the administration of the Perishable Agricultural Commodities Act.

I am going to propose that the act be amended to cure what we consider to be a discriminatory condition.

Before I describe the problem in the State of Colorado, let me emphasize that our small, independent grocers fully support the purposes of the Perishable Agricultural Commodities Act. They encourage its full implementation.

What they do object to is the unfair imposition of an excessive amount of the financing of the Perishable Agricultural Commodities Act on the small, nonchain grocer.

I know that the Agriculture Department intends to recommend to your committee that the Perishable Agricultural Commodities Act be amended to change the licensing criteria for retail grocers. As I understand it, under the proposed USDA amendment, grocers who purchase more than \$50,000 worth of fresh or frozen fruits and vegetables each year would be subject to paying the license fee.

While there is no doubt that this change to a "dollar volume" criteria will be an immeasurable improvement over the old cloudy regulations of "1 ton or more (of the commodities) in excess of 20 times per year," it is still discriminatory against the independent grocer.

Under the proposed USDA amendment 63 independent Colorado retail grocers would be licensed.

However, at the same time, the Perishable Agricultural Commodities Act, unless further amended, would still permit the big Colorado grocery chains to

operate with one license covering their hundreds of stores, most of which are many times larger than the independent retailers "down the block" who would have to be licensed.

Here is what Mr. Fred S. Fishburn, general manager of the Associated Grocers of Colorado, told me a few days ago:

"If the Perishable Agricultural Commodities Act is amended to require licensing of grocers purchasing over \$50,000 of fresh or frozen fruits or vegetables, 63 of our member stores would be affected.

"We do not agree with the proposal, because our members are still discriminated against because the chain headquarters takes out one license for the distribution and not any for the retail units while we take out one for our distribution warehouse and under the new proposal 63 of our members would be affected and need the license and many more will come under it as they grow and do more business."

The USDA admits that the 300 large grocery chains in the country (doing 39 percent of all retail grocery business) should be licensed, because they affect the code of fair trading practices under the Perishable Agricultural Commodities Act.

I don't think anyone disagrees with this.

The Associated Grocers of Colorado, a 27-year-old organization of privately owned, small, independent grocers, agrees that its own distribution warehouses in Denver and Pueblo should be subject to licensing, because it too, like the chain wholesale center, is affected by the code of fair trading practices with the fruit and vegetable farmer.

But it is hard to understand why the AG member stores should be subject to licensing. They draw their stocks entirely from one central supply source in the exact same manner as a branch store of a major supermarket chain. The branch store of the chain, however, is exempt from licensing, even though it may do three times the volume of business of its AG competitor across the street.

This to me seems to be pure and simple "discrimination."

The 637 independent grocers in the Rocky Mountain region ask simply for equitable treatment.

They should not be penalized because they do not belong to a large national chain.

They should not be penalized because they espouse and put into practice the spirit of private ownership and free competition as exemplified in a "small business."

It would seem to me that the Department of Agriculture and the Congress would encourage competition in retail food marketing, rather than place more restrictive burdens on the small-business man who challenges the giant, corporate food chains with a bit of competitive spirit.

I make two alternative proposals for amending the Perishable Agricultural Commodities Act, Mr. Chairman, both of which I will submit in proper form to committee counsel.

First, I propose that the act be amended to exempt from licensing, independent retail grocers who in a year purchase all of their fresh and frozen fruits and vegetables from the same wholesale source. This would cover a marketing organization of hundreds of small, privately owned grocery stores who buy their stocks cooperatively from one central supply source.

Second, if in the wisdom of this committee it feels that the purposes and objectives of the Perishable Agricultural Commodities Act are best served by licensing all retail grocers who purchase a certain "dollar volume" of fresh or frozen fruits and vegetables, then I propose that the Perishable Agricultural Commodities Act be amended to provide for licensing of unit stores within a grocery chain that meet the "dollar volume" criteria. This amendment would "equalize" treatment between grocery chain stores and privately owned, small business groceries.

Mr. Chairman, I thank you for your courtesy in hearing me today, and if the bill before you (H.R. 5023) is amended as I recommended, to protect the small, independent grocer in Colorado, I assure you I will do all in my power to see to it that my colleagues in the Senate understand and support the action of the House.

Mr. GRANT. Thank you very much.

Mr. McINTIRE. If it is appropriate, could the report of the Department under date of January 12 be made a part of the record, or should that just be made part of the file? If it is not too extensive,

I think it would be helpful to have it in the record itself. I ask unanimous consent that it be included in the record.

Mr. GRANT. Very well.

(The report referred to follows.)

