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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 499b-1 of this title; title 11 section 525; title 28 section 2342; title 49 section 5906.

§ 499a. Short title and definitions**(a) Short title**

This chapter may be cited as the “Perishable Agricultural Commodities Act, 1930”.

(b) Definitions

For purposes of this chapter:

(1) The term “person” includes individuals, partnerships, corporations, and associations.

(2) The term “Secretary” means the Secretary of Agriculture.

(3) The term “interstate or foreign commerce” means commerce between any State or Territory, or the District of Columbia and any place outside thereof; or between points within the same State or Territory, or the District of Columbia but through any place outside thereof, or within the District of Columbia.

(4) The term “perishable agricultural commodity”—

(A) Means any of the following, whether or not frozen or packed in ice: Fresh fruits and fresh vegetables of every kind and character; and

(B) Includes cherries in brine as defined by the Secretary in accordance with trade usages.

(5) The term “commission merchant” means any person engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale, on commission, or for or on behalf of another.

(6) The term “dealer” means any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a “dealer” in respect to 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” until the invoice cost of his purchases of perishable agricultural commodities in any calendar year are in excess of \$230,000; and (C) no person buying any commodity other than potatoes 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, or consists of cherries in brine, 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 499c of this title, and in such case and while the license is in effect such person shall be considered as a “dealer”.

(7) The term “broker” means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively, except that no person shall be deemed to be a “broker” if such person is an independent agent negotiating sales for and on behalf of the vendor and if the only sales of such commodities negotiated by such person are sales of frozen fruits and vegetables having an invoice value not in excess of \$230,000 in any calendar year.

(8) A transaction in respect of any perishable agricultural commodity shall be considered in interstate or foreign commerce if such commodity is part of that current of commerce usual in the trade in that commodity whereby such commodity and/or the products of such commodity are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where sale is either for shipment to another State, or for processing within the State and the shipment outside the State of the products resulting from such processing. Commodities normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter.

(9) The term “responsibly connected” means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association. A person shall not be deemed to be responsibly connected if the person demonstrates by a preponderance of the evidence that the person was not actively involved in the activities resulting in a violation of this chapter and that the person either was only nominally a partner, officer, director, or shareholder of a violating licensee or entity subject to license or was not an owner of a violating licensee or entity subject to license which was the alter ego of its owners.

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

(11) The term “retailer” means a person that is a dealer engaged in the business of selling any perishable agricultural commodity at retail.

(12) The term “grocery wholesaler” means a person that is a dealer primarily engaged in the full-line wholesale distribution and resale

of grocery and related nonfood items (such as perishable agricultural commodities, dry groceries, general merchandise, meat, poultry, and seafood, and health and beauty care items) to retailers. However, such term does not include a person described in the preceding sentence if the person is primarily engaged in the wholesale distribution and resale of perishable agricultural commodities rather than other grocery and related nonfood items.

(13) The term “collateral fees and expenses” means any promotional allowances, rebates, service or materials fees paid or provided, directly or indirectly, in connection with the distribution or marketing of any perishable agricultural commodity.

(June 10, 1930, ch. 436, §1, 46 Stat. 531; Apr. 13, 1934, ch. 120, §1, 48 Stat. 584; Aug. 20, 1937, ch. 719, §1, 50 Stat. 725; June 29, 1940, ch. 456, §§1, 2, 54 Stat. 696; Pub. L. 87-725, §§1, 2, Oct. 1, 1962, 76 Stat. 673; Pub. L. 91-107, §§1, 2, Nov. 4, 1969, 83 Stat. 182; Pub. L. 95-562, §1, Nov. 1, 1978, 92 Stat. 2381; Pub. L. 97-98, title XI, §1115(a), Dec. 22, 1981, 95 Stat. 1269; Pub. L. 102-237, title X, §1011(1), Dec. 13, 1991, 105 Stat. 1898; Pub. L. 104-48, §§2, 9(a), 12(a), Nov. 15, 1995, 109 Stat. 424, 429, 430.)

