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GOVERNMENT

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PERISHABLE AGRICULTURAL COMMODITIES
AMENDMENTS

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON DOMESTIC MARKETING AND
CONSUMER RELATIONS

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

ON

H.R. 9288 and H.R. 10988

DECEMBER 4, 1975, FEBRUARY 4 AND 25, 1976

Serial No. 94-00



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AMENDMENTS

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PERISHABLE AGRICULTURAL COMMODITIES AMENDMENTS

THURSDAY, DECEMBER 4, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC
MARKETING AND CONSUMER RELATIONS
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met at 10:10 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Joseph P. Vigorito (chairman of the subcommittee) presiding.

Present: Representatives Vigorito, McHugh, and Findley.

Also present: Tony Imhof, associate counsel; Weldon Barton and Leon Geyer, staff consultants, Subcommittee on Domestic Marketing and Consumer Relations; Carol Dubard, staff assistant.

Mr. VIGORITO. The Subcommittee on Domestic Marketing and Consumer Relations is now in session.

We are meeting this morning to hear testimony on H.R. 9288, a bill to amend the Perishable Agricultural Commodities Act to remove the \$100 statutory ceiling on licensing fees.

[The bill H.R. 9288 follows:]

[H.R. 9288, 94th Cong., 1st sess.]

A BILL To amend the Perishable Agricultural Commodities Act, 1930

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3(b) of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. 499c(b)), is amended by striking out in the third sentence the phrase "but in no event shall such fee exceed \$100" and inserting in lieu thereof "and the Secretary may assess a single, uniform license fee for all applicants or he may assess a graduated fee per applicant based upon the amount and type of business conducted by the firm".

Mr. VIGORITO. The subcommittee originally scheduled 2 days of hearings this week, but due to a conflict with the State Department briefing before the full committee yesterday the subcommittee hearings were limited to today only.

I have heard from the National Potato Council, which is involved with its annual convention on the west coast this week, and others who would like to see an additional day of hearings. In particular, they wish to testify on certain other recommended amendments to the PACA, in addition to licensing fees.

I think that it is only fair that we hear from anyone who has a legitimate recommendation concerning the PACA, and in the interest of time we may as well do that now while the licensing fee question is under review anyway.

Accordingly, I plan to schedule one additional day of hearings on PACA as early next session as feasible, and then the subcommittee will

be able to consider any recommendations for substantive amendments to the act that may be made at that hearing at the same time that we mark up the licensing fee legislation.

Although I am sure that members of the subcommittee may have questions for the USDA witness and other witnesses that go beyond the question of licensing fees, I did want to announce that an additional hearing will be held early next year, and that aspects of PACA other than licensing fees will be emphasized at that time.

I want to thank the subcommittee members, witnesses, and the public for their attendance this morning.

Our first witness is Hon. B. F. Sisk, Member of Congress from California.

STATEMENT OF HON. B. F. SISK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Sisk. Mr. Chairman, members of the subcommittee, it is indeed a pleasure to appear before you today to discuss my proposed amendment to the Perishable Agricultural Commodities Act of 1930.

Basically, the amendment I propose allows the Secretary of Agriculture to alter the fee structure for licences as provided for in the act. This would be done through either of two methods, assess licensees a new rate or establish a graduated fee based on the amount and type of business conducted.

One obvious question regarding this is why change a 45-year-old practice. And, based on the costs of operating the program the answer is equally obvious. At the current rate of fees coming in, the Perishable Agricultural Commodities Act fund will be operating at a serious deficit because of higher costs and fewer license applicants.

Representatives from the U.S. Department of Agriculture have informed me that estimated income from licensing in fiscal year 1976 is \$1,630,000. This is \$1,000 to \$2,000 less than what it costs to implement the program. Based on a trend of fewer and fewer applicants and increased salary costs, the fund could find itself \$840,000 in arrears by fiscal year 1979 with nothing left in the fund itself.

The Perishable Agricultural Commodities Act states that fees shall be available "for all expenses necessary to the administration of this act and the act approved March 3, 1927 . . ."

I would trust you would agree that our predecessors in the Congress envisioned a self-sustaining operation. Unless fees are increased, however, that desire to have a self-sustaining program will be defeated.

There are two alternatives presented which would allow the program to remain solvent.

I would trust that you agree that the degree of latitude allowed by both is perhaps the wisest approach. Should you agree and accept H.R. 9288, please remember that the licensee will still have a degree of protection with the following which is already a part of the Perishable Agricultural Commodities Act:

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.

Also, it was the produce industry which petitioned Congress for the Perishable Agricultural Commodities Act.

Thank you, Mr. Chairman.

Mr. VIGORITO. Thank you very much, Mr. Sisk.

The committee will, of course, go over this thoroughly. We have this meeting today, and we have scheduled another day of hearings.

I hope that we will come to a conclusion so that we do not have to go into public funds to support this program.

It has been supported by licensing fees for a good many years.

The subcommittee will recess for 10 minutes while we go and vote on the floor.

[Recess taken.]

Mr. VIGORITO. The subcommittee will resume its setting.

Our next witness is Mr. John Gardner, Chief, Regulatory Branch, Fruit and Vegetable Division, AMS, USDA.

**STATEMENT OF JOHN GARDNER, CHIEF, REGULATORY BRANCH,
FRUIT AND VEGETABLE DIVISION, AMS, U.S. DEPARTMENT OF
AGRICULTURE; ACCOMPANIED BY EUGENE M. CARLUCCI, ASSIST-
ANT BRANCH CHIEF, REGULATORY BRANCH**

Mr. GARDNER. Mr. Chairman, I have with me Mr. Eugene M. Carlucci, who is Assistant Chief of the Regulatory Branch. I might point out that the Regulatory Branch is charged with the day-to-day administration of the Agricultural Commodities Act.

I appreciate the opportunity to appear before this committee to present the views of the Department of Agriculture on H.R. 9288, a bill to amend the provisions of the Perishable Agricultural Commodities Act, 1930, to permit the Secretary to set the fee for a license to trade under the act at the level he determines necessary to finance adequately the administration of the law.

The amendment would also authorize the Secretary to assess either a uniform fee for all applicants or a graduated fee based on the amount and type of business conducted by the applicant firm.

The Department recommends that H.R. 9288 be passed.

BACKGROUND

Before discussing H.R. 9288 further, I would like to outline the purpose of the PACA and the method of its administration. Because of the highly perishable nature of fresh fruits and vegetables, rapid harvesting, packaging, and distribution are essential. It is a financially hazardous business due to the risks of weather, uncertain growing conditions, and unpredictable fluctuations in market prices.

There are many opportunities for unethical persons to take advantage of these conditions and engage in unfair and fraudulent practices.

For several years prior to 1930, unsuccessful attempts had been made to establish an industry-operated system prohibiting unfair trade practices and enforcing contracts.

When these efforts failed, the leading trade associations in the fresh produce industry united in sponsoring enactment of the Perishable Agricultural Commodities Act.

The basic objective of the act is to establish a code of fair trading practices in the marketing of fresh and frozen fruits and vegetables and cherries in brine in interstate and foreign commerce and to aid in the enforcement of contracts for marketing these commodities.

Among the unlawful trade practices prohibited are to (1) reject or fail to deliver in accordance with the terms of the contract; (2) destroy without reasonable cause any lot received on consignment; (3) fail to pay promptly; and (4) misbrand or misrepresent the grade, quality, or state or region of origin of fruits and vegetables shipped, sold, or offered for sale in interstate commerce.

Enforcement of the act is primarily through a system of licenses. Commission merchants, brokers, and dealers, including certain retailers and processors, are required to be licensed.

A person's license to trade under the act may be suspended or revoked for engaging in unfair trading practices. Recently the law was amended to authorize the Secretary the option of allowing violators of the misbranding provisions to discharge their obligation by paying a monetary penalty in lieu of license suspension or revocation.

There are two main phases of activity in administering the act. In the first phase, the Secretary deals with reparation cases in which he decides disputes involving claims for financial damages resulting from any violation of the fair trading principles.

The second main phase of activity relates to disciplinary measures. These include administrative proceedings by the Secretary to suspend or revoke licenses for repeated or flagrant violations of the act, and court actions to impose civil penalties for operating without a license, together with injunctions to restrain further operations.

The cost of administration of the law is supported entirely by license fees paid by commission merchants, dealers, and brokers trading in the fruit and vegetable industry.

Since the basic law was enacted in 1930, the Secretary traditionally has set a uniform fee for all applicants within the maximum established by Congress.

The present fee of \$100 per year is the maximum authorized by the statute.

There is an immediate need to increase the income from license fees, either by raising the uniform fee or by developing an appropriate schedule of graduated fees. This need is based on two factors: (a) the declining number of firms subject to license, and (b) the increasing cost of administering the act.

At present, the number of licensees is approximately 16,300 compared with an all time peak of about 27,000 in 1956. This trend toward fewer licensees results from the continued consolidations and mergers of large firms in the industry and the closing of many small firms.

The net decline in the number of licensees has averaged about 400 per year during the last 5 years. Nevertheless, the number of complaints filed under the act and the requests for advice and assistance have remained relatively constant.

Costs of administration have been increasing largely because of the adjustment in salaries and fringe benefits which amount to more than 80 percent of all expenditures. These increases in expenditures have taken place even though the number of employees engaged in the administration of this act has not increased over the past 10 years.

In addition, beginning in fiscal year 1975, the General Services Administration notified us, in accordance with Public Law 92-313, that a charge would be made for rent of Federal office space, which results in a 7-percent increase in the cost of administering the program.

I would like to call your attention to attached table 1 of projected income and expenses for the years 1976 through 1979. If the license fee is maintained at the current level of \$100, the PACA fund will incur a deficit of about \$172,000 in fiscal year 1976, \$49,000 in the transition quarter, and a deficit of about \$320,000 during fiscal year 1977. Inasmuch as there is no other source of funds, this program would terminate when the reserve fund is exhausted.

If a uniform fee is to be utilized, it will be necessary that it be set at about \$135 per year to defray the cost of administration and to make some contribution to the reserve fund. If the fee is raised effective July 1, 1976, as set forth in table 2 attached, the program will continue operating in the black through fiscal year 1978. It is estimated that there would be a \$45,000 deficit at the end of fiscal year 1979 if this fee is adopted.

If it is determined that a graduated fee based on type and dollar volume of business would be more equitable, projected fees would range from \$100 to \$300 per year, depending on the dollar volume of business of licensees.

The projected distribution of firms by size groups, shown on table 3, is based on results of a survey of annual business conducted in fiscal year 1974 and observation of industry trends over the past several years. An operating surplus of about \$529,000 is projected for fiscal year 1977, assuming the implementation of the graduated fee on July 1, 1976, with continued surpluses in fiscal years 1977, 1978, and 1979.

Enactment of the proposed amendment will give the Department flexibility in adjusting annual license fees on an as-needed basis to cover increased program costs. Adequate financing will enable the Department to carry out an effective program to suppress unfair and fraudulent practices in the marketing of fruits and vegetables in interstate or foreign commerce.

The Secretary presently has legislative authority to set fees at levels needed to finance the work adequately for certain other self-supporting programs, such as the voluntary grading of farm products. This proposed amendment would provide essentially the same authority under the PACA.

This legislation was recommended to the Department by the PACA-Industry Advisory Committee at its February 2, 1974, meeting.

If H.R. 9288 were enacted, it would not result in a material increase in the cost of administering the PACA. The amendment would not significantly affect the cost of living or the food cost to consumers. Consumers should benefit if the proposed legislation is adopted since it would assure the maintenance of the code of fair trading practices under this legislation which contributes to the free operation of competitive forces in the produce industry.

Mr. Chairman, this concludes my statement.

I shall be glad to respond to questions from the committee.

[The tables attached to Mr. Gardner's statement follow:]

PACA Income and Expenditures and Status of PACA Fund
Fiscal Years 1976-1979 -- Under Three Assumptions

Table 1 - Assumes no change in \$100 annual license fee.

ITEM	FY 1976 Estimated	Transition Quarter	FY 1977 Estimated	FY 1978 Estimated	FY 1979 Estimated
Income from Licensing	\$1,630,000 <u>b/</u>	\$416,000	\$1,590,000 <u>c/</u>	\$1,550,000 <u>d/</u>	\$1,510,000 <u>e/</u>
Expenditures <u>a/</u>	<u>1,802,000</u>	<u>465,000</u>	<u>1,910,000</u>	<u>1,988,000</u>	<u>2,070,000</u>
Operating Surplus or Deficit	- 172,000	- 49,000	- 320,000	- 438,000	- 560,000
PACA Fund Beginning of Year	<u>650,000</u>	<u>478,000</u>	<u>429,000</u>	<u>109,000</u>	<u>- 329,000</u>
End of Year	<u>478,000</u>	<u>429,000</u>	<u>109,000</u>	<u>- 329,000</u>	<u>- 889,000</u>

Table 2 - Assumes uniform fee increased from \$100 to \$135 on July 1, 1976.

ITEM	FY 1976 Estimated	Transition Quarter	FY 1977 Estimated	FY 1978 Estimated	FY 1979 Estimated
Income from Licensing	\$1,630,000 <u>b/</u>	\$416,000	\$2,132,500 <u>c/</u>	\$2,078,500 <u>d/</u>	\$2,024,500 <u>e/</u>
Expenditures <u>a/</u>	<u>1,802,000</u>	<u>465,000</u>	<u>1,910,000</u>	<u>1,988,000</u>	<u>2,070,000</u>
Operating Surplus or Deficit	- 172,000	- 49,000	222,500	90,500	- 45,500
PACA Fund Beginning of Year	<u>650,000</u>	<u>478,000</u>	<u>429,000</u>	<u>651,500</u>	<u>742,000</u>
End of Year	<u>478,000</u>	<u>429,000</u>	<u>651,500</u>	<u>742,000</u>	<u>696,500</u>

a/ Assumes salary increases of 5 percent per year.

b/ Income estimated on 15,900 licenses (includes accrued fees of \$40,000).

c/ Income estimated on 15,500 licenses (includes accrued fees of \$40,000).

d/ Income estimated on 15,100 licenses (includes accrued fees of \$40,000).

e/ Income estimated on 14,700 licenses (includes accrued fees of \$40,000).

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Table 3 - Assumes graduated fee implemented July 1, 1976 **

	FY 1976 Estimated	Transition Quarter	FY 1977 Estimated	FY 1978 Estimated	FY 1979 Estimated
Income from Licensing	\$1,630,000 a/	\$416,000	\$2,439,400 a/	\$2,392,700 a/	\$2,344,900 a/
Expenditures b/	1,802,000	465,000	1,910,000	1,988,000	2,070,000
Operating Surplus or Deficit	- 172,000	- 49,000	529,400	404,700	274,900
PACA Fund					
Beginning of year	650,000	478,000	429,000	958,400	1,363,100
End of year	478,000	429,000	958,400	1,363,100	1,638,000

a/ Includes \$40,000 in accrued fees.

b/ Assumes salary increases of 5 percent per year.

** Fee graduated as follows:

Annual Volume of Business	Percent of Licenses (Estimated)			Number of Licenses		
	Fiscal Year 1976	Fiscal Year 1977	Fiscal Year 1978	Fiscal Year 1976	Fiscal Year 1977	Fiscal Year 1978
Under \$1 million (Assumed Fee \$100)	62.0	61.2	60.4	9,858	9,486	8,761
\$1 - \$3 million (Assumed Fee \$200)	22.2	22.8	23.4	3,530	3,534	3,533
Over \$3 million (Assumed Fee \$300)	15.8	16.0	16.2	2,512	2,480	2,447
Total	100.0	100.0	100.0	15,900	15,500	14,700

Note: Actual distribution of size groups in accordance with fiscal year 1974 survey results was:

Under \$1 million -- 62.8 percent of licenses; \$1 - \$3 million -- 21.6 percent
over \$3 million -- 15.6 percent.

Mr. VIGORITO. Thank you, Mr. Gardner, for giving us the background of the current situation and a look into the future.

Is there any reason why you said \$135? That is a 35-percent increase. I notice that your balance would continuously increase if you implemented a 35-percent increase in your fee. Could we settle on say 25 percent, at \$125?

Mr. GARDNER. The main reason is that we were seeking a figure that would yield sufficient income to eliminate the necessity of raising the license fee again within a year or so.

Under the procedure in our agency, the standard practice is to have funds sufficient to carry on a 6-month operation. The \$135, while it is a 35-percent increase, will yield some contribution to the reserve fund, but will not get quite high enough to go to the 6-month reserve figure, as you can see from the table.

We feel that it would be reasonable, and that the fee should be in the neighborhood of \$135.

Mr. VIGORITO. Do you prefer a fixed fee or \$135, or a graduated fee?

Mr. GARDNER. The subject of a fixed or a graduated fee has been discussed by the Department with the PACA Industry Advisory Committee.

We have told them that in the event H.R. 9288 passed, we would furnish them with alternate proposals to study, and that we would ask for and evaluate their recommendations before any proposal was made for rulemaking. The Department has not determined that it would propose that a fixed or a variable fee system be adopted.

Mr. VIGORITO. H.R. 9288 does not give you the option of one method or another, am I correct?

Mr. GARDNER. H.R. 9288 provides an option of either a fixed or a variable fee.

Mr. VIGORITO. It does?

Mr. GARDNER. Yes.

Mr. VIGORITO. It gives you enough authority to implement a graduated fee without coming back to Congress?

Mr. GARDNER. Yes.

As we understand it, it would be sufficient to follow the normal rulemaking procedure by publishing a fee proposal in the Federal Register after we received the advice of our industry advisory committee. After considering the comments received on the proposal from the general public, we would set the fee system and amount.

Mr. VIGORITO. Mr. McHugh.

Mr. McHUGH. Mr. Gardner, it seems that for over 40 years we have operated under a procedure whereby Congress set a maximum, and the Secretary operated within that.

Is there any particular reason that you could point to why you are coming to Congress asking for this flexibility, so that you would not have to come back to Congress again?

Mr. GARDNER. We are not endeavoring to avoid coming back to Congress. Our only reason for making this recommendation is that it has been more or less common in legislation which requires the setting of fees to give the Secretary the authority to establish the fees at the level he determines appropriate.

Mr. McHUGH. Is there any particular disability, however, to the current procedure?

Mr. GARDNER. To working within a maximum set by statute?

Mr. McHUGH. Yes.

Mr. GARDNER. No.

Mr. McHUGH. If the committee decides to change the laws so that you would not have to come back, what is the reason for the graduated fee alternative? In other words, as you have projected your figures, it would seem clear that \$135 as a set fee for everyone would be more than adequate to cover your projected expenses.

It also seems to me that \$135 for any viable business as a license fee would not be onerous. I may be wrong.

Is there any particular reason for the graduated fee schedule? Is there any precedent for it in other areas, for example?

Mr. GARDNER. The reason for discussing, suggesting, or talking about a graduated fee is that in past appearances before the House Agriculture Committee, the question has been asked of the Department representatives "Why do you not use a variable fee? Why does the big man like the large chainstore pay the same fee as the small retailer or other dealer?" For example, a trucker.

The subject of a uniform versus a variable fee system was of interest to the PACA Industry Advisory Committee. They said they would like to explore the possibilities of the two systems.

After a preliminary study, they recommended that we ask Congress to approve the option of using a variable fee system.

Mr. McHUGH. I do not want to make a mountain out of a molehill. My only concern is that, inasmuch as we have had this law on the books for 40 years, before we change the whole fee system, there should be some compelling reason to make the change.

I think you have probably described all of the reasons that you have. You would like additional flexibility, which I can appreciate an agency might like to have. It has been suggested by some that a graduated fee schedule might be more fair.

Is there any other reason that you can think of, so that I am clear in my own mind on this question?

Mr. GARDNER. No, sir.

Mr. McHUGH. Just for background purposes, and for my information, what type of people serve on the PACA Advisory Committee?

Mr. GARDNER. They represent all segments of the fruit and vegetable industry from the grower through the shipper, the broker, the terminal market buyer, to the retailer, to the processor, and this year we have added a general public representative.

Mr. McHUGH. Have you any idea as to how many suspensions or revocations you have promulgated over the last year or 2 years, or 5 years?

Mr. GARDNER. I can give you current figures for fiscal year 1975.

We have denied licenses in 14 cases during that year. We imposed the penalties of suspensions, or revocations, or a finding of repeated and flagrant violation in 40 cases. That is, in 1975.

Mr. McHUGH. Can you compare that with the complaints you have had?

Mr. GARDNER. Complaints seeking to recover money?

Mr. McHUGH. Yes.

Mr. GARDNER. We have two phases now. We have a reparation complaint system, and we have a disciplinary complaint system.

During 1975 fiscal year, there were 2,390 reparation complaints filed, of which 1,744 were disposed of, 1,392 of them informally and 352 by a formal procedure resulting in recovery or awards directing that payment be made to the complaining parties of \$7.4 million.

Mr. McHUGH. Do you categorize the complaints with regard to revocation or suspension separately, or is that something you initiate yourself? How does that work?

Mr. GARDNER. Disciplinary complaints are all opened by the Department of Agriculture and show the Department as the complaining party. Evidence to initiate the complaint is usually developed during the handling of reparation complaints when we come across an abnormal number of violations, or we may receive information and evidence from outside sources such as other people in the trade.

We do not proceed with the investigation of a disciplinary complaint unless we have received a complaint supported by evidence and have reason to believe there is a probability the investigation will disclose that there are additional violations which would warrant an action to suspend or revoke the license.

Mr. McHUGH. Is it fair to say that of them, there were more than 2,000 complaints which could have resulted in disciplinary action? Is it also fair to say that there were 40 cases in 1975 that in fact did result in disciplinary action? Am I drawing the proper conclusion?

Mr. GARDNER. The 40 disciplinary cases I referred to are not part the over 2,000 reparation complaints.

Mr. McHUGH. I understand, but as I understand what you have said, the disciplinary action is generally taken as a result of a complaint instituted by someone out in the field. Perhaps a private party, or usually a private party.

Mr. GARDNER. The grassroots source of a disciplinary complaint is usually a reparation complaint which discloses evidence that there are more flagrant violations that need to be looked into.

Mr. McHUGH. There have been more than 2,000 reparation complaints in 1975?

Mr. GARDNER. Yes.

Mr. McHUGH. I am trying to draw some kind of comparison between the number of complaints you had and the number of disciplinary actions that resulted.

Mr. GARDNER. The 40 orders imposing sanctions resulted from formal disciplinary complaints. We have also had informal disciplinary actions which have been handled without a formal procedure, and which did not result in the suspension or revocation of a license.

For instance, we have a program to spotcheck for misbranding and misrepresentation. We opened 336 cases involving misbranding violations during 1975, and closed 303 of them informally.

We also find inadequate records when we make investigations in handling reparation complaints. We opened 61 cases of this type, and closed 61 plus some of the carryover from the previous year, or a total of 64. We had 36 other types of disciplinary complaints involving various violations. It could be these disciplinary complaints did not go to a formal proceeding. There were 75 of those opened. Of the 76 complaints involving miscellaneous violations, 36 were closed informally and 40 closed formally by suspension, by revocation, or a finding of a repeated flagrant violation of the law.

Mr. McHUGH. Based upon your experience, would you say that 1975 was a fairly typical year under this law?

Mr. GARDNER. It was a typical year for the workload of reparation complaints. The amount of reparation complaints filed remains fairly constant.

The amount of disciplinary complaints has increased slightly.

There is another source which frequently yields evidence of violations that is used as a basis of disciplinary complaints. That is where we have bankruptcies involving large sums of money or flagrant bankruptcies usually with an indication that there is something out of the ordinary such as purchases of large amounts of merchandise during the period just prior to filing the petition in bankruptcy.

Where warranted a complaint is filed asking for revocation of the violator's license.

Mr. McHUGH. Thank you very much.

Mr. VIGORITO. Mr. Gardner, how many employees does your division have?

Mr. GARDNER. There are 82 employees in the regulatory branch.

Mr. VIGORITO. As you know, the committee is currently considering legislation on grain inspection. We will be faced with the question of how to finance grain inspection. Your agency pays for itself out of fees it collects. Do you find that it is a system that works very well?

Mr. GARDNER. Yes. We think it is an appropriate system. Everybody who is required to be licensed makes a contribution, there are a sufficient number, in excess of 16,000, so there is no possibility of undue influence, and the license fee is not high enough to be termed burdensome.

We feel also that, inasmuch as the licensee participates in the financing, he is more interested in carrying out the code of fair trading practices and he has a definite interest in proper administration.

Mr. VIGORITO. I do not have any more questions.

Thank you very much, Mr. Gardner and Mr. Carlucci for being with us today.

Our next witness is Mr. Watson Rogers, President Emeritus, National Food Brokers Association in Washington, D.C.

STATEMENT OF WATSON ROGERS, PRESIDENT EMERITUS, NATIONAL FOOD BROKERS ASSOCIATION

Mr. ROGERS. Mr. Chairman and gentlemen of the subcommittee, my name is Watson Rogers. I am president emeritus of the National Food Brokers Association, which is a national trade association with headquarters in Washington, D.C.

Our association is one of the oldest in the food industry having been founded in 1904. Our members are located throughout this country and are responsible for the sales and merchandising of the majority of the processed foods in this Nation.

They have served the Nation and the food industry well. On an average, one of our members represents 23 food manufacturers and processors. Many of our member firms have represented the same food processors for over a period of 50 years.

I would like to discuss our members and their relationship to PACA later in my statement.

Initially, however I would like to relay our strong feelings regarding the suggested legislation before this committee. We are very much opposed to a measure which would take away from Congress the right of taxation and transfer such authority to another branch of government. In effect this is what H.R. 9288 would do.

It would delegate to the Secretary of Agriculture the power to set license fees, fees which in reality are forms of taxation for government services to the private sector.

We do not question the competence or integrity of present officials at the U.S. Department of Agriculture. As a matter of fact, we hold them in high regard, not only for their administrative ability, but also for their exemplary character and years of service to this Nation's food industry.

Our objection to this proposed legislation is that we do not believe it is in the public interest for Congress to give up its express rights of taxation to unknown future administrators in another branch of government.

We hope you will not approve any further erosion of the prerogatives of Congress in order to enhance the powers of the executive branch.

The members of Congress are responsible to the people and have to justify this responsibility every 2 years. An agency administrator is not in this same position.

Not only would this bill give the USDA Secretary the absolute authority to set fees but it would be an open end authority.

It would also give the Secretary the power to establish unlimited classifications of business and set license fees accordingly, regardless of the congressional intent when the law was originally passed.

We therefore urge your disapproval of this bill as not being in the best interest of the public because it would distort a proper balance between the Congress and the executive branch.

In opposing this bill, we want to make it clear that we feel the Perishable Agricultural Commodities Act is a good law. It has been instrumental in bringing about an orderly marketing process in the fresh fruit and vegetable industry and in aiding the grower.

This industry, because of the divergence of its components can be thankful for those who foresaw the need for a strong code of ethics for trading purposes.

We also feel the employees of USDA who are responsible for PACA enforcement are effective in carrying out their duties.

Mr. Floyd Hedlund under whose direction the PACA is administered, is known throughout the food industry as an expert on food matters and a dedicated public official.

Our members feel, however, that as legitimate frozen food brokers they should not be required to obtain a PACA license. We do not believe the intent of this legislation was to cover business organizations who have no control over a frozen fruit and vegetable product's price, packaging, or handling.

We strongly feel that there never has been a need for legitimate frozen food brokers to be licensed. The frozen food brokers who are members of our organization are paid a commission based solely on sales made on behalf of a food manufacturer or processor who is already licensed. Frozen food brokers perform the same service for the processor as his salaried sales force would perform. Yet his salesmen do not need a license.

The frozen food broker has absolutely no control over the products he sells for the manufacturer. The processor establishes the price for the product and the frozen food broker must sell the product for that price. The legitimate frozen food broker does not at any time take title to the merchandise. He cannot speculate with the product for his own account.

The frozen food broker would not be responsible to set credit terms extended to the manufacturers' customer as he has no responsibility or authority for assuming credit risks for the manufacturer. As you can see, the frozen food broker is not a collection agent, but a sales agent having no more control over the product than the manufacturers' own salaried sales force.

Problems of credit, sales terms, and fulfillment of contract are problems which occupy the majority of PACA administrative time and effort. As you see, the frozen food broker has absolutely no control over such problems.

Mr. Chairman, as you can appreciate, food brokers throughout this country feel they are being penalized because they are required to pay for an unnecessary license, and that money is being used to police a part of the industry in which they are not involved.

In some cases, frozen food brokers represent packers who employ their own salaried sales force in some markets and work with frozen food brokers in other markets. The frozen food brokers may be required to have a PACA license, but the salaried salesmen are not. Yet they share the same responsibility and perform the same function.

Another situation which sometimes occurs is the case where a frozen food broker might sell for a processor who is both a canner and also a frozen food packer. The frozen food broker needs a PACA license for the frozen foods he sells but does not need a license for the canned foods he sells for the same packer. Yet the broker has the same responsibility for both products—the responsibility of performing only the sales function.

He has no more control over the product whether it is in a frozen or canned state. Thus, he is penalized by having to pay for a license just because the manufacturer decided to freeze the product.

You might ask who has control over the food brokers operation in the marketplace. The answer is quite simple. The licensed packer does. If the broker does not perform properly, the packer can fire him.

Again, the analogy with the salaried salesman becomes necessary. If frozen food brokers do not perform an ethical and productive sales function for the manufacturer, they will be fired in a minute, just like the salaried salesman.

Mr. Chairman, we do not say that all business firms calling themselves brokers should be exempt from PACA requirements. We feel that if a frozen food broker owns or takes title to merchandise, as is the case in some fresh fruit and vegetable transactions, that frozen food broker should be required to be licensed under PACA.

If the frozen food broker has the authority to set terms or prices or adjust the price of products, the broker should be required to be licensed under PACA.

If a broker sells any amount of fresh fruits and vegetables, then the broker should be licensed.

But we do not feel it is equitable to require licensing of those whose operations, by any definition, would not affect the control of a fruit and vegetable product.

As you study the facts before you, I hope you will decide that Congress needs to retain its power to exercise control over taxation matters. By retention of this power, Congress can insure that such taxation will only occur when absolutely necessary.

As stated, the administration of PACA is in very capable hands but it, as in the case of any executive branch function, should be responsible to follow through on legislation as the Congress directs. Congress should retain the power to set the PACA license fee schedule. This calls for disapproval of H.R. 9288.

Moreover, we hope you will amend the PACA regulation to exclude legitimate frozen food brokers from its licensing requirements.

I would like to thank you for the opportunity to discuss the views of our Association with you.

I have been involved with the food industry since 1926. And because of my experience, I feel quite strongly regarding these points.

Thank you very much.

Mr. VIGORITO. Thank you very much, Mr. Rogers.

We will hear the rest of the witnesses, and then if there are questions, we will ask you to come back as a panel for questions and answers.

There is a vote on the floor right now so the subcommittee will be in recess for 10 minutes.

Mr. ROGERS. Mr. Chairman, I am due to be up in New York for a conference. You are not going to keep us too late, are you?

Mr. VIGORITO. No.

But if you have to go you may be excused.

Mr. ROGERS. I will wait a while.

[A short recess was taken.]

Mr. VIGORITO. The subcommittee will resume its hearing.

The next witness is Mr. Durward Seals, vice president, United Fresh Fruit and Vegetable Association.

STATEMENT OF DURWARD SEALS, VICE PRESIDENT, UNITED FRESH FRUIT AND VEGETABLE ASSOCIATION

Mr. SEALS. Mr. Chairman and members of the committee.

My name is Durward Seals. I am vice president of the United Fresh Fruit and Vegetable Association, headquartered in Washington, D.C.

The United is the national trade organization for the fresh fruit and vegetable industry, with more than 2,500 member companies throughout the United States. Its members handle more than 75 percent of the fresh fruits and vegetables marketed commercially in the United States and represent all factors in the production and marketing of fresh produce.

We appreciate this opportunity to present our views on H.R. 9288.

Also, I am appearing for Western Growers Association, Post Office Box 2130, Newport Beach, Calif. 92683, and the Texas Citrus and Vegetable Growers and Shippers, Post Office Box 671, Harlingen, Tex. 78550.

The Western Growers Association represents the growers and shippers of fresh vegetables, melons, strawberries and potatoes in the States of California and Arizona; the Texas Citrus and Vegetable Growers and Shippers represent about 95 percent of the growers and shippers of fresh fruits and vegetables from the Lower Rio Grande Valley through the Laredo, Winter Garden, and Hereford districts of Texas.

The predecessor organizations of our association, which was formed by merger in 1937, were among those which sought and supported the passage of the Perishable Agricultural Commodities Act in 1930.

It was their intention to seek coverage in the act of transactions and negotiations of purchases and sales of fresh fruits and vegetables and directly related matters. I believe that our members are in general agreement that today's fundamental needs are much like those that prevailed when the act went into effect and that the PACA, through the years, has operated effectively.

Our association and its members have worked well with the PACA for the good of the industry. We have found PACA personnel generally cooperative and effective in their work. There may have been occasional differences of opinion but no fundamental or substantive problems.

The United Fresh Fruit and Vegetable Association not only supported but actively encouraged the establishment of what was then called the PACA-Industry Conference Group in 1958 or thereabouts. This was the predecessor group of the current PACA-Industry Advisory Committee and was established for the purposes of organized, intelligent liaison between PACA and the industry. Its reason for being is to provide a sensitive and effective medium of communication between the industry and the PACA to assure that the latter is truly serving the purpose for which it was organized.

It is significant, I believe, that the PACA is financed not out of general revenues but entirely out of the funds paid by licensees under the act. This is exemplary among regulatory agencies of the Federal Government, and our industry generally is proud that PACA is so financed.

Under the present statute the maximum fee that can be charged is the current fee of \$100 per year. We understand that by using the \$100 fee and projecting administrative costs for fiscal year 1976 a deficit of around \$172,000 for that year would result, and a deficit of around \$320,000 for fiscal year 1977.

Inasmuch as there is no other source of funds for this work, the program would be terminated when the reserve fund is exhausted.

I am sure that the witness for the Department of Agriculture will furnish the committee more detailed financial data with respect to its operating costs, revenues, and reserves and I shall not labor the point here.

Mr. Chairman, the Western Growers Association and the Texas Citrus and Vegetable Growers and Shippers support H.R. 9288 as written and urge that the bill be passed.

The United Fresh Fruit and Vegetable Association strongly endorses and supports the need for additional revenue for this program. We support H.R. 9288, with the exception that our board of directors recommends the authority of the Secretary be limited to assess a single, uniform license fee. We, therefore, recommend that lines 7 to

10 of the bill be amended to read as follows: "... and the Secretary may assess a single, uniform license fee for all applicants."

We believe that a graduated fee is not feasible; would be unwieldy; would be impossible to apply uniformly; and would involve significantly higher administrative costs.

Mr. Chairman, with this suggested change in language, we strongly support and urge the passage of H.R. 9288.

Thank you for permitting us to appear and state our views.

Mr. VIGORITO. Thank you very much, Mr. Seals.

