

[CHAPTER 718]

AN ACT

To provide a surcharge on certain air mail carried in Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of February 21, 1925, as amended by the Act approved August 24, 1935 (U. S. C., 1934 edition, Supp. II, title 39, sec. 488), be, and it is hereby, amended to read as follows:

"The Postmaster General may provide difficult or emergency mail service in Alaska, at a total annual cost of not exceeding \$25,000, including the establishment and equipment of relay stations, in such manner as he may think advisable, without advertising therefor; and he is authorized, in his discretion, to contract, after advertisement in accordance with law, for the carriage of all classes of mail to, from, or within the Territory of Alaska, by airplane, payment therefor to be made from the appropriation for star-route service in Alaska: *Provided*, That the Postmaster General, in his discretion, may fix the postage for the mails carried, or any part thereof, by aircraft to, from, or within Alaska, at rates not exceeding in any case 30 cents per ounce or 15 cents per half ounce, notwithstanding the domestic air-mail rate authorized by the Act of June 12, 1934 (39 U. S. C., 463, 1934 edition)."

Approved, August 20, 1937.

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Alaska, air mail.
49 Stat. 744.
39 U. S. C., Supp.
II, § 488.

Emergency service.

Relay stations.

Contract for carriage of mail by airplane authorized.

Proviso.
Rates of postage.

48 Stat. 933.
39 U. S. C. § 463.

[CHAPTER 719]

AN ACT

To amend the Act known as the "Perishable Agricultural Commodities Act, 1930", approved June 10, 1930, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph 6 of section 1 of the Perishable Agricultural Commodities Act, 1930, as amended, is hereby amended to read as follows:

"(6) The term 'dealer' means any person engaged in the business of buying or selling in carloads any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a 'dealer' in respect of sales of any such commodity of his own raising; (B) no person buying any such commodity solely for sale at retail shall be considered as a 'dealer' in respect of any such commodity in any calendar year until his purchases of such commodity in carloads in such year are in excess of twenty; and (C) no person buying any such commodity for canning and/or processing within the State where grown shall be considered a 'dealer' whether or not the canned or processed product is to be shipped in interstate or foreign commerce, unless such product is frozen or packed in ice within the meaning of paragraph 4 of this section. Any person not considered as a 'dealer' under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 3, and in such case and while the license is in effect such person shall be considered as a 'dealer'. As used in this paragraph, the term 'in carloads' includes wholesale or jobbing quantities as defined for any such commodity by the Secretary;".

SEC. 2. That subsection 5 of section 2 of the Perishable Agricultural Commodities Act, 1930, as amended, is hereby amended to read as follows:

"(5) For any commission merchant, dealer, or broker, for a fraudulent purpose, to misrepresent by word, act, mark, stencil, label,

August 20, 1937
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Perishable Agricultural Commodities Act of 1930, amendments.
46 Stat. 531.
7 U. S. C. § 499a (6).
"Dealer" defined.

"In carloads."

46 Stat. 533.
7 U. S. C. § 499b (5).

Unfair conduct.
Misrepresentation.

statement, or deed the character, kind, grade, quality, condition, degree of maturity, or State or country of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce."

46 Stat. 533.
7 U. S. C. § 499b (6).

Removal of evidence of grade placed on containers, etc.

SEC. 3. That subsection 6 of section 2 of the Perishable Agricultural Commodities Act, 1930, as amended, is hereby amended to read as follows:

"(6) For any commission merchant, dealer, or broker, for a fraudulent purpose, to remove, alter, or tamper with any card, stencil, stamp, tag, or other notice placed upon any container or railroad car containing any perishable agricultural commodity, if such card, stencil, stamp, tag, or other notice contains a certificate or statement under authority of any Federal or State inspector or in compliance with any Federal or State law or regulation as to the grade or quality of the commodity contained in such container or railroad car or the State or country in which such commodity was produced."

New subsection.

SEC. 4. That section 2 of the Perishable Agricultural Commodities Act, 1930, as amended, is hereby amended by adding a new subsection numbered 7 and reading as follows:

Substitution or otherwise changing contents after official inspection.