SUPPLEMENTAL REPORT TO CONGRESS BY THE DEPARTMENT OF AGRICULTURE
ON THE PERISHABLE AGRICULTURAL COMMODITIES ACT

During the 1st session of the 87th Congress, two bills, S. 1037 and H.R. 5023, were introduced to amend the Perishable Agricultural Commodities Act. During August 1961, hearings on these bills were conducted by the subcommittee of the Committee on Agriculture and Forestry of the Senate and the Subcommittee on Domestic Marketing of the Committee on Agriculture of the House of Representatives. These bills were supported by most of the large associations which represent the fruit and vegetable industry. The National Association of Retail Grocers of the United States and the National Food Brokers Association proposed that the act be further amended to exempt certain retailers and frozen food brokers from its jurisdiction.

As a result of these proposals, the Senate committee requested the Secretary of Agriculture to investigate the feasibility of variable or supplemental fee rates and to review the definitions now contained in the act that determine which retailers are subject to license. It was also requested that a study be made to ascertain if a dollar value standard rather than tonnage purchased would be more desirable and realistic in determining the licensing liability of retailers. Subsequently, the Senate passed S. 1037 with the added provision that the annual license fees of retailers and frozen food brokers would remain at \$25 while the license fees for other licensees could be increased up to a maximum of \$50 to provide the funds necessary to administer the act.

The House committee also requested the Department of Agriculture to study certain aspects of the act as discussed below:

1. TO WHAT EXTENT SHOULD RETAILERS BE REQUIRED TO BE LICENSED UNDER
THE ACT?

The present retailer licensing formula "purchases of 1 ton or more of fresh or frozen fruits and vegetables in excess of 20 times per year" is a very discriminating one. Under it, only 1½ percent of the retailers in the country are licensed. We do not have 100 percent coverage so, to be on the safe side, we have estimated that 2 or 3 percent of the retailers presently are subject to the Perishable Agricultural Commodities Act. It is clear, therefore, that even if some of the licensed retailers should be excluded from the act, it would affect only a fractional percentage of the retail stores in the country.

No one has proposed that all retailers, regardless of how small, should be covered by the Perishable Agricultural Commodities Act. On the other hand, no one has proposed that all retailers, regardless of how large, should be excluded. The question then involves the matter of where the line should be drawn.

As a general principle, retailers should be licensed if their operations are of enough significance to affect the general application of the Perishable Agricultural Commodities Act code of fair trading practices. This certainly should include the nearly 300 large chains who do 39 percent of the retail food business in the country. This certainly should exclude the approximately 170,000 small single-unit firms (65 percent of the total stores) who do only 8 percent of the total retail food business.

This leaves 35 percent of the retail firms, comprised of small chains and single-store supermarkets, doing 53 percent of the total food business on which the question of where to draw the line rests.

Unjustified rejections, failure to pay, or other unfair trading practices by large retailers have a major economic impact on growers, shippers, and all other factors in the industry. This is true whether the retailer buys directly from the grower or buys from a wholesaler. It has a direct effect on the price which the shipper pays to the grower. Risk of losses by wholesalers due to unfair rejection or failure to pay by the retailer is reflected in the price paid to growers. Business failures by wholesalers inevitably result in monetary losses to their creditors—the growers and shippers. Failure to pay within a reasonable time is presently a curse of the fruit and vegetable industry—many firms want to do business on someone else's money without having to pay interest. Apparently, this starts at the top in many cases so that several months may elapse before the grower gets his money

after it is handed from the retailer to the wholesaler, then to the shipper, and finally to the grower.

In our judgment, the question clearly is not one of who the retailer buys from in determining whether he should be subject to the act. Instead, it is the question of determining whether his volume of business is sufficient to make him an important link in carrying out the fair trading practices of the act.

2. WHAT LEGAL CRITERIA SHOULD BE ESTABLISHED TO DESIGNATE THOSE RETAILERS REQUIRED TO OBTAIN A PERISHABLE AGRICULTURAL COMMODITIES ACT LICENSE?

After receiving the committee's request for this report, a questionnaire was mailed to each licensee in order to obtain certain information which was not otherwise available. Replies were received from about 45 percent of the licensees with many of them failing to answer the questionnaire in full. (See exhibit A for questionnaire.)

One of the questions asked retailers was whether it would be preferable to use dollar value of purchases instead of tonnage in determining whether retailers are subject to licensing. The views by retailers expressed on this question were as follows:

Retailer preference for dollars versus tonnage as basis for licensing

[In percent]

	Retail store firms	Retail truckers	Total
Prefer dollar value.....	77.8	67.1	76.9
Prefer tonnage.....	9.9	14.5	10.3
No preference.....	12.3	18.4	12.8
Total.....	100.0	100.0	100.0

We concur with the view of the 77 percent that dollar value to determine which retailers are subject to the PACA would be preferable to the present tonnage formula. Most retailers keep their records of purchases and sales of fresh and frozen fruits and vegetables in terms of dollars—not in tonnage. Retailers probably do not know the net weight of the bulk containers of many products—crates, boxes, and sacks—which they then break down and sell by count or piece.