Would you stand by for questioning?

Mr. SEALS. Yes.

Mr. VIGORITO. Our next witness is Mr. Thomas F. Wenning, associate general counsel, National Association of Retail Grocers of the United States.

STATEMENT OF THOMAS F. WENNING, ASSOCIATE GENERAL COUNSEL, NATIONAL ASSOCIATION OF RETAIL GROCERS OF THE UNITED STATES

Mr. WENNING. My name is Thomas F. Wenning. I am associate general counsel of the National Association of Retail Grocers of the United States (NARGUS). The association represents local food retailers with some 40,000 members.

H.R. 9288 proposes that Congress delegate to the Secretary of Agriculture open end authority to establish the annual license fee required under the Perishable Agricultural Commodities Act.

The bill would also confer on the Secretary authority to assess a single uniform license fee for all applicants, or in the alternative, a graduated fee for applicants based upon the amount and type of business conducted.

The proposed amendment contains no legislative standards the Secretary must follow in setting the PACA license fee. The Secretary would have wide discretion to act as he sees fit.

NARGUS opposes H.R. 9288 on the grounds that Congress should retain its authority to set the annual license fee required under the act. For over 45 years since the Perishable Agricultural Commodities Act first came into effect, Congress has maintained its authority to establish maximum fees the Secretary could require applicants to pay.

No persuasive reasons have been shown why Congress should now deprive itself of this power and delegate it to the Secretary. No case has been made that it is in the public interest for Congress to surrender its long standing right to determine the maximum PACA fee and to select the basis for determining the fee.

Opposition to H.R. 9288 is based on the general democratic principle that as elected representatives of the people Congress should guard its powers against encroachment from the executive branch.

The liberties of the people are more secure with a strong and effective Congress; they are less secure when nonelected government officials gain increasing power, especially those traditionally exercised by Congress.

Conferring on the Secretary of Agriculture power to set PACA license fees raises numerous uncertainties. None of us has the prophetic vision necessary to foretell who will be the Secretary of Agri-

culture in the years to come, or what policies each would follow in fixing PACA license fees if H.R. 9288 is made law. It is too much to ask that Congress grant such uncontrolled wide-open power to unknown governmental appointees.

The Department of Agriculture has recommended enactment of the proposed legislation on the grounds that there will soon be a need to increase the income from PACA license fees.

However, in our view, need for more funds does not make it necessary that Congress relinquish its historic authority to set the maximum PACA fees. For over four decades, the act has been administered without the Secretary having open end authority to determine the license fee. The Department's statement urging enactment of the proposed amendment, breaking a 45 year old precedent, does not allege any failure on the part of Congress to adequately finance administration of the act.

If Congress has failed to approve increased PACA license fees when they were needed to the detriment of this law, the Department should say so and cite the facts to sustain its position.

The record will show, we believe, that throughout the entire history of this law, Congress' control over setting PACA license fees has not resulted in inadequate financing of the act. Why then is the Department seeking this additional power? What public need has been shown for this proposed legislation?

In the last few years and up to the present time, congressional investigations have revealed shocking instances of abuse of power by officials of the executive branch of the Federal Government. As a result of recent revelations, many people fear concentrating too much power in the hands of the Executive. There is greater safety with a strong Congress, as that branch of government is closest to the people.

Retailers feel more secure from arbitrary, or unreasonable license fee requirements with members of Congress making the decisions rather than lodging such important power in the hands of a line of unknown Secretaries of Agriculture. The Secretary of Agriculture serves at the pleasure of the White House. As such, he is subservient to executive officials, some of whom may not be known to the public let alone accountable to the electorate.

The uncertainty which would follow enactment of this bill is too much like agreeing to a blind bargain, or buying a "pig in a poke."

No one knows what policies would follow approval of this measure. The consequences of such action are likewise unknown. You are asked to accept H.R. 9288 on blind faith.

Setting a PACA license fee may not seem a major issue to some people. However, it could be to a number of operators subject to the law. In any event, Congress should demand the most convincing evidence of an overwhelming public need before it gives up any more of its powers to the Executive.

This completes our statement on H.R. 9288. However, by way of background, it may be helpful to add a few observations on the association's overall view regarding the Perishable Agricultural Commodities Act.

First, NARGUS supports the basic purpose of the statute to protect growers and shippers of fresh and frozen fruits and vegetables from

unjustified and unfair trade practices, especially where the parties to a transaction involving perishable commodities operate at some distance from each other.

Second, food retailers purchasing perishable agricultural commodities solely for sale at retail from a PACA licensed wholesaler should not be required to purchase a PACA license. The purpose of the law if not served by regulating commercial transactions between wholesalers and their retail customers.

The original intent of the law is not advanced by requiring a local retailer selling to household consumers to purchase a PACA license when the retailer buys his PACA merchandise from a licensed local wholesaler.

Third, in 1962 the act was amended to exempt a retailer from having to purchase a PACA license if the invoice cost of his purchases of PACA commodities did not exceed \$90,000 in any calendar year.

In 1969, Congress increased this amount to \$100,000 to take into account the increase in the index of wholesale food prices that had taken place since 1962. Since 1969, the wholesale food price index for fresh and dried fruits and vegetables has increased approximately 68.4 percent. If retailers are to retain the same exemption rate Congress provided in 1962, and again in 1969, the \$100,000 exemption now provided in the law should be increased approximately 68 percent, or to \$168,000.

We thank you for the opportunity to present this statement.

I will remain here for any questions you may have.

Mr. VIGORITO. Thank you very much, Mr. Wenning.

We have another vote on the floor, so the subcommittee will be in recess for 10 minutes.

We will continue through the noon hour. We have two more witnesses. That will be preferable to coming back at 2 o'clock.

The subcommittee is in recess.

[Recess taken.]

Mr. VIGORITO. The subcommittee will resume its hearing.

The next witness is Mr. Stephen Tavilla, P. Tavilla Co., Inc., of Chelsea, Mass.

**STATEMENT OF STEPHEN TAVILLA, PRESIDENT, P. TAVILLA CO.,
INC., BOSTON, MASS.**

Mr. TAVILLA. Mr. Chairman and members of the committee, my name is Stephen Tavilla. I am president of the P. Tavilla Co., Inc., of Boston, Mass. Our firm is engaged in the production, transportation, and wholesale distribution of fresh fruits and vegetables. We have operated successfully under PACA since its beginning 45 years ago.

In addition to our Boston operations, the company has terminal market operations in Miami and Houston.

We are able to serve retailers and consumers effectively because of the prevailing orderly marketing practices. I share the strong feeling of the industry that today's orderly marketing is possible largely because of the Perishable Agricultural Commodities Act. Without it the industry would be prone to confusion and unfair trading practices.

Nearly 100 percent of our trading is by verbal contract using the telephone. Reliance is on a man's word and a mutual understanding of specific trade terms. PCAA terms are the bridge for communication in this industry.

Further, PACA licensing requirements go far in assuring that the individuals who influence a large part of our Nation's food supply are qualified, ethical professionals, as they should be in matters as important as food. Without PACA, abuses of ethical practice would be possible and probable. The result would be reflected in the quality received and price paid by the consumer.

Our industry, as the committee knows, is unique inasmuch as there are wide and largely unpredictable variations in the geographic location, quantity, and quality of the supply. Timing is critical. We ship across the Nation and import from all over the world to assure variety and selection along with good nutrition at retail level. Even if every distributor produced, transported, and marketed his own products, the problems would be immense.

We do not, however, handle every step with every product. We have to deal with thousands of others in our industry. We need every tool we can get to do the job and the best tool we have in dealing with our colleagues is PACA.

With it we have an understanding which results in a smooth transaction most of the time, advice and counsel in cases when needed, and an authoritative judgment procedure when necessary. The alternative, without PACA, would be costly time-consuming civil suits which, again, would be a detriment to efficient marketing.

Recently, for example, my company was involved in a \$102,000 dispute with a food chain. Months were spent in trying to negotiate agreement on a very complicated question.

When it became apparent that the negotiations had bit a stone wall, it was agreed that a PACA intermediary was needed.

The PACA representative met with the principals and legal counsels of both sides, individually and collectively. With his clarification of each side's obligations under the terms of the act, an agreement was reached after one collective meeting. Full settlement was made on the day following the meeting.

The demands on my time cause me to be highly selective in participation in many worthwhile industry efforts. One priority effort, however, is PACA activity.

I have had the privilege of serving on the industry's PACA advisory committee for the last 3 years. This is purely voluntary with no favored consideration or treatment given or expected.

The committee is comprised of representatives from all levels of production and distribution. Their sole purpose is to offer suggestions for effective administration of the program to meet changing times.

As a member of the committee I am acquainted with the financial problems of the program. Attrition, mergers, and acquisitions have reduced the fiscal base of the program to a point where deficits threaten in fiscal 1976 and 1977.

The choices are (1) abolish the program, (2) restructure the licensing fee to provide adequate funds for operation.

The first option would be disastrous to the industry.

PACA commands a well-earned respect in the trade. There is no substitute for this respect and need.

The fresh fruit and vegetable industry is willing to assess itself just as other industries, such as the medical and legal professions, are willing to assess themselves for vital programs.

I have been advised of and am in accord with the statement of Mr. Durward Seals of the United Fresh Fruit & Vegetable Association, specifically, favoring a single, uniform licensing fee.

Passage of H.R. 9288 would give the industry the only opportunity it has to develop the program it needs.

We urge the committee's favorable consideration of H.R. 9288.

I thank you for allowing the presentation of these views.

Mr. VIGORITO. Thank you very much, Mr. Tavilla.

Our next witness is Mr. Fred Burrows, executive vice president, International Apple Institute of Washington, D.C.

STATEMENT OF FRED BURROWS, EXECUTIVE VICE PRESIDENT, INTERNATIONAL APPLE INSTITUTE

Mr. BURROWS. My apologies for not having a prepared statement here, but I have been on a travel merry-go-round for the last 2 weeks.

It has been impossible for me to put it in writing.

Just for the record, the International Apple Institute is a service organization representing the apple and winter pear industries. Our membership encompasses some 13,000 commercial apple and pear growers, as well as those in the packing, storage, freight on board sales, wholesale and retail distributors, exporters, importers, processors, and on and on.

In the eyes of our organization and our industry, the PACA Act and its administration is a model as far as doing a good job is concerned.

Without it, I think the fresh fruit and produce industry would be in real trouble.

It has done great benefits for the entire industry.

I think we can sum it up in this way. There seems to be concern about Congress transferring its taxation responsibilities to the executive branch of government. We would not argue that point at all.

The important factor that the subcommittee should recognize and realize is this. It is necessary for this agency to secure money from the industry itself on a self-financing basis in order to maintain and continue the fine job that it has done, and is doing.

In essence, we could support H.R. 9288, but I think we would go along with the United Fresh Fruit & Vegetable Association in recommending to the subcommittee that you establish a single flat fee. But make it large enough so that we do not have to come back and change the law every other year.

That concludes my statement.

Mr. VIGORITO. I have a statement here from Mr. John C. Datt, director, congressional relations, American Farm Bureau Federation.

It will be inserted in the record at this point, without objection.

[The statement follows:]

STATEMENT OF JOHN C. DATT, DIRECTOR, CONGRESSIONAL RELATIONS,
AMERICAN FARM BUREAU

The American Farm Bureau Federation appreciates the opportunity to comment on H.R. 9288, a bill to amend the Perishable Agricultural Commodities Act of 1930.

Farm Bureau is the largest general farm organization in the United States, with a membership of 2,505,258 families in forty-nine states and Puerto Rico. It is a voluntary, nongovernmental organization, representing farmers who produce virtually every agricultural commodity that is produced on a commercial basis in this country. Many of these members are commercial producers of fruits and vegetables and are directly affected by the Perishable Agricultural Commodities Act.

The importance of the Perishable Agricultural Commodities Act to Farm Bureau members was underscored by adoption of the following policy by the voting delegates of the member state Farm Bureaus at our 1975 annual meeting, which was held in New Orleans last January.

"We recommend that the administration of the Perishable Agricultural Commodities Act include constant and improved surveillance and supervision of trading practices in the purchase and sale of perishable agricultural commodities.

"We support strengthening the Perishable Agricultural Commodities Act (PACA) to ensure prompt payment to producers.

"PACA should include authority, similar to that of the Packers and Stockyards Act, to require payment to producers within two business days of delivery unless other provisions are made in a written contract. The Act should be amended to include honey."

Farm Bureau members, as illustrated by their policy statement, favor strengthening the Perishable Agricultural Commodities Act. Farm Bureau members also favor self-supporting programs, such as the industry-sponsored and industry-financed Perishable Agricultural Commodities Act.

Thus, Farm Bureau supports legislative action that would enable PACA to have available funding, from license fees, not only to carry out current enforcement activities, but also to improve the surveillance and supervision of trading practices in the fruit and vegetable industries.

Farm Bureau supports H.R. 9288 as introduced by Congressman Sisk on August 1, 1975.

This bill would give the Secretary of Agriculture the flexibility to assess either a single, uniform license fee for all applicants or a graduated fee per applicant based upon the amount and type of business conducted by the firm. It also would eliminate the present ceiling on license fees.

This flexibility would enable the Secretary to generate the funding needed to strengthen the administration of the Perishable Agricultural Commodities Act.

We appreciate the opportunity to present our views on this issue which is a matter of importance to fruit and vegetable producers.

Mr. VIGORITO. As I see the testimony presented to the subcommittee today, it seems first that this is one Government agency that the industry is for.

No one has said that we should abolish PACA.

Second, I think it stands out that the witnesses do not wish Congress to give the Agency open ended authority to set fees. They wish Congress to retain the authority to set maximum fees.

We could set the fee as a flat fee at \$125 or \$150 and the industry would be appreciative of that. They think that would be the easiest way.

The purpose of the legislation is not to overhaul the mechanism of PACA. It merely centers around the objective of raising more funds to finance the continuing excellent work that PACA has been doing for the last 45 years.

Mr. Findley, do you have any questions?

Mr. FINDLEY. Yes.

If it would be appropriate, I would like to direct the question to Mr. Gardner.

Mr. Gardner, could you tell us whether the advisory board keeps a record of transcripts of the minutes?

Mr. GARDNER. There is no verbatim transcript kept. There is a special dispensation from that general requirement. There is a conference report that is published after each meeting. Copies are available.

Mr. FINDLEY. One reason I ask that is that this committee probably will not finish the consideration of this proposal until after the next advisory board meeting has occurred. It would be of benefit to us to know what the board has to say, not only the summary position and the consensus position, but other contributions that may have been made representing various viewpoints.

Mr. GARDNER. Yes.

We are next due to meet with the committee on February 6 of this coming year 1976.

Mr. FINDLEY. If the Congress should see fit to establish a parity for a 5-year period to the executive branch for setting fees at any point up to \$150 a year under this act, and to also have discretion to adjust fees based on the nature and volume of business within that top limitation, would this enable the program to go forward satisfactorily?

Mr. GARDNER. A license fee which would top out at \$150 maximum would finance the operation up to and through 1979 and at that time would have a reserve on hand at the end of 1978 equivalent to slightly more than a projected 6-month reserve.

Mr. FINDLEY. So, a 5-year extension at that ceiling would be workable? That is from the financial standpoint?

Mr. GARDNER. Yes, it would be workable from what we know right now. Is that a variable fee?

Mr. FINDLEY. The way I put the question was this.

It would give the executive branch some discretion within that top limit to have variable fees with a top fee of \$150 for a license.

Mr. GARDNER. If you are talking about variable fees, I would condition my answer. From what we project at this time, the fee would not be less than \$100, so that you are talking about your larger and smaller individual paying a variable fee up to the \$150 maximum, a \$50 range.

Mr. FINDLEY. Yes.

Mr. GARDNER. As far as dollars are concerned that would not work, but it would come close. To run through 1979 we would have to have \$150 from each one of the licensees.

Mr. FINDLEY. Thank you, Mr. Chairman.

Mr. VIGORITO. I have one more question, Mr. Gardner.

PACA is self sufficient but receives fees.

To what degree is PACA administration self-sufficient? Does it pay for your salary, and the rent of office space, and so forth? Does it also pay for the Office of General Counsel?

Mr. GARDNER. All costs of the administration are defrayed by the license fee, except for the services of the General Counsel which operates on an appropriation basis.

Mr. VIGORITO. How about the administrative law judges?

Mr. GARDNER. As far as I know, we make no contribution to the administrative law judges. That is handled out of the Office of the Secretary. We do at times get involved in paying the cost of a room to hold a hearing. We do pay the cost of transcripts of hearings in reparation and disciplinary cases.

Mr. VIGORITO. Mr. Findley.

Mr. FINDLEY. Mr. Chairman, you have pointed out an important aspect of this program. That is, it is self-financed. I applaud that. For years I have been trying to get the Federal Crop Insurance program on the same self-financing basis. It is gratifying to me to know that the fees charged here are sufficient to cover administrative costs, unlike a good many other functions of the executive branch.

Mr. VIGORITO. As I mentioned before, I wish to thank all the witnesses for being here today.

We will have another session on H.R. 9288 and other aspects of PACA, either the latter part of January or the beginning of February.

Until then the subcommittee will be recessed at the call of the Chair.

[Whereupon at 12:15 p.m., the subcommittee recessed subject to the call of the Chair.]

[The following statements were submitted to the subcommittee:]

STATEMENT OF DURWARD SEALS, VICE PRESIDENT, UNITED FRESH FRUIT AND VEGETABLE ASSOCIATION

Mr. Chairman and Members of the Committee: My name is Durward Seals. I am vice president of the United Fresh Fruit and Vegetable Association, headquartered in Washington, D.C. The United is the national trade organization for the fresh fruit and vegetable industry, with more than 2,500 member companies throughout the United States. Its members handle more than 75 percent of the fresh fruits and vegetables marketed commercially in the United States and represent all factors in the production and marketing of fresh produce. We appreciate this opportunity to present our views on H.R. 9288.

Also, I am appearing for Western Growers Association, Post Office Box 2130, Newport Beach, California 92683, and the Texas Citrus and Vegetable Growers and Shippers, Post Office Box 671, Harlingen, Texas 78550. The Western Growers Association represents the growers and shippers of fresh vegetables, melons, strawberries and potatoes in the States of California and Arizona; the Texas Citrus and Vegetable Growers and Shippers represent about 95 percent of the growers and shippers of fresh fruits and vegetables from the Lower Rio Grande Valley through the Laredo, Winter Garden, and Hereford districts of Texas.

The predecessor organizations of our association, which was formed by merger in 1937, were among those which sought and supported the passage of the Perish-

able Agricultural Commodities Act in 1930. It was their intention to seek coverage in the Act of transactions and negotiations of purchases and sales of fresh fruits and vegetables and directly related matters. I believe that our members are in general agreement that today's fundamental needs are much like those that prevailed when the Act went into effect and that the PACA through the years has operated effectively.

Our association and its members have worked well with the PACA for the good of the industry. We have found PACA personnel generally cooperative and effective in their work. There may have been occasional differences of opinion but no fundamental or substantive problems.

The United Fresh Fruit and Vegetable Association not only supported but actively encouraged the establishment of what was then called the PACA-Industry Conference Group in 1958 or thereabouts. This was the predecessor group of the current PACA-Industry Advisory Committee and was established for the purposes of organized, intelligent liaison between PACA and the industry. Its reason for being is to provide a sensitive and effective medium of communication between the industry and the PACA to assure that the latter is truly serving the purpose for which it was organized.

It is significant, I believe, that the PACA is financed not out of general revenues, but entirely out of the funds paid by licensees under the Act. This is exemplary among regulatory agencies of the federal government and our industry generally is proud that PACA is so financed.

Under the present statute the maximum fee that can be charged is the current fee of \$100 per year. We understand that by using the \$100 fee and projecting administrative costs for fiscal year 1976 a deficit of around \$172,000 for that year would result, and a deficit of around \$320,000 for fiscal year 1977. Since there is no other source of funds for this work, the program would be terminated when the reserve fund is exhausted.

I am sure that the witness for the Department of Agriculture will furnish the Committee more detailed financial data with respect to its operating costs, revenues, and reserves and I shall not labor the point here.

Mr. Chairman, the Western Growers Association and the Texas Citrus and Vegetable Growers and Shippers support H.R. 9288 as written and urge that the bill be passed.

The United Fresh Fruit and Vegetable Association strongly endorses and supports the need for additional revenue for this program. We support H.R. 9288, with the exception that our board of directors recommends the authority of the Secretary be limited to assess a single, uniform license fee. We, therefore, recommend that lines 7 to 10 of the bill be amended to read as follows:

"... and the Secretary may assess a single, uniform license fee for all applicants."

We believe that a graduated fee is not feasible; would be unwieldy; would be impossible to apply uniformly; and would involve significantly higher administrative costs.

Mr. Chairman, with this suggested change in language, we strongly support and urge the passage of H.R. 9288.

Thank you for permitting us to appear and state our views.

STATEMENT OF STEPHEN TAVILLA, PRESIDENT, P. TAVILLA CO., INC., BOSTON, MASS.

DECEMBER 4, 1975.

Mr. Chairman and Members of the Committee, my name is Stephen Tavilla. I am president of the P. Tavilla Company, Inc. of Boston, Massachusetts. Our firm is engaged in the production, transportation and wholesale distribution of fresh fruits and vegetables. We have operated successfully under PACA since its beginning forty-five years ago. In addition to our Boston operations, the company has terminal market operations in Miami and Houston.

We are able to serve retailers and consumers effectively because of the prevailing orderly marketing practices. I share the strong feeling of the industry that today's orderly marketing is possible largely because of the Perishable Agricultural Commodities Act. Without it the industry would be prone to confusion and unfair trading practices.

Nearly 100% of our trading is by verbal contract using the telephone. Reliance is on a man's word and a mutual understanding of specific trade terms. PACA terms are the bridge for communication in this industry.

Further, PACA licensing requirements go far in assuring that the individuals who influence a large part of our nation's food supply are qualified, ethical professionals, as they should be in matters as important as food. Without PACA, abuses of ethical practice would be possible and probable. The result would be reflected in the quality received and price paid by the consumer.

Our industry, as the Committee knows, is unique inasmuch as there are wide and largely unpredictable variations in the geographic location, quantity and quality of the supply. Timing is critical. We ship across the nation and import from all over the world to assure variety and selection along with good nutrition at retail level. Even if every distributor produced, transported, and marketed his own products, the problems would be immense. We don't however, handle every step with every product. We have to deal with thousands of others in our industry. We need every tool we can get to do the job and the best tool we have in dealing with our colleagues is PACA. With it we have an understanding which results in a smooth transaction most of the time; advice and counsel in cases when needed; and an authoritative judgment procedure when necessary. The alternative, without PACA, would be costly, time consuming civil suits which, again, would be a detriment to efficient marketing.

Recently, for example, my company was involved in a \$102,000 dispute with a food chain. Months were spent in trying to negotiate agreement on a very complicated question. When it became apparent that the negotiations had hit a stone wall, it was agreed that a PACA intermediary was needed. The PACA representative met with the principals and legal counsels of both sides, individually and collectively. With his clarification of each side's obligations under the terms of the Act, an agreement was reached after one collective meeting. Full settlement was made on the day following the meeting.

The demands on my time cause me to be highly selective in participation in many worthwhile industry efforts. One priority effort, however, is PACA activity. I have had the privilege of serving on the industry's PACA advisory committee for the last three years. This is purely voluntary with no favored consideration or

treatment given or expected. The committee is comprised of representatives from all levels of production and distribution. Their sole purpose is to offer suggestions for effective administration of the program to meet changing times.

As a member of the Committee I am acquainted with the financial problems of the program. Attrition, mergers and acquisitions have reduced the fiscal base of the program to a point where deficits threaten in fiscal 1976 and 1977. The choices are (1) abolish the program, (2) restructure the licensing fee to provide adequate funds for operation. The first option would be disastrous to the industry. PACA commands a well earned respect in the trade. There is no substitute for this respect and need.

The fresh fruit and vegetable industry is willing to assess itself just as other industries such as the medical and legal professions are willing to assess themselves for vital programs.

I have been advised of and am in accord with the statement of Mr. Durward Seals for the United Fresh Fruit and Vegetable Association, specifically, favoring a single, uniform licensing fee.

Passage of H.R. 9288 would give the industry the only opportunity it has to develop the program it needs. We urge the Committee's favorable consideration of H.R. 9288.

I thank you for allowing the presentation of these views.

STATEMENT BY THOMAS F. WENNING, ASSOCIATE GENERAL COUNSEL, NATIONAL ASSOCIATION OF RETAIL GROCERS OF THE UNITED STATES

My name is Thomas F. Wenning. I am Associate General Counsel of the National Association of Retail Grocers of the United States (NARGUS). The association represents local food retailers with some 40,000 members.

H.R. 9288 proposes that Congress delegate to the Secretary of Agriculture open-end authority to establish the annual license fee required under the Perishable Agricultural Commodities Act. The bill would also confer on the Secretary authority to assess a single uniform license fee for all applicants, or in the alternative, a graduated fee for applicants based upon the amount and type of business conducted. The proposed amendment contains no legislative standards the Secretary must follow in setting the PACA license fee. The Secretary would have wide discretion to act as he sees fit.

NARGUS opposes H.R. 9288 on the grounds that Congress should retain its authority to set the annual license fee required under the Act. For over 45 years since the Perishable Agricultural Commodities Act first came into effect, Congress has maintained its authority to establish maximum fees the Secretary could require applicants to pay. No persuasive reasons have been shown why Congress should now deprive itself of this power and delegate it to the Secretary. No case has been made that it is in the public interest for Congress to surrender its long standing right to determine the maximum PACA fee, and to select the basis for determining the fee.

Opposition to H.R. 9288 is based on the general democratic principle that as elected representatives of the people, Congress should guard its powers against encroachment from the Executive Branch. The liberties of the people are more secure with a strong and effective Congress; they are less secure when non-elected government officials gain increasing power, especially those traditionally exercised by Congress.

Conferring on the Secretary of Agriculture power to set PACA license fees raises numerous uncertainties. None of us has the prophetic vision necessary to foretell who will be the Secretary of Agriculture in the years to come, or what policies each would follow in fixing PACA license fees if H.R. 9288 is made law. It is too much to ask that Congress grant such uncontrolled wide-open power to unknown governmental appointees.

The Department of Agriculture has recommended enactment of the proposed legislation on the grounds that there will soon be a need to increase the income from PACA license fees. However, in our view, need for more funds does not make it necessary that Congress relinquish its historic authority to set the maximum PACA fee. For over four decades, the Act has been administered without the Secretary having open-end authority to determine the license fee. The Department's statement urging enactment of the proposed amendment, breaking a 45 year old precedent, does not allege any failure on the part of Congress to adequately finance administration of the Act. If Congress has failed to approve increased PACA license fees when they were needed to the detriment of this law, the Department should say so and cite the facts to sustain its position.

The record will show, we believe, that throughout the entire history of this law, Congress' control over setting PACA license fees has not resulted in inadequate financing of the Act. Why then is the Department seeking this additional power? What public need has been shown for this proposed legislation?

In the last few years and up to the present time, Congressional investigations have revealed shocking instances of abuse of power by officials of the Executive Branch of the Federal government. As a result of recent revelations, many people fear concentrating too much power in the hands of the Executive. There is greater safety with a strong Congress, as that branch of government is closest to the people.

Retailers feel more secure from arbitrary, or unreasonable license fee requirements with members of Congress making the decisions rather than lodging such important power in the hands of a line of unknown Secretaries of Agriculture. The Secretary of Agriculture serves at the pleasure of the White House. As such, he is subservient to Executive officials, some of whom may not be known to the public let alone accountable to the electorate.

The uncertainty which would follow enactment of this bill is too much like agreeing to a blind bargain, or buying a "pig in a poke."

No one knows what policies would follow approval of this measure. The consequences of such action are likewise unknown. You are asked to accept H.R. 9288 on blind faith.

Setting a PACA license fee may not seem a major issue to some people. However, it could be to a number of operators subject to the law. In any event, Congress should demand the most convincing evidence of an overwhelming public need before it gives up any more of its powers to the Executive.

This completes our statement on H.R. 9288. However, by way of background, it may be helpful to add a few observations on the association's overall view regarding the Perishable Agricultural Commodities Act.

First, NARGUS supports the basic purpose of the statute to protect growers and shippers of fresh and frozen fruits and vegetables from unjustified and unfair trade practices, especially where the parties to a transaction involving perishable commodities operate at some distance from each other.

Second, food retailers purchasing perishable agricultural commodities solely for sale at retail from a PACA licensed wholesaler should not be required to purchase a PACA license. The purpose of the law is not served by regulating commercial transactions between wholesalers and their retail customers. The original intent of the law is not advanced by requiring a local retailer selling to household consumers to purchase a PACA license when the retailer buys his PACA merchandise from a licensed local wholesaler.

Third, in 1962 the Act was amended to exempt a retailer from having to purchase a PACA license if the invoice cost of his purchases of PACA commodities did not exceed \$90,000 in any calendar year. In 1969, Congress increased this amount to \$100,000 to take into account the increase in the index of wholesale food prices that had taken place since 1962. Since 1969, the wholesale food price index for fresh and dried fruits and vegetables has increased approximately 68.4 percent. If retailers are to retain the same exemption rate Congress provided in 1962, and again in 1969, the \$100,000 exemption now provided in the law should be increased approximately 68 percent, or to \$168,000.

We thank you for the opportunity to present this statement.

PERISHABLE AGRICULTURAL COMMODITIES AMENDMENTS

WEDNESDAY, FEBRUARY 4, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC MARKETING
AND CONSUMER RELATIONS OF THE
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., room 1302, Longworth House Office Building, Hon. Joseph P. Vigorito (chairman of the subcommittee) presiding.

Present: Representatives Vigorito, McHugh, Fithian, Heckler, and Grassley.

Also present: John E. Hogan, associate counsel; William A. Imhof, associate counsel; L. Leon Geyer and Weldon V. Barton, staff consultants, Subcommittee on Domestic Marketing and Consumer Affairs; and Perry Shaw, staff assistant.

Mr. VIGORITO. The Subcommittee on Domestic Marketing and Consumer Relations is now in session.

The subcommittee is convened this morning to continue the hearings commenced December 4, 1975, on legislation to amend the Perishable Agriculture Commodities Act of 1930 as amended.

On December 4 of last year, the subcommittee had before it H.R. 9288 to amend the ceiling on licensing fees under the PACA and the hearings today continue on that bill. In addition, the subcommittee will hear testimony today on H.R. 10988, a bill designed to assure compliance with the prompt payment provisions of PACA and to amend the act in certain other respects.

[The bill H.R. 10988 and the report from the U.S. Department of Agriculture follow:]

[H.R. 10988, 94th Cong., 1st sess.]

A BILL To amend the Perishable Agricultural Commodities Act, and for other purposes

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 "Perishable Agricultural Commodities Act Amendments of 1976".

SEC. 2. Section 1 of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. 499a), is amended by adding in subsection (4) thereof after the phrase "cherries in brine" the phrase ", and frozen potato products"; and by adding in subsection (6)(C) thereof after the word "commodity" the phrase "other than potatoes".

SEC. 3. Section 2 of such Act is amended by striking the period at the end of subsection (7) and inserting a semicolon in lieu thereof and by adding immediately after subsection (7) the following new subsection:

"(8) For any commission merchant, dealer, or broker, in connection with the price, conditions, for production, harvesting or delivery of crops, whether for the purpose of reprisal or otherwise, to extend or cause to be extended to any grower or other person any undue, unjust, or unreasonable preference or advantage in any respect whatsoever; or to subject, or cause to be subjected, any grower or other person to any undue, unjust, or unreasonable prejudice or disadvantage in any respect whatsoever."

SEC. 4. Section 6 of such Act (7 U.S.C. 499f), is amended by adding at the end of paragraph (a) thereof the following: "*Provided, however,* That upon written request of the complainant and upon a determination by the Secretary that disclosure of such information would adversely affect the interest of the complainant and is not required in the public interest, the Secretary may withhold from public disclosure the name, address and other identifying information about the complainant."

SEC. 5. Section 13 of such Act is amended by renumbering paragraphs (b) through (e) as paragraphs (c) through (f) and by adding a new paragraph (b) as follows:

"(b) The Secretary or his duly authorized agents, in order to insure that the prompt payment provision of section 2(4) of the Act is being complied with, shall inspect at least once every three months for a period of two years the accounts, records, and memorandums of any commission merchant, dealer, or broker determined pursuant to section 6 of the Act to have violated such provision. The Secretary may also require that any such commission merchant, dealer, or broker furnish and maintain a surety bond in form and amount satisfactory to the Secretary as assurance that such commission merchant's, dealer's or broker's business will be conducted in accordance with this Act and that such commission merchant, dealer, or broker will pay all reparation awards, subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within two years following determination of the violation."

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., February 4, 1976.

HON. THOMAS S. FOLEY,
Chairman, Committee on Agriculture, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for a report on H.R. 10988 a bill "To amend the Perishable Agricultural Commodities Act, and for other purposes."

H.R. 10988 would amend the Perishable Agricultural Commodities Act to (1) include frozen potato products as a perishable agricultural commodity, (2) amend the definition of a dealer as it relates to potato processors, (3) add a provision making it an unfair practice for a commission merchant, dealer, or broker to discriminate against or give preferential treatment to another person when trading, (4) establish conditions under which the identity of a complainant may be withheld from public disclosure, and (5) establish requirements for surveillance compliance audits.

This Department recommends against enactment of the bill. Our comments concerning each of the proposed amendments and a cost analysis are detailed in Attachments I and II.

In accordance with the provisions of Public Law 91-190, Section 102(2)(C), this legislation would have no significant impact on the quality of the environment.

The Office of Management and Budget advises there is no objection to the presentation of this report and that enactment of H.R. 10988 would not be consistent with the Administration's program.

Sincerely,

JOHN A. KNEBEL,
Under Secretary.

Attachments (2).

ATTACHMENT I.—U.S. DEPARTMENT OF AGRICULTURE COMMENTS ON H.R. 10988, A BILL "TO AMEND THE PERISHABLE AGRICULTURAL COMMODITIES ACT, AND FOR OTHER PURPOSES."

The addition of frozen potato products as a perishable agricultural commodity and adding a condition under which potato processors would be considered "dealers" subject to license, as provided in Section 2 of the bill, would bring transactions involving raw potatoes purchased by processors in intrastate commerce and frozen potato products they manufacture within the jurisdiction of the Act. The Department opposes Section 2 of the bill because it is counter to the Administration's program for deregulation.

The anti-discrimination and anti-favoritism clauses of Section 3 of the bill propose regulation of the terms and conditions which a buyer and seller could include in their contracts. The Perishable Agricultural Commodities Act does not restrict buyers and sellers in their negotiations to reach agreements on price

or other factors they desire to include in their contracts. It is normal for supply and demand for fruits and vegetables to fluctuate widely in very short periods of time and for prices and other cost items to be negotiated on the basis of market conditions prevailing at the time the contract is consummated. Enforcement of these provisions would require that we have knowledge of the intent of the parties in order to determine whether discrimination or preferential treatment was contemplated at the time of negotiations. In our opinion, these provisions would be unenforceable, and we, therefore, recommend against enactment of Section 3 of the bill.