CODIFICATION

Section was formerly classified to section 551 of this title.

AMENDMENTS

1995—Subsec. (b)(9). Pub. L. 104-48, §12(a), inserted at end “A person shall not be deemed to be responsibly connected if the person demonstrates by a preponderance of the evidence that the person was not actively involved in the activities resulting in a violation of this chapter and that the person either was only nominally a partner, officer, director, or shareholder of a violating licensee or entity subject to license or was not an owner of a violating licensee or entity subject to license which was the alter ego of its owners.”

Subsec. (b)(11), (12). Pub. L. 104-48, §2, added pars. (11) and (12).

Subsec. (b)(13). Pub. L. 104-48, §9(a), added par. (13).

1991—Pub. L. 102-237 inserted section catchline, added subsec. (a), designated existing provisions as subsec. (b), and in subsec. (b), inserted heading, substituted “For purposes of this chapter:” for “When used in this chapter—” and periods for semicolons at the end of pars. (1) to (6) and (9).

1981—Pars. (6), (7). Pub. L. 97-98 substituted “\$230,000” for “\$200,000”.

1978—Par. (6)(B). Pub. L. 95-562, §1(a)(1), substituted “\$200,000” for “\$100,000”.

Par. (6)(C). Pub. L. 95-562, §1(b), inserted “other than potatoes” after “commodity”.

Par. (7). Pub. L. 95-562, §1(a)(2), substituted “\$200,000” for “\$100,000”.

1969—Par. (6)(B). Pub. L. 91-107, §1, substituted “\$100,000” for “\$90,000”.

Par. (7). Pub. L. 91-107, §2, substituted “\$100,000” for “\$90,000”.

1962—Par. (6). Pub. L. 87-725, §1, substituted “wholesale or jobbing quantities” for “carloads”, the requirement that the dealer’s invoice cost of his purchases in any calendar year exceed \$90,000 for the requirement that his purchases in such year exceed 20 carloads, and struck out definition of “in carloads”.

Par. (7). Pub. L. 87-725, §1, excluded from definition of “broker”, persons who are independent agents negotiating sales for vendors and whose sales are of frozen fruits and vegetables having an invoice value not exceeding \$90,000 in any calendar year.

Pars. (9), (10). Pub. L. 87-725, §2, added pars. (9) and (10).

1940—Par. (4). Act June 29, 1940, §1, designated existing provisions as cl. (A) and added cl. (B).

Par. (6)(C). Act June 29, 1940, §2, inserted “, or consists of cherries in brine,” after “ice”.

1937—Par. (6)(C). Act Aug. 20, 1937, inserted “unless such product is frozen or packed in ice within the meaning of paragraph 4 of this section” after “foreign commerce”.

1934—Par. (6)(C). Act Apr. 13, 1934, added cl. (C).

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1(a) of Pub. L. 95-562 provided that the amendment made by that section is effective Jan. 1, 1979.

SHORT TITLE OF 1995 AMENDMENT

Section 1(a) of Pub. L. 104-48 provided that: “This Act [amending this section and sections 499b, 499c to 499f, and 499h of this title and repealing provisions set out as a note under section 499f of this title] may be cited as the ‘Perishable Agricultural Commodities Act Amendments of 1995’.”

STUDY OF DOMESTIC FRUIT AND VEGETABLE INDUSTRY

Pub. L. 101-624, title XIII, §§1301-1305, Nov. 28, 1990, 104 Stat. 3559, 3560, provided that:

“SEC. 1301. FINDINGS.

“Congress finds that—

“(1) fruits, vegetables, and specialty crops are a vital and important source of nutrition for the general health and welfare of the people of the United States; and

“(2) fruits and vegetables are recommended as an essential part of a healthy, nutritious diet by numerous health officials and organizations including the Surgeon General of the United States; the National Institutes of Health; the National Cancer Institute; the American Heart Association; the Committee on Diet, Nutrition and Cancer of the National Academy of Sciences; the Department of Agriculture; and the Department of Health and Human Services.

“SEC. 1302. PURPOSES.