The survey also revealed that the present formula of "purchases of 1 ton or more of fresh or frozen fruits and vegetables in excess of 20 times per year" results in some licensing quirks in relation to the total annual value of purchases by these firms. Evidently, variations in the pattern of purchases (e.g., deliveries once per week versus three times per week) have caused some retailers to be licensed whose total annual purchases were relatively small.

The percentage of retailers by size bracket who responded to the survey was as follows:

Annual purchases of fruits and vegetables by licensed retailers

Annual purchases of fruits and vegetables	Percent of firms	Percent of dollar value
0 to \$10,000.....	11	0.1
\$10,000 to \$25,000.....	13	.5
\$25,000 to \$50,000.....	18	1.6
\$50,000 to \$250,000.....	43	11.6
\$250,000 to \$1,000,000.....	10	36.4
Over \$1,000,000.....	5	49.8
Total.....	100	100.0

The retailers buying less than \$50,000 per year represented 42 percent of the licensed firms by number but only 2.2 percent of the total dollar value of purchases. Using average wholesale values per ton for fruits and vegetables, apparently many retailers in the under \$10,000 bracket are buying only 30 to 40 tons of fresh and frozen fruits and vegetables per year. This would mean that they buy less than a ton per week on the average. We believe that such firms purchasing only 0.1 percent of the supplies could be exempted without significantly

impairing the general effectiveness of the Perishable Agricultural Commodities Act. On the other hand, the firms in the \$50,000 to \$250,000 bracket purchased 11.6 percent of the total. A retailer at the \$50,000 value level is buying about 300 tons of fruits and vegetables per year or about 1 ton for each business day. We believe that the \$50,000 and higher category could not be exempted without adversely affecting the growers and wholesalers.

Therefore, we think that the questions and differences of opinion concerning the most satisfactory and acceptable dollar value will fall somewhere in the range between \$10,000 and \$50,000.

We recommend the legal criteria for determining whether or not a retailer is subject to licensing under the act be set at a minimum of \$50,000 of purchases per year of commodities covered by the act. This should effectively remove any "small retailer" about which there should be any valid question of his coverage. For example, approximately 35 percent of the other types of licensees do less than \$50,000 per year in volume of business and many of them fall in the less than \$10,000 category. (Information on size distribution of licensees by type of business is given in exhibit C.) Our recommended minimum of \$50,000 may be going too far which could result in a significant impairment in the general application of the Perishable Agricultural Commodities Act code of fair trading practices. There is no conclusive method of determining this except by actual experience. If a significant impairment should result, the act can be further amended at some future date to correct this criteria.

Based on information obtained from our survey, the effect of adopting the \$50,000 criteria on the number of licensed firms is given below:

Comparison of licensed retailers by size category

Retailers ¹	Estimated number	Percentage of total
Now licensed volume of annual purchases under \$50,000.....	1,482	0.63
Now licensed volume of annual purchases \$50,000 and over.....	2,046	.87
Total number licensed.....	3,528	1.50
Total number retail firms.....	234,000	100.00

¹ Including retail truckers.

In concluding our recommendation on the legal criteria for licensing retailers, we would like to comment very briefly on the proposal which has been made that all retailers who purchase 90 percent or more of their commodities from licensed wholesale suppliers should be exempted from the act. Even the largest retail food chain organization in the country with total sales last year in excess of \$5 billion would be exempted under this proposal. All large retailers purchase the great bulk of their produce from licensed wholesalers, located either at shipping point or in the terminal market.

The only retailers who would not be exempted under this proposal are those few retailers who buy over 10 percent of their commodities directly from growers or from other unlicensed suppliers.

3. SHOULD BROKERS DEALING IN FROZEN FOODS BE REQUIRED TO BE LICENSED UNDER THE ACT WHEN BROKERS DEALING IN CANNED FOODS ARE NOT REQUIRED TO BE LICENSED?

The specific proposal made by the National Food Brokers Association is that brokers who act only as sales agents for processors of frozen fruits and vegetables should be exempted from the act. We believe that all brokers, whether representing sellers or buyers or whether the commodity is fresh or frozen, should be subject to the act as long as the commodity itself is covered by the act. If canned foods ever were added to the act, it would then be essential to include the canned food brokers. Department testimony on these bills set forth the reasons why we believe that inclusion of brokers is essential. The act itself cites five separate provisions covering unfair practices in which brokers may not engage. Exclusion of brokers from the licensing would remove all effective means for enforcing these provisions of the act applicable to brokers.

4. SHOULD THERE BE PROVISION FOR SUPPLEMENTAL LICENSE FEES FOR FIRMS WITH MORE THAN ONE OPERATING UNIT?

There was an extremely wide range in the volume per store reported by licensees who responded to the survey. Two single-store retailers reported yearly purchases of fruits and vegetables in excess of \$1 million per store. On the other hand, a number of firms each operating six or more stores reported total purchases under \$250,000 annually per firm. The per store purchases of these firms averaged less than \$7,500. If a supplemental fee for each operating unit were adopted, these multiple-store firms might be required to pay a license fee which was substantially higher than the larger single-store firms even though their aggregate purchases were very materially less.

