

**(b) Penalties**

A violation of this section shall be considered a violation of paragraphs (4) and (5) of section 2 of the Perishable Agricultural Commodities Act (7 U.S.C. 499b(4) and (5)).

**(c) Reimbursement**

A person bringing a complaint under this section shall reimburse the Secretary of Agriculture for any and all costs associated with the enforcement of this section.

**(d) Prohibition**

The Secretary of Agriculture shall not increase any fees charged under the Perishable Agricultural Commodities Act [7 U.S.C. 499a et seq.] to offset costs associated with the operation of this section.

**(e) Regulations**

The Secretary shall promulgate regulations to carry out this section.

(Pub. L. 101-624, title XIII, §1309, Nov. 28, 1990, 104 Stat. 3562.)

## REFERENCES IN TEXT

The Perishable Agricultural Commodity Act, and the Perishable Agricultural Commodities Act, referred to in subsecs. (a), (b), and (d), probably mean the Perishable Agricultural Commodities Act, 1930, act June 10, 1930, ch. 436, 46 Stat. 531, as amended, which is classified generally to this chapter (§499a et seq.). For complete classification of this Act to the Code, see section 499a(a) of this title and Tables.

7 U.S.C. 499a(4), referred to in subsec. (a), was redesignated 7 U.S.C. 499a(b)(4) by Pub. L. 102-237, title X, §1011(1)(A), Dec. 13, 1991, 105 Stat. 1898.

The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 et seq.), referred to in subsec. (a)(1), is act June 3, 1937, ch. 296, 50 Stat. 246, as amended, which is classified principally to chapter 26A (§671 et seq.) of this title. For complete classification of this Act to the Code, see section 674 of this title and Tables. The Agricultural Marketing Agreement Act of 1937 reenacted and amended the Agricultural Adjustment Act, title I of act May 12, 1933, ch. 25, 48 Stat. 31, as amended, which is classified generally to chapter 26 (§601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 601 of this title and Tables.

## CODIFICATION

Section was enacted as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Perishable Agricultural Commodities Act, 1930 which comprises this chapter.

**§ 499c. Licenses****(a) License required; penalties for violations**

After December 10, 1930, no person shall at any time carry on the business of a commission merchant dealer, or broker without a license valid and effective at such time. Any person who violates any provision of this subsection shall be liable to a penalty of not more than \$1,000 for each such offense and not more than \$250 for each day it continues, which shall accrue to the United States and may be recovered in a civil suit brought by the United States.

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 \$250, 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.

**(b) Application and fees for licenses****(1) Application for license**

Any person desiring any such license shall make application to the Secretary. The Secretary may by regulation prescribe the information to be contained in such application and to be furnished thereafter.

**(2) License fees**

Upon the filing of an application under paragraph (1), the applicant shall pay such license fees, both individually and in the aggregate, as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this chapter and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497). Thereafter, the licensee shall pay such license fees annually or at such longer interval as the Secretary may prescribe. The Secretary shall take due account of savings to the program when determining an appropriate interval for renewal of licenses. The Secretary shall establish and alter license fees only by rulemaking under section 553 of title 5, except that the Secretary may not alter the fees required under paragraph (3) or (4) for retailers and grocery wholesalers that are dealers. Effective on November 15, 1995, and until such time as the Secretary alters such fees by rule, an individual license fee shall equal \$550 per year, plus \$200 for each branch or additional business facility operated by the applicant in excess of nine such facilities, as determined by the Secretary, subject to an annual aggregate limit of \$4,000 per licensee. Any increase in license fees prescribed by the Secretary under this paragraph shall not take effect unless the Secretary determines that, without such increase, the funds on hand as of the end of the fiscal year in which the increase takes effect will be less than 25 percent of the projected budget to administer this chapter and such Act for the next fiscal year. In no case may a license fee increase by the Secretary take effect before the end of the three-year period beginning on November 15, 1995.

**(3) One-time fee for retailers and grocery wholesalers that are dealers**

During the three-year period beginning on November 15, 1995, a retailer or grocery wholesaler making an initial application for a license under this section shall pay the license fee required under subparagraph (A), (B), or (C) of paragraph (4) for license renewals in the year in which the initial application is made. After the end of such period, a retailer or grocery wholesaler making an initial application for a license under this section shall pay an administrative fee equal to \$100. In either case, a retailer or grocery wholesaler paying a fee under this paragraph shall not be required

to pay any fee for renewal of the license for subsequent years.

**(4) Gradual elimination of annual fees for retailers and grocery wholesalers that are dealers**

In the case of a retailer or grocery wholesaler that holds a license under this section as of November 15, 1995, payments for the renewal of the license shall be made pursuant to the following schedule:

(A) For anniversary dates occurring during the one-year period beginning on November 15, 1995, the licensee shall pay a renewal fee in an amount equal to 100 percent of the applicable renewal fee (subject to the \$4,000 aggregate limit on such payments) in effect under this subsection on the day before November 15, 1995.