"(7) For any commission merchant, dealer, or broker, without the consent of an inspector, to make, cause, or permit to be made any change by way of substitution or otherwise in the contents of a load or lot of any perishable agricultural commodity after it has been officially inspected for grading and certification, but this shall not prohibit re-sorting and discarding inferior produce."

46 Stat. 533.
7 U. S. C. § 499c.

Licenses; settlement of liability for violations.

SEC. 5. That section 3 (a) of the Perishable Agricultural Commodities Act, 1930, as amended, is amended by adding thereto the following:

"Any person violating this provision may, upon a showing satisfactory to the Secretary of Agriculture, or his authorized representative, that such violation was not willful but was due to inadvertence, be permitted by the Secretary, or such representative, to settle his liability in the matter by the payment of the fees due for the period covered by such violation and an additional sum, not in excess of \$25, to be fixed by the Secretary of Agriculture or his authorized representative. Such payment shall be deposited in the Treasury of the United States in the same manner as regular license fees."

46 Stat. 533.
7 U. S. C. § 499d.

Issue and force of license.

SEC. 6. That section 4 of the Perishable Agricultural Commodities Act, 1930, as amended, is hereby amended to read as follows:

"(a) Whenever an applicant has paid the prescribed fee the Secretary, except as provided elsewhere in this Act, shall issue to such applicant a license, which shall entitle the licensee to do business as a commission merchant and/or dealer and/or broker unless and until it is suspended or revoked by the Secretary in accordance with the provisions of this Act, or is automatically suspended under section 7 (d) of this Act, but said license shall automatically terminate on any anniversary date thereof unless the annual fee has been paid: *Provided*, That notice of the necessity of paying the annual fee shall be mailed at least thirty days before the anniversary date: *Provided further*, That if the annual fee is not paid by the anniversary date the licensee may obtain a renewal of that license at any time within thirty days by paying a fee of \$15;

Annual fee, payment of.

Provisos.
Mailing of notice.

Renewal, if in arrears.

Causes for license refusal.
Previous violation.
49 Stat. 1533.
7 U. S. C., Supp. II,
§ 499d (b).

"(b) The Secretary shall refuse to issue a license to an applicant (1) if he finds that the applicant has previously been responsible in whole or in part for any violation of the provisions of the Act for which a license of the applicant, or the license of any partnership, association, or corporation in which the applicant held any office or,

in the case of a partnership, had any share or interest, was revoked under the provisions of section 8; or (2) if at any time within two years he has found after notice and hearing that said applicant was responsible in whole or in part for any flagrant or repeated violation of the provisions of section 2; or (3) if he finds, in case the applicant is a partnership, association, or corporation, that any individual holding office or, in the case of a partnership, having any interest or share in the applicant, has previously been responsible in whole or in part for any violation of the provisions of the Act for which the license of such individual, or of any partnership, association, or corporation in which such person held any office, or, in the case of a partnership, had any share or interest, was revoked under the provisions of section 8; or (4) if at any time within two years he has found after notice and hearing, in case the applicant is a partnership, association, or corporation, that any individual holding any office or, in the case of a partnership, having any interest or share in the applicant was responsible in whole or in part for any flagrant or repeated violation of the provisions of section 2; or (5) if he finds that the applicant, subject to his right of appeal under section 7 (c), has failed, except in case of bankruptcy, to pay within the time limit provided therein any reparation order which has been issued, within two years, against him as an individual, or against a partnership of which he was a member, or an association or corporation in which he held any office, or, in case the applicant is a partnership, association, or corporation, that any individual holding any office or, in the case of a partnership, having any interest or share in the applicant, subject to his right of appeal under section 7 (c), has failed, except in the case of bankruptcy, to pay within the time limit provided therein any reparation order which has been issued, within two years, against him as an individual or against a partnership of which he was a member, or an association or corporation in which he held any office. Notwithstanding all of the foregoing provisions of this paragraph, the Secretary, in the case of such applicant, may issue a license if the applicant furnishes a bond or other satisfactory assurance that his business will be conducted in accordance with the provisions of the Act and that he will pay all reparation orders which may previously have been issued against him for violations, or which may be issued against him within two years following the date of the license, subject to his right of appeal under section 7 (c), but such license shall not be issued before the expiration of one year from the date of revocation of license or from the date of the Secretary's finding that the applicant has been responsible, in whole or in part, for any flagrant or repeated violation of section 2. Such bond shall be in an amount sufficient in the judgment of the Secretary of Agriculture to insure payment of such reparation orders;

