

(b) Remedies

Such liability may be enforced either (1) by complaint to the Secretary as hereinafter provided, or (2) by suit in any court of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, and the provisions of this chapter are in addition to such remedies.

(c) Trust on commodities and sales proceeds for benefit of unpaid suppliers, sellers, or agents; preservation of trust; jurisdiction of courts

(1) It is hereby found that a burden on commerce in perishable agricultural commodities is caused by financing arrangements under which commission merchants, dealers, or brokers, who have not made payment for perishable agricultural commodities purchased, contracted to be purchased, or otherwise handled by them on behalf of another person, encumber or give lenders a security interest in, such commodities, or on inventories of food or other products derived from such commodities, and any receivables or proceeds from the sale of such commodities or products, and that such arrangements are contrary to the public interest. This subsection is intended to remedy such burden on commerce in perishable agricultural commodities and to protect the public interest.

(2) Perishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such commission merchant, dealer, or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents. Payment shall not be considered to have been made if the supplier, seller, or agent receives a payment instrument which is dishonored. The provisions of this subsection shall not apply to transactions between a cooperative association, as defined in section 1141j(a) of title 12, and its members.

(3) The unpaid supplier, seller, or agent shall lose the benefits of such trust unless such person has given written notice of intent to preserve the benefits of the trust to the commission merchant, dealer, or broker within thirty calendar days (i) after expiration of the time prescribed by which payment must be made, as set forth in regulations issued by the Secretary, (ii) after expiration of such other time by which payment must be made, as the parties have expressly agreed to in writing before entering into the transaction, or (iii) after the time the supplier, seller, or agent has received notice that the payment instrument promptly presented for payment has been dishonored. The written notice to the commission merchant, dealer, or broker shall set forth information in sufficient detail to identify the transaction subject to the trust. When the parties expressly agree to a payment time period different from that established by the Secretary, a copy of any such agreement

shall be filed in the records of each party to the transaction and the terms of payment shall be disclosed on invoices, accountings, and other documents relating to the transaction.

(4) In addition to the method of preserving the benefits of the trust specified in paragraph (3), a licensee may use ordinary and usual billing or invoice statements to provide notice of the licensee's intent to preserve the trust. The bill or invoice statement must include the information required by the last sentence of paragraph (3) and contain on the face of the statement the following: "The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

(5) The several district courts of the United States are vested with jurisdiction specifically to entertain (i) actions by trust beneficiaries to enforce payment from the trust, and (ii) actions by the Secretary to prevent and restrain dissipation of the trust.

(June 10, 1930, ch. 436, §5, 46 Stat. 534; Aug. 20, 1937, ch. 719, §7, 50 Stat. 728; Pub. L. 98-273, §1, May 7, 1984, 98 Stat. 165; Pub. L. 102-237, title X, §1011(3), Dec. 13, 1991, 105 Stat. 1898; Pub. L. 104-48, §§6, 8(b), Nov. 15, 1995, 109 Stat. 427, 429.)

CODIFICATION

Section was formerly classified to section 555 of this title.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104-48, §8(b), inserted "(including any handling fee paid by the injured person or persons under section 499f(a)(2) of this title)" after "damages".

Subsec. (c)(3). Pub. L. 104-48, §6(a), (b), struck out "and has filed such notice with the Secretary" before "within thirty calendar days" in first sentence and inserted after first sentence "The written notice to the commission merchant, dealer, or broker shall set forth information in sufficient detail to identify the transaction subject to the trust."

Subsec. (c)(4), (5). Pub. L. 104-48, §6(c), added par. (4) and redesignated former par. (4) as (5).

1991—Subsec. (c)(2). Pub. L. 102-237 substituted "as" for "(as)" before "defined".

1984—Subsec. (c). Pub. L. 98-273 added subsec. (c).

1937—Subsec. (a). Act Aug. 20, 1937, struck out "paragraph (1), (2), (3), or (4) of" after "provisions of".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 499b, 499f of this title.

§ 499f. Complaints, written notifications, and investigations**(a) Reparation complaints****(1) Petition; process**

Any person complaining of any violation of any provision of section 499b of this title by any commission merchant, dealer, or broker may, at any time within nine months after the cause of action accrues, apply to the Secretary by petition, which shall briefly state the facts,

whereupon, if, in the opinion of the Secretary, the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the Secretary to the commission merchant, dealer, or broker, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be prescribed by the Secretary.