Withholding the identity of a person who files a complaint to recover damages from a person who has engaged in unfair practices within the meaning of Section 2 of the Act, as provided in Section 4 of the bill, would make recovery of damages by the complaining party unlikely. The Department is not a party to the complaints for recovery of damages; it merely adjudicates these disputes for the parties. In order for a complaining party to prevail in its claim, it must establish the identity of the contracting persons, the provisions of the contract, that it met its contractual obligations, that there has been a breach of contract by the respondent, and establish the damages resulting from the breach. The details of the complaint, including the name of the complaining party, must be made known in order to give the respondent sufficient information to enable it to defend the action. Obviously, if damages are to be paid, the name of the injured party must be made known to the respondent. While the bill does give the Secretary some discretion in this matter, we do not believe that the enactment of Section 4 would aid in the administration of the Act.

Carrying out the audit requirement of Section 5 of the bill would change the Perishable Agricultural Commodities Act into a statute requiring constant surveillance of licensees' business operations. We estimate the cost of carrying out the surveillance audits required would be \$8.9 million a year based on present operating costs. It would be necessary to hire and train 315 new employees to carry out the 7,500 audits per year that would be required if Section 5 of the bill is enacted. Conduct of each audit and preparation of the report would take a total of 56 man hours.

Assuming enactment of H.R. 10988 and adding current costs, the total cost for administration of the Act per year would be \$10.8 million, six times the current costs. The minimum license fee necessary to defray these costs would be \$800.

Attachment II reflects the increase in costs of operations and the minimum license fee necessary to furnish sufficient income to carry out the administration of the Act, including some contribution to the reserve fund. It is our opinion that constant surveillance of firms trading in the fruit and vegetable industry is not necessary to enable the Department to carry out the purpose of the Act. Moreover, while the Secretary would be authorized to require the posting of a surety bond under Section 5, there is no sanctioning authority included. Therefore, it is doubtful whether meaningful action could be taken against a licensee who fails to comply with the Secretary's request that a bond be posted. We question whether the benefits to be derived through the system of audits would be worth the cost involved which is to be borne by the industry through increased license fees.

ATTACHMENT II.—PACA INCOME AND EXPENDITURES AND STATUS OF PACA FUND IF H.R. 10988 ENACTED
FISCAL YEARS 1977-81

[Dollars in thousands]

Item	Fiscal year 1977 estimated	Fiscal year 1978 estimated	Fiscal year 1979 estimated	Fiscal year 1980 estimated	Fiscal year 1981 estimated
Income from licensing.....	² 12,440	³ 12,120	⁴ 11,800	⁵ 11,480	⁶ 11,160
Expenditures ¹	² 10,795	³ 11,039	⁴ 11,405	⁵ 11,787	⁶ 12,190
Operating surplus or deficit.....	1,645	1,081	395	-307	-1,030
PACA fund:					
Beginning of year.....	429	2,074	3,155	3,550	3,243
End of year.....	2,074	3,155	3,550	3,243	2,213

¹ Assumes salary increase of 5 percent per year.

² Income estimated on 15,500 licenses (Includes accrued fees of \$40,000).

³ Income estimated on 15,100 licenses (Includes accrued fees of \$40,000).

⁴ Income estimated on 14,700 licenses (Includes accrued fees of \$40,000).

⁵ Income estimated on 14,300 licenses (Includes accrued fees of \$40,000).

⁶ Income estimated on 13,900 licenses (Includes accrued fees of \$40,000).

Note.—Table 1, assumes license fee of \$800 effective October 1, 1976.

Mr. VIGORITO. On previous occasions when Congress has amended the PACA to increase the statutory ceiling on licensing fees, the Agriculture Committee has taken advantage of those occasions to consider any other changes that might be required in the act to keep it workable for the industry and the public. We are following today those precedents in proceeding as we are.

Our first witness is Mr. Floyd Hedlund, Director of the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture. Mr. Hedlund?

Mr. HEDLUND. Thank you, Mr. Chairman and members of the committee.

With me today is Mr. John J. Gardner, who is Chief of the Regulatory Branch of the Fruit and Vegetable Division, and directly responsible for the day-to-day administration of Perishable Agricultural Commodities Act.

Also with me is Mr. Dennis Becker from the Office of General Counsel of the U.S. Department of Agriculture.

STATEMENT OF FLOYD F. HEDLUND, DIRECTOR, FRUIT AND VEGETABLE DIVISION, AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. HEDLUND. Mr. Chairman and member of the committee:

My name is Floyd F. Hedlund. I am Director of the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture. I appreciate the opportunity to appear before this committee to present the views of the Department of Agriculture on H.R. 10988, a bill to amend the Perishable Agricultural Commodities Act. The views of the Department on H.R. 9288 were presented to this committee on December 4, 1975, H.R. 10988 would amend the Perishable Agricultural Commodities Act to (1) include frozen potato products as a perishable agricultural commodity; (2) amend the definition of a dealer as it relates to trading of potatoes; (3) add a provision making it an unfair practice for a commission merchant, dealer, or broker to discriminate against or give preferential treatment while trading; (4) establish conditions under which the identity of a complainant in a reparation proceeding may be withheld from public disclosure; (5) establish requirements for surveillance compliance audits and authorized the Secretary to require the posting of a surety bond by any licensee who has been found to have failed to make full payment promptly.

BACKGROUND

The basic objective of the Perishable Agricultural Commodities Act is to establish a code of fair trading practices in the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce and to aid in the enforcement of contracts for marketing these commodities. Among the unlawful trade practices prohibited are to (1) reject or fail to deliver in accordance with terms of the contract; (2) destroy without reasonable cause any lot received on consignment; (3) fail to pay promptly; and (4) misbrand or misrepresent the grade, quality, or State or region of origin of fruits and vegetables shipped, sold, or offered for sale in interstate commerce.

Enforcement of the act is primarily through a system of licenses. Commission merchants, brokers, and dealers, including certain retailers and processors, are required to be licensed. A person's license to trade under the act may be suspended or revoked for engaging in unfair trading practices. Recently, the law was amended to authorize the Secretary the option of allowing violators of the misbranding provisions to discharge their obligation by paying a monetary penalty in lieu of license suspension or revocation.

There are two types of cases authorized in administering the act. In the first, the Secretary accepts complaints from injured parties seeking to recover damages resulting from violations of the fair trading rules. The Department is not a party to these complaints. It acts as a forum to enable disputing parties to present their evidence so that the Secretary can determine whether violations of the law have taken place and the amount of damages, if any, resulting from the unfair practices.

The second type of case relates to disciplinary measures. These include administrative proceedings by the Secretary to suspend or revoke licenses for repeated or flagrant violations of the act, and court actions to impose civil penalties for operating without a license, together with injunctions to restrain further operations. The cost of administration of the law is supported entirely by license fees paid by commission merchants, dealers, and brokers trading in the fruit and vegetable industry. There are no appropriated moneys involved.

H.R. 10988

Referring to H.R. 10988, section 2 of the bill would extend the licensing provisions of the Perishable Agricultural Commodities Act to transactions involving potatoes sold for processing within a State where grown and include frozen potato products as a perishable agricultural commodity under the act. The Department opposes section 2 of the bill because it is counter to the administration's program for deregulation.

Section 3 of the bill would make discrimination or preferential treatment in trading in fresh or frozen fruits and vegetables a violation of the act. One of the characteristics of the fruit and vegetable industry is the rapid and oftentimes unpredictable fluctuation in demand and in prices and costs of related services. The purpose of the Perishable Agricultural Commodities Act is to promote contract performance in the buying and selling of the commodities covered by the act rather than to regulate buyers and sellers in what they may agree to in making contracts.

It seems to us that section 3 of the bill would require that the intentions of the parties, as well as all conditions which influenced the negotiations between buyers and sellers in making their contracts, be known. Without this knowledge, it would not be possible to determine whether a violation had taken place. In our opinion, this provision would be unworkable. Section 4 of the bill would authorize the Secretary, upon a written request of the complainant, to withhold the name, address, and other identifying information about the complainant in a reparation proceeding. The Department is not a party to reparation proceedings. It merely lends itself as a forum for

deciding, when asked to do so, the rights and liabilities of the principals in a dispute. Decisions are rendered based upon the evidence presented by the disputing parties. In the fruit and vegetable industry, the records of transactions are generally maintained by the names of the parties involved. In our opinion, it would be practically impossible to settle cases when the name of the complainant must be kept secret.

Enactment of section 5 of the bill would change the Perishable Agricultural Commodities Act into a surveillance statute. While the purpose of this section is to encourage buyers to pay promptly for goods purchased, the audits required under this type of authority would not necessarily result in the recovery of money. Evidence of repeated violations uncovered by audit would be used by the Department as a basis for instituting a disciplinary action to suspend or revoke the violator's license. It would still be necessary for injured parties to file reparation complaints if they desired to recover money because of a breach of contract.

The matter of delay in the payment for merchandise is a disease that seems to have permeated many parts of agriculture. For many years the Department has encouraged produce sellers to exercise more prudence in extending credit to buyers. We have urged that they (1) make appropriate credit checks before setting the terms of payment; (2) have a clear understanding of when payment is due; and (3) insist that payment be made as agreed. If payment is not made promptly, the Department will accept a complaint from the seller to recover moneys due. If investigation develops a pattern of failure to pay, disciplinary action can be taken against the violator.

Carrying out the audit requirements of section 5 of the bill would be costly. In fiscal year 1975 there were 938 firms licensed under the act against whom complaints were settled which involved failure to pay promptly. The bill provides that the Department would be required to audit each of these firms every 3 months for 2 years. This would mean 8 audits of each firm, 3,752 audits for the first year and assuming a like number of firms involved, a total of 7,504 audits per year thereafter. Based on experience, we believe that it would require from 52 to 56 man-hours to complete an average audit, including travel time and preparation of a report. We estimate that it would cost approximately \$1,000 to conduct each audit, or a total of \$3,752,000 to audit cases the first year. The second year there would be a new crop to be audited and, assuming a like number of firms involved, the total cost would be doubled.

Inasmuch as fees from licenses represent the only source of funds, it would be necessary to adjust the license fee accordingly to cover costs. Assuming the conditions outlined above, a license fee of approximately \$800 per year would be required.

Mr. Chairman, this concludes my statement.

Mr. VIGORITO. Thank you, Mr. Hedlund.

I have one question. You refer to section 2 of the bill. The Department opposes it because it is counter to the administration's program for deregulation. To be consistent with that, shouldn't we just forget the whole thing and abolish the entire PACA program? The entire program is regulatory. If all regulations are inconsistent with the administration's program, aren't you also opposed to the entire program that you administer.

Mr. HEDLUND. Mr. Chairman, I guess in the larger sense you are probably correct. But we aren't addressing ourselves to that total thing today. As far as my appearance here today, it concerns only this bill. I would not argue with you on your overall statement.

Mr. McHUGH. In that same connection, Mr. Hedlund, and I don't want to put you on the spot, but as I recall from your testimony last year, you indicated that it would be consistent to include frozen potatoes within the ambit of this act. Have you modified your opinion or are you simply reflecting a broader policy decision made someplace else in the administration that you are required to present to us here?

Mr. HEDLUND. Well, Mr. Congressman, I did testify as you indicated, last July, in exactly that way. I indicated that there were problems in the potato industry and perhaps one remedy would be as proposed. But that was in 1975 and now the administration has taken a different position and I am here today reflecting that position.

Mr. McHUGH. Thank you.

With regard to section 3, it seems to me that that's a fairly limited attempt to proscribe retaliation and indicate that retaliation is an unfair practice under the act. The second question would be how enforceable is it? But aside from the enforceability problem, is it your personal view that we should not include retaliation as an unfair practice? Shouldn't that be an unfair practice in principle in this act?

Mr. HEDLUND. Well, of course, I guess you can't argue, and I certainly wouldn't argue with your thesis that that is a bad practice. But how are you going to get at it? How are you going to nail it down and do something about it? Certainly we are all in favor of fair and equitable treatment across the board. But you can't delve back into what people had in their mind when they made contracts. Their contracts differ from each other for varying reasons. Our big question is how do you get at those reasons? How do you get at the basis for the retaliation to determine that there was, in fact, some retaliation involved. Certainly, we are not opposed to the idea.

Mr. McHUGH. Well, wouldn't the burden be upon the complainant? If a grower comes in and says that he has been retaliated against for a prior complaint, wouldn't you then say to him, "Well, all right, you prove to us that this is the case." And if he could prove it then you would have the authority under the act to take some action against the license of the processor who retaliated?

So you could just leave it up to the complainant to establish to you that there has been retaliation. Perhaps it could never be established. If that's the case then no harm has been done. But in those cases where retaliation could be established as a matter of fact, it seems to me that it would be worthwhile giving you the authority to take action.

Mr. HEDLUND. I would say, Mr. Congressman, if that were the case, if it were upon the complainant to make his case, I would agree. But we are talking here, I believe, about making this a disciplinary matter where it is up to the Department to make the case. Certainly, if it's going to be up to the complainant to make the case, I have no quarrel with that.

Mr. McHUGH. In terms of disciplinary action, isn't it within the Department's discretion when to institute such disciplinary action?

Mr. HEDLUND. Absolutely.

Mr. McHUGH. And therefore, as a matter of administrative procedure, couldn't you simply bring these types of proceedings only in those cases where you were satisfied that the complainant had brought forth sufficient evidence of retaliation?

Mr. HEDLUND. Well, it's a little bit sticky that way. But I think I would have no quarrel with the idea, however you did it. If it's up to the petitioner or the complainant to make his case, if he can prove his retaliation, then I don't have any quarrel with that.

Mr. McHUGH. In that event, then, it seems to me sensible to include retaliation as an unfair practice under this act, don't you think?

Mr. HEDLUND. Why not make it an unfair practice and make it for the reparation complaint? Then it is definitely up to the complainant to make the case.

Mr. McHUGH. But if retaliation is in principle an unfair practice, why should it not be an unfair practice for disciplinary purposes in those cases where you are satisfied that the evidence has been presented to you to justify the disciplinary proceeding?

Mr. HEDLUND. I won't argue that. I think you have a good point. If the complainant makes the case, then there should be a basis for action.

Mr. McHUGH. You never have to bring a disciplinary action if you choose not to?

Mr. HEDLUND. No, we never have to. But, in effect, if you are going to carry out the purposes, you are going to have to get into it.

Mr. McHUGH. And you wouldn't bring a disciplinary action unless you were satisfied the evidence was there to do so. All I am saying is where the evidence is there, you should be authorized under this act to bring such an action.

Mr. HEDLUND. I hope we don't bring any cases where we don't have the evidence.

Mr. McHUGH. You see, my problem is that where a complainant does bring evidence to you of retaliation now, you are not authorized under the act to bring a disciplinary proceeding based on that retaliation. All this bill would do is to give you that authority.

Mr. HEDLUND. Well, I'll go back and say I don't think we would argue with the case where a complainant makes his case of retaliation that we can't do something about it.

Mr. McHUGH. I have a question on section 4. This is a section which would give the Department the authority to withhold the complainant's name in a situation where the Department determines that it would be in the interest of the complainant to do so. What precisely is your objection?

Mr. HEDLUND. Our objection, I think, would be the difficulty of going out and making an investigation, really accusing somebody of violating the law, but you don't tell him who and what he did. And who has complained against him.

This is confined only to reparation cases. These are confined to cases that a complaint has been made against another party. It is sent to the Secretary of Agriculture to adjudicate. And we have to go out and see the other party and find out what the facts of the case are. And to go into somebody's place of business and to tell him that we have a complaint against you, we won't tell you who it is or what it is.

We want to see all your records. And how are you going to investigate, how are you going to find those records, without disclosing who it is? It's a very ticklish idea.

I'm not unsympathetic with the idea that people would like to have their names kept out. And we have discussed this with the people that I think are proposing this. And we have tried to outline the difficulty of trying to investigate it without telling people really what they did wrong.

Mr. McHUGH. Well, you would certainly have to tell the alleged violator what the allegation was. This would simply give you authority, if you thought it was desirable, not to divulge the name of the complainant. I can understand your concern in regard to reparations cases where the complainant is seeking to obtain money damages. In those cases the burden is upon the complainant to proceed to prove his case. Therefore, keeping his identity a secret is inconsistent with the procedure, as I understand the situation.

But in a disciplinary proceeding, where the moving party is the Department, it seems to me that there would not be the necessity in every case to tell the alleged violator who it was who brought the allegation to your attention. In that instance you are the moving party and not the complainant. Is that correct?

Mr. HEDLUND. Well, that's a different matter. Section 4 applies only to reparation cases.

Mr. McHUGH. Is that so, Mr. Chairman?

Mr. VIGORITO. Yes.

Mr. McHUGH. Thank you very much.

Mr. FITHIAN. Thank you, Mr. Chairman.

Just for my own information, when you take punitive action against an offender, what is the normal process? Do you revoke their license? You lift their license?

Mr. HEDLUND. Yes, sir.

Mr. FITHIAN. Could you share with us something of the track record of your agency in this? How many occasions per year does it average out that you lift licenses? Is it an extraordinary thing? Does it happen frequently?

Mr. HEDLUND. Let me outline briefly the two types of actions. First you have reparation cases where one person files a case against another person, another licensee, and the Secretary comes up with the decision that the complainant is due x dollars by x date. If the defendant does not pay by the specified time, his license is automatically suspended until he does pay.

Now, there are quite a few of these kinds of cases. I haven't got it right now but there would be quite a few of those kinds of cases. Then when he does pay, his license is reinstalled and he is eligible to do business.

The other case is the disciplinary action. That is where the Department files a complaint against a party for repeated and flagrant violations of the statute. Now when that takes place and it is carried through to a successful conclusion, the license is either suspended for a period up to 90 days or it is revoked entirely.

Now, in 1975, 42 formal, disciplinary decisions were issued. Eight orders were issued revoking the license of firms which had failed to pay for quantities of produce purchased in interstate commerce.

Sixteen firms were found guilty of repeated and flagrant violations under the act.

Mr. FITHIAN. So you had 66 cases in the last year.

Mr. HEDLUND. Disciplinary. We had 42 formal disciplinary actions, that were decided in 1975.

Mr. FITHIAN. How many people do you have in your Department, Mr. Hedlund? In your part of the Agriculture Department?

Mr. HEDLUND. Well, those concerned with administration of this statute, there are 82 people.

Mr. FITHIAN. Well, I am getting at quite a different matter here than the legislation at hand. I have grown weary already and I've only been here a year, in counting the number of people involved in various regulatory agencies. My first question is why shouldn't this be done away with and put over under the Federal Trade Commission? Why shouldn't your whole agency be done away with?

Mr. HEDLUND. I guess I wouldn't argue very long. The Perishable Agricultural Commodities Act has been around since 1930. The industry at that time tried to have an industry operated system in which to adjudicate disputes in a fast-moving perishable industry which is largely traded at long distances by telephone. They were not able to do that and they came to the Congress and said—we would like a system set up which the industry pays for and that we don't have to go to court to settle our disputes. So the result was the Perishable Agricultural Commodities Act.

Mr. FITHIAN. This is handled by administrative law judges and in a variety of ways in a number of agencies. My concern is the proliferation of this kind of thing. I realize that your group has been around for a long time. But if you have 82 people working there and you handle 66 cases in a year, this would be the equivalent of what normally three of four lawyers would take care of. I'm not a lawyer so I'm not plugging my profession, but this would be the case load that three or four lawyers and a couple of secretaries would take care of.

My curiosity here is peaked by the possibility of merging this with the Federal Trade Commission or some such thing and reducing the total outlay to supervise this. I have no objection to supervising and taking care of licensing in perishable commodities. I understand some of the problems to which your testimony this morning alluded and gave us some other insights. I appreciate that.

My concern is the overall efficiency of the program.

Let me turn to a second comment.

Mr. HEDLUND. I want to get one extra statement in there. You merely asked me about disciplinary cases. Now most of the cases here are the reparation proceedings and there are over 2,000 of those in a year. So that there is a great deal going on other than just the disciplinary actions by the Secretary of Agriculture.

Mr. FITHIAN. Well, we will add that in. But basically as I understand the bottom line of your answer, it is that you would have no philosophical problem with combining this with the Federal Trade Commission?

Mr. HEDLUND. I guess personally I'm not a regulator in spirit. I think going under the Federal Trade Commission puts it in quite a different category. You don't have the reparation proceeding category under the Federal Trade Commission Act. And I suspect you would get some objection from people in the industry.

Mr. FITHIAN. Let me ask you a question to clarify your objection to section 4. Do I understand that your basic objection there is the objection of an unknown complainant being unidentified so that the person whom the complaint is lodged against is not aware of who his protagonist is, so to speak? Is that it? Did I understand your response to Mr. McHugh correctly?

Mr. HEDLUND. Our difficulty would be in settling a case between two parties where we can't tell the accused who is making the complaint and yet we have to get into the records to find out about this transaction.

Mr. FITHIAN. So it is procedural then. You are speaking strictly to a procedural matter rather than a philosophical problem of not permitting the person whom the complaint is lodged against to know who it is that is complaining?

Mr. HEDLUND. No, I am speaking to the procedure.

Mr. FITHIAN. Thank you, Mr. Hedlund.

Thank you, Mr. Chairman.

Mr. VIGORITO. Mr. Grassley?

Mr. GRASSLEY. This bill starts by including frozen potatoes as a product under the Perishable Agricultural Commodities Act. Now, do sections 3, 4, 5, and 6 included in the bill, are they there because they relate just to a problem that stems from frozen potato industry? Are they included because it is a problem that stems from all perishable agricultural commodities?

Mr. HEDLUND. Well, sir, I really can't answer because it is not a Department bill. We did not propose this bill and I think my own feeling is, in answer to your question, that sections 3, 4, and 5 have little or no relation to section 2.

Mr. GRASSLEY. Mr. Chairman, I'd like to ask our counsel or somebody that can answer my question. I want to know whether sections 3, 4, 5, and 6 are in this bill because of problems that stem just from the frozen potato industry or whether it is a problem with all perishable agricultural commodities.

Mr. BARTON. Mr. Grassley, I would like to comment on that. I think that section 2 refers to it more precisely. In some of the subsequent sections, as I understand it, we are trying to get at, among other things, the problem of alleged slow payments by processors to growers. For example, the antiretaliation provision was designed to allow growers to bring complaints without fearing retaliation. Many of these problems have been experienced in the potato industry. There have been instances in Maine and Minnesota, among other places, that potato processors have been in financial difficulties. They either have filed for bankruptcy or have had problems with solvency.

In that sense some of the subsequent sections as I would understand it are designed with potatoes rather precisely in mind. They certainly have a broader scope. But on the surface they would apply to other commodities as well.

Mr. GRASSLEY. Well, in your opinion, would the contents of sections 4, 5, and 6 be around if it weren't for the problems with potatoes as being presented in the first section of the bill? What I am trying to find out, we have a problem here with potatoes evidently. Is the rest of the bill just tagging along because they couldn't get passed on their own merits?

Mr. BARTON. As I understand it, a very large percentage of the complaints and proceedings that have been brought under the act to the Department have been for slow payment. Complaints under the slow payment provision have constituted about 95 percent of the complaints.

Mr. GRASSLEY. Well, then, I'll ask Mr. Hedlund.

Mr. HEDLUND. Yes. A great many of the cases that are brought under this act are for slow pay or at least include slow pay.

Mr. GRASSLEY. And whether you favor or ask for sections 4, 5, and 6, is it your opinion that they are needed because of the problem with the potato industry and the necessity for including that under this act? Or would there be reasons for them regardless of that problem?

Mr. HEDLUND. I think the potato people have taken the leadership in advancing these. Now the same problems. I think, would apply elsewhere. But there has been more difficulty I believe in recent times in the potato industry than elsewhere.

Mr. GRASSLEY. Then the problems of the potato people would not be satisfied just with the passage of section 2 and or section 3? I don't know whether section 3 is that directly related. But the problem of the potato industry would not be satisfied then entirely by the passage of the first part of this bill?

Mr. HEDLUND. Let me answer that this way. The problems of slow pay would not necessarily be solved. I think there are subsequent witnesses here from the potato industry who can perhaps give you more insight into the other question.

Mr. VIGORITO. Thank you. Does counsel have any questions?

Mr. IMHOF. Just a couple of questions, Mr. Chairman, if I may?

Mr. Hedlund, I would like to refer to page 5 of your statement, which was furnished to me, where you estimate the surveillance provisions of the bill. You suggest that there were 938 firms licensed under the act against whom complaints were settled involving failure to pay promptly. I was wondering if in each of those cases there was a determination by the Secretary, pursuant to subsection 6D of the act, of the violation.

Mr. HEDLUND. No.

Mr. GARDNER. This includes all informal and formal complaints filed and settled with the 938 firms both the ones in which the Secretary issued an order and the ones in which informal settlement was arranged.

Mr. IMHOF. Does the Secretary issue an order in connection with those cases in which a formal settlement is achieved?

Mr. GARDNER. He does.

Mr. IMHOF. How many cases were there in which such an order was issued by the Secretary?

Mr. GARDNER. Orders issued by the Secretary on reparation cases were 352 in the last year which involved \$1½ million. Informal closings were 1,392 and involved \$5.9 million.

Mr. IMHOF. That includes Mr. Hedlund's earlier testimony that there were 42 disciplinary cases?

Mr. GARDNER. Forty-two decisions.

Mr. IMHOF. Forty-two decisions.

Mr. BECKER. We had actually for handling during 1975, 552 disciplinary cases.

Mr. IMHOF. There were 42 disciplinary cases brought to conclusion in 1975, is that correct?

Mr. BECKER. Yes.

Mr. IMHOF. If this provision were confined to those cases, I am speaking specifically of the divisions which have to do with the audit, only to disciplinary cases.

Mr. BECKER. Yes, it would. But you must keep in mind that if you went through the formal proceeding, it would be a year or more after the happening before you got a decision, if you wait for the formal procedure.

Mr. IMHOF. I take it from Mr. Hedlund's earlier testimony that you regard sections 4 and 5 of the bill, and I would like to address section 4 for the moment, this is the section that provides for the retaining of the name of the complainant, do you regard this section as applying only to reparations cases? I was wondering, No. 1, why, and, No. 2, if that is the case, if it can be so drafted?

Mr. BECKER. There are two sections to section 6 of the act. Section 6A pertains to complaints which are of nonpayment as between persons in the industry. Those lead to reparations proceedings. Section 6B of the act reflects complaints which lead to disciplinary proceedings. Section 4 of the bill as drafted pertains only to section 6A of the act at this time.

Mr. IMHOF. Is it every case that a complaint filed under section 6A results in a disciplinary proceeding?

Mr. BECKER. Yes, sir; it does, only after it has gone through the reparations proceeding.

Mr. IMHOF. If it were the desire of the committee to restrict the application of section 4 of the bill to disciplinary cases, would it be best to add that proviso under section 6B of the statute?

Mr. BECKER. It would be necessary to do so.

Mr. IMHOF. In regard to section 3 of the bill, which is the section relating to unfair practices, I think you are aware or some of you gentlemen are aware that this section is patterned on section 3 and specifically subsection 3(1) of the Interstate Commerce Act. The Interstate Commerce Commission has been enforcing that provision for some 89 years and successfully, I might add. It might well be that in cases where the evidence was available, the Department could well utilize that provision in this bill.

Mr. HEDLUND. As I stated earlier, I think that if the evidence is there, that's one thing. And I don't think we would argue about it if the evidence is there or if the petitioner or complainant is responsible for making his case.

Mr. IMHOF. Does the Department oppose the provision as it applies to disciplinary cases? In your dialog with Mr. McHugh earlier, the discussion seemed to be confined largely to reparation cases. It seems to me that this provision would be extremely useful to the Department in disciplinary cases. I would hope that the Department would not oppose the provision to extend it to disciplinary cases. I am asking you do you oppose it as it applies to disciplinary cases?

Mr. HEDLUND. Well, that is a different issue, I really am not prepared to state at this time what our position would be on that. But I go back to the question that if we have the evidence, I can't quarrel with the idea of using it.

Mr. IMHOF. Would any change in the drafting of the bill be required to extend provisions of section 3 to disciplinary cases?

Mr. HEDLUND. My counsel says it would not.

Mr. IMHOF. Thank you very much.

Thank you, Mr. Chairman.

Mr. McHUGH. I have one question.

Mr. VIGORITO. Well, make it short. We are pressed for time.

Mr. McHUGH. As a followup on this question of section 4. I can appreciate why you would not want to withhold, or could not withhold, the complainant's name in a reparations case. Accordingly, since the Bill in its present form applies only to reparations cases, I think we should not include this section in the bill as written.

However, I would like to be clear on your reaction, if you have one, as to why you could not withhold the complainant's name in a disciplinary proceeding, since you are the moving party?

Mr. HEDLUND. I am going to let our counsel speak to that.

Mr. BECKER. Congressman, in disciplinary proceedings, our investigators generally act on the basis of knowledge which has come to them from persons in the industry. Such persons are generally sellers or creditors of the party against whom the original complaint is filed. Most of our disciplinary cases involve the transactions of the complaining party. Now for us to be told that there are possible violations and to go to a licensee and ask to look at his records so as to ascertain as to whether there were but not to be able to reflect what we are looking at actually is a terrible impediment to our investigators. And in any event, eventually the licensee is going to know who complained because of the fact that the violations will appear in the disciplinary complaint.

Mr. McHUGH. What you are saying then, is that you would have to tell the alleged violator what specific transaction was in question and once you did that, even if you didn't tell him expressly who the complainant was, he clearly would figure it out because he would know with whom he dealt on that transaction.

Mr. BECKER. Yes, sir.

Mr. McHUGH. I see. Thank you, very much.

Mr. VIGORITO. Thank you very much, Mr. Hedlund, for your testimony and appearing here today.

Our next witness will be Bernard J. Imming, president of the United Fresh Fruit and Vegetable Association of Washington, D.C.

Mr. IMMING. Thank you, Mr. Chairman. I have with me our legislative manager, Llewellyn Gerson.

STATEMENT OF BERNARD J. IMMING, PRESIDENT, UNITED FRESH FRUIT AND VEGETABLE ASSOCIATION, WASHINGTON, D.C.

Mr. IMMING. My name is Bernard J. Imming. I am president of the United Fresh Fruit and Vegetable Association, headquartered in Washington, D.C. The United is the national trade organization for the fresh fruit and vegetable industry, having more than 2,600 member companies throughout the United States. Our members represent all factors in the production and marketing of fresh produce and handle more than 75 percent of the nation's tonnage of commercially produced fresh fruits and vegetables. We appreciate this

opportunity to present our industry's views on H.R. 9288 and H.R. 10988—the current legislative proposals dealing with the Perishable Agricultural Commodities Act.

The predecessor organizations of our association, which was formed by merger in 1937, were among those which sought and supported the passage of the Perishable Agricultural Commodities Act in 1930. Our industry recognized their own need for coverage of the transactions and negotiations involving purchases and sales of fresh fruits and vegetables and directly related matters. The United membership today feels that their fundamental needs are substantially unchanged since the enactment of the PACA and looks forward to the continuation of its effective operation.

There is no question but that the sound business relationship between the industry and the PACA has contributed to the good of our industry. As an association, we have found PACA personnel not only absolutely fair and objective, but as helpful and cooperative as possible. Although there have been occasional differences of opinion, we have had no fundamental problems in working with PACA.

THE PACA-INDUSTRY CONFERENCE GROUP

Although I mentioned this at oversight hearings last year on the PACA, I would like to note again that the United Fresh Fruit and Vegetable Association actively encouraged the establishment of the PACA-Industry Conference Group in the late 1950's. This group was the predecessor of the current PACA-Industry Advisory Committee whose purpose is to provide organized, intelligent liaison between PACA and the industry. It serves as a sensitive and effective medium of communications between the industry and the PACA to assure that the latter continues most effectively in the purpose for which it was organized.

The PACA-Industry Advisory Committee represents fairly all factors in our industry and those for whom PACA was created. It has been an indispensable mechanism for the industry and we believe it has been equally as useful a mechanism from the viewpoint of PACA.

SPECIFIC CURRENT PROPOSALS

Mr. Chairman, I believe it is significant that the PACA is financed, not out of general revenues, but entirely out of the funds paid by licensees under the act. This is exemplary among regulatory agencies of the federal government and our industry is proud that PACA is so financed.

H.R. 9288 before us today would amend the PACA to grant the Secretary of Agriculture authority to assess a single, uniform license fee for all applicants, or to assess a graduated fee per applicant based upon the amount and type of business conducted by the firm. In other words, the Secretary, through administrative procedures, would set license fees for the PACA.

Our industry supports the need for revenue adequate to administer the PACA. In fact, we urge the continuation of a single, uniform license fee and would support the adoption of a maximum amount of \$300 for this purpose. We oppose the provision granting the Secretary

authority to assess a graduated fee. The uniform fee could be raised in increments from the present \$100 by the Secretary of Agriculture from time to time to whatever level within the maximum is required. The action by the Secretary would follow existing procedures which have proven to be satisfactory in the past.

We feel very strongly that the implementation of a graduated fee is not feasible, as it would be unwieldy and impossible to apply uniformly. The administrative costs of a graduated fee system would add an unnecessary burden to the PACA's operations which, in turn, must be financed entirely by the revenues. We fear that too much of the manpower and time of PACA personnel would be consumed in verifying the size of a company's business for purposes of applying the proper graduated fee. In turn, the company would have to submit financial records and statements with regard to its sales and dealings and this would be unnecessarily time consuming and expensive for the company. And although such financial records would be confidential, we fear that the strengthened Freedom of Information Act may give the public access to such records in USDA files and so reveal important information of a competitive nature.

Therefore, to assure adequate and efficient funding of the PACA, we recommend the Secretary be granted authority to assess a single, uniform license fee up to the amount of \$300 for all applicants. With this change, we support and urge the prompt passage of H.R. 9288.

I should now like to comment on H.R. 10988, a bill "To amend the PACA, and for other purposes." The United Fresh Fruit and Vegetable Association does not support this bill. It would necessitate substantial changes in the PACA. We feel that more study and attention should be given its provisions to avoid burdening the PACA with complicated, unnecessary and unenforceable provisions.

Specifically, the United has no position pro or con on section 2 of H.R. 10988—the inclusion of frozen potato products and potato processors under the PACA. However, we have serious reservations concerning sections 3, 4, and 5 of the bill.

Section 3 is essentially an antidiscriminatory clause. To enforce the purpose of this section of H.R. 10988, the PACA agent would have to know the intentions of the buyer and the seller at the time of their negotiations. This intent would be impossible to assess because of the rapidly and constantly changing conditions in the fresh fruit and vegetable market. The PACA, in the past, has not attempted to interfere in the contracts negotiated between a buyer and a seller.