If the same approach were followed for other types of licensees, the probable inequities are even more apparent. For example, some of the smallest wholesalers that reported are operating several establishments, whereas some of the very largest have only one.

We recommend against the adoption of a supplemental license fee based on the number of operating units. We do not believe that it provides a fair and equitable basis for licensing. Actually, neither the costs of administering the act nor the benefits received from the act bear any relationship to the number of operating units comprising a firm. Furthermore, if the legal criteria for licensing retailers is changed to \$50,000 or more of purchases per year, it will mean that the smallest retailer will have a gross profit on fresh and frozen fruits and vegetables alone of about \$15,000 per year. This should alleviate some of the concern over the economic impact of this annual license fee on retailers and the relative ability of the different-sized firms to pay the fee.

5. SHOULD THERE BE VARIABLE FEES BASED ON THE VOLUME OF BUSINESS CONDUCTED BY EACH LICENSEE?

Approximately 70 percent of the firms responding to the survey reported an annual volume of business under the act of less than \$250,000. Ten percent reported a volume in excess of \$1 million. It is obvious, therefore, that a major part of the income needed to administer the act must come from the firms with less than \$250,000 of business under the act. Any substantial reduction in license fees paid by these firms could be accomplished only by increasing fees paid by others to levels which we believe would be extremely high. The alternative would be a schedule with relatively minor differences in fees from low to high volume firms. Further, it is our opinion that the benefits to firms under the act are not necessarily related to volume of business.

Fifty-three percent of the firms replying to the survey favored variable license fees with 38 percent favoring uniform fees. Nine percent expressed no preference. There were wide variations of viewpoint on this question depending upon size and type of business. Most of the small firms were in favor of a variable fee. Most of the medium size and large firms preferred a uniform fee. Shippers, receiving market commission merchants, growers agents, and freezers indicated a significant preference for uniform fees. On the other hand, retailers, brokers, truckers, and manufacturers indicated a significant preference for variable fees. There was little difference in the views of market receivers and canners on this question. (Detailed information on fee preferences by size and type of business is included in exhibit D.)

A variable license fee system based on volume of business would be very difficult and expensive to administer. A method would be needed to spotcheck records of licensees to verify the correctness of the license fee paid. We conservatively estimate that the additional cost of administering such a variable fee system would amount to approximately \$115,000 annually. This in itself would add nearly \$5 per year to the average fee for each licensee. In addition, licensees would have extra bookkeeping and reporting costs. Annual renewal of license is now a simple matter. This would not be true for either the licensee or the Department if the size of the fee had to be based on volume of business conducted during the past year.

In view of the industry response by size and type of business, the Department concludes that there is no strong overall industry preference for a variable fee. We recommend against adoption of a variable fee system based on volume of business on the further grounds of the additional costs and the difficulties it would create, both for licensees and for the Department.

6. SUMMARY OF RECOMMENDATIONS

The Department recommends:

- (a) That dollar value of purchases rather than tonnage purchased be used in determining which retailers are subject to license and further that all retailers be exempt from the license requirements whose dollar purchases of commodities covered by the act are \$50,000 or less annually. This would require amending the present act by deleting subparagraph (6)(B) of the first section and adding the following in lieu thereof: "(B) No person buying any such commodity solely for sale at retail shall be considered as a 'dealer' in respect to any such commodity until his purchases of such commodity in any consecutive 12-month period are in excess of \$50,000;"
- (b) That all brokers negotiating purchases or sales of commodities covered by the act should continue to be subject to the act.
- (c) That supplemental fees based on number of stores or units should not be imposed.
- (d) That uniform license fees should be continued rather than adopting a fee schedule based on volume of business.

EXHIBIT A

U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE,
Washington, D.C., October 20, 1961.

PERISHABLE AGRICULTURAL COMMODITIES ACT SURVEY

To Perishable Agricultural Commodities Act Licensees:

Proposed amendments to the Perishable Agricultural Commodities Act were submitted to Congress in the 1961 session. One of the proposed amendments dealt with license fees which are the sole source of revenue to pay for the cost of administration of the act. In recent years, the current fee has not produced sufficient revenue to meet these expenses, and it has been necessary to draw upon the limited reserve funds built up in previous years. The bill, therefore, proposed to authorize an increase in the license fee to a maximum of \$50. However, the Department proposes to increase the fee to only approximately \$35 at this time to cover current administrative expenses. Representatives of the retailers and the frozen food brokers have objected to increasing the fee and questioned the equity of requiring payment of the same annual fee by each licensee, regardless of the size of the business, or the number of branches operated. The Secretary of Agriculture was requested by the Senate Committee on Agriculture and Forestry and the House Committee on Agriculture to investigate the feasibility of using variable fees depending on the volume of business conducted, or the number of branches or stores operated. The Department does not oppose the principle of variable fees if the industry favors such a plan. However, we would not like to have a plan adopted that would be costly to administer. Of course, it should be recognized that if a variable fee plan is adopted licensees will be called upon to submit reports to the Department showing the volume of business conducted, or number of branches or stores operated. Also, the records of licensees would be subject to review by the Department to verify the accuracy of the reports.