(2) Filing and handling fees

A person submitting a petition to the Secretary under paragraph (1) shall include a filing fee of \$60 per petition. If the Secretary determines under paragraph (1) that the facts contained in the petition warrant further action, the person or persons submitting the petition shall submit to the Secretary a handling fee of \$300. The Secretary may not forward a copy of the complaint to the commission merchant, dealer, or broker involved until after the Secretary receives the required handling fee. The Secretary shall deposit fees submitted under this paragraph into the Perishable Agricultural Commodities Act Fund provided for by section 499c(b) of this title. The Secretary may alter the fees specified in this paragraph by rulemaking under section 553 of title 5.

(b) Disciplinary violations

Any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any other interested person (other than an employee of an agency of the Department of Agriculture administering this chapter) may file, in accordance with rules prescribed by the Secretary, a written notification of any alleged violation of this chapter by any commission merchant, dealer, or broker. In addition, any official certificates of the United States Government or States or Territories of the United States and trust notices filed pursuant to section 499e of this title shall constitute written notification for the purposes of conducting an investigation under subsection (c) of this section. The identity of any person filing a written notification under this subsection shall be considered to be confidential information. The identity of such person, and any portion of the notification to the extent that it would indicate the identity of such person, are specifically exempt from disclosure under section 552 of title 5 (commonly known as the Freedom of Information Act), as provided in subsection (b)(3) of such section.

(c) Investigation of complaints and notifications

(1) Commencing or expanding an investigation

If there appears to be, in the opinion of the Secretary, reasonable grounds for investigating a complaint made under subsection (a) of this section or a written notification made under subsection (b) of this section, the Secretary shall investigate such complaint or notification. In the course of the investigation, if the Secretary determines that violations of this chapter are indicated other than the alleged violations specified in the complaint or notification that served as the basis for the investigation, the Secretary may expand the investigation to include such additional violations.

(2) Issuance of complaint by Secretary; process

In the opinion of the Secretary, if an investigation under this subsection substantiates the existence of violations of this chapter, the Secretary may cause a complaint to be issued. The Secretary shall have the complaint served by registered mail or certified mail or otherwise on the person concerned and afford such person an opportunity for a hearing thereon before a duly authorized examiner of the Secretary in any place in which the subject of the complaint is engaged in business. However, in complaints wherein the amount claimed as damages does not exceed \$30,000, a hearing need not be held and proof in support of the complaint and in support of respondent's answer may be supplied in the form of depositions or verified statements of fact.

(3) Special notification requirements for certain investigations

Whenever the Secretary initiates an investigation on the basis of a written notification made under subsection (b) of this section or expands such an investigation, the Secretary shall promptly notify the subject of the investigation of the existence of the investigation and the nature of the alleged violations of this chapter to be investigated. Not later than 180 days after providing the initial notification, the Secretary shall provide the subject of the investigation with notice of the status of the investigation, including whether the Secretary intends to issue a complaint under paragraph (2), terminate the investigation, or continue or expand the investigation. The Secretary shall provide additional status reports at the request of the subject of the investigation and shall promptly notify the subject of the investigation whenever the Secretary terminates the investigation.

(d) Decisions on complaints

After opportunity for hearing on complaints where the damages claimed exceed the sum of \$30,000 has been provided or waived and on complaints where damages claimed do not exceed the sum of \$30,000 not requiring hearing as provided herein, the Secretary shall determine whether or not the commission merchant, dealer, or broker has violated any provision of section 499b of this title.

(e) Bond required for certain complaints

In case a complaint is made by a nonresident of the United States, or by a resident of the United States to whom the claim of a nonresident of the United States has been assigned, 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.

(June 10, 1930, ch. 436, §6, 46 Stat. 534; Apr. 13, 1934, ch. 120, §§8-10, 48 Stat. 586, 587; Aug. 20, 1937, ch. 719, §§8, 9, 50 Stat. 728; Pub. L. 86-507, §1(4), June 11, 1960, 74 Stat. 200; Pub. L. 87-725, §8, Oct. 1, 1962, 76 Stat. 675; Pub. L. 92-231, §1, Feb. 15, 1972, 86 Stat. 38; Pub. L. 97-98, title XI, §1115(c), Dec. 22, 1981, 95 Stat. 1270; Pub. L. 97-352, §2, Oct. 18, 1982, 96 Stat. 1667; Pub. L. 102-237, title X, §1011(4), Dec. 13, 1991, 105 Stat. 1898; Pub. L. 104-48, §§7, 8(a), Nov. 15, 1995, 109 Stat. 428, 429.)

CODIFICATION

Section was formerly classified to section 556 of this title.

AMENDMENTS

1995—Pub. L. 104-48, §7(d)(1), substituted “Complaints, written notifications, and investigations” for “Complaint and investigation” in section catchline.