Section 4 of H.R. 10988 authorizes the Secretary to withhold the identity of a complainant upon the complainant's written request. Our industry strongly opposes this provision. A respondent must have the right to know who filed a complaint against him in order to proceed with his defense. He must have certain detailed information, such as the provisions of the contract with the complainant to determine the complainant's case, possible breach of contract, and the possible damages. And, of course, if damages are to be paid, the respondent must know the name of the complainant.

Section 5 states that the accounts of any licensee who has violated the provisions of the act—even parties who were in an honest dispute—would be subject to routine examination by PACA personnel.

The record of our industry with respect to PACA does not indicate a need for "fishing expeditions" by the PACA personnel. This is anything but a desirable practice in the near unanimous view of our industry. Also, the personnel and time costs to perform this surveillance would add significantly to the cost of the PACA—more costs which would raise again the level of the annual PACA license fee to unbearable levels.

Lastly, under section 5, a licensee found to in violation of the act must post a surety bond to assure compliance with the provisions of the PACA. We oppose this provision as being totally unnecessary and unduly burdensome.

SUMMARY

Our industry believes the PACA is operating efficiently and effectively along the lines for which it was intended and that it is not now in need of the substantial changes proposed by H.R. 10988. We strongly support a single, uniform license fee with a maximum of \$300 and urge immediate enactment of H.R. 9288 with this provision. We oppose H.R. 10988. It makes significant changes in the PACA which we feel should never be adopted and which surely deserve more study and comment before their further consideration.

In conclusion, Mr. Chairman, I would like to applaud the decision to hold further hearings on this legislation on February 25, 1976. As I communicated to you earlier, many of our members—all of them PACA licensees and representing various important factors in our industry—found it impossible because of conflicting circumstances to appear here today, but wish to express their views on this important legislation. Now they will have an opportunity to do so. In addition, the PACA-Industry Advisory Committee will have met on February 7, and the results of their consideration of these bills, representing the views of all factors affected by PACA operations, should be most useful to the Congress and we recommend that the subcommittee have a departmental representative on hand to report. We know the subcommittee wishes to be appropriately responsive to the needs of all those who would be affected by the proposals, and we believe it has acted generously and wisely in scheduling the additional day of hearings February 25.

We hope our comments on these two bills have been helpful to the subcommittee and we appreciate the opportunity to present our industry's views.

Mr. VIGORITO. Thank you, Mr. Imming. I'm sure your statement is well prepared and well received and we appreciate your comments.

I don't have any questions. Mr. McHugh?

Mr. McHUGH. Thank you, Mr. Chairman. I just have one question. I appreciate your being here and your fine statement.

There is one question in regard to section 5 which would give the Secretary the authority to require a surety bond in a case where it has been found that the processor has violated the act. You've opposed that, to use your words, as being "totally unnecessary and unduly burdensome." I have some difficulty understanding why in every case it would be unnecessary.

It seems to me that we are talking about a case where one has violated the act already, breached a contract or been slow to pay or whatever, and the Secretary would be given the authority to look at the situation and require a bond if he sees fit. Why is it totally unnecessary?

Mr. IMMING. This opinion, Mr. McHugh, is based on our experience in the past, I suppose, where our members have found and the PACA I believe has found it unnecessary. Therefore, we feel this way.

Mr. McHUGH. Well, the PACA doesn't have the authority now, does it, for the Secretary to require a bond? This is something new.

Mr. IMMING. My understanding it is not for this purpose; no, sir.

Mr. McHUGH. OK. Thank you.

Mr. VIGORITO. Does counsel have any questions?

Mr. IMHOF. I would ask one question, Mr. Chairman. I was wondering, Mr. Imming, would you oppose section 5 to which Mr. McHugh just addressed you a question, if it were limited to disciplinary proceedings?

Mr. IMMING. Yes.

Mr. IMHOF. You would oppose it as to any proceeding?

Mr. IMMING. I'm sorry. It's difficult to understand you. I did not hear your last question.

Mr. IMHOF. Section 5 is the audit section of the bill. Would you oppose that section if its application were confined to those instances where the licensee was determined by the Secretary in a formal disciplinary proceeding to have violated the act.

Mr. IMMING. We oppose it, period.

Mr. IMHOF. I see. And it would be your position that in those instances there should be no surveillance by the Secretary of the subsequent performance by the licensee?

Mr. IMMING. At this time, unless I misunderstand your question, we do oppose it; yes.

Mr. IMHOF. I have no further questions.

Mr. VIGORITO. Thank you, Mr. Imming, for your presentation here today.

Mr. IMMING. Thank you, Mr. Chairman.

Mr. VIGORITO. In order to save time, we will call the next three witnesses who represent the National Potato Council, Mr. Doyle Burns, the executive director, from Denver, Colo., Mr. Bob Harwood, member of the National Potato Council from my congressional district, and Mr. Seth Ballog, member of the National Potato Council also from my district in Pennsylvania. Would you three gentlemen come forward now, please?

Mr. BURNS. Mr. Chairman, you are acquainted with these gentlemen with me, Mr. Seth Ballog on my right and Mr. Bob Harwood on my left. They both have statements. With your permission, I will read my statement first and then we can follow with their statements.

STATEMENT OF DOYLE BURNS, EXECUTIVE DIRECTOR, NATIONAL POTATO COUNCIL

Mr. BURNS. My name is Doyle Burns. I am executive director of the National Potato Council.

The National Potato Council is a nonprofit trade association whose membership consists of commercial potato growers from throughout the continental United States. These commercial potato farmers produce an estimated 97 percent of all Irish potatoes grown in this country.

I am testifying today on behalf the National Potato Council and its membership and I am speaking in support of H.R. 10988 and H.R. 9288.

First, I would like to express our sincere appreciation to the chairman, Mr. Vigorito, and to your committee for your consideration in setting this day aside for testimony on these very important amendments to the PAC Act.

Potato production for the past 5 years has exceeded 300 million hundredweight each year with the highest year's production exceeding 340 million hundredweight. The total value of that crop and that is at the grower level has been well over \$1 billion each year with the highest year almost \$1½ billion.

However, the most important point to consider is the substantial contribution potatoes make to the diet of the American consuming public. Last year, at 119.4 pounds per capita, each consumer ate more pounds of potatoes than any other food product. Potatoes are a low cost, highly nutritious food. It is important that we maintain a plentiful supply. In its absence, the per capita food cost would go up and diet deficiencies would increase.

It is hard for us to keep up with and fully understand all of the changes that have taken place and are still occurring within the potato marketing picture. To a lesser degree, I believe many other perishable commodities are experiencing similar changes.

The advent of processing has intensified and increased the seriousness of many of these situations within the potato industry. Other testimony in this hearing will give firsthand evidence of just what is happening and how it is adversely affecting the small potato farmers.

The PAC Act is over 45 years old. At the time the act was passed, potatoes were marketed in car lots of 320 to 360 hundredweight. There were commercial growers in excess of 100,000, and buyers numbered many thousands.

Compare this with the 500 sack car lots or more of today, and it is estimated that less than 10,000 growers produce nearly all of the crop and the effective buyers number only a handful. Yet, more potatoes are being consumed today than ever before. The ratio of buyer to seller has seriously eroded the farmers' bargaining ability. If he refuses to accept the arbitrary adjustments proposed by the buyer he may well find himself with no market outlet at all.

If he complains to the buyer about slow pay or some other transgression, or files a complaint under the PAC Act, that could be the last load that he will deliver. That is an unfair situation. No one, not even a potato farmer, should have to operate under the threat of coercion, reprisal or retaliation.

Another problem, and in some states far more serious has developed with the processing industry. Processors will normally contract prior to planting for a substantial share of their projected needs. The contract requires the grower to deliver to the processor at specified times certain quality and at an agreed upon price.

During the past 3 or 4 years we find more and more processors unable or unwilling to pay for the potatoes after they have been delivered. It is literally impossible for the farmer to have advance knowledge of the processor's financial condition. Nor does any one farmer realize that there are dozens and sometimes hundreds of other farmers who are also delivering to that processor.

Collectively, their losses will amount to millions of dollars. Picture the dilemma of the grower. The contract is a necessity because his banker requires it before he will advance operating expenses. Once he has signed the contract, he has to deliver, and even if he knew the processor was not going to pay, the contract still requires him to deliver. His only recourse is to violate the contract, refuse to deliver and take a chance on being sued by the processor.

There is or can be a very effective solution to this problem. All potatoes are a perishable agricultural commodity. All potatoes whether frozen, dehydrated or fresh meet the needs of the same market. Anyone who buys and processes within a State and sells the finished product either within that State or any place else in the United States should be required to have a PAC license.

Frozen potato processors and frozen potato products should be subject to the PAC Act. There is no good or justifiable reason for such an exemption to be made. This inequity would be corrected in section 2 of this bill.

Earlier in this statement, I mentioned the problems of coercion, reprisal and retaliation. Such charges are sometimes hard to verify or prove. Why? First, the PAC Office says there are practically no rejections and according to their records, this is absolutely correct. However, they have no record of the adjustments that are agreed on under the threat of rejection.

The grower is well aware that it is not only the load being disputed but if he refuses to agree to the requested adjustment, there will not be any more orders. In the cases of contracted potatoes, the grower may be advised his crop won't be acceptable until next spring. By then, decay, sprouts and shrinkage has destroyed half or more of his crop.

Retaliation or the threat thereof is a vicious thing. It would be nice to say it does not exist but it does exist. It is a rather common practice. Conservative estimates indicate that in some States at specified times, growers have lost 10 to 12 percent of their net return to this cause alone. Section 3 of this bill may not stop all acts of reprisal but certainly it does afford the victim legal recourse when the charges can be proven.

Under present circumstances as they exist today, very few growers and probably no small grower would file a complaint because of the problems he would face if he did. But if he could remain anonymous, the small grower would file complaint and thereby give the PAC Administrator the necessary authority to investigate.

Of all the amendments being discussed here today, this one is probably the most important. It affords the small grower a degree of protection. His complaint can provide the PAC Administration with the necessary authority to check the licensee's books. If violations do exist, the PAC Administration can correct or call to account the violator.

The charge that anonymity would create fishing expeditions and wholesale harassment is pure hogwash. No grower is going to lodge a complaint unless he has legitimate grounds. Common sense would dictate caution. He could not afford to jeopardize his credibility with PACA or the industry by making spurious charges. Insofar as PACA is concerned, if they cannot handle the workload they now have, how can they find additional time to go fishing or to harass someone?

No licensee need have any worry if he is not in violation. The cries of harassment ring hollow because they are being uttered by the very ones who would sooner or later be found in violation of the act.

Finally, in regard to the fourth amendment to the act, what is the purpose of the license? From all outward indications, the Department and the PAC Administration considers the license primarily as the vehicle to raise funds to conduct the program and pay its bills.

Admittedly, the collection of funds is important. You must have money to operate but that is not the real purpose of the license. That license is the authority or the right for the licensee to do business. The first sentence in the act itself states that it is an act to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities.

It does not say the act is a money raising project. Therefore, the first consideration must be to suppress unfair and fraudulent practices. The money to pay for doing that should then be established and incorporated into the charge for a license fee. Today anyone can walk in, pay the price, and get a license. As long as he pays up once a year, he can keep that license even though he may be in constant violation of the act.

PAC refuses to even look at an licensee's operation unless a formal written complaint is filed. Yet, they have told us they know who most of the violators are. The practice of having reasonable cause to believe a violation is occurring, and failing to investigate, is not much different from the policeman who witnesses a bank robbery but looks the other way because he doesn't want to get involved.

This is a serious matter and the proposed amendment to section 13 of the act would do a lot to correct this gross inequity. We believe a recap of PAC history would show that most PAC licensees are basically honest and trying to be fair in their business transactions. These people would have nothing to fear from these proposed changes. The violator who must submit to inspection is not being unjustly penalized. Those licensees who are repeated violators will either change their tactics or they will lose their license, and that is the way that it should be. The surety bond is a further guarantee that he will comply with the provisions of the act.

Mr. Chairman, I might say right here that we are not bound by these amendments. We, in our opinion, think they will help. But if there are others within this industry who can come forth with suggestions or recommendations we have an open mind on the whole situation. However, I think I should say that at this point the growers view the PAC as pretty much of a farce. With all of the things that are being done, are being done after the money has been drawn. The revocations of a license occur after the man has taken bankruptcy and there is no recourse as far as obtaining funds.

We support H.R. 9288, the proposed amendment to increase license fees. This is the only way the PAC Act can continue. In our opinion, the graduated fee based on the volume of business would be a fair and equitable system. Certainly it would be unfair to expect a licensee doing \$100,000 worth of business to pay as much as one doing \$10 million worth of business. We believe the license authorization should not be open end. Congress should review the amount of the license on a periodic basis.

The National Potato Council has been working for the past 4 years to get USDA to become more aggressive in the administration of the PAC Act. We have offered suggestions, recommended alternatives, asked for changes in administrative procedure, all to no avail.

They tell us they cannot do the things we ask. Their interpretation of the act is a narrow and totally inadequate one. The amendments before this Subcommittee in this hearing will give the Department of Agriculture the necessary authority to do the job of correcting some of the glaring inequities in the produce business. There is nothing sacred about the PAC Act. It was a good law for the produce industry. It is still needed. But after 45 years, it needs to be changed to meet the needs of today's market problems.

It is not the intent of the National Potato Council to hurt, hinder, or restrict any honest, productive, and dependable licensee. We do not honestly believe these amendments in H.R. 10988 would affect any licensee unless he is deliberately violating the act. If he is violating the act, then he must understand that he is imperiling his right to do business.

We respectfully request the subcommittee to give full and serious consideration to this bill and we are hopeful that it will receive favorable consideration.

Mr. VIGORITO. Thank you very much, Mr. Burns.

Before we have questions, we will hear from the other two gentlemen at the table. Our next witness is Mr. Robert Harwood from Wattsburg, Pa.

Mr. HARWOOD. Thank you, Chairman Joe, and your committee.

STATEMENT OF ROBERT W. HARWOOD, MEMBER, NATIONAL POTATO COUNCIL

Mr. HARWOOD. I am Robert Harwood and my address is Wattsburg, Pa.

As a potato farmer, I plant about 115 acres of potatoes each year. Nearly all of the potatoes that I grow are sold to potato chippers, and the sales are handled through the Pennsylvania Potato Growers Cooperative.

The co-op handles the sales and I do the packing. However, I am not paid for my potatoes by the co-op until they receive the money from the chip buyer. Most of the potatoes I grow are used within the State where I live. I believe we have as good a record for prompt and fair settlement as could be found any place in this country.

It is my understanding that according to the PAC Act payment is supposed to be made within 10 days of when the potatoes are delivered. I speak from experience when I say that I seldom get paid within 10 days and often times it will be 60 days and sometimes 90 days before I receive payment.

I believe more teeth in the PAC Act would help me and my marketing co-op to get our money quicker. The practice of slow pay appears to be getting worse with the buyer using the farmer's money for a longer period of time.

I want to thank the committee for the chance to speak on this matter.

Thank you.

Mr. VIGORITO. Thank you, Bob.

Now we will hear from Seth Ballog from my congressional district.

Mr. BALLOG. Thank you, Mr. Chairman.

STATEMENT OF SETH BALLOG, MEMBER, NATIONAL POTATO COUNCIL

Mr. BALLOG. My name is Seth Ballog and I live in Union City, Pa.

I am a potato farmer, growing 180 acres of potatoes per year. Most of the potatoes are sold as table stock, with the rest going for chips. Nearly all of the potatoes I produce are marketed by the Pennsylvania Potato Growers Cooperative.

It is my responsibility to grade and pack the potatoes. The sales are handled by the co-op. Payment for the potatoes is made to me upon receipt of payment by the co-op.

The Pennsylvania Co-op follows the practice of selling to those buyers with the best ratings in the "Red Book" or "Blue Book." As a result, we probably have less trouble with slow pay than some other States. But even here in our State, there are often delays of 2 to 4 months before settlement is made. This works a hardship on any grower, but it is more serious for the small grower.

While we do not have frozen processors in our State, the bankruptcy of a processor in Maine, for example, can cause a shift of potatoes into Pennsylvania markets. All potato areas of the country are so mixed together that any condition in one area will affect all others.

I support both of the bills before this committee. The PACA needs more money to do the job it is supposed to do but they also need to do a better job of speeding up payments for produce, and guard more closely the actions of people in the industry.

I urge the adoption of these amendments, and I am convinced it will improve the vegetable industry.

Thank you.

Mr. VIGORITO. I can very well understand the need for prompt payment in this day of high interests of 8 and 10 percent. It can make the difference of whether you have a profit or not at the end of the year. Can you tell me to what extent this delayed payments goes on? Mr. Burns?

Mr. BURNS. Apparently, it is a fairly common practice. I am basing this on the conversations that I have with potato growers throughout the country. We recognize that there is a certain amount of delay that is probably necessary and we are not sure that the law is realistic when it says within 10 days. The natural chain of events would of course mean a certain amount of time must elapse as the product moves through the channels of trade.

However, we do not believe that there is any justification for it running more than 30 days. In fact, in the conversations that I have

had with growers, in most cases, they consider 30 days relatively prompt payment.

Mr. IMMING. But in those cases beyond that we feel that it is going further than it should.

Mr. VIGORITO. Mr. McHugh?

Mr. McHUGH. Thank you, Mr. Chairman.

Thank you, gentlemen, for being here.

I have one question with regard to the practicality of having to keep confidential the complainant's name. You've heard the testimony of the Department. As they indicate, a person who is alleged to have violated the act or a contract would have to be told of the specific allegations so that he could prepare his defense.

Once he is told what the allegations are, isn't he then going to know who made the complaint, basically because he has dealt with a particular grower on that transaction?

Mr. BURNS. Not in every case, Mr. Congressman. If he does and if it is that important to him to know then that's to his advantage, I guess. But in the cases, and let's use one classic example that we have before us right now, and that is the bankruptcy of a processor in Maine. There are literally dozens of farmers who are involved in that.

So far as his determining the identity of who it might be when he has a multitude of people with whom he is in violation he can still not be sure which one it might be. But even in case of a single violator and the possibility of him being able through a series of deductive movements or some other means determine who that would be, that is his prerogative. If he wants to pursue that and try to determine who it was, and if he does, then we would still have the one against retaliation and he would be in violation of the act.

Mr. McHUGH. Do you happen to know what the usual situation is with regard to these complaints? Is it usually a complaint involving one transaction or one grower or is it customary to have a multitude of growers?

Mr. BURNS. I believe for the most part it would depend on the market. In the case of fresh table stock potatoes, in many cases it would be a single individual. Not every time, but in many cases it would be. In the case of a processor it almost invariably involves a multitude of growers because of processor contracts with many growers whenever he is preseason contracting for the product that he would use.

Mr. McHUGH. Thank you very much.

Mr. VIGORITO. Mrs. Heckler?

Mrs. HECKLER. I am interested in the process of determining price by the broker. I would like to have you describe the sequence of events and what factors the broker would take into consideration when he determines the price of the commodity.

Mr. BURNS. In the potato industry we may be unique in this respect in that we do not have any one channel that all produce goes through. Potatoes are handled literally in just about any way you can imagine, because of the nature of the business and the way that it has grown. In the case of fresh table stock, it would be a grower who either sells to a country shipper or the country shipper who

would pack those potatoes for the account of the grower and then they move from that shipper, sometimes to a grower, sometimes they will move directly to the receiver or the person who is going to—sometimes they will go to the chainstores that are buying direct and they go directly into the store.

Mrs. HECKLER. So the potato is a rather unique commodity in that sense?

Mr. BURNS. I didn't hear that.

Mrs. HECKLER. The potato would be rather unique in that they would not go to as many other individuals or companies as perhaps fruits and vegetables might. Is that true? Is there a more direct relationship between the grower and the ultimate retailer in the potato industry?

Mr. BURNS. There may be several people in between. There might be as many as four or five. There are brokers involved in some cases. There are wholesale buyers. It is possible that a product might change hands many times before it finally gets to the consumer.

I was told one time of a load of potatoes out of Maine that changed hands 10 times before it left the State of Maine. So there is a multitude of ways.

Mrs. HECKLER. May I ask, where does the PACA license come into play, at what stage?

Mr. BURNS. The grower is not required to have a license. At the present time, anyone who handles potatoes that are traveling interstate or any perishable agriculture commodity would be required to have the license.

Mrs. HECKLER. So if the potato crop from a certain farm had to go through 10 different organizations, companies, or individuals, those 9 or 10 people or groups would all have to have licenses, is that right?

Mr. BURNS. I believe that is right. Beyond the producer, anyone from that point on who handles the product or customarily handles the produce that they handle, if it is in interstate commerce, then they would be required to have a license.

Mrs. HECKLER. Now where is the level of preferential treatment or discrimination along this very, very extended chain? Where is the discrimination or preferential treatment occurring? At what stage in the chain?

Mr. BURNS. I'm not sure there would be preferential treatment.

Mrs. HECKLER. Well discrimination then, discrimination against the grower?

Mr. BURNS. I guess it could occur any place along the line. If the retailer doesn't pay the wholesaler then the wholesaler can't get the money to the broker or it can't get back to the country shipper and the country shipper can't get it back to the farmer. At any point, there may be part of them paying promptly and there would be others who would be slow in their payments. It could be a problem at any point.

Mrs. HECKLER. Is there any particular place where the problem occurs more commonly than at another junction?

Mr. BURNS. We used to think we did not have a problem with regard to processing. But the last 2 years has indicated that this is probably a more serious problem today than what we had originally with the fresh potato shipping.

There have been times when this situation would change. During a period of time when there is a shortage of potatoes in the hands of the farmer, then those people who buy those potatoes want them and they may want to come back again. Then prompt payment is much more the common practice than it might be when there is a surplus of potatoes.

Mrs. HECKLER. I take it the country shipper is usually the person with whom the grower deals?

Mr. BURNS. Ordinarily he would be.

Mrs. HECKLER. How does the country shipper decide what the price is going to be? What quantity do they sell and then how does he determine the price? And does the grower have a chance to talk to other shippers and get other prices?

Mr. BURNS. I'm sure there is a communication between them. There are various reports that report what the market has been. There are reports on what might have happened recently—a frost or freeze or something that would destroy part of the crop. There are many factors that go to determine what the price would be. In most cases, I suspect, if finally gets down to the point of what will you give me for them?

Mrs. HECKLER. It is a bidding process?

Mr. BURNS. In the case of processing?

Mrs. HECKLER. Does the country shipper in essence put in a bid, do other country shippers put in bids?

Mr. BURNS. I am not that familiar with the other end of the business. I suspect that this is probably true. That if I was in the business of buying I would call one country shipper and say—well, what would you sell me a load for? If I thought his price was out of line, I would go to another shipper. I think that is good business, to shop around and see if they can get a better buy.

Mrs. HECKLER. Now what quantity, generally, is the yardstick by which the price is determined? Is it in terms of buying potatoes that they refer to a truckload of potatoes, or pounds, or what?

Mr. BURNS. They would be in hundredweights.

Mrs. HECKLER. Hundredweights.

Mr. BURNS. Yes, that would be the most common. Now they may bagged in 10-pound bags. They may be in boxes. They are packaged in a multitude of ways. But generally speaking, they will either be priced on the basis of a 100 pounds or in some cases, of 50 pounds. The price quoted would be on that basis.

Mrs. HECKLER. Why don't I just ask the gentleman on the right? You are a grower?

Mr. HARWOOD. Yes.

Mrs. HECKLER. Do you shop around for the country shipper who will give you the highest price?

Mr. HARWOOD. In most of my marketing, I market through the Pennsylvania Cooperative of the Potato Growers Association. They do this. They hunt the markets for me. And then they call me as a grower. Then they say, Bob, I can sell four trailerloads of potatoes—

Mrs. HECKLER. What quantity?

Mr. HARWOOD. Trailerloads. All of my potatoes are loaded bulk and delivered directly to a chip plant. In the East we have a good number of potato chip plants. And these plants, the deal is made

between the Pennsylvania Cooperative Potato Growers Association, them and the plant, to decide on what price they will pay that week. Then the cooperative calls me and says, Bob, will you take this price for your potatoes and load these trailers when they come? And if I agree, then that transaction is made. And I expect to be paid 10 days later but it is usually 30 to 90 days later that I get my pay.

Mrs. HECKLER. And you believe that they shop around for different brokers who——

Mr. HARWOOD. I'm sure they do. They are in contact with all areas where they produce potatoes. And everybody studies the market. And everybody is in touch with everybody else to make sure that they are going to get the top price in the State for the quality product that they have.

I know, even without doing this, because my Penn Co-op does this work for me, but I know practically all the time what the price is in Maine on shipping potatoes, I know what it is in upstate New York, I know what it is in eastern Pennsylvania. So anybody just gets to know the price by the seat of their pants. It's the way it's done. You are in the business and you get to know.

Mrs. HECKLER. What percentage of markup does the cooperative enjoy?

Mr. HARWOOD. What percentage? What is the brokerage? In most instances, they take either 15 cents or 20 cents a hundredweight, brokerage fee during the marketing service. This can vary.

Mrs. HECKLER. Has this price gone up in the past few years?

Mr. HARWOOD. Oh, yes. It used to be 10 cents straight across the board. Now its' usually 20 cents.

Mrs. HECKLER. Do you follow what the prices are in the super-markets?

Mr. HARWOOD. Oh, yes. It is usually 100 percent markup.

Mrs. HECKLER. One hundred percent markup.

Mr. HARWOOD. Yes, cents for potatoes, 10-pound bags, usually it is \$1.19 which is about a 100 percent markup.

Mrs. HECKLER. Do you happen to know what the transportation costs are? How much do the transportation costs account for in the markup?

Mr. HARWOOD. I don't know because we sell our potatoes and table stock on a delivered basis, delivered to the warehouse, which would be if you take a chainstore warehouse, the price per 10-pound bag, if we are getting, take a round figure, 70 cents delivered. This is delivered to their warehouse. So all the cost they have of shipping, is shelving space plus transporting it from the warehouse to their store.

Mrs. HECKLER. Thank you very much.

Thank you, Mr. Chairman.

Mr. VIGORITO. We wish to thank you gentleman for appearing here today. Your testimony will be given due consideration. Thank you very much.

Our next two witnesses are potato growers, Mr. Lloyd Schmidt, executive secretary, Red River Valley Potato Growers, from Minnesota, and Mr. Basil Fox, member of the Maine Potato Council. I'm assuming that is Potato Grower Council.

I understand that Mr. Shaw will not be here today.

Is Mr. Schmidt, here?

Mr. SCHMIDT. Thank you, Mr. Chairman.

STATEMENT OF LLOYD A. SCHMIDT, EXECUTIVE VICE PRESIDENT,
RED RIVER VALLEY POTATO GROWERS ASSOCIATION

Mr. SCHMIDT. My name is Lloyd A. Schmidt. I am executive vice president of the Red River Valley Potato Growers Association.

Our offices are located in East Grand Forks, Minn., and we represent the 900 to 1,000 potato growers in North Dakota and the North-west District of Minnesota which is approximately 95 percent of the potato growers in Minnesota.

I also served as chairman for 2 years with the National Potato Council's Managers Advisory Committee and am in my third year on their legislative committee.

Potato producers in the Red River Valley of Minnesota and North Dakota produce annually 2.5 to 3 billion pounds of potatoes depending, of course, on total planted acres, weather, and other factors.

These hundredweights, depending on the market and yield, are valued at anywhere from \$60 to \$135 million per year.

These same hundredweights are the result of plantings on 160,000 to 200,000 acres of land to an average cost of approximately \$400 per acre or an investment of from \$64 to \$80 million.

It is very easy to see that the range can go from profit to loss very easily as in every other commodity.

This is the open market situation that growers, at least in the Red River Valley, want and they are ready to gamble on it.

However, the one protection, Government protection if you will, they have, is the Perishable Agricultural Commodities Act, which we are discussing here today.

Of the 2.5 to 3 billion pounds or 25 to 30 million hundredweights of potatoes that are grown in the Red River Valley, 8 million hundredweights are used by local processors during an average year. This represents approximately 30 percent of the valley production.

The reason for this last statement is this. Although the slow pay situation is a national problem, we have two developments in the Red River Valley that very effectively point out the problem and demonstrate the need for updating the law to reflect current business practices and problems.

One processor with a plant located in the Red River Valley, is in a chapter 11 bankruptcy proceeding at the present time. This processor owes in excess of \$480,000 for potatoes purchased from Red River Valley potato growers in 1974 and 1975. The only reason it is not considerably more is that a loan from the Bank of North Dakota and participating Red River Valley banks for \$2,500,000 was negotiated in July of 1975 and used at the insistence of the Red River Valley Potato Growers Association, whom I represent and others, exclusively to pay growers for the potatoes they sold to the company. As a result of this, all potatoes purchased with payments due up to April 15, 1975 were paid for.

Had it not been for this, it is safe to assume that growers in the Red River Valley would have \$3 million owed to them and not \$480,000. Also, this same processor owes \$1,300,000 to our neighbor growers in Canada and several million to growers in Maine through their operation there.

Another processor in the valley has now had an involuntary bankruptcy filed against him, which he has since consented to, and owes potato growers in excess of \$1 million. In this case it is not only a matter of slow pay within the 1 year's operation. Some of the money due the grower goes back 2 years and more.

Because these two plants are closed, potato growers have lost the markets for approximately 400 million pounds or 4 million hundred-weights of potatoes. This, as I'm sure you realize, has a tremendously adverse effect on the potato market in the Red River Valley.

Because of the two examples given, the association I represent is very much in favor of the passage of H.R. 10988 and for the following reasons.

First, potatoes purchased and processed into frozen products within the same are not presently covered under the act. Therefore, a North Dakota frozen potato product processor has no recourse under the act. H.R. 10988 would remedy that problem and cover the two examples I presented earlier.

Second, justified or not, growers, in many cases, are afraid to file complaints against receivers of their product. Why would he be afraid? He might end up being the last one paid. He may run into all sorts of difficulties in delivering the balance of his contract. He may find it extremely difficult obtaining any future contracts with that receiver should he ever want to. Any of these and possibly more would happen to him simply because he tried to get what was due him through a law designed to help him. Again, H.R. 10988 would remedy this problem and again would have an effect on the two previous examples.

Third, because of the possibility of retaliation, growers are very reluctant to identify themselves in a complaint against a receiver. Once more, H.R. 10988 in section 4, section 6, seeks to remedy that problem. However, I would add that we realize that at some point the accused has the right to face his accuser and for that reason, H.R. 10988, section 3, section 2 is also necessary if section 4, section 6 is to be beneficial.

Fourth, due to the fact that receivers can repeatedly violate the act, even after a complaint is filed, we favor the passage of section 5, section 13 of H.R. 10988. This would give the Department of Agriculture the authority it needs to keep a constant surveillance on those that were proved to be in violation of the act.

Had the amendments offered here in H.R. 10988 been in effect, it is our feeling that the two cases cited here would not have gone as far as they have and that the producers would have either received the payments due them or the receivers would have been faced with a possible loss of their licenses earlier when it would have done some good.

We fully realize that you cannot, through legislation, instill conscience into those who do not wish it. However, through bills, such as is represented here in H.R. 10988, you can probably push closer to acceptance of it. It is not a good testimonial for our country where we have to admit that good business practice has to be legislated. Our only satisfaction is that it is necessary in a very few, but important, cases.

I want to personally, and for those I represent, thank Congressman Bergland and Congressman Sisk for authoring this bill and ask for the support of all of you in Congress. I would also like to thank the members of this committee for the privilege of appearing before them today and ask them for their support on H.R. 10988.

Thank you, Mr. Chairman.

Mr. VIGORITO. Our next witness is Mr. Basil Fox.

STATEMENT OF BASIL FOX, MEMBER, NATIONAL POTATO COUNCIL

Mr. Fox. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Basil Fox. I am a potato farmer from Washburn, Maine. I have been a member of the National Potato Council's PACA committee for 3 years.

We in Maine have had ample opportunity to observe the inadequacies of the present PAC Act. Perhaps the most glaring example is our present situation in which we have a potato processor owing in excess of \$5 million to the potato farmers of our county for potatoes delivered in 1974 and 1975.

Under the present act, frozen potato products are not covered unless potatoes are purchased out of State and the products made are sold interstate. The amendment offered would correct this situation by specifically including frozen potato products.

When the present act was passed in 1930, frozen potato products were of no consequence as we had no processing of potatoes at that time, whereas today nearly one-half of the total potato production is being processed. In view of the change that has occurred in the form our potatoes are used, we feel it is very important that frozen potato products be included specifically as the amendment states.

Under the present act there is no specific provision for reprisal being a violation. For example, if a grower has a slow pay problem with a processor and files a PACA complaint against the processor, the processor may, when it comes time for next year's contract to be signed, decide that he doesn't need that producer's potatoes. I realize that reprisal is a very difficult charge to prove and the part of the amendment dealing with reprisal won't be any cure all but I do feel it will act as a deterrent to would be violators.

I favor the part of the amendment giving the Secretary the authority to withhold a complainant's name under specific situations. Many times a would be complainant doesn't file a complaint because he fears that in doing so he is eliminating one of his markets. The amendment specifically gives the Secretary the authority to withhold the complainant's name if upon a determination by the Secretary that disclosure of such information would adversely affect the interest of the complainant, and that such information is not required for the public interest.

I think any complainant would want to be required by the department to prove that he has a legitimate claim to the satisfaction of the department, before the department takes action.

I particularly favor the section of the amendment pertaining to prompt payment provision of the act.

In order to insure that prompt payment provisions of section 2(4) of the act is being complied with, the amendment directs that the Secretary or his duly authorized agents shall, and this is an important word. The department has no way to misinterpret, there's no two ways on interpreting "shall," I don't believe. The agent shall inspect at least once every 3 months for a period of 2 years the accounts, records, and memoranda of any commission merchant, dealer, or broker, determined pursuant to section 6 of the act, to have violated such provision.

The Secretary may require a surety bond if in his judgment it would be necessary for assurance that the business will be conducted in accordance with the act.

If we had this amendment in effect through the years, the farmers in Maine would not be owed in excess of \$5 million by one processor today.

If a licensee is complained against, found guilty and there is no followup to determine if he has corrected his errors, he may continue in his old ways and the result may be eventual bankruptcy. The provision in this amendment could be compared to a court putting someone on probation. I would be hopeful that licensees not complying with the act might be forced to realize that a license is a privilege to do business under the terms of the act not a license to steal.

I cannot see why any licensee would object to this amendment if they are complying with the act. The percentage of licensees who are not complying with the act is very small, therefore, isn't it fair to assume that the legitimate licensee will welcome this amendment? I submit to this committee that if this amendment has favorable action, it will aid all the fresh fruit and vegetable industry in eliminating some of the undesirables and make for fair competition for the legitimate operator.

With the cost of production spiraling, it is imperative that farmers and shippers be paid for what they grow and ship.

I favor the amendment providing for an increase in licensing fees. If this act is to be enforced, it has to be properly funded. Both the National Potato Council and Maine Potato Council are on record as favoring a licensee fee based on volume. We consider this the most equitable method.

