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USDA LICENSE FEES

Analysis of the Solvency and Users of the Perishable Agricultural Commodities Act Program

Statement of Robert A. Robinson,
Associate Director, Food and Agriculture Issues,
Resources, Community, and Economic Development Division

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Mr. Chairman and Members of the Subcommittee:

We are pleased to participate in this oversight hearing on the U.S. Department of Agriculture's Perishable Agricultural Commodities Act program. As you know, this program promotes fair trading practices in the perishable fruits and vegetables marketing chain. Among other things, it requires most buyers and sellers of fresh and frozen produce to obtain an Agriculture license in order to buy and sell their product. The program is administered from fees charged to obtain these Agriculture licenses. Agriculture and some Members of Congress are concerned that the legislative ceiling on license fees, last set in fiscal year 1988, will prevent the government from collecting sufficient revenues to cover future increases in the cost of providing program services, thereby rendering the program insolvent. As requested, our testimony today will discuss (1) how changes in the program's revenues and expenditures from fiscal years 1992 through 1998 may impact the program's future solvency and (2) how the fees fruit and vegetable buyers and sellers pay into this program compare with their use of program services.

In summary, according to Agriculture's projections, the program's long-term solvency is at risk. While revenues have been and are expected to be sufficient to cover program expenditures through fiscal year 1995, Agriculture will subsequently have to draw upon the program's reserves. This is because the current legislative ceiling will prevent the program from collecting sufficient revenues to cover escalating costs. These reserves, built up during years of surplus, will be sufficient to help carry the program through fiscal year 1998. After this point, the reserves will essentially be depleted and program solvency will be at risk.

Some buyer and seller groups' contributions to program revenues were often not proportionate to their use of program services. For example, we found that during fiscal year 1993, buyers and sellers trading more than one ton of produce a day (known as dealers) contributed about 42 percent of the program's revenues but required up to 85 percent of the program's services. Conversely, retailers covered by the act annually contributed about 34 percent of the revenues but required less than 7 percent of program services.

BACKGROUND

The Perishable Agricultural Commodities Act of 1930 (PACA) promotes fair trading practices in the marketing of fresh and frozen fruits and vegetables. The act prohibits unfair and fraudulent practices in the industry and provides for dispute resolution outside the civil court system to enforce contracts between buyers and sellers of these commodities in interstate and foreign commerce. Sellers must provide the quantity and quality of products specified in contracts, while buyers must accept and promptly pay for products received in accordance with the contract terms. These parties must abide by the fair trade practices established under the act in order to maintain a valid license to conduct business.

The PACA program, managed by the Department's Agricultural Marketing Service, is funded primarily from license fees paid annually by approximately 15,000 buyers and sellers, including dealers, retailers, brokers, commission merchants, food service firms, processors, and truckers. The amount each licensee pays is based on the number of branches or business facilities owned. The current legislatively set ceiling on fees, ranging from $400 to $4,000, was set in fiscal year 1988. However, the fees did not reach this ceiling until the middle of fiscal year 1991. In fiscal year 1993, 14,980 licensees paid about $7.2 million in license fees. At that time, the program also had reserves of about $1.8 million, built up during those years when revenues exceeded expenditures. (See table I.1 in attachment I for the distribution of licenses and fees, fiscal year 1993.)

In fiscal year 1994, Agriculture requested that the ceiling on license fees be raised to help the program cover future cost increases. Instead, for fiscal years 1995 and 1996 only, the Congress directed Agriculture to collect new fees to help cover the administrative costs associated with handling disputes between parties. These fees include a $60 filing fee for disputes settled informally and a $300 handling fee for complaints that require formal resolution. PACA program officials handle both types of disputes, while Agriculture's Office of General Counsel (OGC) assists the program by adjudicating formal complaints. Because it considered legal services an integral component of programs funded by user fees--including the PACA program--the Office of Management and Budget directed Agriculture to begin allocating the cost of OGC services to program budgets. OGC began charging the PACA program and other Agriculture user fee programs, such as grading services, for their legal services in fiscal year 1993.

