

APPENDIX D
PROPOSED NATIONAL
AGRICULTURAL BARGAINING
ACT OF 1979

Proposed National Agricultural Bargaining Act of 1979

96th Congress
1 st Session

H.R. 3535

To assure fair practices in agricultural bargaining.

IN THE HOUSE OF REPRESENTATIVES

April 9, 1979

Mr. Panetta introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To assure fair practices in agricultural bargaining.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Agricultural Bargaining Act of 1979".

Congressional Findings and Declaration of Policy

Sec. 2. Agricultural products are produced in the United States by many individual farmers and ranchers scattered throughout the various States of the Nation. Such products in fresh or processed form, move in the channels of interstate and foreign commerce, or directly burden or affect interstate commerce. The efficient production and marketing of agricultural products by farmers and ranchers is a vital importance to their welfare, and to the general welfare. Because agricultural products are produced by numerous individual farmers, their ability to market and to bargain effectively for fair prices and terms of sale of their products is adversely affected unless they are free to join together in cooperative associations of producers as authorized by law. Interference with this right, or the failure of any handler of agricultural products to bargain in good faith with a cooperative association of producers as the representative and agent of such producers is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce. Therefore, it is declared to be the policy of Congress and the purpose of this title to establish standards of fair practices that shall be observed by handlers and associations of producers in their dealings in agricultural products, to provide standards for the accreditation of cooperative associations of producers of agricultural products for the purpose of bargaining, to define the mutual obligations of handlers and associations of producers to bargain with respect to the production, sale, and marketing of agricultural products, and to provide for the enforcement of such obligations.

Definitions

Sec. 3. When used in this title-

(a) "Accredited association" means an association of producers accredited in accordance with section 6 of this title.

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(b) "Association" means any association of producers of agricultural products engaged in the marketing of such products, including marketing, selling, bargaining, shipping, or processing as defined in section 15(a) of the Agricultural Marketing Act of 1929, as amended (49 Stat. 317; 12 U.S.C. 1141(a)), or in section 1 of the Act entitled "An Act to authorize association of agricultural producers" approved February 18, 1922 (42 Stat. 388; 7 U.S.C. 291).

(c) "Handler" means any person, other than an association, engaged in the business or practice of (1) acquiring agricultural products from producers or associations for processing or sale; (2) grading, packaging, handling, storing, or processing agricultural products received from producers or associations; (3) contracting or negotiating contracts or other arrangements, written or oral, with producers or associations with respect to the production or marketing of any agricultural product; or (4) acting as an agent or broker for a handler in the performance of any function or act specified in (1), (2), or (3) above.

(d) "Person" includes one or more individuals, partnerships, corporations, and associations.

(e) "Producer" means a person engaged in the production of agricultural products as a farmer, planter, rancher, poultryman, dairyman, fruit, vegetable, or nut grower, including a grower or farmer furnishing labor, production management, or facilities for the growing or raising of agricultural products.

(f) "Secretary" means the Secretary of Agriculture.

Unfair Practices

Sec. 4. (a) It shall be unlawful for any handler to engage, or to permit an employee or agent to engage, in any of the following practices, which are hereby defined as unfair practices:

(1) To coerce a producer in the exercise of his right to contract with, join, or maintain his membership in, or to refrain from contracting with, joining, or maintaining his membership in an association or to refuse to deal with a producer because of the exercise of his right to contract with, join, or maintain his membership in an association.

(2) To discriminate against a producer with respect to price, quantity, quality, or other terms of purchase, acquisition, or other handling of agricultural products because of his membership in or his contract with an association.

(3) To coerce or intimidate a producer to breach, cancel, or terminate a membership agreement or marketing contract with an association or a contract with a handler.

(4) To offer to pay or loan money or anything of value, or to offer or give any other inducement or reward to a producer for refusing to join or to cease to maintain membership in an association.

(5) To make or circulate false reports about the finances, management, or activities of an association or a handler.

(6) To refuse to bargain in good faith with an association accredited to represent producers, if the handler is designated pursuant to section 6.

(7) To conspire, combine, agree, or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act.

(b) It shall be unlawful for any association to engage or to permit an employee or agent to engage in any of the following practices, which are hereby defined as unfair practices:

(1) To refuse to bargain in good faith with a handler designated pursuant to section 6.