“(c) The Secretary shall refuse to issue a license to an applicant if he finds after notice and hearing that at any time within two years said applicant has been found guilty in a Federal court of having violated the provisions of the Act known as the Produce Agency Act (7 U. S. C., secs. 491-497), or of having violated section 14 (b) of this Act, or, in case the applicant is a partnership, that any member of the partnership was found guilty within two years of having violated the Produce Agency Act, or section 14 (b) of this Act, or, if the applicant is an association or corporation, that any officer or any person holding a responsible position therein has been found within two years to have been guilty of violating the Produce Agency Act or section 14 (b) of this Act;

“(d) The Secretary may withhold the issuance of a license to an applicant, for a period not to exceed thirty days pending an investi-

Repeated, etc., violations.

Partnerships, etc. Member, etc., having previously had license revoked.

Member, etc., responsible for repeated violations.

Failure to pay reparation order.

Bankruptcy excepted.

Waiver of revocation and issue of license; bond.

Time limitation.

Refusal, if applicant found guilty of Produce Agency Act, etc., violations.
7 U. S. C. §§ 491-497.

Withholding of license pending investigation.

Hearing.

Refusal, if found unfit, etc.

46 Stat. 534.
7 U. S. C. § 499e.

Liability to person damaged.

46 Stat. 534.
7 U. S. C. § 499f.

Complaint and investigation.

46 Stat. 534.
7 U. S. C. § 499f (e).

Complaints by non-residents.

Bond in double amount of claim, etc.

Proviso.
Reciprocal waiver provision.

46 Stat. 534.
7 U. S. C. § 499g.

Reparation order.
Decision where hearing not required, or defendant fails to answer.

gation, for the purpose of determining (a) whether the applicant is unfit to engage in the business of a commission merchant, dealer, or broker by reason of having prior to the date of the application engaged in any practice of the character prohibited by this Act, or (b) whether the application contains any materially false or misleading statement or involves any misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent, or employee of the applicant. If after investigation the Secretary believes that the applicant should be refused a license, the applicant shall be given an opportunity for hearing within sixty days from the date of the application to show cause why the license should not be refused. If after the hearing the Secretary finds that the applicant is unfit to engage in the business of a commission merchant, dealer, or broker by reason of having prior to the date of the application engaged in any practice of the character prohibited by this Act, or because the application contains a materially false or misleading statement made by the applicant or by its representative on its behalf, or involves a misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent, or employee, the Secretary shall refuse to issue a license to the applicant."

SEC. 7. That paragraph (a) of section 5 of the Perishable Agricultural Commodities Act, 1930, as amended, is hereby amended to read as follows:

"(a) If any commission merchant, dealer, or broker violates any provision of section 2 he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation."

SEC. 8. That paragraph (b) of section 6 of the Perishable Agricultural Commodities Act, 1930, as amended, is hereby amended to read as follows:

"(b) Any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any employee of the United States Department of Agriculture or any interested person may file, in accordance with rules and regulations of the Secretary, a complaint of any violation of any provision of this Act by any commission merchant, dealer, or broker and may request an investigation of such complaint by the Secretary."

SEC. 9. That paragraph (e) of section 6 of the Perishable Agricultural Commodities Act, 1930, as amended, is hereby amended to read as follows:

"(e) In case a complaint is made by a nonresident of the United States, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Secretary of Agriculture against the complainant on any counter claim by respondent: *Provided*, That the Secretary shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the furnishing of a bond."