Program funding from fees currently supports 103 PACA program employees in Washington, D.C., and five regional offices. These employees administer licenses; handle administrative and court actions for unfair trade practices; process, investigate, evaluate, and resolve complaints; and advise industry on their rights and obligations under the law. PACA program officials handle various types of disputes, including (1) reparation complaints--disputes between buyers and sellers over monetary damages incurred when contract provisions are violated and (2) disciplinary complaints--Agriculture actions against persons charged with violating fair trade practices. These activities are allocated to three cost categories: (1) PACA program-related costs, (2) a portion of the Agriculture Marketing Service's overhead costs, and (3) OGC costs.

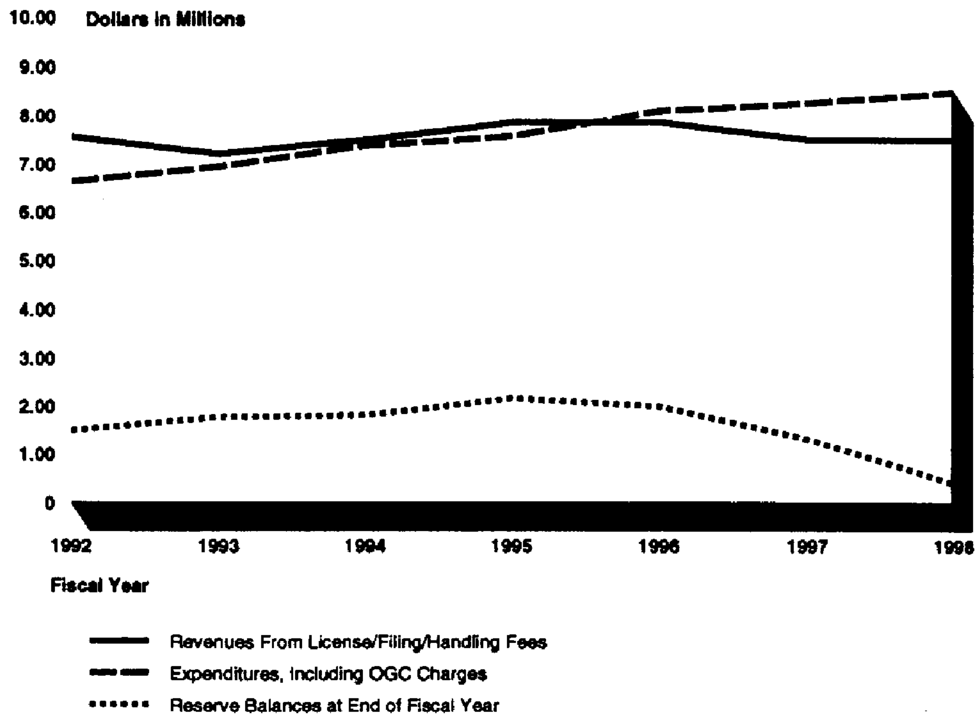
The act also provides for a seller's financial security by providing protection against a buyer's default on payment of a contract should the buyer file for bankruptcy or become insolvent. This portion of the act, known as the trust provision, requires a seller to notify the debtor and Agriculture through a trust notice, within 30 days of the date that payment is past due, that the seller intends to seek redress under the act. The act allows this seller first claim against the buyer's fruit and vegetable-related assets, including fruit and vegetable inventories and all receivables or proceeds from the sale of these commodities.

PACA FEES AND RESERVE FUNDS WILL NOT COVER PROGRAM COSTS AFTER FISCAL YEAR 1998

While Agriculture anticipates that the PACA program's revenues will cover expenditures through fiscal year 1995, it expects to begin drawing upon PACA program reserves to help cover costs in fiscal year 1996. By the end of fiscal year 1998, Agriculture expects that PACA program reserves will be virtually depleted. This threat to the program's solvency is largely attributable to the combination of two factors: (1) the current legislative ceiling placed on license fees and (2) the full costs of OGC services, which OGC will pass to the PACA program beginning in fiscal year 1996.