Also, with respect to retailers, it was requested that a study be made to determine if the cost of fresh and frozen fruits and vegetables purchased, rather than the tonnage purchased, would be a more desirable and realistic method of determining whether retailers are subject to licensing.

The Department is soliciting your prompt cooperation in completing this study. Please answer the questions on the enclosed questionnaire and return it to the Department by November 10, 1961, in order that a report can be made to Congress. Use the self-addressed envelope which requires no stamp. Please review the instructions carefully before completing the questionnaire. If your records are incomplete, a good estimate is better than no reply. The information you provide will be held confidential and used only in combination with replies from other licensees.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division.

INSTRUCTIONS FOR ANSWERING QUESTIONS

1. Base your answers on business conducted during the most recent 12 months for which information is available. If you have been in business for less than 12 months, furnish anticipated amount of business that will be conducted during a 12-month period. Include only fruits and vegetables that originated in, or were shipped to, another State or foreign country. Do not include fruits and vegetables which you have grown.
2. Review all categories listed before answering the questions.
3. If business is conducted in more than one category, insert the amount of business conducted under each of the appropriate categories.
4. In reporting frozen fruits and vegetables, do not include those which have been dried or manufactured into articles of food of a different character such as juices, concentrates, french-fried potatoes, and so forth.
5. Firms buying fresh and frozen fruits and vegetables to supply their subsidiaries or service their cooperative members should report as market receivers.
6. Retail subsidiaries and members of service cooperatives holding separate licenses under this act should report the value of fresh and frozen fruits and vegetables received through their parent firms or purchasing organizations.

Fruit and Vegetable Categories		Value of Business (in dollars)	
Category	Sub-category	Value	Percentage of Total
Fruit	Apples		
	Pears		
	Oranges		
	Grapefruit		
Vegetable	Tomatoes		
	Peas		
	Beans		
	Other		
Frozen Fruit	Apples		
	Pears		
	Oranges		
	Grapefruit		
Frozen Vegetable	Tomatoes		
	Peas		
	Beans		
	Other		

70

NO. 3000

225000

5000

AMOUNT OF BUSINESS MADE

FORM FV-274
(10-12-61)UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
FRUIT AND VEGETABLE DIVISION
WASHINGTON 25, D. C.FORM APPROVED
BUDGET BUREAU NO. 40-61137

PERISHABLE AGRICULTURAL COMMODITIES ACT SURVEY

INSTRUCTIONS: Please read carefully the instructions in the covering letter before answering questions. If records for

supplying answers to Part 2 are not readily available, your best estimates will be satisfactory.

PART 1 - GENERAL (To be answered by ALL licensees.)

1. WHICH OF THE FOLLOWING METHODS OF DETERMINING PACA LICENSE FEE LIABILITY DO YOU PREFER?

☐ 1(A) PREFER UNIFORM PACA LICENSE FEE
FOR ALL LICENSEES☐ 2(B) PREFER VARYING PACA LICENSE FEE
BY SIZE OR TYPE OF BUSINESS.**PART 2 - TYPE OF BUSINESS CONDUCTED** (To be answered as applicable.)

(REPORT FOR 12-MONTH PERIOD - See instruction No. 1 in the covering letter.)

THIS SECTION TO BE COMPLETED BY SHIPPERS AND RECEIVERS
(Report SALES)

2. MARKET RECEIVERS (including distributors and jobbers)

3. SHIPPERS

4. TRUCKERS SELLING AT WHOLESALE

5. NUMBER OF BRANCHES OR UNITS
OPERATED ON AN ANNUAL BASIS6. MAXIMUM NUMBER OF BRANCHES OR UNITS
OPERATED AT ANY ONE TIME ON A SEASONAL BASIS**THIS SECTION TO BE COMPLETED BY BROKERS AND SALES REPRESENTATIVES**
(Report GROSS FEES AND COMMISSIONS EARNED)

7. BROKERS (including independent sales agents)

8. BUYING BROKERS

9. RECEIVING MARKET COMMISSION MERCHANTS

10. GROWERS' AGENTS (including cooperatives)

11. NUMBER OF BRANCHES OPERATED ON AN ANNUAL BASIS

12. MAXIMUM NUMBER OF BRANCHES OPERATED
AT ANY ONE TIME ON A SEASONAL BASIS**THIS SECTION TO BE COMPLETED BY PROCESSORS**