Subsec. (a). Pub. L. 104-48, §8(a), inserted subsec. heading, designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Subsec. (b). Pub. L. 104-48, §7(a), inserted heading and amended text generally. Prior to amendment, text read as follows: “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 chapter by any commission merchant, dealer, or broker and may request an investigation of such complaint by the Secretary.”

Subsec. (c). Pub. L. 104-48, §7(b), inserted heading and amended text generally. Prior to amendment, text read as follows: “If there appear to be, in the opinion of the Secretary, any reasonable grounds for investigating any complaint made under this section, the Secretary shall investigate such complaint and may, if in his opinion the facts warrant such action, have said complaint served by registered mail or by certified mail or otherwise on the person concerned and afford such person an opportunity for a hearing thereon before a duly authorized examiner of the Secretary in any place in which the said person is engaged in business: *Provided*, That in complaints wherein the amount claimed as damages does not exceed the sum of \$15,000, a hearing need not be held and proof in support of the complaint and in support of respondent’s answer may be supplied in the form of depositions or verified statements of fact.”

Subsec. (d). Pub. L. 104-48, §7(c), (d)(2), inserted heading and substituted “\$30,000” for “\$15,000” in two places in text.

Subsec. (e). Pub. L. 104-48, §7(d)(3), inserted heading. 1991—Subsecs. (c), (d). Pub. L. 102-237 inserted a period at end of subsec. (c) and substituted a period for semicolon at end of subsec. (d).

1982—Subsec. (e). Pub. L. 97-352 inserted “or by a resident of the United States to whom the claim of a nonresident of the United States has been assigned,” after “In case a complaint is made by a nonresident of the United States,”.

1981—Subsecs. (c), (d). Pub. L. 97-98 substituted “\$15,000” for “\$3,000”.

1972—Subsec. (c). Pub. L. 92-231 substituted “\$3,000” for “\$1,500”.

Subsec. (d). Pub. L. 92-231 substituted “\$3,000” for “\$1,500” wherever appearing.

1962—Subsec. (c). Pub. L. 87-725 substituted “\$1,500” for “\$500”.

Subsec. (d). Pub. L. 87-725 substituted “\$1,500” for “\$500” wherever appearing.

1960—Subsec. (c). Pub. L. 86-507 inserted “or by certified mail” after “registered mail”.

1937—Subsec. (b). Act Aug. 20, 1937, §8, substituted “section 499b of this title” for “this chapter”.

Subsec. (e). Act Aug. 20, 1937, §9, inserted “and any reparation award that may be issued by the Secretary of Agriculture against the complainant on any counter claim by respondent” and proviso.

1934—Subsec. (c). Act Apr. 13, 1934, §8, inserted proviso.

Subsec. (d). Act Apr. 13, 1934, §9, substituted “complaints” for “a complaint” after “on” and inserted “where damages claimed do not exceed the sum of \$500 not requiring hearing as provided herein” after “complaints”.

Subsec. (e). Act Apr. 13, 1934, §10, among other changes, inserted “formal” before “action”.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 3 of Pub. L. 97-352 provided that: “The amendment made by section 2 [amending this section] shall not apply with respect to complaints made under section 6(e) of the Perishable Agricultural Commodities Act, 1930 [subsec. (e) of this section], before the date of enactment of this Act [Oct. 18, 1982].”

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.

FILING AND HANDLING FEES DURING FISCAL YEARS 1995 AND 1996

Pub. L. 103-276, §1, July 5, 1994, 108 Stat. 1406, during fiscal years 1995 and 1996, directed Secretary of Agriculture to require filing fee of \$60 per petition for petitions alleging violation of section 499b of this title and handling fee of \$300 for petitions that warrant further action, which handling fee was to be included in determining amount of damages, with both fees to be deposited into the Perishable Agricultural Commodities Act Fund, prior to repeal by Pub. L. 104-48, §8(c), Nov. 15, 1995, 109 Stat. 429. See subsec. (a)(2) of this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 499e, 499g, 499h, 499m of this title.

§ 499g. Reparation order

(a) Determination by Secretary of Agriculture of amount of damages; order for payment

If after a hearing on a complaint made by any person under section 499f of this title, or without hearing as provided in subsections (c) and (d) of section 499f of this title, 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 determines that the commission merchant, dealer, or broker has violated any provision of section 499b of this title, 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. The Secretary shall order any commission merchant, dealer, or broker who is the losing party to pay the prevailing party, as reparation or additional reparation, reasonable fees and expenses incurred in connection with any such hearing. If, after the respondent has filed his answer to the complaint, it appears therein that the respondent has admitted liability for a portion of the amount claimed in the complaint as damages, the Secretary under such rules and regulations