Regardless of how additional funding is secured, I think it should be coupled with faster service and a determination of the department that licensees be made to realize that a license is a privilege to do business under the terms of the act.

Thank you, Mr. Chairman. That concludes my statement.

Mr. VIGORITO. We wish to thank you, Mr. Fox, for being here, and Mr. Smith. We will give your testimony due consideration. It runs in line with the other three producers that preceded you so the questions would be merely repetitious.

Thank you very much.

We have one more witness today, Mr. Stephen Tavilla, president of the P. Tavilla Co., Inc., Boston, Mass.

Mr. Tavilla.

**STATEMENT OF STEPHEN TAVILLA, PRESIDENT, P. TAVILLA CO.,
INC.**

Mr. TAVILLA. Mr. Chairman and members of the committee, my name is Stephen Tavilla. I am president of the P. Tavilla Co., Inc., of Boston, Mass. and Miami, Fla. Our firm is engaged in the production and wholesale distribution of fresh fruits and vegetables. We have operated successfully under PACA since its beginning 45 years ago.

I might also add not to confuse anyone else, I was a potato grower in Maine for 9 years.

I have previously testified on bill 9288 and still support that bill. My position on that remains unchanged.

Today I would like to comment on bill H.R. 10988.

In section 2, I see no conflict in the definition change as amended, as to whether processors are in or out.

In section 3, our industry continues to run on supply and demand. Consequently it would not be possible to sell a product at only one price in our terminal. When there is an oversupply, you cannot hold back sales. The sales price must be lowered in order not to have your product deteriorate and run the risk of its being unsaleable. A set price would strangle trading by attempting to fool with supply and demand. This would also kill incentive for the daily challenges within this industry. It would tempt anyone to file a claim for discrimination or favorable treatment, which would immediately involve investigation.

One of the prime concerns would be if you sold your own merchandise at a certain price. For example, \$5 per case of cabbage, and then you had some consigned cabbage later in the day. Perhaps you could get \$6 per case for this cabbage, as the demand got stronger. It would be discriminatory to sell the farmer's cabbage for a higher price than for what you sold your own. Because of this, it would be unfair to the farmer who gave me his merchandise to sell to the best of my ability.

Section 4, I could not concur with the complaints filed by Mr. X. When someone files a complaint against a firm, the firm has the right to know his accuser.

Section 5, anyone filing a complaint against a firm with a finding of no prompt payment should not be allowed access to the firm records every 3 months for a period of 2 years. This ruling makes absolutely no sense. A firm would be obliged to increase its office staff which in turn would slow down the business and cause unnecessary increases in overhead.

Furthermore, it would require PACA to hire over 300 additional people to process, investigate and resolve these claims, which would add to the cost of a company's PACA license by five or six times. The ones most hurt by this process would again be the small man.

Slow pay is an individual responsibility. An attempt to force an industry to adopt a 10-day period or else at a nationwide level, could have tragic repercussions.

In conclusion, PACA evolved as a means to eliminate unfair practices. To this end, it has been extremely successful. This has been because the law has always provided that buyer and seller could

make whatever contract they wanted to. PACA only came into the picture when a question arose as to whether someone was doing what they agreed to do.

It now appears that some individuals would prefer that it become a sophisticated collection agency, protecting sales to people who cannot or do not wish to pay for their produce.

I wish to thank this committee for the opportunity to present my views here today.

Mr. VIGORITO. Thank you for your presentation here today.

Mrs. Heckler, do you have any questions?

Mrs. HECKLER. Yes. Mr. Tavilla, I want to welcome you. You happen to be the first witness from Massachusetts that we have had since I have been on this committee. It is a very rare experience that I speak with a witness who happens to come from my own State.

I certainly can see why you advocate that the accuser be known and I think that many of the statements in your presentation are valid and I think only simple justice.

I am very interested in this whole question of the process of the farm to retail procedures, the chain of delivery for all commodities, and all goods in the agricultural sector.

I want to hasten to add that I am very much in favor of the profit motive. I believe in free enterprise and I believe everyone should make a profit. I was a little horrified to find out however that the difference between the farmer's return and the consumer cost amounts to a 100 percent markup. That goes beyond what I consider a reasonable profit. The difficult thing is to try to track down where the bulge in cost occurs in the whole system.

I wonder if you can help me with this? Since I have been on the Agriculture Committee, I have spoken with many farmers. I just spoke with a group of farmers from California who told me they produce lettuce at 2 cents a head and we all know what the price is in the supermarkets in Massachusetts.

Can you enlighten me as to where the enormous profit is going? What is causing this? And what is the procedure whereby you as the broker determine what you are going to pay for a truckload or trailerload of fresh goods?

Mr. TAVILLA. Our whole industry is pretty much based on supply and demand. I am a grower, I am a broker.

Mrs. HECKLER. May I ask what you grow?

Mr. TAVILLA. I grow tomatoes. I grew potatoes in Maine for 9 years and I switched to tomato farming in Florida. We have two brokerage offices, one in San Francisco and one in Homestead, Fla. We have produce terminals that we sell from in Miami and in Boston. And I am also involved in a retail operation in West Athens. So I pretty much go down the line and I think I have access to a lot of this information.

I don't quite agree with a hundred percent markup. Maybe from the price a farmer gets, like the 2 cents a head, which is kind of low. In California, I don't think they sell anything for under 8 cents a head for lettuce. But I keep hearing about all the middleman profits.

Usually it costs more to get the lettuce from the west coast to the east coast per head than the actual lettuce cost before it even hits a terminal.

Mrs. HECKLER. Well, let's talk about some other commodity then where the transportation costs are not so high.

Mr. TAVILLA. If you are talking about potatoes from the State of Maine, for instance, there are two bases for prices, one is the cash markup for supply and demand and the other is the commodities exchange that the potatoes are sold on. If that is very high, the farmers are a little reluctant to sell. If that is off, they all seem to want to sell at one time.

So, usually, from a supply and demand, we can usually establish a price. We know if it is \$8 a hundred today it might be \$8.25 a hundred-weight tomorrow or \$7.75. It goes along with how the movement is. The Government report comes out on the 10th of the month with what is left on hand and there are other factors that determine the ups or the downs.

Mrs. HECKLER. May I ask you something? You have a terminal in Chelsea, is that right? Chelsea, Mass.?

Mr. TAVILLA. Right.

Mrs. HECKLER. When does it open? How many people will be out there? What is the byplay? What is the exchange between the farmer and your representative who is going to decide what he is going to pay for a truckload of whatever?

Mr. TAVILLA. We bring produce into our terminal. At 5 o'clock the gates are open to the buying public and they come around and they shop at different places and ask prices for produce and——

Mrs. HECKLER. Who are the buying public?

Mr. TAVILLA. These are supermarket chains, roadside stands, Government institutions, purveyors to hotels and restaurants, a combination of buyers. And they will walk around the market and get the best product for the best price for that day. And there again we have a market report that's put out by the Government as to what the sales were the previous day and this is a guide for them, or they know just by——

Mrs. HECKLER. Is this published some place?

Mr. TAVILLA. Yes. It is published right in the Chelsea area, a daily sheet from the market news service.

Mrs. HECKLER. The news service, who publishes that?

Mr. TAVILLA. That's from the Department of Agriculture.

Mrs. HECKLER. And this lists the prior price in our region or in other regions or nationally or what?

Mr. TAVILLA. Well, basically, it gives the prices on the terminals the previous day. Sometimes it will also give what prices are on an FOB basis in different shipping areas, maybe out of Florida or out of California.

Mrs. HECKLER. So there is really very little bidding. I've heard so much about the bidding on carloads, et cetera. Where does the bidding procedure come in? If your price is pretty much what you've seen the day before, received the day before, then what is the area in which you can perhaps get more for the products?

Mr. TAVILLA. Well, for instance, somebody may have an order to export some potatoes on a large order and he may call up to Maine and try to buy these potatoes. And if a man wants to move a large block of potatoes, maybe 10 or 20 carloads or truckloads, he'll negotiate a price with them. It may be a little higher than the day before if

there is a great demand. If there's not much demand, a broker may come and say, for 25 cents a hundredweight less than yesterday, I can place five loads of potatoes in different areas. Do you want to take the order?

And depending on his supply on hand and his workload for his crews, he may say yes or he may say no or he may say—I'll take two of them. It's back and forth daily negotiation.

Mrs. HECKLER. How many do you have representing your interest there?

Mr. TAVILLA. In Boston, we have about five salesmen.

Mrs. HECKLER. Five salesmen?

Mr. TAVILLA. In our Boston office.

Mrs. HECKLER. And how many buyers would there be?

Mr. TAVILLA. During the day, there may be 200 to 300 buyers come in each day.

Mrs. HECKLER. Do you service all of Boston or are there other terminals in Boston?

Mr. TAVILLA. The New England Produce Center and the Boston Market Terminal really serve most of New England except the part that is close to New York City. And the maritimes, part of the Canadian section.

Mrs. HECKLER. And what is your relationship with other brokers along the way? One of the men who just testified today said that the products or commodities could go through 10 hands. What is your relationship with those at an earlier stage in the process?

Mr. TAVILLA. Well the 10 hands is an unusual case. But it's not unlikely that it can happen to go through two or three hands. A broker may have five loads of potatoes that he has picked up at one price and may have a chance to sell them at a little higher price to another broker who has just received a large order and can't get it filled. And that may mean going to a second hand and then on to the terminal.

Now we sell loads of potatoes for farmers directly to people who can use full loads and then we bring in trailerloads to our terminal to people who want than full truckloads. And we try to make a markup that will keep us going. On the loads that are sold directly, we try to make a brokerage fee on it or a small markup equivalent to a broker's fee.

Mrs. HECKLER. I happen to know a family in which the father was in the food brokerage business. When he passed away suddenly, the oldest daughter took over the business. She was able to maintain it and they were making a profit. But it was a very low profit. When the oldest son was old enough to take over the business, he did. And he became a millionaire within 2 to 3 years. How did this happen? What is going on in this marketplace? What are the opportunities that one can have?

Mr. TAVILLA. This business will always give you a good living. I left school when I was 14 as the second oldest of 10 children to work for my dad. That was 37 years ago. I'm not a millionaire. I have no complaints. Working hard will get you there. It's a very good business and throughout all the bad spots of the ups and downs on the stock market, people may not want to trade their car in or buy a new suit, and if they can't afford beans or broccoli they can always buy some

other commodity, potatoes, something else. But they will always buy food and they will always eat and the business has always been very good to us and we have enjoyed it.

Mrs. HECKLER. How does a person make a killing in this business?

Mr. TAVILLA. Well, there are speculators, for instance, that probably on the commodities exchange right now, that can just take a position and be lucky. You don't have to be smart. Because if you go by logic, it usually goes the other way. But if you are lucky, it's like going to Las Vegas and throwing the dice in this business. You just take a chance and you hope that you are right.

Mrs. HECKLER. At your level, how much of a markup occurs in terms of the cost of products?

Mr. TAVILLA. In the terminals, I think the average terminal, the markup is about 10 to 12 percent. The cost of operation hangs right around 11 percent in round figures. It is a very small net after all. But we do a high volume so that helps it.

Mrs. HECKLER. Net after taxes, what would be the profit of a business similar to yours? I don't mean yours specifically.

Mr. TAVILLA. One-half to 1 percent. Almost the same as the supermarket volume which is four-tenths to five-tenths of 1 percent, after expenses.

Mrs. HECKLER. Based on the return to equity ratio, what would the return be?

Mr. TAVILLA. I don't have those type of figures here. I'm not familiar with them.

Mrs. HECKLER. Because the supermarket profits on that basis are very, very high, whereas on the per item basis, they are very, very low. As you know.

Mr. TAVILLA. Yes.

Mrs. HECKLER. I would like you to come back the next time and tell me how to make a killing.

Mr. TAVILLA. I'll try my best.

Mrs. HECKLER. Tell me how to help the consumer. If you have any ideas on that before you finish, would you like to put that on the record?

Mr. TAVILLA. Well, we've worked with the Governor's Food Committee in Massachusetts on this same problem and we haven't come up with any results but we have spent time studying how to lower cost and we've worked with groups that are working with low-income people in some of these areas and there are some food co-ops that have started up around the Boston area and they have so many customers we have grown to calling them capitalists when they come in. But this is working out fine for a lot of people, these food co-ops. They are a big part of our business today. That seems to be doing a good job for people who want to get their food at a much lower cost.

Mrs. HECKLER. Now, in terms of the small farmer, you heard the testimony before you, and I know that you are in a different position and you take a different position, which is very understandable. You suggest that we not pass any amendments to the act. You suggest some modifications. How would you deal with the problem of these potato farmers, the fact that they are consistently paid late and that this causes tremendous headaches for them?

Granted, we don't want a lot more red tape, certainly, but isn't there some way that we can deal with their problems and give them some regress?

Mr. TAVILLA. There probably is. The potato processors are a small part of the food produce industry in the country and I don't think we are having the type of problem, because we have many hundreds of people we can sell to. They may have one or two people in their area. I wouldn't want to be a potato grower and just have one person who could take my product and worry about whether or not I was going to get paid.

Neither would I want to hold back accusing that person of not paying. I would want to run away from him and not sell to him anymore. This is my personal philosophy. But in areas it may be a real problem. As far as adding them into the act, I see no problem with it. If I would help them, I wouldn't oppose such a move.

They have an individual problem which I think maybe they should work out themselves, on collection. I don't think we should just be a collection agency.

Mrs. HECKLER. So the problems of the potato grower are different from the producers' or the commodity—

Mr. TAVILLA. I believe they are. They are restricted to very few people who can take their product. Where we are in a much different position than the rest of the fruit and produce industry.

Mrs. HECKLER. Thank you very much, Mr. Tavilla.

Mr. Chairman, I appreciate your bringing in a Northeast witness. I am glad to hear from my region of the country, for a change.

Mr. VIGORITO. Thank you, Mr. Tavilla, for being here today.

I have one statement here from the Western Growers Association, from Donald Dressler. It will be inserted in the record at this point if there is no objection.

[The prepared statement of Western Growers Association, presented by Donald Dressler follows:]

STATEMENT OF WESTERN GROWERS ASSOCIATION, PRESENTED BY DONALD DRESSLER, GENERAL COUNSEL

My name is Donald Dressler, and I am the General Counsel of Western Growers Association, an association, the members of which are engaged in growing and shipping fresh vegetables, melons, potatoes, and strawberries from origins in the states of California and Arizona. On behalf of Western Growers and its members, this statement is presented in opposition to Sections 3, 4, and 5 of HR 10988. Western Growers and its members feel that those sections of HR 10988 represent an unwarranted and unnecessary expansion of the Perishable Agricultural Commodities Act and one which threatens the efficient operation of that Act. The experience of those of us who operated under the Act is that it is now workable and generally satisfactory. Such a drastic modification of the Act is certainly unwarranted.

With respect to Section 3 of the bill, it is our position that the language of that section is so broad and all-inclusive that its meaning is totally unclear. It seems to place an enormous burden upon the Department of Agriculture, a burden which is not warranted given the industry's generally good experience to date. Additionally, the section threatens to completely destroy longstanding buyer-seller relationships and contractual arrangements. In light of the existence of the Robinson-Patman Act and other legislation, it seems unnecessary to add further legislation in this area. Furthermore, the industry is particularly concerned that the breadth of the section makes the possibilities for complaint enormous and the enforcement difficulties equally enormous.

Section 4 of the proposed bill allows the complaining party to remain anonymous, a state of affairs contrary to the essence of our legal system. It is submitted that the absence of any standard upon which the Department of Agriculture is to rely in deciding when a complainant may remain secret makes a mockery of the purported permissive nature of this section. It should also be pointed out that secrecy in the context of Section 6 of the Act, which Section 4 of the bill amends, is an unworkable concept. The role of the Department of Agriculture in a Section 6 proceeding is to act as an intermediary between the two parties in an attempt to settle the dispute and effectuate payment. An intermediary is in an impossible position if he is unable to divulge the name of one adverse party to another. The simple act of paying damages would be impossible as long as secrecy was maintained. Furthermore, as a general matter there is absolutely no evidence in the industry that the types of abuses this section is evidently aimed at have ever existed.

Based upon the industry's experience Section 5 of the bill is excessive and totally unnecessary. All shippers are, of course, interested in assurances that individuals who violate the Act will not do so in the future. However, an inspection system that borders upon harassment is not the way to accomplish this goal. More importantly, the Act is industry funded and the inspection requirements of Section 5 in conjunction with the other requirements of this bill, would increase the financial burden to such an extent that the fee system required would be oppressive. It is our understanding that the Department of Agriculture has estimated that under the inspection provisions of Section 5, as well as the other provisions of this bill, the Department's budget for this program will increase six times and will force the Department to assess a minimum fee of \$800 annually. Needless to say, the \$800 per year fee would represent a substantial burden to the smaller firms covered by the Act, of which there are a large number.

For all of the above reasons, Western Growers and its members oppose as unnecessary and excessive, Sections 3, 4, and 5 of H.R. 10988 and support the views of the Department of Agriculture with respect to those sections.

Mr. VIGORITO. This concludes the hearings for today.

The committee will stand adjourned until we reconvene February 25 at 2 p.m.

The hearing is adjourned.

[Whereupon, at 12:20 p.m., the subcommittee adjourned, to reconvene on February 25, 1976, at 2 p.m.]

PERISHABLE AGRICULTURAL COMMODITIES AMENDMENTS

WEDNESDAY, FEBRUARY 25, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC MARKETING
AND CONSUMER RELATIONS OF THE
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:15 p.m. in room 1302, Longworth House Office Building, Hon. Joseph P. Vigorito (chairman of the subcommittee) presiding.

Present: Representatives Vigorito, McHugh, Findley, and Grassley, and Bergland and Symms, members of the full committee.

Also present: John E. Hogan, associate counsel; William A. Imhof, associate counsel; L. Leon Geyer and Weldon V. Barton, staff consultants, Subcommittee on Domestic Marketing and Consumer Affairs; and Perry Shaw, staff assistant.

Mr. VIGORITO. The Subcommittee on Domestic Marketing and Consumer Relations of the Agriculture Committee is now in session.

The subcommittee meets this afternoon to continue the public hearings on H.R. 9288 and H.R. 10988. This is legislation to amend the Perishable Agricultural Commodities Act.

Because of the large number of witnesses scheduled to testify this afternoon, it will be very helpful if each witness will very briefly summarize his or her statement. Otherwise we will not be able to hear everyone.

Each of you may submit your entire prepared statement, and it will be published in its entirety in the record of these hearings.

I wish to welcome all of you. I want to thank you for coming this afternoon.

I would like to insert in the record at this time a letter from John J. Gardner, executive secretary of the Industry Advisory Committee of the PACA.

Without objection, this will be included.

[The letter referred to above follows:]

UNITED STATES DEPARTMENT OF AGRICULTURE,
AGRICULTURE MARKETING SERVICE,
Washington, D.C., February 23, 1976.

HON. JOSEPH P. VIGORITO,
Chairman, Subcommittee on Domestic Marketing and Consumer Relations, Committee on Agriculture, House of Representatives, Washington, D.C.

DEAR MR. VIGORITO: On February 7, 1976, the PACA-Industry Advisory Committee met in San Francisco to review and make recommendations on a number of subjects of current concern in the administration of the Perishable

Agricultural Commodities Act. The Committee considered H.R. 9288 and H.R. 10988, bills to amend the PACA. The purpose of this letter is to advise you of the Committee's recommendations on these two bills.

H.R. 9288

H.R. 9288 would permit the Secretary to set the fee for a license to trade under the Act at the level he determines necessary to finance adequately the administration of the law. The amendment would also authorize the Secretary to assess either a uniform fee for each applicant or graduated fee based on the amount and type of business conducted by the applicant firm.

The Committee members expressed concern over adopting a variable fee system because they were of the opinion that it would be expensive to administer, and require additional reports. The Committee unanimously recommended that a uniform fee for each applicant would be appropriate; that a maximum fee of \$300 be authorized in the statute; and that the license fee be increased by the Department from \$100 to \$135, as soon as authority is available.

H.R. 10988

In its review of H.R. 10988, the PACA-Industry Advisory Committee took the position that enactment of Section 2 of the bill could be beneficial to potato growers and processors. However, one processor member was opposed to this Section advising that he had received comments from frozen potato processors who were opposed to enactment of Section 2.

The Committee members expressed the opinion that Section 3 of the bill which makes it an unfair practice to discriminate against or give preferential treatment while trading was unworkable. The members took the view that such preference or prejudice would be impossible to prove.

In considering Section 4 of the bill, the Committee members were advised that the present proposal would authorize the Secretary to withhold the name, address, and identity of a complaining party who files a reparation complaint. The Committee reacted very strongly to this provision, insisting that a person complained against has a right to know the name of the party complaining, as well as the nature of the complaint.

Changing the Perishable Agricultural Commodities Act as proposed in Section 5 into a surveillance statute by establishing mandatory requirements for quarterly audits of the records of violators is, in the opinion of the Advisory Committee, unnecessary. The Committee took the position that present procedures of informal spot-checks as conducted under PACA are adequate.

The views of the Advisory Committee as reported herein do not reflect the views of the Department as presented in our testimony on December 4, 1975, and February 4, 1976, before your Subcommittee.

Sincerely,

JOHN J. GARDNER, *Executive-Secretary,*
PACA-Industry Advisory Committee.

Mr. VIGORITO. Our first witness is my colleague and good friend, Congressman Bob Bergland, from Minnesota.

Mr. Bergland.

STATEMENT OF HON. BOB BERGLAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. BERGLAND. Thank you very much, Mr. Chairman and members of the subcommittee.

I am delighted that you have scheduled this extra day of hearings on this controversial but all-important matter of how to run the program designed to protect the fruit and vegetable industry.

It is my good fortune to represent the Seventh District of Minnesota within which is found the fertile Red River Valley of the north, one of the major potato producing areas of the United States. Although I do not produce potatoes on my farm, Mr. Chairman, I am well

acquainted with the industry and the peculiar risks inherent in an industry which produces and markets a perishable commodity.

I am here to express to you, Mr. Chairman, and members of the committee, my profound disappointment in the way the PACA is being administered. The act was passed in 1930 and was designed to provide protection to producers, handlers, and others dealing in perishable commodities.

We have had, over the years, various administrators with various attitudes as to the way the program ought to be run.

The problem has developed in the last dozen years and is getting worse with the passing of time.

Growers, Mr. Chairman, are simply not afforded the protection which I believe the act intended.

My growers are continuously confronted with the problem of slow pay, no pay, and this is an impossible matter for the growers to contend with individually and singly.

Potatoes are somewhat like livestock in that, once the product leaves the producer's premises, it is very difficult for him to control in any way. He is vulnerable.

Mr. Chairman, the administrators of the PACA have always maintained that they can take little or no action against a handler unless a formal complaint is filed.

My growers are intimidated and afraid to file a complaint.

While there are several hundred growers in my region, there are relatively few buyers.

The growers are afraid that, if they would file a formal complaint protesting no pay or slow pay or some other violation of the good code of business ethics, then, in the next year, they will find their contract not renewed and their market would disappear.

As a consequence, Mr. Chairman, they are afraid.

I charge that the administration of the PACA has been derelict. It has been derelict in the administration of its authority.

For example, two major packers have gone bankrupt in my district. I do not know how much grower money was dropped in these two bankruptcies, but the growers told me that for 2 years these packers were in financial trouble.

Yet, the administration of the PACA did nothing about it. They claimed that they had no right to intervene. They claimed they did not have information. They claimed all kinds of things.

But it seems very strange that, if growers knew these two outfits were in some money trouble, the people who were set up to administer a program to protect growers, were not aware of these deficiencies. After the processors got in so much trouble, there was no way to go except file bankruptcy. Only at this point did the administrators get involved in the question of suspending licenses.

I know that the amendments which I have offered are being considered by this subcommittee, are opposed by the administration.

I know that it is highly unlikely that the amendments will become law, because of that opposition.

But, I would like to suggest, Mr. Chairman, that there be some changes made.

I have provided members of the committee with a list of the PACA-Industry Advisory Committee.

You will notice on that list, Mr. Chairman, more than 20 people representing shippers, service wholesalers, retailers, processors, and one public representative.

Among that list are two growers. One of them has resigned in disgust.

Mr. Chairman, the Advisory Committee is heavily oriented to the shipping, handling, brokering, and the processing side of the industry. Growers simply have not had a voice in trying to design a balanced policy in the administration of PACA.

I know the Advisory Committee is not required by law. They are unpaid. In that sense, they have no legal authority. But they do, Mr. Chairman, have influence and considerable influence.

I submit that it would be in everyone's interest if this were a balanced group with not less than half of those persons being appointed from among the many bona fide producers of perishable vegetables and fruits.

On way that this could be achieved, Mr. Chairman, would be to increase the license fees which this committee is now considering for only one year at a time.

This means that the Department would have to come back each year. It would mean this subcommittee would have a chance to review the administration of the program and listen to the complaints that will be made a part of the record.

It would give you a chance to undertake what is essentially an oversight function on an annual basis.

I think this, in and of itself, could give Congress a better insight, and we would certainly be able to better represent the public interest in what is essentially an agency closely oriented to the packing and processing side of the industry.

I submit, Mr. Chairman, that we need packers and processors and handlers—obviously. But we need producers as well. This agency has become tilted and biased in favor of people who need help but who are, for the most part, well able to take care of themselves.

Now, I do not know what kind of a legislative remedy might be necessary. But I do know that, in the livestock business, we are planning to institute some changes in the Packer and Stockyards Act requiring that people pay for their products when they receive delivery—within 2 days.

We are planning to amend the law to require a handler to have a bond so that growers know that, when a product is delivered to that warehouse or to that packer's premises, they are going to get paid.

The fact is, in the potato business, Mr. Chairman, they lose control of their commodity once it is delivered, and recovery of the insurance or the payment is very, very difficult under some circumstances.

I am not sure that one could adopt the same kinds of stringent rules on paying that are common in the livestock industry to the perishable vegetables and fruit industry, but I think we need to get closer to it and provide a better balance in the administration of this act which is so essential to the general well-being of the industry.

Mr. Chairman, for the record, I would like to submit the names and the business affiliation and address of the members of the PACA Advisory Committee so that we can see who these folks are.

I know they provide honest advice, but the growers are simply not represented.

Mr. VIGORITO. If there are no objections, that will be inserted in the record at this point.

[The material submitted by Mr. Bergland follows:]

PACA-INDUSTRY ADVISORY COMMITTEE MEETING, SAN FRANCISCO, CALIFORNIA,
FEBRUARY 7, 1976

Growers:

Raymond Tumbleston, Edisto Island, SC.
William L. Webster, Rexburg, ID.

Shippers:

Edwin L. Barr, Jr., Barr Packing Company, Sanger, CA.
Othal E. Brand, Griffin & Brand of McAllen, Inc., McAllen, TX.
J. M. Bowers, Jersey Fruit Cooperative Assn., Moorestown, NJ.
John M. Dickenson, III, Limoneira Company, Santa Paula, CA.
James F. Laise, VA Fruit Sales Service, Inc., Winchester, VA.
Lael Lee, Growers Exchange, Inc., Salinas, CA.
Donald M. Lins, Seald-Sweet Growers, Inc., Tampa, FL.
Thomas W. Ryan, Ryan's Potatoes, Inc., East Grand Forks, MN.
Theodore M. Zacher, Wenatchee Wenoka Growers Assn., Wenatchee, WA.

Brokers:

Looe Baker, C. H. Robinson Company, Minneapolis, MN.
John S. Caldarulo, Joe Caldarulo Company, Chicago, IL.
Edward W. Kruljac, Walter S. Markham Company, Salinas, CA.

Receivers:

Joseph A. Cerniglia, Jr., Cerniglia Produce Company, Forest Park, GA.
Richard B. Crosset, Jr., The Crosset Company, Inc., Cincinnati, OH.
William J. Derby, Pate-Derby Company, Fayetteville, NC.
Stephen Tavilla, P. Tavilla Company, Inc., Chelsea, MA.

Service Wholesalers:

Chandler V. Copps, The Copps Corporation, Stevens Point, WI.
Levi F. Garrett, Jr., Garrett-Holmes & Company, Inc., Kansas City, MO.

Retailers:

Joe M. Ernst, Handy Andy, Inc., San Antonio, TX.
Alfred A. Ponte, Stop and Shop Companies, Inc., Boston, MA.

Processors:

Richard H. Barger, ARGIPAC, Inc., Salem, OR.
Arthur Goldstein, Frito-Lay, Inc., Dallas, TX.

Public Representative:

Marie J. Ferree, Department of Food Science & Technology, University of California, Davis, CA.

Mr. VIGORITO. Thank you very much, Mr. Bergland, for your testimony.

I agree with most of what you have said. The only thing that bothers me is that, in one of your amendments, there may be some contradiction with the Constitution. I am not a constitutional lawyer, but you want the producer to file a complaint without giving his name.

Do you think this would be possible?

Does not the Constitution say that those who are accused have the right to confront their accusers?

Mr. BERGLAND. Mr. Chairman, there are two provisions in the law that deal with the matter of complaints: one is for informal complaints, and the other is for reparations procedures where the awarding of money is at stake.

The law defines a person in such a broad sense that certainly it could be an organization of persons. In fact, the regulations do describe and define an organization of persons as a person for the purpose of filing a complaint.

I realize that, if it got to a point where a specific charge and a specific allegation were to be brought against a specific packer, then

the specifics in that particular complaint would have to be made a part of the public record.

But, what I am concerned about, Mr. Chairman, and the proposition that we are talking about here is that there would be authority for the association of producers to bring the complaint against a packer.

I am not talking about fishing expeditions. I am talking about incidences where there is evidence of violations of the law. It could include bad checks or a variety of things.

At some point in time, when it gets down to a matter of awarding damages, obviously the grower's name is going to have to be brought in and made a part of the public record; but, in terms of bringing complaints against a handler in order to bring a PACA investigation. I think an association of producers ought to have that right.

Once it gets down to a matter of awarding damages, obviously the specific grower would have to be identified. There would be no question about that.

Mr. VIGORITO. Thank you very much for your comments.

Mr. McHugh?

Mr. McHUGH. Thank you, Mr. Chairman.

I certainly want to compliment you, Mr. Bergland, for your fine contribution to our testimony and to our record.

I was also somewhat concerned about the administration's vigor in attempting to enforce the law. Specifically, I was concerned about their position on retaliation which, as I understand their testimony, they opposed including as an unfair practice in this law.

I find this somewhat puzzling.

One of the things I would like to ask you specifically about is this. I do not come from an area which produces many perishable products. I would like to ask if, in your experience, you have found that there is a considerable amount of retaliation which goes on. I am not sure what the record shows at this point, but I do not recall a great deal of testimony which would indicate that, as a matter of fact, there is retaliation. There is clearly a fear of retaliation if a complaint is made.

Do you have any indication from your experience or from your district as to whether there actually has been retaliation?

Mr. BERGLAND. No, sir, I do not. The fear that permeates the growers in their attitude toward the handler is so overwhelming they do not bring complaints.

I am convinced that retaliation could be established if, indeed, it were practiced.

If a grower filed a complaint against a handler—and, subsequent to their complaint, and the handler canceled the grower's contract to sell the product—that fact could be established in a court of law, the burden would fall on both parties in the dispute—not only on the grower.

The problem now is, of course, that no one is willing to bring the complaint because they are afraid that retaliation could take place and they need protection.

This is a subtle kind of thing which is very difficult to establish and document in chapter and verse, but I have lived with growers all my life and I know they are honest people.

They are in trouble, Mr. Chairman.

Mr. McHUGH. I appreciate that, Mr. Bergland.

Thank you.

Mr. VIGORITO. Thank you, Mr. Bergland.

Our next witness is Mr. Robert Pedersen, representing the Frozen Potato Products Institute from Boise, Idaho.

He is accompanied by Mr. Jim Conrad, president of Simplot Corp., representing Idaho Association of Commerce and Industry, and Mr. Don Smalley, vice president and general manager, Rogers Bros., Division, Alexander-Baldwin, Inc., Idaho Falls, Idaho.

Mr. PEDERSEN. Mr. Chairman, in the interest of time, Mr. Conrad's testimony will be submitted in written form at a later date. He will not be here verbally today.

Mr. Smalley has an abbreviated version of his statement. He will be giving it shortly. He is representing Frozen Potato Products Institute.

Mr. VIGORITO. Without objection, the statement of Mr. Conrad will be included in the record.

[The statement of Mr. Conrad had not been received at the time of printing.]

STATEMENT OF ROBERT K. PEDERSEN, REPRESENTING THE FROZEN POTATO PRODUCTS INSTITUTE, BOISE, IDAHO

Mr. PEDERSEN. Mr. Chairman, and members of the committee, my name is Robert K. Pedersen, president of Ore-Ida Foods, Inc., Boise, Idaho.

I appear on behalf of the American Frozen Food Institute, a non-profit organization of manufacturers of frozen foods. The institute's members account for approximately 85 percent of the total production of frozen fruits and vegetables and a substantial proportion of the production of other frozen foods, including potato products.

We first want to comment on H.R. 9288.

This bill would authorize the Secretary of Agriculture to assess a single, uniform license fee or to assess a graduated fee per applicant based upon the amount and type of business conducted by the firm.

The institute has no objection to an increase in the license fee, provided, of course, that the increase is reasonable. The institute does, however, object to authorizing the Secretary to assess a graduated fee per application. In our opinion, the graduated fee would be impractical in terms of costs, manpower, and time, in the administration of the Perishable Agricultural Commodities Act (PACA).

Such a graduated fee would involve the submission of financial records and statements by all companies subject to licensing under the statute and, in turn, impose an impossible workload on PACA. The costs of accumulating such data and submitting it to PACA would inevitably have to be passed on to the consumer with a resultant increased price of the goods involved.

As is well known, the present administration and the public oppose statutes and regulations which would have an inflationary impact on the economy.

Therefore, the institute submits that the Secretary be granted only authority to assess a uniform license fee for all applicants, rather than a graduated fee.

Section 2 of H.R. 10988 would add processors of frozen potato products to those who must be licensed under the statute.

The institute objects to this provision. The statute, by its terms, applies only to fresh fruit and fresh vegetables.

Section 2 of this bill, however, appears to contemplate the inclusion of potatoes which have been processed beyond merely cutting, dicing, drying, freezing, slicing and the like.

Indeed, Mr. Floyd Hedlund, Director, Fruit and Vegetable Division of USDA, testified on February 4, 1976, before the Domestic Marketing and Consumer Relations Subcommittee of the House Agriculture Committee that, contrary to his testimony the year before, there was no need to regulate the potato industry by way of licensing provisions of the act.

He stated:

I testified last July that there were problems in the potato industry. That was in 1975; now the administration has taken a different position and I am here reflecting that position.

He further testified that USDA opposes inclusion of frozen potato products because it is counter to the administration's present program of deregulation. Further, the regulations of USDA provide that the term "fresh fruits and fresh vegetables" does not include those fruits and vegetables which have been manufactured into articles of food of a different kind or character (u C.F.R. 46.2(u)).