13. CANNERS - PURCHASES OF FRESH FRUITS AND VEGETABLES

14. FREEZERS - PURCHASES OF FRESH AND FROZEN FRUITS AND VEGETABLES

15. FREEZERS - SALES OF FROZEN FRUITS AND VEGETABLES

16. MANUFACTURERS - PURCHASES OF FRESH AND FROZEN FRUITS AND
VEGETABLES FOR USE IN THE PRODUCTS

17. NUMBER OF PLANTS OPERATED

THIS SECTION TO BE COMPLETED BY RETAILERS

(Report PURCHASES)

18. RETAILERS OPERATING FROM ESTABLISHED PLACE OF BUSINESS

19. NUMBER OF STORES INCLUDED IN QUESTION 18

20. RETAILERS SELLING OFF TRUCKS

21. NUMBER OF TRUCKS INCLUDED IN QUESTION 20

22. WOULD IT BE PREFERABLE TO USE DOLLAR VALUE OF
PURCHASES INSTEAD OF TONNAGE IN DETERMINING
WHETHER RETAILERS ARE SUBJECT TO LICENSING?☐ 1

YES

☐ 0

NO

NAME OF
FIRM

BY

ADDRESS
OF FIRM

TITLE

NOTE: Make comments on reverse.

EXHIBIT B

Licenses in effect, by State, number, and percentage of licensees participating in PACA survey

State	Licenses	Survey participants	Percentage of licensees participating	State	Licenses	Survey participants	Percentage of licensees participating
Alabama.....	504	158	31.3	Nebraska.....	170	82	48.2
Alaska.....	13	5	38.5	Nevada.....	31	11	35.5
Arizona.....	296	140	47.3	New Hampshire.....	61	19	31.1
Arkansas.....	356	145	40.7	New Jersey.....	725	288	39.7
California.....	2,331	1,128	48.4	New Mexico.....	123	45	36.6
Colorado.....	415	185	44.6	New York.....	2,198	1,005	45.7
Connecticut.....	272	122	44.9	North Carolina.....	598	252	42.1
Delaware.....	69	31	44.9	North Dakota.....	88	46	52.3
District of Columbia.....	97	40	41.2	Ohio.....	1,035	529	51.1
Florida.....	1,398	572	40.9	Oklahoma.....	332	109	32.8
Georgia.....	625	222	35.5	Oregon.....	266	135	50.8
Hawaii.....	92	44	47.8	Pennsylvania.....	1,343	679	50.6
Idaho.....	184	80	43.4	Rhode Island.....	92	38	41.3
Illinois.....	1,264	629	49.8	South Carolina.....	268	105	39.2
Indiana.....	688	279	40.6	South Dakota.....	34	17	50.0
Iowa.....	360	149	41.4	Tennessee.....	510	223	43.7
Kansas.....	291	124	42.6	Texas.....	1,564	639	40.9
Kentucky.....	393	147	37.4	Utah.....	119	48	40.3
Louisiana.....	501	162	32.3	Vermont.....	29	14	48.3
Maine.....	342	158	46.2	Virginia.....	503	223	44.3
Maryland.....	352	207	58.8	Washington.....	440	240	54.5
Massachusetts.....	752	390	51.9	West Virginia.....	248	110	44.4
Michigan.....	972	411	42.3	Wisconsin.....	407	204	50.1
Minnesota.....	367	216	58.9	Wyoming.....	42	17	40.5
Mississippi.....	259	93	35.9				
Missouri.....	676	301	44.5	Total.....	125,170	11,248	44.7
Montana.....	67	32	47.8				

¹ Total includes 6 licensees in Canada and 2 in Mexico.

EXHIBIT C

Distribution of volume of business in fruits and vegetables—Type of business

[In percentages]

Type of business	Under \$10,000	\$10,000 to \$24,999	\$25,000 to \$49,999	\$50,000 to \$249,999	\$250,000 to \$999,999	\$1,000,000 and over	Total
Market receivers.....	7.4	6.1	7.1	30.2	32.4	16.8	100.0
Shippers.....	4.2	6.3	7.1	32.0	33.2	17.2	100.0
Truckers (wholesale).....	13.9	13.2	20.3	44.1	7.6	.9	100.0
Brokers.....	45.6	19.6	14.7	16.5	3.0	.6	100.0
Buying brokers.....	37.9	24.7	15.3	16.6	5.5	0	100.0
Receiving market commission merchants.....	14.3	14.3	27.1	35.7	7.2	1.4	100.0
Growers agents.....	16.0	19.7	18.6	29.3	12.2	4.2	100.0
Canners.....	8.3	10.2	14.6	33.4	24.0	9.5	100.0
Freezers—Buy.....	7.7	7.7	15.3	30.8	21.2	17.3	100.0
Freezers—Sale.....	1.0	1.0	2.8	21.7	33.0	40.5	100.0
Manufacturers.....	16.4	14.9	15.5	35.5	12.9	4.8	100.0
Retailers—Establishments.....	11.3	12.6	18.3	43.0	10.3	4.5	100.0
Retailers—Trucking.....	34.0	25.7	20.7	19.0	.6	0	100.0
Total.....	13.7	11.1	13.0	33.3	19.5	9.4	100.0