SEC. 10. That section 7 of the Perishable Agricultural Commodities Act, 1930, as amended, is hereby amended to read as follows:

"(a) If after a hearing on a complaint made by any person under section 6, or without hearing as provided in section 6, paragraphs (c) and (d), or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified, the Secretary deter-

mines that the commission merchant, dealer, or broker has violated any provision of section 2, he shall, unless the offender has already made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as a result of such violation and shall make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order;

"(b) If any commission merchant, dealer, or broker does not pay the reparation award within the time specified in the Secretary's order, the complainant, or any person for whose benefit such order was made, may within three years of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the commission merchant, dealer, or broker, or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States. Such suit in the district court shall proceed in all respects like other civil suits for damages, except that the findings and orders of the Secretary shall be prima-facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court, nor for costs at any subsequent state of the proceedings, unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit;

"(c) Either party adversely affected by the entry of a reparation order by the Secretary may, within thirty days from and after the date of such order, appeal therefrom to the district court of the United States for the district in which said hearing was held. Such appeal shall be perfected by the filing of a notice thereof together with a petition in duplicate which shall recite prior proceedings before the Secretary, and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with the clerk of said court with proof of service thereof upon the adverse party, together with a bond in double the amount of the reparation award conditioned upon the payment of the judgment entered by the court plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. The clerk of court shall immediately forward a copy thereof to the Secretary of Agriculture, who shall forthwith prepare, certify, and file in said court a true copy of the Secretary's decision, findings of fact, conclusions, and order in said case, together with copies of the pleadings upon which the case was heard and submitted to the Secretary. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be prima-facie evidence of the facts therein stated. Appellee shall not be liable for costs in said court if appellee prevails he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs. Such petition and pleadings certified by the Secretary upon which decision was made by him shall upon filing in the district court constitute the pleadings upon which said trial de novo shall proceed subject to any amendment allowed in that court;

"(d) Unless the licensee against whom a reparation order has been issued shows to the satisfaction of the Secretary within five days from the expiration of the period allowed for compliance with such order that he has either taken an appeal as herein authorized or has made payment in full as required by such order his license shall be suspended automatically at the expiration of such five-day period until

Suit by complainant to enforce payment.

Venue of action.

Jurisdiction.

Findings of Secretary as prima-facie evidence of facts.

Attorney's fee.

Appeal; proceedings.

Filing of petition, bond, etc.

Copy to Secretary of Agriculture.

Suit in district court to be a trial de novo.

Pleadings.

Suspension of license for failure to obey reparation order or to appeal.

Proviso.
Effective if appeal
dismissed, etc.

46 Stat. 535.
7 U. S. C. § 499h.

Suspension or revo-
cation, grounds for.

Licensee employing
unlicensed employee,
restriction.

License obtained
through misrepresen-
tation.

Injunction proceed-
ings.

46 Stat. 537.
7 U. S. C. § 499a.

Inspections; em-
ployment of inspec-
tors, etc.

he shows to the satisfaction of the Secretary that he has paid the amount therein specified with interest thereon to date of payment: *Provided*, That if on the appeal the appellee prevails or if the appeal is dismissed the automatic suspension of license shall become effective at the expiration of ten days from the date of the judgment on the appeal unless prior thereto the judgment of the court has been satisfied."

SEC. 11. That section 8 of the Perishable Agricultural Commodities Act, 1930, as amended, is hereby amended to read as follows:

"(a) Whenever (a) the Secretary determines, as provided in section 6, that any commission merchant, dealer, or broker has violated any of the provisions of section 2, or (b) any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 14 (b) of this Act, the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender;

"(b) The Secretary may, after thirty days' notice and an opportunity for a hearing, revoke the license of any commission merchant, dealer, or broker who, after the date given in such notice, continues to employ in any responsible position any individual whose license was revoked or who was responsibly connected with any firm, partnership, association, or corporation whose license has been revoked. Employment of such individual by a licensee in any responsible position after one year following the revocation of any such license shall be conditioned upon the filing by the employing licensee of a bond, in such reasonable sum as may be fixed by the Secretary, or other assurance satisfactory to the Secretary that its business will be conducted in accordance with the provisions of this Act;

"(c) If, after a license shall have been issued to an applicant, the Secretary believes that the license was obtained through a false or misleading statement in the application therefor or through a misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent, or employee, he may, after thirty days' notice and an opportunity for a hearing, revoke said license, whereupon no license shall be issued to said applicant or any applicant in which the person responsible for such false or misleading statement or misrepresentation, concealment, or withholding of facts is financially interested, except under the conditions set forth in paragraph (b) of section 4.