(2) To coerce or intimidate a handler to breach, cancel, or terminate a marketing contract with an association or a contract with a member of an association.

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(3) To make or circulate false reports about the finances, management, or activities of an association or a handler.

(4) To coerce or intimidate a producer to breach, cancel, or terminate a membership agreement or marketing contract with an association.

(5) To conspire, combine, agree, or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act.

Bargaining in Good Faith

Sec. 5. (a) "Bargaining" is the performance of the mutual obligation of a handler and an accredited association to meet at reasonable times and for reasonable periods of time for the purpose of negotiating in good faith with respect to the price, terms of sale, compensation for products produced under contract, or other provisions relating to the products that are marketed by the members of such accredited association or by the association as their agent. Such obligation on the part of any handler shall extend only to accredited associations and the products with respect to which such associations are accredited to bargain. Such obligation does not require either party to agree to a proposal or to make a concession.

(b) If a handler purchases a product from other producers under terms more favorable to such producers than the terms negotiated with an accredited association for such product, he shall offer the same terms to the accredited associations. In comparing such terms, there shall be taken into consideration, in addition to the stipulated purchase price and without limiting the generality of the foregoing, any bonuses, premiums, hauling or loading allowances, reimbursement of expenses, or payment for special services of any character which may be paid by the handler, and any sums paid or agreed to be paid by the handler for any other designated purpose than payment of the purchase price.

Accreditation of Associations of Producers

Sec. 6. (a) An Association seeking accreditation to bargain for producers of an agricultural product or products shall submit to the *Secretary* a petition for accreditation. The petition shall: (1) specify the agricultural product or products for the producers of which the association seeks accreditation to bargain; (2) designate the handlers, individually or by production or marketing area or by some other appropriate classification, with whom the association shall be accredited to bargain; and (3) contain such other information and documents as may be required by the *Secretary*.

(b)(1) Upon receiving the petition and any supporting material, the *Secretary* shall give notice of the petition to all designated handlers. Handlers who have been designated individually shall receive personal notice; handlers who have been designated by production or marketing area or by some other general classification shall be given notice through the *Federal Register*. Both the association seeking accreditation and the designated handlers shall have an opportunity to submit written evidence, views, and arguments to the *Secretary*, who may in his discretion conduct an informal proceeding. The *Secretary* shall hold a formal hearing for the reception of testimony and evidence only if he finds that there are substantial unresolved issues of material fact.

(2) The *Secretary* shall accredit such association if, based upon the evidence submitted, the *Secretary* finds-

(A) that under the charter documents or bylaws of the association, it is owned and controlled by producers;

(B) that the association has contracts with its members empowering the association to sell or negotiate terms of sale of the products of its members that are binding under State law;

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(C) that the association represents a sufficient number of producers or that its members produce a sufficient quantity of agricultural products to enable it to function as an effective agent for producers in bargaining with the designated handlers. In making this finding, the Secretary shall exclude any quantity of the agricultural products contracted by producers with producer owned and controlled processing cooperatives and any quantity of such products produced by handlers; and

(D) that the association has as one of its functions acting as principal or agent for its members in negotiations with handlers for prices and other terms of trade with respect to the production, sale, and marketing of their products.

(c) The Secretary shall give notice of his decision to the petitioning association and to the designated handlers, together with a concise statement of his reasons. The Secretary shall also give notice of any accreditation to all other associations that have been accredited to bargain with respect to the product or products with any of the designated handlers.

(d) Each accredited association shall submit an annual report to the Secretary in such form and including such information as the Secretary by regulation may require so as to enable him to determine whether the association continues to meet the standards for accreditation.

(e) If the Secretary believes that an accredited association has ceased to meet the standards for accreditation set forth in paragraph (b) of this section he shall notify the association of the respects in which he believes it has ceased to maintain such standards and allow it a reasonable time to answer or to correct the deficiencies noted. Thereafter, if the Secretary is not satisfied that the association is then in compliance with paragraph (b) of this section, he shall notify the association and hold a hearing to consider the revocation of accreditation. If, based upon the evidence submitted at the hearing, the Secretary finds that the association has ceased to maintain the standards for accreditation, he shall revoke the accreditation of such association.