(B) For anniversary dates occurring during the one-year period beginning at the end of the period in subparagraph (A), the licensee shall pay a renewal fee in an amount equal to 75 percent of the amount paid by the licensee under subparagraph (A).

(C) For anniversary dates occurring during the one-year period beginning at the end of the period in subparagraph (B), the licensee shall pay a renewal fee in an amount equal to 50 percent of the amount paid by the licensee under subparagraph (A).

(D) After the end of the three-year period beginning on November 15, 1995, the licensee shall not be required to pay any fee if the licensee seeks renewal of the license.

**(5) Perishable Agricultural Commodities Act Fund**

Such fee, when collected, shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the "Perishable Agricultural Commodities Act Fund", which shall be available for all expenses necessary to the administration of this chapter and the Act approved March 3, 1927, referred to above. Any reserve funds in the Perishable Agricultural Commodities Act Fund may be invested by the Secretary in insured or fully-collateralized interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. Any interest earned on such reserve funds shall be credited to the Perishable Agricultural Commodities Act Fund and shall be available for the same purposes as the fees deposited in such fund. Financial statements prescribed by the Director of the Office of Management and Budget for the last completed fiscal year, and as estimated for the current and ensuing fiscal years, shall be included in the budget as submitted to the Congress annually.

**(c) Use of trade names**

A licensee may conduct business in more than one trade name or change the name under which business is conducted without requiring an additional or new license. The Secretary may disapprove the use of a trade name if, in his opinion, the use of the trade name by the licensee would be deceptive, misleading, or confusing to

the trade, and the Secretary may, after notice and opportunity for a hearing, suspend for a period not to exceed ninety days the license of any licensee who continues to use a trade name which the Secretary has disapproved for use by such licensee. The Secretary may refuse to issue a license to an applicant if he finds that the trade name in which the applicant proposes to do business would be deceptive, misleading, or confusing to the trade if used by such applicant.

(June 10, 1930, ch. 436, §3, 46 Stat. 533; Aug. 20, 1937, ch. 719, §5, 50 Stat. 726; June 15, 1950, ch. 254, §1, 64 Stat. 217; July 30, 1956, ch. 786, §2(a), 70 Stat. 726; Pub. L. 87-725, §3, 4, Oct. 1, 1962, 76 Stat. 673, 674; Pub. L. 91-107, §3, Nov. 4, 1969, 83 Stat. 182; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 95-562, §2, Nov. 1, 1978, 92 Stat. 2381; Pub. L. 97-98, title XI, §1115(b), Dec. 22, 1981, 95 Stat. 1269; Pub. L. 100-414, §1, Aug. 22, 1988, 102 Stat. 1102; Pub. L. 101-624, title XIII, §1361, Nov. 28, 1990, 104 Stat. 3568; Pub. L. 104-48, §§3-4(b), 5(a), Nov. 15, 1995, 109 Stat. 425-427.)

REFERENCES IN TEXT

The Act to prevent the destruction or dumping of farm produce, approved March 3, 1927, referred to in subsec. (b)(2), (5), is act Mar. 3, 1927, ch. 309, 44 Stat. 1355, as amended, which is classified generally to chapter 20 (§491 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 553 of this title.

AMENDMENTS

1995—Pub. L. 104-48, §3(b)(1), reenacted section catchline without change.

Subsec. (a). Pub. L. 104-48, §§3(b)(1), 5(a), inserted heading and substituted "\$1,000" for "\$500" in first paragraph and "\$250" for "\$25" in two places.

Subsec. (b). Pub. L. 104-48, §3(b)(2), inserted heading.

Subsec. (b)(1). Pub. L. 104-48, §3(a)(1), (2), inserted heading, realigned margins, and struck out after second sentence "Upon the filing of the application, and annually thereafter, the applicant shall pay such fee as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this chapter and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497), but in no event shall such fee exceed \$400, plus \$200 for each branch or additional business facility operated by the applicant in excess of nine such facilities, as determined by the Secretary. Total annual fees for any applicant shall not exceed \$4,000 in the aggregate."

Subsec. (b)(2). Pub. L. 104-48, §4(a), added par. (2).

Subsec. (b)(3), (4). Pub. L. 104-48, §3(a)(5), added pars. (3) and (4).

Subsec. (b)(5). Pub. L. 104-48, §§3(a)(3), (4), 4(b), designated provisions of subsec. (b) relating to Perishable Agricultural Commodities Act Fund as par. (5), inserted heading, realigned margins, and struck out "The amount of money accumulated and on hand in the special fund at the end of any fiscal year shall not exceed 25 percent of the projected budget for the next following fiscal year." after "fees deposited in such fund." and "The Secretary shall give public notice of any increase to be made in the annual fee prescribed by him hereunder and shall allow a reasonable time prior to the effective date of such increase for interested persons to file their views on or objections to such increase." after "budget as submitted to the Congress annually."

Subsec. (c). Pub. L. 104-48, §3(b)(3), inserted heading.