"(d) In addition to being subject to the penalties provided by section 3 (a) of this Act, any commission merchant, dealer, or broker who engages in or operates such business without a valid and effective license from the Secretary shall be liable to be proceeded against in any court of competent jurisdiction in a suit by the United States for an injunction to restrain such defendant from further continuing so to engage in or operate such business, and, if the court shall find that the defendant is continuing to engage in such business without a valid and effective license, the court shall issue an injunction to restrain such defendant from continuing to engage in or to operate such business without such license."

SEC. 12. That section 14 of the Perishable Agricultural Commodities Act, 1930, as amended, is hereby amended to read as follows:

"(a) The Secretary is hereby authorized, independently and in cooperation with other branches of the Government, State, or municipal agencies and/or any person, whether operating in one or more jurisdictions, to employ and/or license inspectors to inspect and certify, without regard to the filing of a complaint under this Act,

to any interested person the class, quality, and/or condition of any lot of any perishable agricultural commodity when offered for interstate or foreign shipment or when received at places where the Secretary shall find it practicable to provide such service, under such rules and regulations as he may prescribe, including the payment of such fees and expenses as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That fees for inspections made by a licensed inspector, less the percentage thereof which he is allowed by the terms of his contract of employment with the Secretary as compensation for his services, shall be deposited into the Treasury of the United States as miscellaneous receipts; and fees for inspections made by an inspector acting under a cooperative agreement with a State, municipality, or other person shall be disposed of in accordance with the terms of such agreement: *Provided further*, That expenses for travel and subsistence incurred by inspectors shall be paid by the applicant for inspection to the United States Department of Agriculture to be credited to the appropriation for carrying out the purposes of this Act: *And provided further*, That official inspection certificates for fresh fruits and vegetables issued by the Secretary of Agriculture pursuant to any law shall be received by all officers and all courts of the United States, in all proceedings under this Act, and in all transactions upon contract markets under Commodities Exchange Act (7 U. S. C., Supp. 2, secs. 1 to 17 (a)), as prima-facie evidence of the truth of the statements therein contained;

“(b) Whoever shall falsely make, issue, alter, forge, or counterfeit, or cause or procure to be falsely made, issued, altered, forged, or counterfeited, or willingly aid, cause, procure or assist in, or be a party to the false making, issuing, altering, forging, or counterfeiting of any certificate of inspection issued under authority of this Act, the Produce Agency Act of March 3, 1927 (7 U. S. C., sec. 491-497), or any Act making appropriations for the Department of Agriculture; or shall utter or publish as true or cause to be uttered or published as true any such false, forged, altered, or counterfeited certificate, for a fraudulent purpose, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or by imprisonment for a period of not more than one year, or both, at the discretion of the court.

Approved, August 20, 1937.

Fees and expenses for services.

Provisos.
Disposition of, collected by licensed inspector.

By other inspectors.

Travel and subsistence, inspectors; payment by applicant.

Official inspection certificates, effect of.

49 Stat. 1491.
7 U. S. C., Supp. II, §§ 1-17a.

Forging or counterfeiting of certificates.

44 Stat. 1355.
7 U. S. C. §§ 491-497.

Punishment.

[CHAPTER 720]

AN ACT

To authorize the completion, maintenance, and operation of Bonneville project for navigation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of improving navigation on the Columbia River, and for other purposes incidental thereto, the dam, locks, power plant, and appurtenant works now under construction at Bonneville, Oregon and North Bonneville, Washington (hereinafter called Bonneville project), shall be completed, maintained, and operated under the direction of the Secretary of War and the supervision of the Chief of Engineers, subject to the provisions of this Act relating to the powers and duties of the Bonneville power administrator provided for in section 2 (a) (hereinafter called the administrator) respecting the transmission and sale of electric energy generated at said project. The Secretary of War shall provide, construct, operate, maintain, and improve at Bonneville project such machinery, equipment, and

August 20, 1937

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Bonneville project.
General purposes declared.

Completion, maintenance and operation under Secretary of War.