(f) The Secretary may, upon his own motion or the petition of an accredited association or a designated handler, amend his order of accreditation with respect to the product or products specified therein. The Secretary shall give notice of any proposed amendment and the reasons therefor to all accredited associations and handlers that would be directly affected thereby and shall provide an opportunity for a public hearing. Thereafter, the Secretary may amend the order if he finds such amendment will be conducive to more effective bargaining and orderly marketing by the accredited association of the product or products of its members.

Assignment of Association Dues, Fees, or Retains

Sec. 7. If a producer of a farm product voluntarily executes, either as a clause in a sales contract or other instrument in writing, an assignment of dues or fees to or the deduction of a sum to be retained by an association authorized by contract to represent such producer, by which the handler is directed to deduct a sum from the amount to be paid for such product, or for the services of such producer under a growing contract, and on behalf of the producer to pay the same over to such association as dues or fees or funds to be retained by the association, and causes notice of such assignment to be delivered to a handler, then such handler shall deduct the amount authorized from the amount paid for any farm product being sold by any such producer or for any services under any growing contract and, upon payment to producers for such farm product or services, pay said amount over to the association or its assignee.

Mediation and Arbitration

Sec. 8. The Secretary may provide mediation services if requested either by an accredited association or by a designated handler engaged in bargaining with an accredited association and if, in the Secretary's judgment, an impasse in bargaining has occurred. The Secretary shall provide assistance in proposing and implementing arbitration agreements between accredited associations and designated handlers. The Secretary may establish a procedure for compulsory and binding arbitration if he finds that an impasse in bargaining exists and such impasse will result in a serious interruption in the flow of product to consumers or will cause substantial economic hardship to producers or handlers involved in the bargaining.

Administration

Sec. 9. (a)(1) Whenever it is charged that an accredited association or handler has violated or is violating section 4 (a)(6) or (b)(1) of this title, the Secretary shall issue and cause to be served upon the person charged a complaint stating the charges. The complaint shall summon the named person to a hearing before the Secretary at the time and place therein fixed.

(2) Whenever it is charged that an association or handler has violated or is violating any other provision of this title, the Secretary shall investigate such charges. If, upon such investigation, the Secretary has reasonable cause to believe that the person charged has violated such provision, he shall issue and cause to be served upon the person so charged a complaint stating the charges. The complaint shall summon the named person to a hearing before the Secretary at the time and place therein fixed.

(b) The person complained of shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony. The person who filed the charge shall also have the right to appear in person or otherwise and give testimony.

(c) If, upon a preponderance of the evidence, the Secretary is of the opinion that the person complained of has violated any provision of this title, he shall state his findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violation and shall order such further affirmative action, including an award of damages to the person filing the charge, as will effectuate the policies of this title.

(d) The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act, and may cooperate with any department or agency of the Government, any State, territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, binding, telegrams, telephones, law books, books of reference, publications, furniture, stationery, office equipment, travel, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and as may be appropriated for by Congress; and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose.

Independent Enforcement Authority

Sec. 10. The Secretary may at any time institute an inquiry on his own motion, in any case and as to any matter for which a charge is authorized to be made to or before the Secretary by section 9 of this title. The Secretary shall have the same power and authority to proceed with any inquiry instituted upon his own motion as though a charge had been filed with him, including the power to make and enforce any order.

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Judicial Review

Sec. 11. (a) Any person aggrieved by a final order of the Secretary issued under section 9 of this Act or under section 6(b)(2), 6(e), or 6(f) of this Act, may obtain review of such order in the United States Court of Appeals for the District of Columbia Circuit by submitting to such court within thirty days from the date of such order a written petition praying that such order be modified or set aside.

(b) The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record, shall be conclusive.

(c) Orders of the Secretary with respect to which review could have been obtained under paragraph (a) of this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(d) If no petition for review, as provided in paragraph (a) of this section, is filed within thirty days after service of the Secretary's order, the Secretary's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such thirty-day period. In any such case, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the person named in the complaint.

(e) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

Federal Enforcement

Sec. 12. (a) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of section 4 of this title or in violation of any order of the Secretary, he shall bring a civil action in accordance with paragraph (b) of this section.

(b) The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance.

(c) Any person who violates section 4 of this title or any order of the Secretary issued under section 9 or 10 of this title shall be subject to a civil penalty not to exceed \$500 per day of such violation.