Figure 1 shows the trends in PACA program revenues, expenditures, and reserves through fiscal year 1998. As you can see, after fiscal year 1995, expenditures will exceed revenues; therefore, Agriculture will need to begin using PACA program reserves to cover expenditures.

Figure 1: Changes in PACA Program Revenues, Expenditures, and Reserves, Fiscal Years 1992-98



Note: See table I.2 in attachment I for detailed information on the data presented in this figure.

Source: U.S. Department of Agriculture.

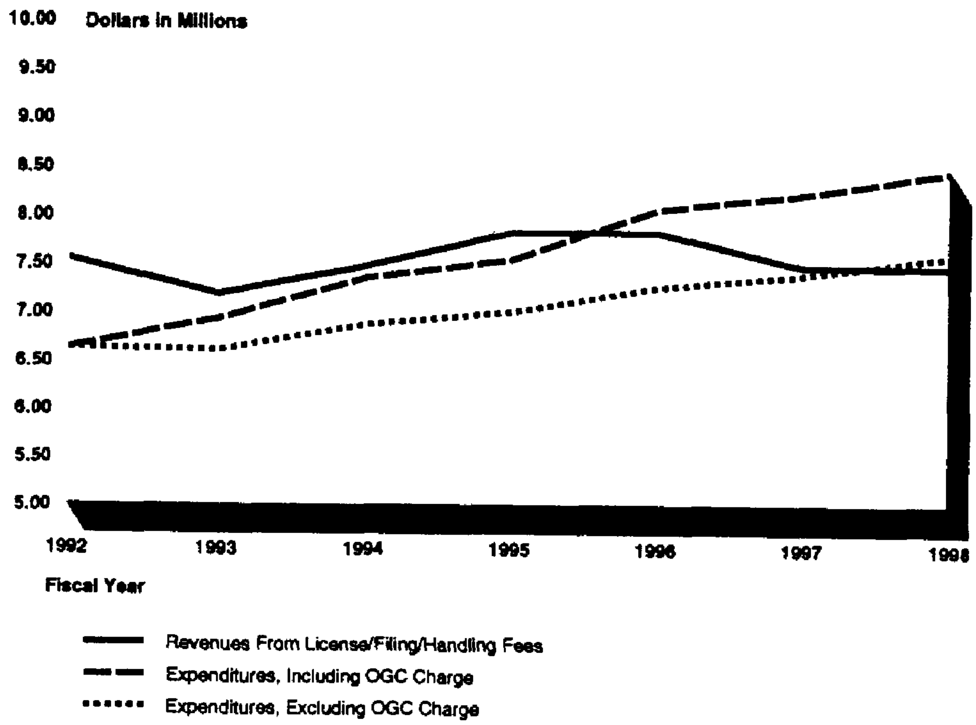
Between fiscal years 1992 and 1994, revenues from license fees averaged about $7.4 million annually, while expenditures averaged about $7 million, enabling the program to add to its reserves. Agriculture expects to have sufficient revenues to cover the program's expenditures in fiscal year 1995.[1] (See tables I.2

[1]Agriculture projects that the program will collect an additional $350,000 in filing and handling fees during fiscal years 1995 and 1996.

through I.5 in attachment I for a detailed analysis of these expenditures.)

Agriculture projects that PACA program costs will begin to exceed revenues in fiscal year 1996, mainly because program expenses are expected to rise, while the current legislative ceiling on license fees remains in place. Agriculture projects that the program will continue to receive about $7.5 million annually in license fees in fiscal years 1996, 1997, and 1998. In addition, during fiscal year 1996, Agriculture projects the program will receive $350,000 in filing and handling fees. On the other hand, expenditures are expected to total between $8.1 million in fiscal year 1996 and $8.4 million in fiscal year 1998. The increase in expenditures is due primarily to increases in salaries and benefits for PACA program staff and the additional costs that Agriculture's OGC plans to charge the program for both its direct and overhead expenses. Without the OGC charges, the licensing fees, even under the current ceiling, would have been sufficient to cover expenses, at least through fiscal year 1997. However, because of the OGC charges, the program will have to draw upon its reserves beginning in fiscal year 1996. If all reserves are depleted and expenditures continue to exceed revenues, funds will not be sufficient to pay for operating costs and the ability to conduct program operations will be threatened. Figure 2 shows the impact of OGC charges on the PACA program, assuming that the legislative ceiling remains in place.