The institute vigorously opposes section 3 of H.R. 10988. That section would prohibit any commission merchant, dealer, or broker, in connection with the price, conditions for production, harvesting or delivery of crops, whether for the purpose of reprisal or otherwise, from extending or causing to be extended, to any grower or other person any undue, unjust, or unreasonable preference or advantage in any respect whatsoever; or, from subjecting or causing to be subjected, any grower or other person to any undue, unjust, or unreasonable prejudice or disadvantage in any respect whatsoever.

Again, Mr. Hedlund, in representing USDA, opposes this section on the ground that it is not possible to, " * * * delve back into people's mind when they make a contract."

In addition, it is our opinion that section 3 might be interpreted to require processors to bargain with growers or associations of growers in order to achieve the objectives of the section, despite its obvious ambiguity of language.

There have been attempts for years to enact legislation mandating compulsory bargaining. All have failed, and for good reason. It seems obvious that not all growers are equally efficient, and that some growers can provide for the needs of some processors better than other growers.

Section 3 could, as written, be construed to eliminate any preference by a processor to any grower on the grounds of efficiency or otherwise. This provision is contrary to the free enterprise system as we know it in the United States. Moreover, it is not the purpose of the PACA to prohibit free contractual negotiations between growers and processors.

As stated by Mr. Hedlund:

The purpose of the Perishable Agricultural Commodities Act is to promote contract performance in the buying and selling of the commodities covered by the Act rather than to regulate buyers and sellers in what they may agree to in

making contracts. It seems to us that Section 3 of the bill would require that the intentions of the parties, as well as all additions which influenced the negotiations between buyers and sellers in making their contracts, be known. Without this knowledge, it would not be possible to determine whether a violation had taken place. In our opinion, this provision would be unworkable.

We agree with this statement by Mr. Hedlund. In addition, it seems obvious that the terms "undue, unjust, or unreasonable" are so vague as to be almost meaningless.

Section 4 of the bill would permit the Secretary to withhold from public disclosure the name, address, and other identifying information about a complainant.

Again, USDA opposes this section and we agree. It is fundamental, under our system of jurisprudence, that the accused be informed of the accuser's identity and be afforded the opportunity to confront the accuser. There are numerous Supreme Court decisions supporting this proposition.

Section 5 would require the Secretary to audit at least once every 3 months for a period of 2 years every merchant, dealer, or broker determined to have violated the prompt payment provision of the statute. As stated by Mr. Hedlund in testimony before the Subcommittee on Department Operations on June 24, 1975, during the fiscal year through June 1, 1975, the Department handled 2,300 reparation cases.

If USDA were required to audit these 2,300 violators once every 3 months for a period of 2 years, it seems obvious that the costs would be enormous.

Indeed, it is doubtful whether USDA has the manpower to conduct such audits.

Another example of the costs which would be involved, were section 5 to be enacted, was cited by Mr. Hedlund in testimony before this committee on February 4, 1976. Mr. Hedlund estimated that it would cost approximately \$1,000 to conduct each audit or a total of \$3,752,000 to audit cases the first year.

Mr. Hedlund went on to conclude that the audit requirements of section 5 would necessitate imposition of a license fee of approximately \$800 per year. The institute therefore opposes enactment of section 5.

In summary, Mr. Chairman, the institute would support a reasonable increase in the licensing fees, but opposes inclusion in the license system of frozen potato products and opposes sections 3-5 for the reasons I have stated.

Thank you.

Mr. VIGORITO. Thank you, Mr. Pedersen.

Mr. Smalley, we will be glad to have your statement.

Could you emphasize in your statement only what has not been mentioned by Mr. Pedersen? There is no use repeating what he said.

STATEMENT OF DONALD SMALLEY, PRESIDENT, FROZEN POTATO PRODUCTS INSTITUTE, CHICAGO, ILL.

Mr. SMALLEY. My name is Donald Smalley. I am vice president and general manager of the Rogers Bros. Division of Alexander-Baldwin, Inc., Idaho Falls, Idaho, and I am testifying today in my capacity as president of the Frozen Potato Products Institute, 111 East Wacker Drive, Chicago, Ill.

The Frozen Potato Products Institute (FPPI) was founded in 1958. The association's members all are engaged in the manufacture and sale of frozen potato products, including frozen french fried potatoes. Association members account for approximately 80 percent of all frozen potato products produced in this country each year.

The frozen potato products of FPPI members are not now covered by the Perishable Agricultural Commodities Act (PACA). We oppose the proposal contained in section 2 of H.R. 10988 to amend the act to encompass these products, for we believe that such an amendment is unnecessary, would needlessly impose a regulatory burden on our industry, and would extend the coverage of the act far beyond that originally intended.

One of the primary goals of the enactment of PACA in 1930 was to ensure that sellers of perishable commodities could depend upon acceptance of their products by contract buyers—assuming that the commodity met the terms of the contract—and prompt payment. Unlike traditionally more volatile businesses covered by PACA, however, the frozen potato products industry is a stable industry composed largely of publicly owned firms of large size and considerable financial resources. Since these firms also engage in the purchase and sale of unprocessed potatoes and other products, they generally already are subject to PACA sanctions in their dealings with growers. PACA coverage of the sale of frozen potato products, therefore, is unnecessary.

While there may have been a few isolated instances of slow payment or of processors of frozen potatoes suffering financial difficulties in past years, there has been no pattern of such occurrences which would warrant additional regulation of an entire multimillion-dollar industry. To the contrary, all of the information available to us indicates that the industry has compiled an outstanding payment record and is comprised of firms whose financial stability is excellent.

Our members include, for example, my employer, a division of Alexander-Baldwin, a large, well-known and highly stable organization. Other industry members include the Heinz Co., which reported net income of more than \$66 million in 1974; AMFAC, Inc., which earned \$56 million in 1974; the Carnation Co., which reported net income of almost \$80 million that year; and Consolidated Foods, with earnings of over \$70 million. Most of our members are substantial firms, therefore, often publicly owned with publicly available financial reports, and have long utilized accepted business practices in dealing with their suppliers.

Because FPPI members also purchase and sell fresh and frozen (uncooked) vegetables, they are for the most part PACA licensees already. As with any other licensee, therefore, processors of frozen french fried potatoes already are subject to many PACA sanctions in the event of a failure to pay growers in a timely manner, including limitations on the purchase of raw potatoes and limitations on the employment of their officers and directors. In view of the overall financial stability of the industry, the proposed amendment of PACA to include coverage of frozen potatoes products would be unnecessary to protect growers.

In his testimony before this committee on February 4, Mr. Hedlund, Director of the Fruit and Vegetable Division of the USDA's Agricultural Marketing Service, opposed its extension to cover frozen

potato products as being contrary to efforts to free American business of needless regulatory burdens. Additional regulation in this case can only be expected to increase our cost of doing business. The Federal regulations which interpret and implement the PACA provisions comprise 50 closely-written pages in the Code of Federal Regulations—100 columns of printed rules. As in other regulated areas, these rules and regulations have been interpreted and explained in numerous decisions of USDA Administrative Law Judges and other officials throughout a 45-year history. It is inevitable that if the frozen potato products industry is made subject to this substantial regulatory scheme, our costs will be increased. Our personnel will have to be instructed in the new rules and regulations and the history of their interpretation; others will have to be assigned to monitor changes and new interpretations. Our forms and purchasing or recordkeeping practices may have to be changed (even though they have proven satisfactory to all in the past), and our legal costs may increase.

We all know too well that despite the best intentions of regulators, even a little regulation often leads to more and more regulation, with an ever-growing impact upon the cost of engaging in the regulated business. The other sections of H.R. 10988, in fact, represent just such a phenomenon. Section 3 of the bill would make it unlawful to give an "unreasonable preference or advantage" to any grower or to subject any grower to "unreasonable prejudice or disadvantage in any respect whatsoever" and for any reason. Because the setting of the price for the purchase of potatoes, for example, involves a great number of legitimate bargaining considerations (differences in area costs or yields, changes in demand, etc.) which often result in the payment of different prices, this section would require Federal Government review of virtually every transaction to determine precisely how the price and other terms had been set. If this did not prove completely unworkable (as Mr. Hedlund has predicted it would in his testimony), it would subject the entire industry to an enormously expensive and burdensome form of regulation. Similarly, section 4 of the bill would burden both the industry and the PACA program itself with arguments about the need for anonymity in particular proceedings, making the proceeding more expensive and time consuming, while section 5 would require intensive inspections and audits of business records, adding further costs for business and, as Mr. Hedlund testified, requiring an increase in millions of dollars in PACA license fees.

The frozen potato products which our members manufacture and sell are low-priced consumer food products with relatively low markups resulting from a highly competitive market. The cost of producing the product already has been and will continue to be increased by other governmental requirements, such as recent effluent limitations adopted by the EPA requiring the expenditure of vast sums for new effluent treatment equipment. There is little room in the price of the product for the absorption of additional regulatory costs. Such costs instead would be passed on to the user in the form of higher retail prices. At a time when Congress and many Federal departments and agencies are seeking ways to eliminate unnecessary Federal regulation because of its impact upon inflation, it is particularly important that

this subcommittee not subject an industry to new regulation where, as here, that regulation has not been demonstrated to be clearly necessary.

The original PACA was never intended to encompass frozen potato products. The proposal contained in Section 2 of H.R. 10988, therefore, would not be a simple clarification of existing legislation, but rather would expand the PACA well beyond its original scope. While PACA applies to "fresh fruits and vegetables," our frozen potato products are, in contract, a manufactured product. Unlike the produce covered by PACA, our frozen french-fried potatoes, for example, are boiled in water and oil not simply to inhibit enzyme growth, but to impart to them qualities important in their use and preparation by the consumer.

This important distinction between fresh vegetables (including frozen vegetables) and manufactured products such as frozen french-fried potatoes has long been recognized and approved by the Federal courts. In the case of *Union Pacific R. Co. v. Ore-Ida Potato Products, Inc.*, 252 F.2d 505 (9th Cir. 1958), for example, a U.S. Circuit Court of Appeals held that frozen french-fried potatoes were not "vegetables" but rather were "cooked" foods, while in *Lester C. Newton Trucking Co. v. U.S.*, 209 F.Supp. 600 (D.Del. 1962), a U.S. District Court held that frozen french-fried potatoes were a "manufactured" product rather than an "agricultural" product.

Because the products of FPPI members are manufactured products rather than fresh vegetables, their inclusion within the PACA program would require either that many other products also be included or that Congress having similar characteristics. Thus, products such as frozen french-fried onion rings and a wide variety of cooked, processed foods are not now covered by the PACA and cannot reasonably be distinguished from frozen potato products for regulatory purposes. If all such products are now to be included within PACA coverage, the act will have been expanded far beyond the original intent to create an orderly market for fruits and vegetables; the administrative effort would be increased substantially, perhaps with adverse consequences to the successful program of more limited coverage carried out for the last 45 years. The net result of broadening the coverage of the PACA is likely to be greater regulation and greater regulatory costs, but a lessening of the PACA's utility to those who truly need its protection.

In summary, therefore, FPPI opposes the proposal to amend the Perishable Agricultural Commodities Act to include regulation of frozen potato products. FPPI believes that such an amendment is unnecessary, that it would needlessly place a regulatory burden on our industry and increase our costs, and that it would extend the coverage of the act beyond that originally intended, to the detriment of the present apparently successful program.

Thanks you for allowing me to appear before the subcommittee. If you have any questions I will be pleased to answer them.

Mr. VIGORITO. Mr. Symms?

Mr. SYMMS. I would like to welcome these gentlemen here today. I particularly want to welcome Bob Pedersen who is from my district. I think his house is out of my district, but his office is in my district. We are glad to have you here.

As we talk about some of these increased costs to the consumer, are there any others which we have not mentioned here?

Mr. SMALLEY. There conceivably and very possibly could be. Let me tell you what could happen.

Right now, frozen potato products have a different freight rate than its perishable raw counterpart. The differential in that freight rate is 12½ percent.

Should the frozen potato products be included in the act, it is entirely possible that the railroads and motor carriers would be successful in having them classified under the higher freight rate category. There would be the 12½ percent increase.

There are two previous adjudications on this very matter. They are in my testimony, and they occurred back in the late 1950's. Both were unsuccessful in the Federal courts. In other words, the Federal courts held that the frozen potatoes were a manufactured product and, therefore, did have to have the same freight rate structure as does the perishable product.

The magnitude of this, in terms of an additional concern for consumer spending, is anywhere from \$10 million to \$12 million a year. So that is the impact if the freight rates were to be equalized.

Does that respond to your question?

Mr. SYMMS. Thank you very much.

Do you have any comments, Mr. Pedersen?

Mr. PEDERSEN. Yes.

We are producers of fresh frozen vegetables as well as potato products, and so we are quite aware of the differential in the rate, especially in rail.

We are wondering, also, where this thing ends, if you begin with one manufactured product—not a fresh frozen product. Potatoes are a manufactured product, by definition. It is handled in the courts effectively.

What comes next in the way of items? Frozen onion rings? Boil-in-the-bag with onion sauce? Why not canned vegetables?

This could go on ad infinitum. And can you think of the problems that would be created in this country if many, many food items of that type would be brought under this type of surveillance? It would create an impossible situation. It would be impossible to administer the problems that occur under the act. It would put a terrible burden on USDA, and a burden on the industry. It would be very costly, and believe me costly to the consumer.

Thank you.

Mr. VIGORITO. Thank you, gentlemen, for your testimony today.

Our next witness is Mr. Arthur Slavin, the executive vice president of the New York Produce Trade Association of Bronx, N.Y.

STATEMENT OF ARTHUR SLAVIN, EXECUTIVE VICE PRESIDENT, NEW YORK PRODUCE TRADE ASSOCIATION

Mr. SLAVIN. Gentlemen, I would like to ask your indulgence in one respect.

I have with us a member of the Food and Produce Industry who was not scheduled to speak, and I would like to share my time with him. Mr. Bernard Mayrsohn is the president of Prevor-Mayrsohn

International, Inc., probably one of the biggest exporters and importers in the field of general fruits and produce on the east coast, and he is just getting over an attack of the flu and was not scheduled to be here, but he has kindly consented to be here.

With your permission, if I can give him just a few minutes of my time, I would appreciate it.

Mr. VIGORITO. Permission is granted.

Mr. SLAVIN. Mr. Chairman and members of the committee:

My name is Arthur Slavin. I am vice president and general counsel of the New York Produce Trade Association.

This is a nonprofit membership organization, incorporated as a border trade for those merchants in the New York City Terminal Market.

As a practicing lawyer, I have been in this field for 36 years specializing for the most part in the fresh fruit and vegetable industry and practice for the PACA.

Our terminal in New York is the largest in the world, receiving and distributing perishable agricultural commodities in carload equivalents from all corners of the country, also from foreign countries. We also export agricultural commodities to foreign countries all over the world.

We number approximately 100 separate trading merchants and on their behalf I would like to thank you for this opportunity to express our views. The members of our organization stand as one in strong opposition to sections 3, 4, and 5 of H.R. 10988.

PACA was enacted in 1930, and has been amended from time to time since then. It is defined as an act to suppress unfair and fraudulent practices in the marketing of perishable commodities in interstate and foreign commerce. In both form and practice, it does just that.

In my years of practice under the act, I have found enforcement of its provisions contrary to some of the things which have been stated here, to be "... strict in its punishment of offenders, swift, forceful, and vigorous."

On many occasions, I have complained that it is, at times, too strict, and possibly unfair and harsh. I do not know of any code of laws which regulates any other industry as rigidly, nor any wherein the sanctions imposed on offenders are as stringent or severe.

I have carefully read the prior testimony given before this honorable committee in support of this bill, all of which appears to have been given by potato counsel. It would appear that these proponents would have this carefully structured act designed to serve those dealing in or handling all perishable agricultural commodities radically restructured to serve unique, if real, problems of a relatively few growers of a single agricultural commodity.

This would appear to be, to me, unique in legislative history.

There is really nothing that the PACA in present form cannot accomplish for these proponents other than that which, in my opinion, would be unconstitutional and undemocratic.

Let us examine the PACA briefly in pertinent form and structure. Let us examine the practice.

First. Section 2 prohibits unfair conduct, defined in part to include false or misleading statements and failure to correct the account and failure to make full payment promptly and failure to perform any specification described by the terms of the contract.

Surely this includes everything we are talking about here.

Second. Section 6 provides for the filing of complaints against an alleged offender. This may be informal, and written on a post card. It can be as informal as that.

If, in the opinion of the Department, such complaint warrants investigation, the Department will then dispatch its trained and able investigators to the respondent's place of business and examine the books with a fine-tooth comb.

I might tell you gentlemen that some of these examinations take as long as months, and they go through this truly with a fine-tooth comb.

Little escapes the diligent and close scrutiny of these investigators.

A written report of such investigation is then sent to both sides. These quasijudicial proceedings are concluded by a trial in which both parties may furnish testimony and evidentiary matter. That is followed by a decision and a reparation order. Truly a democratic process.

Third. Section 7 provides substantially that, if a reparation order is not complied with within 5 days of the expiration of that period allowed for the compliance, then the offender's license is automatically suspended.

Fourth. Further provisions of the act, section 8, provides substantially sanctions against offenders whose licenses have been suspended or revoked, prohibiting any licensee under the act from employing them in any capacity whatsoever, whether as a truckman, an office worker, or an executive, ranging in reparation proceedings to a period of not to exceed 90 days and, where a violation is flagrant or repeated, to 2 years.

Now, that is healthy punishment.

In a statement before this committee on February 4, 1976, Doyle Burns, executive director of National Potato Council, stated:

"Today anyone could walk in and pay the price and get a license; as long as he pays up once a year, he can keep that license, even though he may be in constant violation of the Act.

This is not only inaccurate, but nothing can be further from the truth.

Let me cite to you from my own experience these two cases.

I refer to you a recent matter cited by the Department of Agriculture which I am going to keep anonymous because I prefer not to make mention of the respondent. It is entitled PACA Document No. 2-3734, decided December 15, 1975. In this case, the respondent, in corporate form, had entered into an agreement and consent order in a disciplinary proceeding wherein his license was suspended for 45 days upon condition that he made complete and absolute restitution to shippers of an amount of \$48,367.30.

The respondent fully complied with the terms of this order, suffering the suspension and making full restitution. After that, he chose to liquidate his business and his license ran out.

A year later, he came back for a license in his individual and his application was rejected.

In the proceeding which followed, the respondent contended that, since he had suffered the full sanctions imposed and made his full restitution, he was now entitled to such a license and that the Department action was arbitrary, capricious, and abusive discretion.

The judicial officer held that, despite such compliance, the respondent was unfit to hold a license by virtue of his previous actions, and sustained his rejection.

That hardly is a situation in which anybody can have, or get, or retain a license.

Another case stands in mute testimony of the rigid enforcement by PACA by the Department, that of *Zwick v. Freeman*, 337 Federal 2d, 110, 1976. In this case, the respondent was discharged in a proceeding under Chapter 11 of the Bankruptcy Act, after settling with all its creditors.

It was conceded by the Department that the debtor was found innocent of any wrongdoing after an adverse order by accountants for the creditors committee in the chapter 11 proceeding. Creditors representing over 90 percent of his creditors interceded on his behalf and requested the Department permit him to stay in business and they would capitalize him. He was an unfortunate victim of business reverses. The Department contended that the act had been violated repeatedly or flagrantly, nevertheless it instituted a disciplinary proceeding and issued a license revocation order.

This decision survived an attack on five constitutional grounds, and a decision of the U.S. Circuit Court of Appeals, Second Circuit, in which certiorari to the U.S. Supreme Court was denied, established the inviolability of the PACA and enforcement for all times.

It was a landmark decision.

I must confess, gentlemen, with some reluctance, that I handled both of these cases, and I can testify heartily with considerable experience as to the Department's close scrutiny of licensed applications, and to its tenacity in pursuing offenders. It does not let up. It is not lenient.

Against such a history of enforcement and effectiveness, what exactly are the proponents of this bill seeking to establish?

Basically, the history of American jurisprudence is the principle that an accuser must be named and must face the accused. How else can he fairly and adequately defend himself?

Section 4 of H.R. 10988, providing for anonymity of the accuser, would seek to impose star-chamber proceedings harkening back to the middle ages and the infamous *lettre de cache* of France. It would be a most dangerous practice indeed.

I think, gentlemen, that we have already had too much of that sort of thing.

Section 3 of H.R. 10988 suggests that it would invalidate reprisals or prejudice on the part of a respondent against his complainant.

I suggest that, in a ministry of constantly changing variables of price, condition, quality, supply, demand, and the particular requirements of each buyer, the determination of whether or not, or failure to act, constitutes prejudice or reprisal would involve indefinable mental processes and pure conjecture impossible of proof and impractical to try.

The last objectionable provision, section 5 of H.R. 10988, mandates an audit every 3 months for 2 years of the records of an offender. An offender would have to be defined to include any unsuccessful party in a reparation proceeding, either complainant or respondent.

For examples, shipper delivers to receiver a carload of tomatoes warranted to be not less than 5 percent U.S. 1 in grade. Receiver claims that tomatoes arrived out of grade, and both parties, each claiming to be right, become parties to a reparation proceeding.

Receiver, as respondent, counterclaims against shipper for breach of warranty and, after the trial, he is sustained and is awarded damages against the complainant of \$500.

Would this section mandate that the complainant's books and records shall be audited by the USDA every three months for 2 years? I doubt that this is your intention, gentlemen.

Then, too, the offender may be required to furnish a bond in such an amount to insure that he will pay all the reparation awards which may be issued against it in connection with transactions within the 2-year period.

I have had considerable experience in getting bonds under all kinds of circumstances. My experience with such bonds is that the surety company will require either a cash or property deposit equal in amount to the amount of the bond, or a financial statement so favorable that it will virtually guarantee indemnification to the surety of the amount of the bond.

Such a requirement, gentlemen, would be beyond the ability of many or most small businesses and would force them out of business. I doubt that the bill intends such an effect.

I will not go into the cost of supervising the mandatory audit system because it has been adequately covered by other objections to H.R. 10988. However, it is my opinion that this provision would result in such a proliferation of self-serving complaints that the cost of supervision would become staggering.

I think that even the statistical information furnished to you in the statement of John H. Knebel, Under Secretary of Agriculture, on February 4, 1976, does not fully anticipate the enormity of such an undertaking.

As an aside, I think it important that you be informed that on February 7, 1976, the PACA-Industry Advisory Council met in San Francisco to consider H.R. 10988 among other things, and, after full consideration, the Advisory Committee unanimously voted against sections 3, 4, and 5 of this bill.

Finally, gentlemen, I would respectfully urge that the Department of Agriculture was not intended to be, nor should it be, permitted to become a credit and collection agency. The proposed provisions could place an insidious tool in the hands of a hatchet man, and are obnoxious to American ideals of air and decent conduct. They should not be permitted to replace the existing usage of common, ordinary, sound business sense in normal business.

PACA was created by the Congress as a shield against unfair practices. Let us not make it a weapon instead for any particular interest.

Thank you for this opportunity.

Mr. VIGORITO. Thank you very much.

Mr. Mayrsohn, have you some comments to make?

STATEMENT OF BERNARD MAYRSOHN, PRESIDENT, PREVOR-MAYRSOHN INTERNATIONAL INC., NEW YORK TERMINAL MARKET

Mr. MAYRSOHN. Thank you, Mr. Chairman, and members of this committee.

My name is Bernard Mayrsohn, president of Prevor-Mayrsohn International, Inc., operating a wholesale distribution facility at the New York Terminal Market at Hunt's Point. We also do a considerable amount of exporting of American fresh fruit and vegetables, buying throughout the United States and shipping them abroad.

Mr. Slavin, representing our association, of which I am executive vice president, stated it better than we can, of course, but I must say that 30 years in this business and with a background of graduating from Cornell Agricultural University in Agricultural Economics, and working with the PACA over these many years on both sides of the fence, I find it a very compatible way of working the way we buy and sell on a give and take daily basis over the phone.

I find it a very equally representative right of the shipper as well as the receiver. As the receiver, I can tell you we do not feel in any way that we are badgering any shipper that complains against us, and I can say that the shippers have no hesitation of complaining against receivers.

Both of us have found that there has been fair treatment.

I come unprepared other than to support what Mr. Slavin has said, and I thank you for this opportunity to say it.

Mr. VIGORITO. We wish to thank you gentlemen for your testimony.

Our next witness today is Mr. Jackie M. Bowers, general manager Jersey Fruit Cooperative Association.

STATEMENT OF JACKIE M. BOWERS, GENERAL MANAGER, JERSEY FRUIT COOPERATIVE ASSOCIATION

Mr. BOWERS. Mr. Chairman and members of the committee:

My name is Jackie M. Bowers. I am general manager of Jersey Fruit Cooperative Association, Inc., of Moorestown, N.J.

Jersey Fruit is a grower member cooperative marketing organization. We handle the sales of fresh apples and peaches for our 30-odd growers. We represent in excess of one-half of the apples produced in the State of New Jersey and a very high percentage of the peaches from the State.

I appreciate this opportunity to present our views on H.R. 9288 and H.R. 10988—the current legislative proposals dealing with the Perishable Agricultural Commodities Act.

I am most appreciative and complimentary to the legislators and the industry leaders for organizing PACA. I feel that it has served our industry well and could be a model for Government agencies in integrity and fairness.

The current business financial climate dictates that I must be in opposition to increased costs which do not contribute directly towards improved productivity. There is, however, no question that our industries need PACA and that there must be adequate revenue to properly and adequately administer it.

I am therefore in support of H.R. 9288, but recommend a uniform license fee for all applicants. The actions taken by the Secretary in the past have appeared to work satisfactorily, and we urge the continuation of a single uniform license fee and would support the adoption of a maximum amount of \$300 for this purpose. The uniform fee could be raised from the present \$100 by the Secretary of Agriculture from time to time as required.

We oppose the implementation of a graduated fee because of the increased costs and burden it would place on the operations of PACA which would surely increase the license fee. Manpower and time of PACA would be consumed in verifying the size of the company's business for purposes of applying the graduated fee. It would also be unnecessarily time consuming and expensive for the company in filling and filing additional forms.

I would also like to comment on H.R. 10988. Jersey Fruit cannot support this bill. We feel that it would complicate PACA and burden it with unenforceable provisions and seriously hamper and curtail free movement in the market place.

Specifically, we have no opposition to section 2 of H.R. 10988. We could, in fact, support the inclusion of frozen potato products and potato processors under the PACA.

We do, however, have serious concern and opposition to sections 3, 4, and 5 of the bill.

Section 3 is essentially an antidiscriminatory clause. PACA investigators would be required to determine the intent of the buyer and seller at the time of the sale. If preferential treatment and unfair practice means that prices could not be changed on any given marketing day or, in fact, any marketing hour, then free movement in the marketplace would be drastically hampered.

In highly perishables, such as peaches, it is quite common for prices to decline throughout the day. It would be very uncomfortable for a sales organization to be required to sit with the entire day's production because it could not drop from the early morning prices for fear of being accused of practicing discrimination. The PACA has not attempted to interfere in prices or contracts between sellers and buyers in the past, and it will be a sad day for our industry if they should start interfering in the future.

When Jersey Fruit was formed, a group of growers got together to do something for themselves. They combined and made a marketing agency and it has been effective. There is nothing unreasonable about us. We do not have any big clubs to swing; we just go out in the market like any regular person or marketing agency and do business.

I plead that you do not take action which may hinder the simplicity of our free enterprise marketing system.

Section 4 of H.R. 10988 authorizes the secretary to withhold the identity of the accuser. As much as I have, at times, wished for rights without responsibility, there is no way that we can support this request. Beyond the point of ethics and the right to know, the accused could not properly proceed with his defense if he did not know who filed the complaint.

Section 5 deals with mandatory requirements for compliance audits. PACA has done a good job in keeping our industry trading on an even keel and in determining rights and responsibilities of all parties in-

volved. It has not been big government looking over our shoulders with surveillance tactics.

I do not see this approach as a remedy to slow pay, but rather what could turn into a very expensive fishing expedition which could be very costly for the operation of both PACA and our industry. It boggles my mind to think what the increased cost for the operation of PACA would be with this type surveillance. This would surely increase the annual PACA license fee to a level that would be unbearable. I have earlier expressed my opposition to increasing fixed expense which in no way contributes to the improvement of productivity.

Section 5 deals with posting of a surety bond by persons who fail to pay promptly. From what I know of surety bonds, I am most impressed by the high cost of the premiums and the low rate of recovery through them. This is a very burdensome approach and highly questionable as far as results.

I am surely in favor of and support any practice, policy or action that puts money in the hands of the growers or shippers promptly. We stand ready to cooperate in any way possible to this end. However, experience has taught us at Jersey Fruit that good pay practices start with, or go hand-in-hand with, good sales practice. I am afraid that the lock on our door only deters honest people and, as much as we might wish otherwise, the crooks will find a way to enter.

I wish to express my appreciation for the opportunity to comment on these two bills and hope that my expressions may contribute to your sound judgment on these important decisions for our industry. Thank you, Mr. Chairman.

Mr. VIGORITO. Thank you very much, Mr. Bowers.

Would you express your position on section 2 of H.R. 10988, in reference to frozen potato products?

Mr. BOWERS. For the benefit of time, I had mentioned that in a written report, and we do not really have any opposition to that phase of it. I have heard comments that maybe this would open up other areas, but, to me, we do not see where it would particularly be any problem.

Mr. VIGORITO. Mr. Findley?

Mr. FINDLEY. Mr. Bowers, I am sure you are familiar with the existence of the PACA-Industry Advisory Committee.

Mr. BOWERS. I am a member of it.

Mr. FINDLEY. I notice on a sheet of paper now before me that there are only two growers on that committee.

Do you see any objection to increasing the proportion of growers to participate in the deliberations of the committee?

Mr. BOWERS. Frankly, I am not quite sure. I did not have a copy of what category I was describing.

Mr. FINDLEY. You are a shipper?

Mr. BOWERS. Maybe I have my foot on both sides of the fence, because I surely consider myself as a grower-representative, being a cooperative member grower organization, as we are. But, to specifically answer your question, no, I see no reason that this would in any way be detrimental. My experience—I guess this is the second year that I have been a part of this committee—is that I have nothing but the highest respect for the manner in which they have pretty thoroughly

caught up all phases of any subject that was discussed. I have sensed nothing that would indicate anything other than forward and welcomed expression on the parts of all segments of our industry.

Mr. FINDLEY. The present composition of the committee suggests a very heavy imbalance, and I assume that the growers are numerically far greater than any other category in the industry on a numbers—on a population—basis.

Yet, there are about 25 people in the other categories contrasted with just two growers. There are 11 shippers, 3 brokers, 4 receivers, 2 service-wholesalers, 2 retailers, and 2 processors, and 1 public representative.

So, it would seem to me that it would probably at least enhance grower confidence in this system if the growers had a large representation.

Would you agree to that?

Mr. BOWERS. I would not disagree with it.

Mr. VIGORITO. Thank you very much, Mr. Bowers.

We will now have three witnesses as a panel. We will have Mr. Arthur Goldstein, executive officer of Frito-Lay; Mr. James S. Herr, president representing Herr's Potato Chips, Inc.; and Mr. Lawrence E. Burch, executive vice president of the Potato Chip Institute International, accompanied by Mr. Melville Ehrlich, counsel for Potato Chip International.

STATEMENT OF ARTHUR GOLDSTEIN, NATIONAL MANAGER, POTATO PURCHASING DIVISION, FRITO-LAY, INC.

Mr. GOLDSTEIN. My name is Arthur Goldstein. I am national manager of the Potato Purchasing Division, Frito-Lay, Inc., Dallas, Tex., a processor of potato chips and snack food items.

Frito-Lay operates 24 potato chip factories in 17 States. Our products are distributed and marketed nationally, and our potato purchasing division is actively engaged in handling and shipping potatoes from practically every potato-producing area in the United States, necessitating our involvement not only with the actual processing of potatoes for potato chips but also in the variety development and improvement programs, foundation and certified seed programs, and the commercial production of potatoes for processing.

I am also one of the 24 members of the PACA-Industry Advisory Committee.

Frito-Lay wishes to go on record in opposition to the enactment of H.R. 10988. This amendment to the current functional Perishable Agricultural Commodities Act would not only result in increased licensing costs, but would not correct any of the inequities proponents claim to exist under the present legislation.

The existing legislation under which the produce industry currently functions has been effective and efficient, and the respect and support the industry has given the PACA—since its inception—has been a classic example of industry cooperation with Government in policing itself.

The methods and manner in which the PACA functions today has earned the respect and confidence of the entire produce industry.

The mechanics for establishing investigations, arbitrating disputes, and penalties for violations—under the existing legislation—already are in force and functioning satisfactorily.

Sections 1 and 2 of the recommended amendment do not affect Frito-Lay and, therefore, we do not have a position—pro or con—on these provisions at this time. However, we vigorously oppose sections 3, 4 and 5.

Section 3 of the bill—the antidiscriminatory clause—would seem virtually impossible to supervise or enforce. The nature of the produce business and the many variables that exist in the areas of quality, package sizes, daily fluctuations of supply and demand, the wide fluctuations in price, and various and sundry uncontrollables would make it extremely difficult to identify the intent or motives of the contractual parties. The ability to properly evaluate a discriminatory practice would entail the wisdom of Solomon and the luck of the Irish—an unlikely combination.

Frito-Lay stands opposed to section 4 of the bill. This would result in greatly increased costs to the licensee due to the broadening of the administration and enforcement aspects of this legislation, as exhibited in previous testimony on February 4 by the director of the fresh fruit and vegetable division, Floyd Hedlund.

Enactment of section 4 would create a climate of suspicion and antagonism among producers, shippers, receivers, and processors due to the cloak-and-dagger aspects of an unidentified accuser, who may or may not have a legitimate claim, instituting an action by the PACA, that, again, may or may not be legitimate, encouraging spurious claims by dissatisfied or malicious individuals, causing needless expense and a waste of time and effort that could be channeled into more productive endeavors.

The magnitude of the Frito-Lay potato division and the wide range of activities that we engage in could, if this amendment were enacted, cause an unnecessary waste of time and money whenever any disgruntled, misdirected producer, shipper, packer, or broker chose to harass us spitefully and anonymously.

In normal business transactions, it is certainly customary and proper for a creditor to face his debtor and request due payment for legitimate claims.

We do not feel that the produce business, or the potato processing business, should be any different from any other mercantile practice, and the precedent of a face-to-face confrontation—accuser to accused—has been traditional and a cherished right in our judicial system.

Section 5, establishing requirements for surveillance compliance audits is nothing but a fishing expedition, and it would not solve any of the inequities that the proponents of this measure would lead us to believe. Auditing does not prevent bankruptcies, nor will surveillance-auditing speed up payments. They will, however, add to increased costs and a waste of otherwise productive time.