1990—Subsec. (b). Pub. L. 101-624 substituted ". Any reserve funds in the Perishable Agricultural Commod-

ities Act Fund may be invested by the Secretary in insured or fully-collateralized interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. Any interest earned on such reserve funds shall be credited to the Perishable Agricultural Commodities Act Fund and shall be available for the same purposes as the fees deposited in such fund. The" for "": *Provided, That the*" and ". Financial" for "": *Provided further, That financial*".

1988—Subsec. (b). Pub. L. 100-414 substituted "\$400, plus \$200" for "\$300, plus \$150" and "\$4,000" for "\$3,000".

1981—Subsec. (b). Pub. L. 97-98 substituted "\$300", "\$150", and "\$3,000" for "\$150", "\$50", and "\$1,000", respectively.

1978—Subsec. (b). Pub. L. 95-562 substituted "in such application and to be furnished thereafter" for "in such application" and "\$150, plus \$50 for each branch or additional business facility operated by the applicant in excess of nine such facilities, as determined by the Secretary" for "\$100", and inserted provisions limiting the total annual fees for any applicant to an amount not to exceed \$1,000 in the aggregate and limiting the amount of money in the special fund at the end of any fiscal year to an amount not to exceed 25 percent of the projected budget for the next following fiscal year.

1969—Subsec. (b). Pub. L. 91-107 increased limitation on fees from \$50 to \$100.

1962—Subsec. (b). Pub. L. 87-725, §3, increased annual fee from a maximum of \$25, to such fee as the Secretary determines necessary to meet the expenses of administering this chapter and the Act approved March 3, 1927, but not exceeding \$50, directed the Secretary to give public notice of any increase in the annual fee and to allow reasonable time before the effective date of such increase for submission of views on, or objections to, such increase, and struck out references to the availability of the Perishable Agricultural Commodities Act Fund for administrative expenses of sections 581 to 589 of this title.

Subsec. (c). Pub. L. 87-725, §4, added subsec. (c).

1956—Subsec. (b). Act July 30, 1956, increased fee from \$15 annually to not more than \$25 annually.

1950—Subsec. (b). Act June 15, 1950, increased fee from \$10 to \$15 annually, provided for its disposition in fund, made fund available for administrative expenses, and provided for financial statements.

1937—Subsec. (a). Act Aug. 20, 1937, added second par.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97-98, set out as an Effective Date note under section 4301 of this title.

#### TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President by section 101 of 1970 Reorg. Plan No. 2. Section 102 of 1970 Reorg. Plan No. 2 redesignated Bureau of the Budget as Office of Management and Budget and offices of Director of Bureau of the Budget, Deputy Director of Bureau of the Budget, and Assistant Directors of Bureau of the Budget as Director of Office of Management and Budget, Deputy Director of Office of Management and Budget, and Assistant Directors of Office of Management and Budget, respectively. Section 103 of 1970 Reorg. Plan No. 2 transferred all records, property, personnel, and funds of Bureau to Office of Management and Budget. See part I of Reorg. Plan No. 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 499a, 499d, 499f, 499h, 499o, 499s of this title.

### § 499d. Issuance of license

#### (a) Authority to do business; termination; renewal

Whenever an applicant has paid the prescribed fee the Secretary, except as provided elsewhere in this chapter, 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 chapter, or is automatically suspended under section 499g(d) of this title, but said license shall automatically terminate on the anniversary date of the license at the end of the annual or multiyear period covered by the license fee unless the licensee submits the required renewal application and pays the applicable renewal fee (if such fee is required): *Provided, That* notice of the necessity of renewing the license and of paying the renewal fee (if such fee is required) shall be mailed at least thirty days before the anniversary date: *Provided, further, That* if the renewal fee (if required) is not paid by the anniversary date the licensee may obtain a renewal of that license at any time within thirty days by paying the fee provided in section 499c(b) of this title, plus \$50, which shall be deposited in the Perishable Agricultural Commodities Act fund provided for by section 499c(b) of this title: *And provided further, That* the license of any licensee shall terminate upon said licensee, or in case the licensee is a partnership, any partner, being discharged as a bankrupt, unless the Secretary finds upon examination of the circumstances of such bankruptcy, which he shall examine if requested to do so by said licensee, that such circumstances do not warrant such termination.

#### (b) Refusal of license; grounds

The Secretary shall refuse to issue a license to an applicant if he finds that the applicant, or any person responsibly connected with the applicant, is prohibited from employment with a licensee under section 499h(b) of this title or is a person who, or is or was responsibly connected with a person who—

(A) has had his license revoked under the provisions of section 499h of this title within two years prior to the date of the application or whose license is currently under suspension;

(B) within two years prior to the date of application has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 499b of this title, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect;

(C) within two years prior to the date of the application, has been found guilty in a Federal court of having violated the provisions of sections 491, 493 to 497 of this title, relating to the prevention of destruction and dumping of farm produce; or

(D) has failed, except in the case of bankruptcy and subject to his right of appeal under section 499g(c) of this title, to pay any reparation order issued against him within two years prior to the date of the application.