Figure 2: Changes in PACA Revenues and Expenditures, Including and Excluding OGC Charges, Fiscal Years 1992-98



Source: U.S. Department of Agriculture.

Beginning in fiscal year 1996, OGC charges against the program will reflect total projected costs for OGC services. Before then, these charges were based on rough estimates of OGC's staff time spent providing identifiable legal services to the PACA program. This estimate did not include the total costs of support functions, such as supervision and training, or OGC overhead costs. For example, in fiscal year 1993, the year that it began charging for services, OGC charged the PACA program $321,000. However, its total costs attributable to the program were more than double that--about $673,000. (Table I.5 in attachment I shows these charges for fiscal years 1993 through 1998.)

CONTRIBUTIONS OF PACA-REGULATED GROUPS ARE OFTEN NOT PROPORTIONATE TO THEIR USE OF PROGRAM SERVICES

In other user fee programs we have reviewed at Agriculture, users only pay into the program when they receive services, such as grading, that they have requested. Unlike these programs, the PACA program revenues come from up-front license fees. We found that the percent of license fees paid by various groups regulated under the PACA program did not always correspond to their use of PACA program services for reparation complaints and trust notice filings (the only services for which Agriculture had data available by user groups). While dealers paid the largest portion of the program's total license fees--42 percent--their use of program services often exceeded their financial contributions. Specifically, dealers filed about 85 percent of all reparation complaints, and about 66 percent of the trust notices were filed against them. On the other hand, retailers paid about 34 percent of the total license fees but filed less than 1 percent of the reparation complaints, and less than 7 percent of either complaints or trust notices were filed against them. Finally, agents working on behalf of growers and shippers--known as commission merchants--paid about 3 percent of the license fees but filed 26 percent of trust notices. (See table I.6 in attachment I for more information on the use of program services.)

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Mr. Chairman, this concludes our prepared statement. We hope that our information will facilitate your deliberations on the PACA program. We would be pleased to answer any questions that you or the other Members may have.

Table I.1: Distribution of Licenses and Fees, Fiscal Year 1993

User	Licenses		License fees		Number of licensees paying		
	Number issued	Percent of total	Received ($ mil.)	Percent of total fees	$400[a]	$600 to $4,000[b]	$4,000[c]
Dealers	6,891	46.00	$2.98	41.50	6,846	28	17
Retailers	3,991	26.64	2.43	33.84	3,701	143	147
Brokers	2,036	13.59	0.86	11.98	2,032	3	1
Processors	1,202	8.02	0.52	7.24	1,194	6	2
Commission merchants	435	2.90	0.19	2.65	433	0	2
Food service firms	356	2.38	0.17	2.37	348	4	4
Truckers	69	0.46	0.03	0.42	69	0	0
Total	14,980	100.0	$7.18	100.0	14,623	184	173

[a]1 to 9 branches = $400
[b]10 to 27 branches = $600 to $4,000
[c]28 or more branches = $4,000

Source: U.S. Department of Agriculture.

Table I.2: PACA Revenues, Expenditures, and Reserves, Fiscal Years 1992-98

Dollars in millions

Fiscal year	Revenues	Expenditures	Reserve balance	Months of operating reserves
1992	$7.54	$6.63	$1.48	2.7
1993	7.18	6.92	1.75	2.9
1994	7.46	7.34	1.79	2.9
1995[a]	7.81[b]	7.53	2.14	3.2
1996[a]	7.81[b]	8.05	1.97	2.9
1997[a]	7.46	8.21	1.29	1.8
1998[a]	7.46	8.44	0.38	0.4

[a]U.S. Department of Agriculture estimates.