EXHIBIT D

Tabulation of Perishable Agricultural Commodities Act survey results—Preference for uniform and variable fees, by volume of business and by type of business

Type of business	Under \$10,000	\$10,000 to \$24,999	\$25,000 to \$49,999	\$50,000 to \$99,999	\$100,000 to \$174,999	\$175,000 to \$249,999	\$250,000 to \$349,999	\$350,000 to \$499,999	\$500,000 to \$749,999	\$750,000 to \$999,999	\$1,000,000 and over	Total
Market receivers:												
Total reports number.....	213	177	206	295	340	227	252	267	257	161	484	2,889
Uniform.....percent.....	15.5	27.1	25.2	27.1	33.5	40.9	47.6	30.2	64.6	67.1	77.9	46.0
Variable.....do.....	73.2	65.1	68.9	65.4	62.9	54.9	46.8	46.1	31.6	31.6	18.6	48.8
No vote.....do.....	11.3	7.3	5.8	7.5	3.5	4.2	5.6	3.7	3.9	3.1	3.5	5.2
Shippers:												
Total reports.....number.....	59	89	99	156	177	115	109	126	143	87	241	140
Uniform.....percent.....	23.7	23.6	36.3	38.5	49.7	57.4	65.1	65.1	62.9	75.9	83.4	56.7
Variable.....do.....	67.8	73.0	59.6	55.1	46.9	41.7	30.3	31.5	30.8	20.7	13.3	39.1
No vote.....do.....	8.5	3.4	4.0	6.4	3.4	0.9	4.6	3.2	6.3	3.4	3.4	4.1
Truckers (wholesale):												
Total reports.....number.....	177	108	259	308	180	74	55	23	14	5	11	1,274
Uniform.....percent.....	19.8	24.4	20.8	26.9	27.8	41.9	38.2	47.8	57.1	40.0	72.7	27.0
Variable.....do.....	74.0	67.9	74.1	69.8	68.3	51.4	60.0	43.5	35.7	40.0	27.3	68.0
No vote.....do.....	6.2	7.7	5.0	3.2	3.9	6.8	1.8	8.7	7.1	20.0	0	5.0
Brokers:												
Total reports number.....	399	171	129	86	40	18	10	5	7	4	5	874
Uniform.....percent.....	14.5	32.2	48.8	52.3	55.0	55.6	40.0	40.0	28.6	75.0	40.0	30.4
Variable.....do.....	73.4	59.1	47.2	38.4	37.5	44.4	40.0	40.0	28.6	25.0	40.0	59.7
No vote.....do.....	12.0	8.8	3.9	9.3	7.5		20.0	20.0	42.8		20.0	9.8
Buying brokers:												
Total reports number.....	89	58	36	18	12	9	7	1	3	2	0	235
Uniform.....percent.....	27.0	55.2	55.6	72.2	25.0	55.6	42.9	100.0	66.7	100.0	0	44.7
Variable.....do.....	70.8	36.2	41.7	27.8	75.0	33.3	42.9	40.0	33.3		0	51.1
No vote.....do.....	2.2	8.6	2.8			11.1	14.2				0	4.2
Receiving market commission merchants:												
Total reports number.....	10	10	19	12	9	4	2	3	0	0	1	70
Uniform.....percent.....	50.0	50.0	57.9	58.3	77.8	50.0	100.0	100.0			100.0	61.7
Variable.....do.....	40.0	50.0	42.1	41.7	11.1	50.0					0	33.7
No vote.....do.....	10.0				11.1						0	2.9
Growers agents:												
Total reports number.....	30	37	35	26	19	10	7	3	7	6	8	188
Uniform.....percent.....	33.3	56.8	54.3	65.4	73.7	50.0	71.4	100.0	42.8	50.0	100.0	57.7
Variable.....do.....	60.0	40.5	28.6	26.9	26.3	40.0	28.6		57.2	50.0	0	36.2
No vote.....do.....	6.7	2.7	17.1	7.7		10.0				50.0	0	6.4
Canners:												
Total reports number.....	21	26	37	35	34	16	20	22	11	8	24	254
Uniform.....percent.....	19.0	26.9	21.6	34.3	41.2	43.8	70.0	63.6	54.5	87.5	66.0	42.0
Variable.....do.....	81.0	61.5	67.6	51.4	47.1	37.5	30.0	31.8	36.4	12.5	29.2	48.9
No vote.....do.....		11.5	10.8	14.3	11.8	18.8		4.5	9.1		4.2	8.7