“The purposes of this subtitle [subtitle A (§§1301-1309) of Pub. L. 101-624, enacting section 499b-1 of this title, amending sections 608c and 608e-1 of this title, and enacting this note] are to—

“(1) improve the Nation’s dietary and nutritional standards by promoting domestically produced wholesome and nutritious fruit and vegetable products;

“(2) increase the public awareness as to the difficulties domestic producers experience regarding the production, harvesting, and marketing of these products; and

“(3) aid in the development of new technology and techniques that will assist domestic producers in meeting the challenges of increased demands for fruit and vegetable products in the future.

“SEC. 1303. DECLARATION.

“Congress declares that the domestic production of fruits and vegetables is an integral part of this Nation’s farm policy.

“SEC. 1304. STUDY OF THE FRUIT AND VEGETABLE INDUSTRY.

“(a) STUDY.—

“(1) IN GENERAL.—The Secretary of Agriculture shall conduct a study to determine the state of the domestic fruit and vegetable industry. In conducting such study, the Secretary of Agriculture shall con-

sult with such agencies or departments, as determined necessary by the Secretary of Agriculture, including the Environmental Protection Agency, the Department of Health and Human Services, the Department of Commerce, the Department of Labor, and the Department of Education.

“(2) CONTENTS.—The study conducted under paragraph (1) shall include—

“(A) a review of the availability of an adequate labor supply for maintaining and harvesting of fruits and vegetables;

“(B) a review of the availability of crop insurance or disaster assistance for fruit and vegetable producers;

“(C) a review of scientific and technological advances in the areas of genetics, biotechnology, integrated pest management, post harvest protection, and other scientific developments related to the production and marketing of fruits and vegetables;

“(D) an examination of the availability of safe and effective chemicals for use in the production of fruits and vegetables, and an evaluation of the value of national uniformity to both consumers and producers;

“(E) a review of the requirements and cost of labeling fruits and vegetables in the industry, and the benefits that would result from the labeling of such products; and

“(F) a review of Federal educational programs that teach the importance of fruits and vegetables to a proper diet.

“(b) REPORT.—Not later than 18 months after the date of enactment of this title [Nov. 28, 1990], the Secretary of Agriculture shall prepare and submit, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report containing the results of the study described in subsection (a). Such report shall include—

“(1) the recommendations of the Secretary concerning the manner in which producers of domestic fruit and vegetable commodities that are not receiving assistance under the programs that provide market enhancement assistance (such as the export enhancement program under subtitle B of title XI of the Food Security Act of 1985 (7 U.S.C. 1736p et seq.) to producers of domestic fruit and vegetable commodities, could participate in such programs; and

“(2) the recommendations to the Secretary concerning the establishment of additional programs of the type described in paragraph (1) to assist producers of domestic fruit and vegetable commodities in increasing their production and in expanding domestic and foreign markets for the products of such producers.

“SEC. 1305. COUNTRY OF ORIGIN LABELING PROGRAMS.

“(a) GROWN IN THE U.S. PROGRAM.—The Secretary of Agriculture (hereafter referred to in this section as the ‘Secretary’) shall implement a program defining the conditions under which non-perishable agricultural products may be designated as ‘grown in the U.S.’.

“(b) PILOT PROGRAM.—

“(1) IN GENERAL.—The Secretary shall implement a 2-year pilot program during which time perishable agricultural products (fresh fruits and vegetables) are labeled or marked as to their country of origin. This program shall be conducted nationwide. After the 2-year period, the Secretary shall conduct a study to determine the results of the program. The Secretary shall submit to the Congress the results of the study within 18 months from the date of completion of the program.

“(2) DETAILS OF THE PILOT PROGRAM.—

“(A) DESIGNATION OF COUNTRY OF ORIGIN.—The program shall require that the country of origin of perishable agricultural products be indicated on any such products or on the package, display, holding unit, or bin by means of a label, stamp, mark,

placard, or other clear and visible indication at the point of sale by any commission merchant, dealer, broker, or grocer. A sign near the products shall be an acceptable indication of the country of origin.