At the recent PACA-Industry Advisory Committee meeting, which was held on February 7, 1976, in San Francisco, a discussion of H.R. 10988 was on the agenda. This Advisory Committee, which has representatives from growers, shippers, brokers, receivers, service

wholesalers, retailers, processors, and a public representative, voted unanimously in opposition to H.R. 10988—a bill to amend the PACA. The minutes of this meeting should be readily available to this committee, and I trust that this committee has read, or will read, what transpired.

I appreciate the opportunity to express our views, and I hope this testimony aids in contributing to a proper and equitable conclusion re: H.R. 10988.

Thank you.

Mr. VIGORITO. Thank you, Mr. Goldstein.

STATEMENT OF JAMES S. HERR, PRESIDENT, HERR'S POTATO CHIPS, INC.

Mr. HERR. My name is James S. Herr. I am president of Herr's Potato Chips, Inc., Box 308, Nottingham, Pa.

We manufacture potato chips and distribute them in the States of Pennsylvania, New Jersey, Maryland, and Delaware.

We purchase our potatoes primarily from brokers and dealers who are licensees under the Perishable Agricultural Commodities Act (PACA).

Nevertheless, we do buy a small portion of our potatoes, approximately 15 to 20 percent, directly from growers and, because of this small portion of our purchases, we are licensees under PACA and affected by the proposed provisions of H.R. 10988.

We have not opposed H.R. 9288, which is designed to keep PACA on a self-sustaining basis through increased license fees, but the increased costs of PACA should be kept within reasonable limits. H.R. 10988 could lead to fantastic additional costs while serving no really useful or practical purpose.

Aside from more substantive objections to H.R. 10988, testimony already in this record presented on behalf of the U.S. Department of Agriculture indicates that our license fee could go from \$100 to \$800. Cost increases should be measured against purposes to be accomplished.

In our opinion, H.R. 10988 does not accomplish any useful purpose and does not accomplish the purposes for which its proponents contend.

As briefly as we can state them, these are our objections to H.R. 10988:

1. It introduces an element of secrecy into what should be open, face-to-face dealings between licensees and growers.

2. It does not in any way prevent a bankruptcy of a licensee, as proponents contend.

3. Any investigation must be unrealistically broad in its scope if the secrecy of the identity of the complainant is to be preserved.

4. If the PAC administration then orders any action to be taken, or payment to be made by the licensee, this would then automatically dissolve the original secrecy as to the complainant.

5. The provisions for auditing a licensee a minimum of four times a year for 2 years, even if each audit discloses the licensee to be in full compliance, is unnecessarily punitive and unnecessarily expensive.

6. Our company has never been charged with noncompliance with PACA, but, under H.R. 10988 taken together with H.R. 9288, we would be charged higher fees because of the investigation or auditing of some other company which may not be in compliance.

7. If there are licensees who are not in compliance, enforcement of present provisions of PACA are adequate to deal with the problem.

In summary, the inflationary aspects of legislation should be weighed against purposes to be accomplished. We feel this legislation serves no necessary or even desirable purpose. But, by the estimate of the Department of Agriculture, it could have an inflationary aspect on license fees of 700 to 800 percent.

This would greatly affect small operators such as we are.

We appreciate this opportunity to make our views known.

Mr. VIGORITO. Thank you very much.

STATEMENT OF LAWRENCE E. BURCH, EXECUTIVE VICE PRESIDENT, POTATO CHIP INSTITUTE INTERNATIONAL

Mr. BURCH. My name is Lawrence E. Burch. I am the executive vice president of the Potato Chip Institute International (PCII). PCII is a nonprofit trade association of potato chip manufacturers with offices at 26250 Euclid Avenue, Euclid, Ohio.

The members of PCII account for well over 90 percent of the domestic production of potato chips. As potato processors buying potatoes largely directly from growers, most of our chip manufacturing members are licensees under the Perishable Agricultural Commodities Act (PACA) and are, therefore, concerned with the provisions of H.R. 10988.

I call attention at the outset that we have not opposed H.R. 9288, which is designed to put the PAC administration on a financially self-sustaining basis. We have not opposed that legislation because we believe that they have an effective and desirable function to be performed and have performed satisfactorily in the past. However, we cannot completely divorce H.R. 10988 from H.R. 9288 because of the effect it has on the costs which may be required to be paid under H.R. 9288.

We believe costs, and therefore license fees, should be increased if reasonably necessary to carry out necessary or desirable functions; but we believe that H.R. 10988 does not meet this test.

I will not dwell on the increases in cost which could be required by H.R. 10988 because testimony on that point has already been placed in the record by the U.S. Department of Agriculture which indicates that there could be a fantastic and highly inflationary cost increase.

Our major objection is to the substantive provisions of H.R. 10988 which, in our opinion, do not carry out the purposes for which they are intended and serve neither a necessary nor a desirable purpose which cannot now be accomplished under PACA as it now stands.

We object to the concept of secret accusations by unknown or unnamed complainants. We believe that there should be face-to-face dealings between accuser and accused.

We think it is obvious that any investigation made as the result of a secret complaint must of necessity be abnormally broad in order that the investigation itself does not disclose the identity of the

complainant. This means an undue burden to be placed on the staff of PACA requiring a substantial increased cost of operation to be passed on the licensee and eventually to the consumer.

We feel that the same is true of the provisions in H.R. 10988 requiring an audit at least quarterly for 2 years, even though each audit demonstrates complete compliance.

We believe that it is unfair, as H.R. 10988 would do, to increase the cost of a licensee in full compliance to pay for the operating costs to investigate and audit a few who may not be in compliance. We believe the same results can be accomplished under present methods of administration and by the same PACA staff.

In short, our objections to H.R. 10988 are that it is highly inflationary, it is regressive in shrouding complainants in secrecy, it is unnecessarily costly, and it serves no useful or desirable purpose.

Thank you.

Mr. VIGORITO. Mr. Findley?

Mr. FINDLEY. Mr. Goldstein, you may have heard Mr. Bergland testifying about the problem encountered by some producers in his home State.

Do you have any suggestions as to what remedies exist which might be employed to protect the interests of the producers in such circumstances?

Mr. GOLDSTEIN. Yes, I do.

I believe Mr. Slavin made the suggestion that there are industry organizations which are in a much better position to attest to or certify the processors or handlers who handle the membership's potatoes.

In fact, I have a copy of a newspaper clipping. I think it was February 28, 1974. The Red River Valley Potato Association was negotiating a contract. One of the companies which they accepted and told their growers that it would be OK to contract with, was a company that went bankrupt.

That does not make any sense.

I think the growers association could police that better than anybody.

Mr. VIGORITO. Thank you, gentlemen, for being here.

The next witness will be introduced by a member of this committee, the gentleman from Minnesota, fellow Congressman Bergland.

Mr. BERGLAND. Thank you very much, Mr. Chairman.

It is my pleasure to introduce a constituent and a friend, Mr. Merle Anderson from Climax, Minn., who is himself a very successful potato producer.

He is here today representing the Red River Valley Potato Growers Association. He has been the chairman of the National Potato Council. He is a professional in the true sense of the word.

Mr. Chairman, I am pleased to present Mr. Anderson today.

STATEMENT OF MERLE ANDERSON, PAST PRESIDENT, NATIONAL POTATO COUNCIL AND RED RIVER VALLEY POTATO GROWERS ASSOCIATION

Mr. ANDERSON. Mr. Chairman, it seems that someone has to be a proponent on things today.

As a farmer, I am not the best speaker in the world all the time, and so I will stick to the text of my testimony.

My name is Merle Anderson. I am from Climax, Minn., in Red River Valley. I am a past president of the National Potato Council. I am a past president of the Red River Valley Potato Growers Association, and I have served the potato industry in many capacities in the last 20 years.

I am a farmer. I operate a 1,400-acre farm and we grow from 150 to 350 acres of potatoes each year.

I am pleased to offer testimony in support of the amendments contained in H.R. 10988. My testimony will cover two areas of subject matter: One will be to clarify our position, as I have worked with the National Potato Council; and, two, as it affects the potato grower and our marketing conditions in the Red River Valley.

I want to assure this committee that the National Potato Council seeks only to raise the level that this industry conducts its business. The National Potato Council has worked long and hard to find a way to work and cooperate with the Department of Agriculture and the officials of PACA.

In the year 1972, by the process of our annual meeting, the potato growers across the country gave the specific direction to our steering committee and to our officers to work with the Department to seek a change in the administration of the PACA Act. The problems then, as they are today, were: Slow pay, no pay, unwarranted rejections, unwarranted discounts, double brokerage, and other violations of the act.

A committee was formed known as the PACA Committee of the National Potato Council. Many trips to Washington and many meetings in the Department of Agriculture, at all levels, amounted to only good visits and no change of administration of the act. We believed then, as we do now, that all of this could have been accomplished by administrative rule. Since we were overruled at every crossroad, we are here today asking for your help.

I should say that we are not totally critical of the act. It is a good act, but nothing is so good that it does not need some change and review after 45 years of constant administration.

I want to assure you that there is a very serious problem within the industry that can be corrected to a great extent by the amendments offered in H.R. 10988. In representing the growers' interests, we have to stand up and raise objection to continued and flagrant violations of the act.

The PACA Industry Advisory Committee meets annually. Their members are made up of mostly the receiver and broker segment of the industry. A large part of these meetings seem to have turned into sessions of bad-mouthing the potato growers and their national organization and also members of Congress who have recognized this problem and have worked with us.

We object to officials of the Department of Agriculture being a part of and leading this kind of discussion.

In the interest of time, I will not cover each and every one of the amendments to this act. But I would like to speak on a few of the suggested sections.

Mr. Chairman, it has been said that "the PACA, in the past, has not attempted to interfere in the contracts negotiated between a buyer and a seller."

I would submit, Mr. Chairman, that a violation of the PACA Act is simply a violation of the act. Interference has nothing to do with it.

Section 4 deals with the disclosure of the name, rank and serial number of the complainant. I must tell you that it is a proven fact that producers just don't sign complaints against their receivers. That is his market outlet for now and in the future. With fewer and fewer outlets for him to market to, he is not going to risk being blackballed by these receivers.

Mr. Chairman, we fully recognize that the name of complainant must be disclosed in the case of a reparation complaint. But, in the case of a disciplinary complaint, there simply is no need for disclosure of that name.

The opponents of this bill say that a respondent must have the right to know who filed a complaint against him in order to proceed with a defense.

They are looking for bandages before they are cut, Mr. Chairman. No defense is necessary until after an investigation is conducted. Only then, after the Secretary has ruled the complaint valid and in order, does he charge the respondent with a violation.

During one of our many meetings with the Department, in which we tried to correct these errors administratively, the following hypothetical case was presented to Mr. Hedlund.

Assume John Doe filed a complaint against Company X. After revealing Mr. Doe's name to company officials and an investigation is begun, the Department finds 10 other people who also have money overdue them from the company.

1. Is the company forced to pay all, or just the one who complained? They finally said that all should be paid.

2. Why should anyone have to be a sacrificial lamb?

If a complaint is determined by the Secretary to be valid, and after the investigation the company is found to be delinquent in one or more cases, they can be pointed out to that company where the violations are. There is absolutely no good reason to single out any one person.

Mr. Chairman, in discussions with the administrators of the Department, by their own admission they pretty well know who the violators of the act are. But we are told they cannot act without a formal complaint. This is why we are asking for this amendment.

Testimony has been given that these changes are going to increase fees to \$800.

Mr. Chairman, it is not the intent of the surveillance portion of Section 5 that a full-blown audit be required. It is a simple matter that, after a licensee has been found to be in violation, it is not going to be a time-consuming procedure to determine if that licensee stays in compliance.

It is our opinion that, when the problem receivers recognize that they must now raise the level by which they do business, the number of violators will be greatly reduced. Therefore, we do not agree that the administrative cost will be increased by anything near what the Department has suggested. In fact, it is possible that, as time goes on it may even reduce the administrative costs.

The slow-pay and sometimes no-pay problem is a growing cancer to our industry. Looking back over the recent years, in case after case there is living proof that grower losses could have been greatly re-

duced and bankruptcy prevented had receivers and processors conducted their business within the provisions of the act.

In the Red River Valley today, our processing market has actually been crippled by the failure of some of our processors to conform to the provisions of their license. Two processing plants are closed and in bankruptcy. They both operated for years in violation of the act. The Department of Agriculture knew they were in violation, but they said they couldn't act. Again—no formal complaint.

It was bad for the growers to lose all that money, but even worse to lose that volume of our processing market.

The point is, these processing plants may not have failed had they not been allowed to go millions of dollars in debt to growers.

Let me assure you, the potato growers of the Red River Valley are concerned about these problems.

Mr. Chairman, I would have to ask the opponents of these amendments, "What are you afraid of?" If you are conducting your business in a manner that conforms to the law and your license, then you have nothing to fear.

Mr. Chairman and members of the committee, these amendments will not affect adversely any of those receivers that are conducting their business properly. I would like to add also, and I would suggest that, regarding bill H.R. 9288, I would support the suggestion that was offered by Congressman Bergland.

Mr. Chairman and members of the committee, I appreciate your hearing me out on these matters. The potato growers do need your support.

Thank you.

I would be glad to answer any questions.

Mr. VIGORITO. Thank you.

Mr. FINDLEY?

Mr. FINDLEY. Mr. Anderson, you state that the Department knew that two processing plants were in violation and that they could not act because they had no formal complaint.

Were these producers who dealt with these processing firms under contract with the processing firms? Was that their way of doing business?

Mr. ANDERSON. Dealers flowed to those two processors in both manners, some under contract and, I am sure, some under direct sale.

Mr. FINDLEY. Do you know what the violations were?

Mr. ANDERSON. It was generally conceded by anyone who knew anything about the industry that they were in violation of the act because they had bills 2 and 3 years old laying all over the place.

Mr. FINDLEY. Were they delinquent in paying producers over a period of time?

Mr. ANDERSON. Yes.

Mr. FINDLEY. Do you know the extent of the delinquency?

Mr. ANDERSON. At times, in the case of the one company, it ranged into as much as \$3 million. It was a bank in North Dakota which decreased that by \$2.5 million in one case. That was earmarked for growers.

In the other case, I am sure there is \$1.8 million owed to growers. That is the way I understand the situation.

Let me add this.

Anybody could say, "Why do you deliver to a processor like that?" These growers had no way of knowing the financial condition of these processors. We never see their balance sheet. They look like they are going great guns. It is a matter of confidence, I guess.

These markets are limited for growers. They gear their production and the type of production which they create to go to certain markets. In these cases, there were processors and that was their outlet.

Mr. FINDLEY. Where would they ship, if they did not ship to these two processors?

Mr. ANDERSON. They probably would have to go over into somebody else's business and have to take business away from some other producer who was established with some other processor or market that he delivers to.

Mr. FINDLEY. I can understand why an individual producer, especially one who is not of substantial means, would be reluctant to cause trouble with his only source of marketing, if he had limited sources.

A previous witness just stated, if I recall his words correctly, that the associations representing potato growers could adequately protect their interests if they were vigilant and on the ball, so to speak.

Do you have any comment on that?

Mr. ANDERSON. I can speak to that. I was chairman of the bargaining committee at the time that this incident happened. It was unfortunate.

The bargaining committee had no control over how many potatoes that processor contracted. It was generally thought that he was going to contract for a relatively small amount of potatoes.

We had no idea of his financial situation. We did not know what his financial situation was. So, what happened was, that he went out and contracted over 1 million hundredweight of potatoes, which was much beyond his needs.

It was a blind risk, and it failed. This happened with other processors in the industry, too.

Mr. FINDLEY. Does your organization ordinarily represent producer-members if slow pay does occur? Is that one of the services you render?

Mr. ANDERSON. We have not done that as such. Our association is concerned with it. They are on record as being in support of these amendments which would help the situation.

They do work with growers. I am sure that they make telephone calls to the PACA. There is informal discussion with the PACA about these matters.

That is why I say that, in many cases, sometimes PACA officials know that there are violations, but there is no action because we do not want to file a complaint. We hope that the guy will make out and somehow will be able to pay.

Mr. FINDLEY. But the association representing the broad number of producers would be able, I would think, to bring some pressure or voice complaints directly to the processor, once they get information about slow pay. By that means, they could provide some discipline.

Does that make sense? What is wrong with that line of argument?

Mr. ANDERSON. I would not say that it has not been done or cannot be done. But, I think the association is probably a little bit reluctant to sever or damage its relationship with those processors. It does its

best to cooperate with them in the area. We have had a good history of that up until the time when we find out too late that they are out of business and there is no money to get.

It is so easy to look back now and see these mistakes now.

Mr. FINDLEY. If existing law was thoroughly enforced, would you be here today?

Mr. ANDERSON. No.

In our opinion, as we match this up with the Stockyards Act and we have researched it, there is some administrative rule and this could have been accomplished in the major points that I am talking about in my testimony. And we would have much preferred to do that, sir. We were very reluctant to go the legislative route.

Mr. FINDLEY. Thank you, Mr. Chairman.

Mr. VIGORITO. Thank you very much, Mr. Anderson, for your testimony.

Our next witness is Mr. Clarence A. Parr of the National Potato Council.

STATEMENT OF CLARENCE A. PARR, CHAIRMAN, NATIONAL POTATO COUNCIL'S LEGISLATIVE COMMITTEE

Mr. PARR. Thank you, Mr. Chairman.

My name is Clarence Parr. My residence address is Route 1, Box 209, Burley, Idaho. I serve currently as chairman of the National Potato Council's legislative committee, and as past president of the council. In addition, I have served as president of the 1,800-member Potato Growers of Idaho, Inc.

I would like to begin my testimony first by expressing my appreciation for this opportunity to testify before your subcommittee, and second by expressing my humble gratitude in this, our country's 200th birthday, for a system of government that makes it possible for citizens such as myself to express an opinion in the legislative process. It is a privilege enjoyed by few outside of this great country, and a privilege little recognized by those who would malign it.

I have a short written statement, Mr. Chairman, that will take only about 3 minutes, and a few observations.

I was involved with the bargaining effort in the State of Idaho for some 15 years, incidentally, Mr. Chairman, and I led that up for 3 years.

The proposed legislation before this committee today is not a momentary fancy of the leadership of the National Potato Council. It is the result of grass roots demand that something be done to improve and elevate the level upon which business is transacted throughout the fresh fruit and vegetable industry.

There will undoubtedly be those who will proclaim that the proposals before this committee will create so-called fishing expeditions into private records and that confidentiality of business transactions will no longer prevail. Let us be constantly aware that only those who are reasonably suspect need fear the additional strength of enforcement provided in the proposed legislation.

Then, of course, there will be those who will proclaim no need for additional statutory requirements, that the present act provides all the essential ingredients to assure everyone a sound and safe

business transaction. Primarily this will come from those who deal in sufficient volume in the Nation's marketplace to insure fair and equitable business relationships.

But, what about that relatively small producer who chooses to handle his own product? His only assurance of a sound business transaction is the integrity of the person with whom he deals or the protection provided under the Perishable Agricultural Commodities Act.

There is little comfort to those who deal on both ends of the fruit and vegetable industry in the fact that a relatively large percentage of the total dollar volume of business transacted is carried out in a fair and equitable manner, when they have been a target for the opportunists and the advantage seekers who either fail to pay promptly or who never pay at all.

It would be extremely unfortunate for those who presently transact their business fairly to view the proposals before this committee today as any sort of a blanket condemnation of an entire industry.

In your search for justifying the need for these proposed amendments to the PACA Act, one need only look as far as the recorded actions of the appropriate regulatory branch of USDA to discover the losses suffered by handlers over a year's time, for any multiple of 1 year that you choose.

In some cases, just one act of violation amounts to millions of dollars lost by handlers who trusted the integrity of both the one with whom they had dealings, and the PACA Act, to protect them from loss. In many instances, neither provided adequate protection.

Skyrocketing costs of producing agricultural products in today's economy does not allow any latitude for writeoff of uncollectable receivables whether you are a producer-shipper of cabbage in North Carolina, a producer-shipper of Oregon onions, or a producer-shipper of potatoes in California. The difference between profit and loss can oftentimes be traced to one truckload or one carload.

If I were a receiver and merchandiser of agricultural commodities, it would be of the greatest interest to me to assure that my competitor in the Nation's marketplace was playing by the same set of rules.

Imagine two receivers who each buy and sell commodities valued at \$5 or \$10 million each year. One pays on time constantly. The other holds payment an average of 90 to 120 days. Today's interest market assures him a competitive advantage over the receiver who conducts his business with honesty and integrity.

I believe it is essential here and now to establish need for this legislation and to place it in its proper perspective, and I would like to reemphasize that it is primarily the relatively small independent grower-shipper who needs the additional protection provided by these proposed amendments.

Certainly, huge marketers such as Sunkist Growers, Tenneco, R. T. French, and many others, need not operate in fear of retaliatory action; nor do I imagine that prompt payment for goods sold is too much of a problem, for, in this instance, we have more or less of a tossup on who needs who to transact business.

However, if I were to decide tomorrow that the only available market for the 65,000 hundredweight of potatoes, that I presently hold in storage, was by packing and shipping them to market, I seriously question:

1. Whether I would receive prompt payment; 2. Whether I could afford the luxury of filing a complaint; 3. Whether I would receive payment at all or not.

It is not impossible to imagine that equitable long-distance transactions could be held between two parties in the complete absence of any statutory obligation, provided that prospects for future business needs were equal.

Any attempt to analyze the detrimental impact that the problem of slow pay has on the fresh fruit and vegetable industry would have to include consideration of the influence it has on the industry's business rating system, such as Red Book or Blue Book.

This system includes, among other criteria, the business firms' promptness in handling their accounts. Consequently, those with high four-star ratings are blessed with far more potential customers than they have need for.

The end result is that we have price offerings based more on the supply-demand ratio of buyers and sellers than the supply-demand ratio of the commodity being traded. In other words, it tends to further spread the already notorious in-balance of buyers to sellers.

To place undue restrictions upon the freedom of entry into private business enterprise is as objectionable to me as it is to anyone. However, it is a function of government to provide protection for those who are engaged in our free enterprise system from those who would exploit it.

In conclusion, let me reiterate. The proposals before this committee today are primarily to assist the small business entrepreneur and to help insure his survival as an important part of our food marketing system.

Mr. Chairman, that concludes my prepared statement.

I have just a few observations.

There have been, in this hearing room today, many statements alluded to as a result of the industry advisory committee meeting in San Francisco.

I have a few quotations that I would like to enter into the record at this time. These are from the same mediums and I think they might give you a better picture of what may have occurred at that industry advisory committee meeting.

One point which can be illustrated very markedly is this. There is a statement made by Mr. Jack Gardner, Chief of the PACA Division of the Department of Agriculture, before the brokers' division of the United Fresh Fruit and Vegetable Association at that meeting in San Francisco.

Mr. Gardner's statement, as reported by the Packer newspaper, a trade journal, was, and I quote: "PACA complaints used to average \$150. But today they are averaging \$1,500. That is using other people's money."

Other illustrations will be a statement by Harold Hostermann, manager of the Red book, which is a business-rating company. This was at that recent meeting.

Mr. Hostermann's statement was, and I quote: "Slow-pay has become worse in the past year. In past years, firms that historically paid slowly, kept paying slowly or even slower. In 1975, however, some firms with good reputations have paid slowly."

Another quotation, another statement made by another gentleman at that industry advisory committee meeting was made by Mr. Walter Lindsey, head of the Produce Reporter Co. He said, "Blue Book surveys showed that shipments not paid for until 3 or 4 weeks after arrival have climbed to 21 percent of total shipments in 1975, compared with only 13 percent 5 years ago. Shipments remaining unpaid after more than 30 days jumped to 8 percent of all shipments in 1975, compared with 3 percent 5 years ago."

So those are the kinds of statements, Mr. Chairman, that we have from the industry advisory committee meeting.

That concludes my statement.

Mr. VIGORITO. Thank you.

Mr. Symms?

Mr. SYMMS. Thank you, Mr. Chairman.

I am sorry I was not here when my other people from Idaho testified.

Earlier the question was asked about possible cost increase. Would you agree that there might be cost increases as the gentlemen, Mr. Smalley and Mr. Pedersen said earlier? Can you see this problem?

Mr. PARR. I would not be qualified to speak to that.

As to the cost increases which have been extrapolated by the Department of Agriculture, that is, based on the increased license fees because of the increased regulatory action, I seriously doubt that that would occur at the level that the Department is declaring.

Mr. SYMMS. As a grower, I think you know that ultimately the market price can only carry so much of the processing costs and remain competitive.

So, ultimately, it must come out of somebody somewhere down the line when your costs seem to be the only variable in the amount of money the grower can get. Everyone else ends up getting more. Freight rates are fixed, and it costs a certain amount of money to run a packing line, labor costs, and so forth.

I wonder, in looking at this from a potato grower's point-of-view, if we do something along this line, where is that increased cost going to come from? Who is going to pay for it?

There is a limit on the free market. People do not have to buy potatoes. Those of us from Idaho wish they did, but they do not have to. They can buy rice or wheat or something else. They do not have to eat processed french fries or whatever the product is. There is a variety of choice in the market place.

So, as it reaches the maximum that it can bring in a grocery store, and if the competition holds it down, then, if you increase the cost of production, who is going to pay for it?

The grower may end up being the guy who receives less money.

That is my question.

Mr. PARR. Congressman, if you are referring specifically to the cost of license fees for holding a PACA license, then I seriously question any increase to regulatory action or its resultant increase in license fees. I do not think that would result in an increased cost to the consumer.

I am glad that you mentioned that, as a producer, I am the only one with variable costs. I might add that that variable seems to have only one direction—mostly up.

So I am glad that you asked that question.

Insofar as commenting on the statement that was made by Mr. Pedersen, as it relates to a possible shift in freight rates, I am simply not qualified to speak on that. But, insofar as it relates to a license fee, certainly an increase in license fees to cover the cost of regulatory action would not be insurmountable and would be absorbed either on the production end or the processing end.

This just does not amount to that much.

Mr. SYMMS. I have another question which I would like to ask you.

I know you have the reputation for being one of the best growers. What about the guy who grows an inferior quality potato? Is there not something in this legislation in the way it is now written that might force the processor to accept his products?

As a good grower, we do not want to get involved in that, do we?

Mr. PARR. I can see nothing in the proposed legislation that will require that. I guess I will have to add this.

The producers in Idaho have been fortunate in that the processing industry in Idaho is an extremely stable industry. The relationship of processors to growers in Idaho has been good.

As far as I know, there have never been any losses or any complaints registered in Idaho about slow pay or no pay. This is insofar as it concerns the processing industry.

To answer your question, I would say that I can see nothing in the proposed legislation. So my answer would be no.

And I can see nothing in the proposed legislation that would indicate that there is any necessity for PACA, under the proposed amendments, to interfere into the normal contract negotiation process. I cannot read that in the legislation.

Mr. SYMMS. Thank you very much, Clarence.

I would like to go back, Mr. Chairman, for a moment on that price issue of increased cost.

I inadvertently walked out during Mr. Pedersen's testimony. He made mention of the fact of the increased cost and then Mr. Smalley talked about the possibility of increased freight rates.

For us in Idaho, it is an important thing. The freight rate question is an important thing because we are a longer way from the big markets than Mr. Bergland's district is, or somewhere else around the country. It does have a big impact.

I do not want that to be in the record in any way that might be misunderstood.

I think Mr. Pedersen's point was that, if you have the graduated fee, then there could be the additional cost. He is asking for a uniform fee.

Do you, as a grower, agree with the uniform fee rather than the graduated fee? That is the point I want to get at. They would not have to go through a lot of bookkeeping and redtape to satisfy the Government.

Mr. PARR. The question, to me, gets down to a moral obligation.

I do feel in my mind that large handlers, that is, extremely large handlers, certainly should have more obligation to support this act, and the administration of this act, which is self-regulating and self-supporting insofar as cost to the Government. I feel that a large handler certainly should bear more of that responsibility than a very small handler.

That would be, as I say, a moral obligation.

Mr. SYMMS. I am sympathetic with you as a grower. My concern is, that if you keep increasing the cost, then where is the large handler going to get the money other than from the grower? He really does not have any money except out of the market. Isn't that right?

He is not a potato handler.

Mr. PARR. I can appreciate that concern. But, at the same time, I have a great deal of concern for a small grower-shipper in Wisconsin who enters his product into the marketplace and then cannot receive payment on time or never receives payment at all.

I think that it would behoove this committee to dig up the facts from the USDA. I know of one offhand—one receiver of fruits and vegetables who went bankrupt a couple of years ago owing the industry some \$3 million.

There ought to be a way to avoid this.

It has a depressing effect on the whole industry.

Mr. SYMMS. I appreciate your testimony.

Mr. VIGORITO. Thank you very much, Mr. Parr.

Our next witness will be Mr. Vernon James.

STATEMENT OF VERNON JAMES, NORTH CAROLINA POTATO GROWERS ASSOCIATION

Mr. JAMES. My name is Vernon James. I am a grower-shipper of potatoes and cabbage. I have been requested to appear before this committee by the North Carolina Potato Growers Association. I am a member of the United Fresh Fruit and Vegetable Association, and I also serve in the North Carolina Legislature. I am a licensee under the PAC Act.

I am appearing here today to support H.R. 10988 and H.R. 9288.

The first amendment which would bring the processor of frozen potato products under the PAC Act would not affect me directly but it would have a secondary effect since all potatoes marketed, regardless of where there are sold, have an influence on the marketing of all other potatoes being marketed at the same time.

I would like to speak generally about the next three amendments. First, they would make it unlawful to do what has become a rather common practice in the fruit and vegetable industry, and that is the threat of reprisal if the country shipper or grower does not agree to an adjustment in price. As a shipper of perishable commodities I can speak from actual experience. This practice is used all the time. It is especially noticeable when the price has gone down between the agreement and the delivery of the load. Often the threat is a simple take it or leave it—with the seller usually taking the cut and saying nothing about it. The load is out of his control; he doesn't have another buyer; the product is subject to perishability; he has to take it. These discounts are referred to in the trade as market rot. In truth, they are unfair and uncalled for price adjustments made under threat of retaliation. I recognize that some charges of reprisal or prejudice would be hard to prove but many cases can be proven and making it unlawful will stop some of the open and flagrant actions as they are today.

Second, the little farmer or small shipper doesn't have a chance. If his name appears on a complaint filed with PACA he just as well close up and get out. To him that is the same as signing his death

warrant. A complainant's name becomes common knowledge throughout the trade almost immediately. John Doe is a troublemaker, and that is all that is necessary.

If the PAC administration would pursue disciplinary action, even though the complainant is anonymous, it would stop a lot of the violations. When licensees know they can and will be subject to investigation, there will be far less violations occurring.

Testimony has been given to this subcommittee indicating it would cost almost \$4 million to maintain surveillance as proposed in section 5, and this total cost would be doubled the second year. These figures have been provided by the Department of Agriculture. They are false, misleading, and ridiculous. In the first place, the amendment does not require a full-blown audit. It says the Secretary shall "inspect" and not "audit". A preliminary inspection will quickly show if there are violations and that is all the law requires or that will be necessary.

In closing, Mr. Chairman, let me just make one observation. These three amendments will not affect any licensee unless he is a violator or has been charged with a violation. I am one of those licensees and I can assure you I would be much more careful if I knew I would be called to account for my violations. In the long run, there will be far fewer violations and the cost of administering PACA would be reduced. We would have a better industry and it would cost less money.

Mr. VIGORITO. Our next witness is Mr. Joseph Procacci, Garden State Farms, Inc., of Philadelphia.

STATEMENT OF JOSEPH G. PROCACCI, PRESIDENT, GARDEN STATE FARMS, INC., PHILADELPHIA, PA.

Mr. PROCACCI. Mr. Chairman, it is a pleasure to appear here to discuss the two bills you have before you for voting.

As a produce receiver over the past 30 years, my business has grown from a pushcart operation to a fair-sized packing plant and wholesaling operation. During this period, my company has transacted many millions of dollars of business by word-of-mouth—no written contracts.

My feelings with respect to H.R. 9288 and H.R. 10988 are as follows:

H.R. 9288—My company is in favor of uniform fees with a maximum fee of \$300.

H.R. 10988—Section 2: While this section is immaterial to my company, I feel that, if the potato farmers and shippers are having trouble with the processors, this might help them.

Section 3: We oppose.

Discriminatory treatment is against the Federal Trade Laws. Enforcement of this section would be impossible due to the perishability of fresh produce, and the price variations caused by the laws of supply and demand. The end result would be to harass small businesses.

Section 4: We oppose.

If this section were enacted, it would legislate away parties' rights to face their accusers.

Section 5: We oppose.

This section is especially distasteful. Repeat violators would be subjected to disciplinary action by the PACA to put them right out of business. Changing PACA into a surveillance statute is unwarranted and unnecessary.

PACA records reveal that the industry generally lives up to the code of fair trade practices as shown by the many thousands of shipments valued at \$18 to \$20 billion annually where disputes only arose in approximately 2,000 cases.

This section, if enacted, would substantially increase the PACA workload and require hiring more personnel and setting higher license fees.

The excellent job that PACA is performing on their present functions would suffer with the audit surveillance duties, since these extra duties would tend to reduce an outstanding group of professionals to a group of high-priced traveling bookkeeping clerks.

The receivers would also be burdened with having to provide support manpower to assist PACA auditors, thereby causing additional expense which would further reduce the very small existing profit margins. Naturally, we would have to pass this expense along to the consumers.

The produce industry utilizes two great credit organizations—the Blue Book and the Red Book—the bibles of the produce industry, which rate the financial ability as well as the integrity of everyone in our industry. These ratings are published weekly and are available to everyone in the industry.

All shippers review these ratings and have the option of either shipping open account or drawing a draft upon the receiver's bank, which guarantees payment. Receivers have an incentive to pay promptly to retain favorable ratings in the Red Book and Blue Book.

If our customers do not pay within a reasonable time, we discontinue selling to them. If we do not pay our farmers and shippers within a reasonable time, they discontinue selling to us. We do not feel that the Government agency should be used as a crutch to support poor business judgment.

Mr. VIGORITO. Thank you, Mr. Procacci.

Can you tell me what type of customers you have?

Mr. PROCACCI. We sell chainstores, purveyors, retailers, peddlers. We sell everybody. We operate five stores in the Philadelphia market.

Mr. VIGORITO. I have spent some time in Philadelphia.

Thank you very much.

Our next witness is Mr. Bernard W. Shaw, president of the Maine Potato Council.

STATEMENT OF BERNARD W. SHAW, PRESIDENT, MAINE POTATO COUNCIL

Mr. SHAW. Mr. Chairman and members of the committee:

My name is Bernard Shaw. I am a potato farmer from Limestone, Maine, and I am presently serving as president of the Maine Potato Council, a growers' organization of 1,000 farm units representing 1,300 farmers in Maine.

The Maine Potato Council is an association of potato growers from 19 districts throughout the State and is funded by a tax paid by growers to the Maine Potato Commission. The Council provides the claim service for growers in an effort to collect slow pay from various receivers and processors.

Our experience in Maine has been quite extensive with PACA over the last several years.