(d) Any person who wilfully violates section 4 of this title, or any order of the Secretary under section 9 or 10 of this title, shall be punished by a fine of not less than \$500 nor more than \$1,000 per day of such violation or by imprisonment for not more than one year, or both.

Civil Remedies

Sec. 13. (a) Except as provided in paragraph (b) of this section, any person may commence a civil action on his own behalf-

(1) against any person who is alleged to be in violation of section 4 of this title or of any order issued by the Secretary under section 9 or 10 of this title; or

(2) against the Secretary when there is alleged a failure of the Secretary to perform any act or duty under this title which is not discretionary with the Secretary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such section or order (including the issuance of a permanent or temporary injunction or restraining order), or to order the Secretary to perform such act or duty as the case may be, and to apply any appropriate civil penalties under section 12 of this title.

(b) No action may be commenced-

(1) under paragraph (a)(1) of this section-

(A) prior to sixty days after the plaintiff has given notice of the alleged violation to the Secretary and to the alleged violator, or

(B) if the Secretary has commenced and is diligently prosecuting a civil or criminal action in a court of the United States to require compliance with such section or order, but in any such action any person may intervene as a matter of right;

(2) under paragraph (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Secretary.

(c) Any person aggrieved by reason of any violation of, or combination or conspiracy to violate any provision of section 4 of this Act may bring an action in the appropriate district court of the United States without respect to the amount of the controversy, and shall recover damages therefor. Any action to enforce any cause of action under this subsection shall be forever barred unless commenced within two years after the cause of action arose.

(d) The court, in issuing any final order in any action brought pursuant to paragraph (a) or (c) of this section, may award costs of litigation (including reasonable attorney fees) to any party, whenever the court determines such award is appropriate.

(e) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law, except as provided in paragraph (b) of this section.

Investigative Powers of Secretary

Sec. 14. (a) Whenever required to carry out the objectives of this title, including the conduct of any investigations or hearings-

(1) the Secretary shall require any person to (i) establish and maintain such records, (ii) make such reports, and (iii) provide such other information as he may reasonably require; and

(2) the Secretary or his authorized representative, upon presentation of his credentials and a warrant or such other order of a court as may be required by the Constitution-

(i) shall have a right of entry to, upon, or through any premises in which records required to be maintained under paragraph (a)(1) of this section are located, and

(ii) may at reasonable times have access to any copy any records, which any person is required to maintain or which relate to any matter under investigation or in question.

(b) Any records, reports, or information obtained under this section shall be available to the public except that upon a showing satisfactory to the Secretary that such records, reports, or information, if made public, would divulge confidential business information, the Secretary shall consider such record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18, United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this title or when relevant in any proceeding under this title.

(c)(1) In making inspections and investigations under this title, the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath.

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(2) The Secretary, upon application of any party to a hearing held under section 9 or 10 of this title, shall forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Secretary to revoke such subpoena. The Secretary shall revoke such subpoena if in his opinion the evidence whose production is required does not relate to any matter in question, or if such subpoena does not describe with sufficient particularity the evidence whose production is required.

(d) The Secretary, or any officer or employee designated by him for such purpose, shall have power to administer oaths, sign and issue subpoenas, examine witnesses, and receive evidence. Witnesses shall be paid the same fees and mileage allowance as are paid witnesses in the courts of the United States.

(e) In the case of any failure or refusal of any person to obey a subpoena or order of the Secretary under this section, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found or resides or transacts business, upon the application by the Secretary shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as and when so ordered to give testimony relating to the matter under investigation or in question. Any failure to obey such order of the court may be punished by said court as a contempt thereof.

State Authority

Sec. 15. This Act shall not invalidate the provisions of any existing State legislation dealing with the same subjects as this Act, nor shall this Act prevent any State from enacting legislation similar to existing State legislation, except that such similar legislation may not permit any action that is prohibited under this title.

Separability of Provisions

Sec. 16. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

Repeal of Agricultural Fair Practices Act of 1967

Sec. 17. The Agricultural Fair Practices Act of 1967 (Public Law 90-288, 7 U.S.C.A. 2301 et seq.) is hereby repealed effective on the day after the date of enactment of this title: Provided, however, That such repeal shall not affect any act done or any right accruing or accrued, or any act or proceeding had or commenced in any civil cause, before such repeal.