“(B) APPLICATION OF PROGRAM.—

“(i) IMPORTED AND DOMESTIC PRODUCTS.—The program shall apply to imported and domestic perishable agricultural products (including fresh fruits and vegetables).

“(ii) IMPORTED PERISHABLE AGRICULTURAL PRODUCTS.—The labeling program shall apply to imported perishable agricultural products that enter the United States marked as to the country of origin and that are in compliance with section 304(a) of the Tariff Act of 1930 [19 U.S.C. 1304(a)].

“(C) EXEMPTIONS.—The Secretary may provide for exemptions for products that are exempted, under section 304(a)(3)(J) of the Tariff Act of 1930, from the country of origin marking requirements of that Act [19 U.S.C. 1202 et seq.].

“(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.”

POTATO DEALERS

Section 1(b) of Pub. L. 95-562 provided in part that no person buying potatoes for processing solely within the State where grown shall be deemed or considered to be a dealer under par. (6) of this section as amended by section 1(b) of Pub. L. 95-562 until Jan. 1, 1982.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 499b-1, 1638 of this title; title 31 section 3903.

§ 499b. Unfair conduct

It shall be unlawful in or in connection with any transaction in interstate or foreign commerce:

(1) For any commission merchant, dealer, or broker to engage in or use any unfair, unreasonable, discriminatory, or deceptive practice in connection with the weighing, counting, or in any way determining the quantity of any perishable agricultural commodity received, bought, sold, shipped, or handled in interstate or foreign commerce.

(2) For any dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause any perishable agricultural commodity bought or sold or contracted to be bought, sold, or consigned in interstate or foreign commerce by such dealer.

(3) For any commission merchant to discard, dump, or destroy without reasonable cause, any perishable agricultural commodity received by such commission merchant in interstate or foreign commerce.

(4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned, in such commerce by such dealer, or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had; or to fail, without reasonable cause, to perform any specification or duty, express or im-

plied, arising out of any undertaking in connection with any such transaction; or to fail to maintain the trust as required under section 499e(c) of this title. However, this paragraph shall not be considered to make the good faith offer, solicitation, payment, or receipt of collateral fees and expenses, in and of itself, unlawful under this chapter.

(5) For any commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree of maturity, or State, country, or region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce. However, any commission merchant, dealer, or broker who has violated—

(A) any provision of this paragraph may, with the consent of the Secretary, admit the violation or violations; or

(B) any provision of this paragraph relating to a misrepresentation by mark, stencil, or label shall be permitted by the Secretary to admit the violation or violations if such violation or violations are not repeated or flagrant;

and pay, in the case of a violation under either clause (A) or (B) of this paragraph, a monetary penalty not to exceed \$2,000 in lieu of a formal proceeding for the suspension or revocation of license, any payment so made to be deposited into the Treasury of the United States as miscellaneous receipts. A person other than the first licensee handling misbranded perishable agricultural commodities shall not be held liable for a violation of this paragraph by reason of the conduct of another if the person did not have knowledge of the violation or lacked the ability to correct the violation.

(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.

(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.

(June 10, 1930, ch. 436, §2, 46 Stat. 532; Apr. 13, 1934, ch. 120, §§2, 3, 48 Stat. 585; June 19, 1936, ch. 602, §1, 49 Stat. 1533; Aug. 20, 1937, ch. 719, §§2-4, 50 Stat. 725, 726; June 29, 1940, ch. 456, §§3, 4, 54 Stat. 696; Apr. 6, 1942, ch. 211, 56 Stat. 200; July 30, 1956, ch. 786, §1, 70 Stat. 726; Pub. L. 93-369, Aug. 10, 1974, 88 Stat. 423; Pub. L. 97-352, §1, Oct. 18, 1982, 96 Stat. 1667; Pub. L. 98-273, §2, May 7, 1984, 98 Stat. 166; Pub. L. 104-48, §§9(b), 10, Nov. 15, 1995, 109 Stat. 430.)