Freezers—buy:											
Total reports number	4	4	4	5	6	4	1	2	4	9	52
Uniform	25.0	50.0	50.0	40.0	100.0	50.0	100.0	100.0	75.0	88.9	40.4
Variable	do	do	do	60.0	do	do	do	do	25.0	11.1	55.8
No vote	25.0	do	do	do	do	do	do	do	do	0	3.8
Freezers—sale:											
Total reports number	1	1	3	7	9	6	9	11	9	43	106
Uniform	100.0	100.0	100.0	14.3	44.4	66.7	44.4	63.6	66.7	83.7	60.4
Variable	do	do	do	85.7	55.6	33.3	55.6	36.4	33.3	7.0	33.0
No vote	do	do	do	do	do	do	do	do	do	9.3	6.6
Manufacturers:											
Total reports number	85	77	80	67	26	27	22	14	4	25	518
Uniform	8.2	22.1	32.5	61.2	46.2	51.9	68.2	50.0	75.0	84.0	37.8
Variable	80.0	72.7	67.5	32.8	53.8	44.4	27.3	28.6	25.0	12.0	54.6
No vote	11.8	5.2	0.0	6.0	do	3.7	4.5	21.4	do	4.0	7.5
Retailers—Establishments:											
Total reports number	216	241	350	255	134	67	64	36	31	87	1,915
Uniform	11.6	14.1	16.6	31.4	37.3	38.8	51.6	61.1	38.7	67.8	21.2
Variable	78.2	75.5	74.9	56.9	52.2	53.7	39.1	27.8	48.4	19.5	63.4
No vote	10.2	10.4	8.6	11.8	10.4	7.5	9.4	11.1	12.9	12.6	10.5
Retailers—Trucking:											
Total reports number	61	46	37	10	0	1	0	0	0	0	179
Uniform	9.8	8.7	13.5	20.0	do	do	do	do	do	do	12.3
Variable	8.2	2.2	8.1	60.0	do	do	do	do	do	do	8.4
No vote	82.0	89.1	78.4	do	do	100.0	do	do	do	do	79.3
Total:											
Total reports number	1,365	1,105	1,298	1,155	638	567	546	505	321	928	9,955
Uniform	16.3	26.0	27.1	37.9	43.9	50.4	55.5	62.0	67.0	78.6	39.2
Variable	74.1	66.5	66.3	55.9	50.6	44.4	39.9	31.9	29.0	16.6	54.1
No vote	9.6	7.5	6.6	6.1	5.5	5.1	4.6	6.1	4.0	4.8	6.7

NOTE.—Reports that did not include information on volume or type of business have not been included as follows: Miscellaneous—Total reports number, 1,293; Uniform, 258 percent; Variable, 45.3 percent; and No vote, 30.7 percent.

Mr. HEIMBURGER. Could I ask Mr. Rains of the United Fruits and Vegetables one question?

Mr. GRANT. Mr. Rains, committee counsel wants to ask you one more question.

Mr. HEIMBURGER. Mr. Rains, I would like you to expand a bit on a statement you made which wasn't quite clear to me. Did I understand you to say that if this principle of exempting from Perishable Agricultural Commodities Act licensing the retailers who purchase from wholesalers within the same State, then there is no reason why this same principle should not be applied to wholesalers who purchase from wholesalers or jobbers within the same State, is that the point you are making?

Mr. RAINS. Mr. Heimburger, I believe you are referring to that part of my testimony relating to local transactions.

Mr. HEIMBURGER. That is correct, yes.

Mr. RAINS. I stated that in my opinion the term "local transaction" in our industry was rather widely misunderstood. Now, considering a local transaction in wholesale quantities, I referred to a carlot distributor in a gateway city such as Chicago who owned a car of merchandise on wheels, en route, let us say, from California to Chicago, and at the time in Wyoming, and for reasons best known to himself he wanted to get rid of that car, either to make a profit or to reduce a loss. So he negotiated with a man in the same market, maybe in the adjoining office or the adjoining wholesale store. He gave him the manifest, that is, the grade, size, number of packages, and what have you, and probably the label. He gave all that to this prospective purchaser, and they negotiated a price. And the transaction was made. Well, in my opinion that would constitute a local transaction in the minds of many people, two people standing on a curb in a city. You would say that was a local transaction. Well, that sort of thing has to be covered. It is the backbone of the industry, and many transactions like that occur regularly. The other would be a salaried representative of a big buyer at a shipping point office negotiating for the purchase of a carlot or several carlots of merchandise to be shipped, let us say, to Chicago, or New York.

There we have the salaried representative of a principal, a buyer, talking to the other principal, the owner and shipper, negotiating a sale with merchandise maybe only being loaded, or maybe the merchandise is still in the field in the process of being harvested, but he buys on the basis of what the seller represents it to be there on the manifest, again, the size, grade, quality, what have you.

And the man walks out of the shipper's office and goes about his business. That would be considered by him, I suppose, as being a local transaction. But many such transactions take place in this industry, and those must be covered.

Mr. HEIMBURGER. Thank you.

Mr. GRANT. Thank you very much.

The committee will stand adjourned.

(Whereupon, at 12:07 p.m., the subcommittee adjourned, subject to the call of the Chair.)