[b]Includes $350,000 annually for filing and handling fees.

Source: U.S. Department of Agriculture.

ATTACHMENT I

Table I.3: PACA Program Expenditures, Fiscal Year 1993

Dollars in thousands

Type of expenses	PACA program-related costs	Agricultural Marketing Service overhead costs	Total costs
Salaries and benefits	$4,921	$320	$5,241
Travel	322	8	330
Rent and utilities	492	26	518
Supplies	63	7	70
Equipment	107	15	122
Other[a]	560	80	640
Total	$6,465	$456[b]	$6,921

[a]Other expenses include (1) contractual services and training (includes OGC's $321,000 charge to the PACA program), (2) printing, and (3) interest, penalties, and fines.

[b]This total represents about 7 percent of the PACA program-related costs.

Source: U.S. Department of Agriculture.

Table I.4: Agricultural Marketing Service Overhead Allocated to the PACA Program, Fiscal Year 1993

Dollars in thousands

Agricultural Marketing Service offices	Overhead allocation
Administrator	$11
Deputy Administrator, Program Operations	9
Deputy Administrator, Management	21
Information Staff	11
Legislative Affairs Staff	7
Management reimbursement to Animal and Plant Health Inspection Service	46
Compliance Staff	28
Financial Management Division	76
Personnel Division	81
Information Resources Management Division	93
Management Services Division	59
Statistical Staff	14
Total	$456

Source: U.S. Department of Agriculture.

Table I.5: OGC Charges to PACA Program, Fiscal Years 1993-98

Fiscal year	Direct costs: PACA program-related[a]	Direct costs: Other[b]	OGC over-head costs[c]	Total costs incurred	OGC charges to PACA	Shortfall
1993	$400,250	$194,263	$78,725	$673,238	$321,000	($352,238)
1994	464,960	225,671	91,453	782,084	484,206	(297,878)
1995[d]	362,743	170,702	70,655	604,100	535,595	(68,505)
1996[d]	477,064	231,545	93,833	802,442	802,442	0
1997[e]					834,540	
1998[e]					859,576	

[a]PACA-related: Salaries and benefits specifically related to the PACA user-fee program, sometimes known as billable hours.

[b]Other: A proportional share of salaries and benefits attributable to services that benefit all OGC programs. This involves the same staff. For example, an expenditure in this category would include staff salaries and benefits for time spent in training and supervision.

[c]OGC overhead costs: A proportional share of costs such as supplies, communications, and equipment maintenance. This is about 12 percent of the total direct costs.

[d]Fiscal years 1995 and 1996 are current estimates provided by OGC.

[e]Fiscal years 1997 and 1998 OGC charges are projections provided by the Agricultural Marketing Service. Amounts represent 4 percent and 3 percent inflation factors, respectively. Estimates have not been developed for OGC cost categories.

Source: U.S. Department of Agriculture.

ATTACHMENT I

Table I.6: Use of Program Services--Reparations and Trust Notices, Fiscal Year 1993

User	Percent of license fees paid[a]	Reparations[b]		Trust notices[c]	
		Percent filing	Percent filed against	Percent filing	Percent filed against
Dealers	41.5	84.8	85.1	56.3	65.8
Retailers	33.8	0.1	2.6	0.0	6.6
Brokers	12.0	7.2	6.4	10.8	15.6
Processors	7.2	1.1	1.5	5.7	3.3
Commission merchants	2.7	2.4	3.2	25.9	2.7
Food service firms	2.4	0.2	0.9	0.2	3.4
Truckers	0.4	0.0	0.1	0.0	0.0
Growers	0.0	4.3	0.2	1.0	2.5

[a]$7.18 million paid.
[b]4,040 reparation complaints filed.
[c]132,472 trust notices filed.

Source: U.S. Department of Agriculture.

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