The 1971-1972 crop seemed to be the start of slow pay in Maine with claims involving some \$100,000. This was followed in 1972-1973 season by the same PACA licensee amounting to several hundred thousand dollars. A repeated violation in 1973-1974 followed with another processor involved in slow pay to growers in excess of \$2.3 million.

The season 1974-1975 brought a repeated violation by the same processor in which 136 claims were filed, the most of which were formal plus 36 on fresh pack of which \$751,000 was collected.

We presently have \$5.2 million owed growers from the 1975 crop, part of which claims have been filed for. Again, this was a repeated violation by the company. This company has filed for chapter 11 bankruptcy and is presently in debtor in possession with the courts. The likelihood of growers collecting even a small portion of this \$5.2 million seems very remote.

Our single basic cash crop in Aroostook County, where 95 percent of the potatoes are grown, is potatoes. Over the past 5 years, the cost of production has nearly tripled. To remove \$5.2 million from a population of 92,000 people within Aroostook County has a drastic effect. Because of slow pay, extreme hardships have been imposed on many growers by PACA licensee over the past several years.

H.R. 10988, the proposal to amend the PACA, should help to alleviate many of the problems we have encountered with frozen potato products and very definitely make these fall within the jurisdiction of the act.

I refer to section 3, subsection 8, as recommended, would protect growers who had filed a claim with PACA from any unfair practices or harassment.

May I quote an example of this very thing last year in Maine. Officials of a large processing plant called a potato grower and informed him that, because he filed a claim against the company, "We're going to make you deliver the balance of your contract last," which would be several months later.

I direct this particular example to you, because we feel the amendment to the act will enable the administrators of the act to correct this unfair advantage.

Section 5, subsection 13, which deals with holding of a name in such complaints at the discretion of the Secretary, would encourage growers to the protection of the act and discourage the purchaser from taking unjust advantage as cited in the previous example.

The slow pay problem on the 1974-75 crop went on at least 3 months before growers had courage enough to file claims because of the two amendments mentioned above. The threat of reprisal was haunting many growers. This graphically characterizes the fear of growers and seriously inhibits filing of complaints.

Section 2, subsection 4: We submit had the proposed amendment been in effect directing the Secretary to review the accounts of a licensee who has previously violated the act, Maine growers more than

likely would not be owed \$5.2 million on accounts that are nearly a year old.

I particularly like the part of the amendment where the Secretary is directed by the word shall. Instead of a huge stack of formal complaints representing untold hours of claim service, and the many hours of work by the PACA staff in processing, action would have begun in the fall or early winter of 1974 rather than waiting for formal complaints to come in and be processed in April and May of 1975.

The Maine Potato Council feels that these additions to the now existing act are much needed and would greatly enhance the effectiveness of the administrators of the act. These changes in the act will not in any way affect those people who are abiding by the act, but simply correct those very few who are not.

I would like to make a statement in regard to the effect that it is my belief and the opinion of many people that an increase in the fees of the PACA Act should be effectuated, but we have some reservations because a great many of our growers are shippers and are small people, and we would like to see this kept to a minimum. I think the area of \$135 to \$150 would be an adequate fee.

I also noticed a number of remarks made, and I would like to answer one or two of them.

In the past, I have been president of the bargaining association in Maine. I have dealt with processors. I sell potatoes to fresh packers, and I have seen reprisals made on individuals who have filed complaints. I have verification of that and I can present it to you if you need it.

This does happen, gentlemen. It is not a fantasy in the industry. We are small people on small farms working hard in an effort to improve the industry itself. And, because we are small, we find it very difficult sometimes to see the fire. Sometimes we see the smoke before we see the fire, when different people are in trouble. There is no way for us to verify this, but there is a way for PACA to verify it.

When a violator violates the act, and PACA collects money in 1 year—and I am talking about \$2.3 million to growers which comes in months late—we start out a new harvest year and sell potatoes to this processor when we know he has problems. It is about 40 percent of our market in this particular area. Again we see smoke, and we report that smoke, but we have to have a formal complaint. Here is a violator who has once violated. It behooves me to see how an act such as we have in the PACA Act could not look into this fairly without completely auditing the books. I am sure they are very capable of distinguishing the facts of a well-run company from one that is in trouble.

I would be remiss if I failed to mention in closing the cooperation by PACA and its administrators, and particularly Mr. Gardner and his staff in working out the problems that we have had in Maine the past several years. We have found it a most useful tool, and a fair one. But it has to be revised from time to time; 40 to 45 years is a long time for a law to stand, and our business has changed fast. The cost of production for farmers has tripled, or nearly tripled, and we are talking of a great deal of money, and we think that this amendment to the act should be passed.

Mr. Chairman, I thank you for the opportunity to appear before you today, and I thank the committee.

Mr. VIGORITO. Thank you, Mr. Shaw.

Our next and last witness is Mr. Fred W. Burrows of the International Apple Institute, Washington, D.C.

**STATEMENT OF FRED W. BURROWS, EXECUTIVE VICE PRESIDENT,
INTERNATIONAL APPLE INSTITUTE, WASHINGTON, D.C.**

Mr. BURROWS. My name is Fred W. Burrows, I am executive vice president of the International Apple Institute with headquarters in Washington, D.C.

The Institute is the national trade association representing the apple and winter pear industries. Our membership encompasses about 13,000 commercial producers and many hundreds of the leading packers, shippers, f.o.b. sales agencies, processors, wholesale and retail distributors, brokers, exporters, importers and allied industry firms. Our members produce, handle and/or process over 90 percent of the U.S. apple crop and about 75 percent of the winter pear crop.

We appreciate this opportunity to present our views on H.R. 9288 and H.R. 10988.

I would just like to add this. There has been some discussion here with regard to the category of membership on the PACA Industry Advisory Committee, and whether grower representation is adequate. I am confident the produce industry would not oppose greater grower representation on that committee, but I would just like to point out that, of the nine shippers that are listed as shippers on that committee, five are growers, and one of the receivers is also a grower. In addition, two of the shippers who are listed on that committee are under the direct control of growers, and their salaries are paid by growers. So, I believe the committee has fair and reasonable representation by the grower segment of our industry.

History and experience clearly demonstrate that the act and the regulations have provided a fair, effective, equitable and relatively inexpensive system of handling unfair and fraudulent practices in the marketing of fruits and vegetables in interstate and foreign commerce.

Since the enactment of the act in 1930, the industry has enjoyed "law and order" contrasted to the chaos that existed prior to enactment. Most important, throughout the years our industry has found the PACA staff dedicated, remarkably fair and objective, and always ready to be helpful and cooperative.

We would emphasize that the PACA is not financed out of general revenues. The PACA is entirely financed from funds received from the license fees paid by the industry firms covered by the act.

The views of the IAI on H.R. 9288 were presented to the subcommittee on December 4, 1976. In essence, we support the continuation of a single, uniform license fee and would support establishment of a maximum amount of \$300 for this purpose (sec. 3(b) of the act). And hopefully you will pass the legislation soon because I understand they need some money over there.

The Secretary of Agriculture could increase the present \$100 uniform fee in the required increments up to proposed \$300 maximum. We understand that an immediate increase in the license fee to \$135 would allow the PACA to be self-financing and provide a modest, needed operating surplus. We urge early enactment of legislation to provide for a maximum uniform fee of \$300.

We strongly oppose a graduated fee system. It would be unnecessarily costly to administrate, unwieldy, and difficult if not impossible, to apply equitably and uniformly.

Our views on H.R. 9288 are identical with the position adopted by the PACA Industry Advisory Committee at its meeting in early February.

We are not opposed to section 2 of H.R. 10988 with regard to the coverage of interstate purchases by processors and the frozen potato products they manufacture within the provisions of the act. Interstate suppliers furnishing raw potatoes, processors selling frozen potato products, and buyers purchasing frozen potato products presumably would benefit from these proposed amendments, since they would be able to recover damages if they suffered injury because of a violation of section 2 of the act.

The IAI does not oppose including "frozen potato products" in the definition of a "perishable agricultural commodity."

Further, we do not oppose the proposed coverage of interstate purchases of raw potatoes by processors. However, it is conceivable if such a change is made for one perishable commodity (potatoes) that Congress will be asked to do the same for all such commodities, that is, the interstate purchases by processors of all fresh fruits and vegetables.

Such a change might be desirable. However, actually apple growers have experienced few, if any, unfair and fraudulent practices (sec. 2 of the act) on the part of processors involving interstate transactions. The solution is effective. The processor needs raw product. If a processor plays dirty, the word gets around fast to all growers in the area and the growers refuse to deliver or find other processing outlets.

As far as including frozen potato products in the definition of perishable agricultural commodities, we really do not have a position on it.

Section 3 of the bill carries antidiscrimination and antifavoritism clauses which propose regulation of the terms and conditions a buyer and/or seller could include in their contracts. The IAI strongly opposes the proposed amendment.

The PAC Act does not restrict the transacting parties in their negotiations to reach agreements on price or other factors they desire to include in the contracts. The supply and demand for fruits and vegetables can, and normally does, fluctuate widely in very short periods of time, and the prices and other conditions are negotiated based on the market conditions prevailing at the time the contract is consummated.

Enforcement of the provisions of the proposed section 3 would require that the PACA have knowledge of the intent of the transacting parties during the negotiations in order to determine whether discriminatory or preferential treatment was intended or contemplated. In our judgment, these proposed provisions are completely unenforceable and unnecessary.

Section 4 of the bill proposes that the Secretary may withhold the identity of a person who files a complaint to recover damages from a person who has engaged in unfair practices as defined in section 2 of the act.

The Institute strongly opposes section 4 of the bill.

To prevail in his claim, the complainant must identify the contracting parties, the provisions of the contract, assure that he met his contractual obligations, show that the contract has been breached by the respondent and that the breach has resulted in his suffering damages.

It is only commonsense that the respondent, in order to adequately defend his action or position, have full details of the complaint, including the identity of the complainant.

The ridiculousness of the proposal is further clarified by the fact that, if damages are to be paid, the name of the injured party must be revealed to the respondent.

Presumably, this proposal relative to identity, or withholding identity, stems from slow pay by processors to growers for raw potatoes.

Reportedly, a potato grower is afraid to file a formal slow-pay complaint against a processor because the processor will retaliate and not buy from that grower in the future or even at the present time. In our judgment, at least based on our experience in the apple industry, this fear is not valid.

In other words, if a processor over here in Winchester, Va., played dirty with slow pay, I can assure you that the 50 or 60 or 70 or 100 growers over in the Winchester area would know about it in a day or two, and they would go to that processor and tell him to either pay or they will form a complaint and that processor will not get the product.

I can assure you that a processor without raw product is not going to be in business long.

Sure, a processor could retaliate, or threaten to retaliate, against a single grower or a few growers. However, a processor with a serious slow-pay problem is usually in financial difficulties, and his slow-pay actions involve many, many growers—possibly 100, 200, or even 300 growers—in the production area. That he is slow pay is well known to most, if not all, of his contracting growers and even with other growers.

All of the growers suffering damages from slow pay can jointly, or individually, file a complaint. If the processor retaliates—presumably against all the complaining parties—he is, as I said, without raw product to process. It is only economic commonsense that the longer the growers involved with supplying raw product to a processor with slow pay and financial problems hesitate to take positive action, the more they will lose.

Section 5 of the bill would change the PAC Act into a statute requiring constant surveillance of licensees' business operations. The surveillance, in our judgment, would be unnecessary and very costly.

The PACA authorities estimate the proposed surveillance audits would require an additional \$8.9 million a year, or a total cost of \$10.8 million; six times the present costs. A minimum license fee of \$800 would be needed to defray the PACA expenses.

In closing, we reemphasize that the IAI is strongly opposed to sections 3, 4, and 5 of H.R. 10988.

Mr. Chairman, that concludes my testimony.

Mr. VIGORITO. Thank you, Mr. Burrows.

Mr. SYMMS. Fred, I see where you do not oppose putting frozen potatoes in. The frozen potato boys can get out from under FDC and they would be better off?

Mr. BURROWS. I am not knowledgeable on that. In other words, we are talking about the processor of frozen potatoes selling to or through a broker of the manufactured product. They both would have recourse to each other, if there was coverage under the act. There is not coverage now.

By the same token, a frozen apple processor might say that he wants to put frozen apple products under the act also.

I do not think the growers, at least, would take a position on it. I think the frozen processors would say——

Mr. SYMMS. I was being facetious.

The FTC demonstrated against private enterprise in general, and everybody might be glad to be over at the Department of Agriculture.

Mr. BURROWS. That is very funny. I cannot answer that.

Mr. VIGORITO. Thank you, Mr. Burrows.

Mr. BURROWS. Thank you, Mr. Chairman.

Mr. VIGORITO. At this point in the record we will include a statement by Mr. Richard Thornton, from central California, unless there is an objection.

Hearing none, it will be included in the record.

Also for the record, we have a statement from the Honorable William S. Cohen, Congressman from the State of Maine. Without objection, that statement also will be included in the record at this point.

[The prepared statements of Richard Thornton and Hon. William Cohen follows:]

STATEMENT OF RICHARD THORNTON, EXECUTIVE VICE PRESIDENT, GROWER-SHIPPER VEGETABLE ASSOCIATION OF CENTRAL CALIFORNIA

My name is Richard Thornton, and I am the Executive Vice President of Grower-Shipper Vegetable Association of Central California, an association whose members are engaged in the growing and shipping of fresh vegetables from origins in the state of California. On behalf of Grower-Shipper Vegetable Association of Central California, and its members, this statement is presented in opposition to H.R. 10988. It is the position of this organization and its members that H.R. 10988 contains provisions which are extremely detrimental to growers and shippers of fresh vegetables. The Act in its current form has produced a satisfactory and workable system for the resolution of disputes. The proposals contained in H.R. 10988 will distort that system and will prevent the fair and equitable airing of all facts pertinent to a particular dispute.

Section 4 of the bill would permit the Department of Agriculture to keep the names of parties filing a complaint secret during the pendency of a Section 6 dispute. There are several problems with this proposal, not the least of which is the fact that the proposal is contrary to the basic tenets of our legal system. Additionally, we believe the proposal would be totally unworkable in that it would inevitably prevent a party from responding completely to a complaint lodged against it as a result of the secrecy concept. In a Section 6 proceeding the role of the Department of Agriculture is to act as intermediary between the two parties in an attempt to settle the dispute and effectuate payment. The Department will be unable to satisfactorily perform that task because of the obligation it will have to withhold information from the party against whom the complaint is lodged. It should also be pointed out that we know of nothing in the industry's experience under the current Act which would indicate that such a requirement is necessary.

Section 5 presents substantial problems and threats to the industry as well. Naturally, shippers are interested in assurances that individuals who violate the Act will not do so in the future. The industry is not however, facing such a monumental payment problem as to require an audit system which essentially amounts to harassment. It is also important to keep in mind that the Act is industry funded.

The extensive reporting requirements envisioned by Section 5 and the accompanying paper work would undoubtedly add to the financial burden placed upon industry members under the Act. It has been estimated that if this bill is enacted, the Department of Agriculture will be required to perform 2,000 to 3,000 audits in the first year and that the audit requirements will double in the second year. Obviously substantial additional expenses will be incurred, all of which must be borne by the industry. Once again, it is submitted that current experience under the Act is such that the need for an enormous additional burden such as this has not been demonstrated.

For the foregoing reasons the Grower-Shipper Vegetable Association of Central California, respectfully urges that this Committee not report H.R. 10988 because it is unnecessary and unduly burdensome.

STATEMENT OF HON. WILLIAM S. COHEN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MAINE

Mr. Chairman and members of the subcommittee, I am grateful for this opportunity to testify in support of H.R. 10988, a bill which proposes several important changes in the Perishable Agricultural Commodities Act of 1930. Since the Subcommittee has already received extensive testimony in favor of this bill from representatives of the Maine potato industry, I will not needlessly consume my colleagues' time by restating in detail why potato growers in my State consider prompt enactment of this bill to be absolutely essential. Let me simply indicate that the statements of Mr. Basil Fox of Washburn, Maine, and Mr. Bernard Shaw of Limestone, Maine, accurately depict the need for this or similar legislation. I am confident that the remarks of these two gentlemen, who advise me on agricultural matters, will be carefully considered.

In endorsing H.R. 10988, the Maine and National Potato Councils are seeking legislative recognition of two important facts: namely, that the PAC Act needs to be adapted to the realities of present day marketing practices and that it has failed on far too many occasions to protect the interests of hundreds of potato growers who do business with PACA licensees. The very serious "slow pay" problem in Maine which was discussed in the testimony of Messrs. Fox and Shaw is conclusive evidence that changes are badly needed in the PAC Act.

I am as reluctant as any of my colleagues to extend the reach of the federal regulatory structure into the operation of the marketplace. In no way do I wish to needlessly burden with unnecessary regulations the thousands of PACA licensees who are fully complying with the law. However, I believe that we must recognize that hundreds of small potato producers have suffered severe economic damage under the existing arrangement, and that the Congress has an overriding responsibility to correct this injustice.

Growers are not seeking an unfair advantage in their business dealings with receivers and processors by advocating enactment of H.R. 10988. To the contrary, they seek only to minimize the risks inherent in farming and correct the glaring deficiencies in the present law which continually work to their disadvantage and drive them out of business. When a grower does not have the capital to buy fertilizer and seed to plant in the spring *solely* because he hasn't received payment for the crop he marketed months earlier, it's obvious that the PAC Act fails to balance his rights against those of the receiver or processor. And when this occurs, it is only a further signal to the grower that the Federal government is insensitive and unresponsive, and more concerned with procedures and forms than with helping people.

Mr. Chairman, passage of H.R. 10988 or similar legislation would be a clear signal to hundreds of potato growers that the Federal government is not insensitive to their plight. Such an action would restore a proper balance to the business relationships of growers, receivers and processors—a relationship which is presently heavily weighted in favor of the latter groups. Finally, enactment of this bill would send a strong message to PACA officials in the Department of Agriculture that the Congress is profoundly disturbed over their seemingly indifferent attitude toward the problems of the small potato grower.

In sum, H.R. 10988 seeks to redress the inequities and inadequacies of the present PAC Act, and I strongly urge my colleagues on the Subcommittee to take favorable action on this bill.

Mr. VIGORITO. That concludes our hearings for today.

The subcommittee is adjourned subject to the call of the Chair.
 [Whereupon, at 4:30 p.m., the subcommittee adjourned.]
 [The extraneous material submitted to the subcommittee follows:]

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION

(By John C. Datt, Director, Washington Office)

The American Farm Bureau Federation appreciates the opportunity to comment on H.R. 10988, a bill to amend the Perishable Agricultural Commodities Act of 1930.

Farm Bureau is the largest general farm organization in the United States, with 2,505,258 members in forty-nine states and Puerto Rico. It is a voluntary, non-governmental organization, representing farmers who produce virtually every agricultural commodity that is produced on a commercial basis in this country. Many of these members are commercial producers of fruits, vegetables, and potatoes and are directly affected by the Perishable Agricultural Commodities Act.

The importance of the Perishable Agricultural Commodities Act to Farm Bureau members was underscored by adoption of the following policy by the voting delegates of the member state Farm Bureaus at our 1976 annual meeting, which was held in St. Louis last month.

"PERISHABLE AGRICULTURAL COMMODITIES ACT"

"We recommend that the administration of the Perishable Agricultural Commodities Act include constant and improved surveillance and supervision of trading practices in the purchase and sale of perishable agricultural commodities.

"We support strengthening the Perishable Agricultural Commodities Act (PACA) to ensure prompt payment to producers.

"PACA should include authority, similar to that of the Packers and Stockyards Act, to require payment to producers within two business days of delivery unless other provisions are made in a written contract. The Act should be amended to include honey and vegetables for processing, including potatoes."

Farm Bureau members have recommended amending the Perishable Agricultural Commodities Act to include, "honey and vegetables for processing, including potatoes." Sec. 2 of H.R. 10988 adds "frozen potato products" to the list of commodities coming under the Act's definition of a perishable agricultural commodity. Farm Bureau supports this amendment; however, we urge the Committee to amend the wording by adding the words "and processed potato products." This would give PACA protection not only to growers who produce for the frozen potato market, but also to those that produce for the canned and chipping industries.

Farm Bureau members on numerous occasions have discussed the problem of producers being hesitant to file a PACA complaint because of possible future reprisals by handlers. The language in Sec. 4(a) speaks to this concern and, if enacted, would help producers to utilize the Act as originally intended.

The amendments in Sec. 4(b) offer greater assurance that commission merchants, dealers, and brokers will do business in accordance with the Act. Producers are becoming more concerned with the number of defaults in the handling industry. This language would provide more assurance with reference to the financial position of handlers, especially those that have been found in violation of the Act.

Farm Bureau feels that the amendments offered in Sec. 3 and 4 of H.R. 10988 would increase protection for producers and improve the functioning of the Perishable Agricultural Commodities Act in the best interests of the entire industry.

Therefore, Farm Bureau supports H.R. 10988.

We would also like to call to the attention of the Committee our statement submitted on December 4, 1975 in support of H.R. 9288, which deals with PACA license fees. Our position on H.R. 9288 remains the same as outlined in that statement.

We appreciate the opportunity to present our views on these issues which are of great importance to fruit, vegetable, and potato producers.

CERNIGLIA PRODUCE CO.,
Forest Park, Ga., February 25, 1976.

JOHN J. FLYNT, JR.
U.S. House of Representatives,
House Office Building, Washington, D.C.

DEAR MR. FLYNT: This letter is in reference to the hearing of the Subcommittee on the Perishable Agricultural Commodities Act on Bill 9288 and Bill H.R. 10988. I was originally scheduled to testify at the hearing but because of unforeseen circumstances am unable to appear at the appointed time. However, it is my desire to have my views as set forth in this letter become a part of the record, if that is possible.

I represent a third generation in the wholesale distribution of fresh fruits and vegetables and my views, therefore, are based on old and sound practices.

Bill 9288. I support this bill.

Bill H.R. 10988. Section II. I have no contest with the definition change as amended.

Section III. Our industry is still run on the "supply and demand" rule and the hope of every businessman to make the largest possible profit on his time and efforts while keeping within the boundaries of fairness to the consumers. A set price would seem to definitely rule out possibility of the consignee to obtain top prices for consigned merchandise. This would, in effect, be detrimental to getting the most money for the farmer that consigned the merchandise in the beginning. It would also be in restraint of fair trade.

Section IV. I feel that a complaint against any firm should be dignified by an accuser's name. It is possible a complaint could be resolved before coming before the PACA if the firm being complained against is confronted by the complainant. This section would tend to make PACA a collection agency rather than a regulatory branch.

Section V. This section is ludicrous. Books being investigated every three months for two years would necessarily result in more manhours spent by the PACA and increased overhead which would have to be absorbed somewhere and where else but by the small man. Pending legislation of this sort seems hardly worthy of comment and should never get out of committee.

I appreciate your taking time to read this letter and for any consideration given to it.

Respectfully,

JOSEPH A. CERNIGLIA, Jr.

STATEMENT OF MELDON B. ANDERSON, EXECUTIVE MANAGER, IDAHO GROWER SHIPPERS ASSOCIATION, INC., IDAHO FALLS, IDAHO

The Idaho Grower Shippers Association is a voluntary, non-profit trade association with a membership composed of growers, grower-shippers, shippers and processors of Idaho potatoes. Our members grow nearly 100,000 acres of potatoes annually and handle in excess of 85% of all potatoes and potato products shipped from Idaho into the channels of interstate commerce.

The PACA Act in its present form, while not perfect in all respects, has been a valuable code of fair trading standards and practices for our members; however, H.R. 10988 which proposes to amend the Perishable Agricultural Commodities Act, appears to us to complicate and, therefore, weaken these standards and their effectiveness rather than improving the Act itself. More specifically, we are opposed to Sec. 3, Sec. 4, and Sec. 5 of H.R. 10988 as follows:

1. Sec. 3, as we understand it, would make it unlawful, "to extend or cause to be extended to any grower or other person any undue, unjust, or unreasonable preference or advantage in any respect whatsoever; or to subject, or cause to be subjected, any grower or other person to any undue, unjust, or unreasonable prejudice or disadvantage in any respect whatsoever."

While the rhetoric of this section is fine, its actual meaning and application to the highly competitive and perishable produce industry is questionable and unclear to us. If its intent is to equalize the growers it simply won't work because of the nature of the produce industry. It is one of the few remaining areas of our economy where the trading is subject to all the forces of a supply and demand market system. This market system accommodates itself to forces that it does not control which often results in a wide range of price fluctuations and, therefore, discrimination such as that envisioned by Sec. 3 of H.R. 10988 would not only be difficult to substantiate but also impossible to administer. Within the framework

of this market system, the handler must be able to acquire supplies of raw product competitively, based on quality, business history of the individuals involved, and future projections of business in general.

2. Sec. 4, which provides that upon written request of the complainant, the Secretary may withhold from public disclosure identifying information about the complainant strikes at the very heart of our understanding of equal responsibility and protection under the law. While there are situations where our members would like to remain anonymous in filing a complaint under the PACA, the consensus of our membership is that the expediency of hiding behind a cloak of anonymity could lead to irresponsible complaints and their proliferation which in turn would result in an intolerable situation for all concerned.

We know of no other regulatory areas where a person does not have the right to know the identity and confrontation of his accuser.

3. Sec. 5, orders the Regulatory Branch which administers the PACA Act to audit quarterly for a two year period the books of any licensee found guilty of a slow pay violation.

According to John J. Gardner, Chief on the Regulatory Branch, "938 firms were found guilty of prompt pay violations in fiscal 1975. Under the proposed law, the branch would have to audit each one of these four times a year for two years. Combined with other violations that are expected to take place in 1976, he estimated it would take 7,500 audits per year, at \$1,000 per audit to do the job. Three hundred people would have to be added to the Regulatory Branch staff and license fees would shoot up to \$800 per year." (Feb. 14, 1976 issue of The Packer).

Our industry could not bear this kind of a cost increase in the license fee, nor do we favor supporting a bulging bureaucracy necessary to comply with Sec. 5. Any increase in license fees could be better used in enforcing the current Act, especially in the area of misbranding where current resources allow very little positive effort.

The idea that a firm's books should be opened up to the Secretary or his duly authorized agent for a period of two years in order to insure the prompt payment provisions of Section 2(4) of the Act goes far beyond the intention of the PACA in our opinion and this expansion of authority would lead to excessive regulation of the produce industry.

In regard to H.R. 9288 which is also under consideration by this committee, we support a single, uniform license fee with a \$300 maximum in the law. The PACA-Industry Advisory Committee of the United States Department of Agriculture has recommended that a uniform annual fee of \$135 be set immediately for those licensed under the Act. We support this recommendation.

STATEMENT ON BEHALF OF THE NATIONAL ASSOCIATION OF RETAIL GROCERS OF THE UNITED STATES

(by Frank D. Register, Executive Director)

The National Association of Retail Grocers of the United States (NARGUS) wishes to present comments, in addition to the testimony that was given before the Subcommittee on December 4 concerning H.R. 9288. H.R. 10988 was subsequently introduced after NARGUS testified. NARGUS is a national nonprofit trade association representing approximately 40,000 owners and operators of local retail food stores.

NARGUS reaffirms its strong opposition to H.R. 9288. Congress should not delegate to the Secretary of Agriculture uncontrolled discretion to set the amount of the Perishable Agricultural Commodities Act (PACA) license fee. Congress should retain the power to establish the maximum PACA license fee. Food retailers feel better represented by Congressmen who are their elected Representatives than by appointed bureaucrats. Congress has maintained this authority for over 45 years and no reason has been offered as to why Congress should surrender the right to determine maximum PACA fees.

NARGUS supports the power of Congress to set the maximum fee. On June 24, 1975 representatives of the U.S.D.A. testified before the House Agriculture Subcommittee on Department Operations that an increase in the license fee from the current \$100 to \$125 would enable the PACA fund to operate through fiscal year 1979, with \$667,580 remaining at the end of 1979. U.S.D.A. officials testified before this subcommittee on December 4, 1975 revising their estimates. A license fee of \$135 was projected to enable the PACA fund to operate through fiscal year

1979 with a surplus of \$696,500. NARGUS opposes any increase in the license fee beyond \$135. Setting a maximum license fee of \$135 would enable Congress to retain oversight of the PACA program concurrently with review of the license fees in three or four years. NARGUS opposes setting the maximum above \$135 since a higher limit, such as tripling the fee to \$300, would tend to postpone periodic Congressional oversight.

NARGUS continues to believe that the perishable Agricultural Commodities Act is unnecessary government regulation so far as the Act extends to food retailers purchasing perishable agricultural commodities solely for retail sale from a PACA licensed wholesaler. The licensing of food retailers buying from licensed wholesalers is unnecessary for government regulation designed to protect growers and shippers. Retailers have continuing daily commercial relations with their wholesalers that do not require government control.

NARGUS strongly urges that if the maximum PACA fee is raised from the current \$100 that the Subcommittee appropriately raise the retail exemption to at least \$175,000. The current PACA license is not required if the invoice cost of a retailer's PACA purchases do not exceed \$100,000. Since 1969, when the retail exemption was raised from \$90,000 to \$100,000, the wholesale food price index for fresh and dried fruits and vegetables has increased approximately 68.4 percent. Just to keep up with the rapid rate of inflation the retail exemption should be increased to at least \$175,000.

On February 4, 1976 the Department of Agriculture testified in opposition to H.R. 10988. NARGUS supports U.S.D.A.'s position for fundamental reasons. H.R. 10988 would expand governmental regulation to unworkable limits, requiring additional administrative personnel and rules that would cost far more than the benefits hoped to be derived. NARGUS believes the need to expand the scope of the Perishable Agricultural Commodities Act as proposed under H.R. 10988 has not been clearly established.

H.R. 10988 would expand the coverage of PACA to frozen potato products. The inclusion of frozen potato products would cause invoice cost increases that would further erode the value of the retailer exemption. The more products included the less the retail exemption would retain its original worth. The inclusion of frozen potato products would serve as a precedent for requests to have other frozen processed food products covered under PACA. The result would be more government regulation not less.

Section three of H.R. 10988 prohibiting unjust or unreasonable preferences in connection with perishable agricultural commodities would be unworkable. The perishable agricultural commodities market and product conditions fluctuate weekly, daily, and hourly. Supply and demand vary as the day progresses. Buyers must be free to bid higher and lower because of deterioration in quality, freshness, and supply. Distress sales to move perishable products are frequent. Section three would be a broad expansion of government regulation into the terms of a contract. PACA should remain primarily concerned with contract performance.

Section four would permit the Secretary of Agriculture to withhold a complainant's name from disclosure. An accused certainly should be afforded the right to know who his accuser is in order to adequately defend himself. Further, in order to remedy a complaint the name of the accuser is absolutely necessary to assure that the relief offered is appropriate. Section four poses questions of due process and is opposed.

Section five is unnecessary. Currently, PACA licenses are subject to revocation or suspension. Revocation of a license puts an operator out of business and is more effective than any burdensome auditing procedure.

In conclusion, NARGUS opposes H.R. 9288 and H.R. 10988. NARGUS supports the power of Congress to set the maximum PACA license fee. NARGUS urges that the PACA license fee increase be limited from the current \$100 to \$135. A PACA license fee of \$135 would enable the program to function through 1979. Congressional oversight could be conveniently held at that time. In conjunction with increasing the PACA license fee, NARGUS believes the retailer exemption should be raised to at least \$175,000 to compensate for inflation.

NATIONAL FOOD BROKERS ASSOCIATION,
Washington, D.C., February 18, 1976.

HON. JOSEPH P. VIGORITO,

Chairman, Subcommittee of the House Agriculture Committee on Domestic Market and Consumer Relations, Cannon House Office Building, Washington, D.C.

DEAR SIR: The National Food Brokers Association was represented in testimony before your committee in regard to H.R. 9288, dealing with the Perishable

Agricultural Commodities Act. NFBA President Emeritus Watson Rogers testified on our behalf on December 4, 1975. As your committee is continuing its hearings on PACA, this time on H.R. 10988, we wish to expand our statement for the record as follows, and to reaffirm the position outlined for us by Mr. Rogers.

We want to discuss the provisions of H.R. 10988 as follows. In regard to Section 2 of the bill, the NFBA recommends that there be no expansion of products covered by the PACA. In our opinion there is no justification to include frozen potato products under PACA. In the first place we do not believe any substantial need has been established to require such a major change from the well established and clearly defined list of covered fresh (and frozen) fruits and vegetables. We believe the Congress would want to be reluctant to add new products to the scope of the law unless there is a clear need for such additional regulation—such need clearly established to be in the general public interest. We do not believe that this has been clearly established.

It is our understanding that the U.S.D.A. has come out against such additional coverage. We believe their position is the correct one. We should also point out that any additional coverage would require additional manpower and this could further aggravate the financial position of the department in needing additional funds to administer PACA.

Further, we believe that to add frozen potato products could be the first step toward requests to include other frozen prepared food products which have as their base perishable agricultural commodities. With such a precedent there is no limit to the broad coverage to which this could lead—all in distinct contravention of the basic purpose of the Act. As Congress wisely decided when it passed the Act it is to cover fresh fruits and vegetables only, whether in fresh or frozen form.

We also view as a dangerous and unwarranted expansion of regulation the Sections 3, 4, and 5 of H.R. 10988. These, we believe, go beyond the compliance powers needed by the U.S.D.A. to enforce the Act. We repeat the statement made by Mr. Rogers in his previous testimony, in that we have every confidence in the integrity and the devotion to duty of the present personnel in U.S.D.A. who administer the law. However, Congress must also plan for future contingencies. The kind of power proposed in this bill could, in the wrong hands, prove disastrous to the very people the provisions of the law are supposed to protect.

Section 3 of H.R. 10988 treats discrimination or preferential actions as a violation of the Act. We believe this section is totally unnecessary. The present PACA fully covers the area of discriminatory and disruptive practices in contractual performance by buyers and sellers. U.S.D.A. officials themselves have testified that their responsibility under PACA is to promote contractual performance.

The constantly changing conditions in the fresh fruit and vegetable industry force buyers and sellers to follow closely pricing patterns which are established by supply and demand conditions, in accordance with the practices in the marketplace. There are clearly established laws of commerce and antitrust which apply to any violations. It would not be proper to establish still another agency within the Executive Branch to duplicate this kind of enforcement effort. This again could lead to the need for additional personnel and still higher fees for an agency which already is in need of additional funds just to maintain its present responsibilities.

The same problems exist for Sections 4 and 5 of H.R. 10988 which would create still further administrative burdens for PACA. They are not staffed for such activities, even if the need for them were clearly established, which it is not. The U.S.D.A. has gone on record as being opposed to these Sections.

While your Committee is considering PACA and the need for change, we strongly recommend that the Committee amend the law to increase the present \$100,000 exemption coverage of frozen food brokers to a minimum of \$175,000 (Section 1, Paragraph 7). This increase in the exemption is made necessary by the inflation in wholesale fruit and vegetable prices that has taken place since the time the present exemption figure was established. This increase would be in keeping with other actions by Congress to provide for the inflationary rise in prices. Congress has wisely recognized that statutory standards based on a constant dollar amount should be adjusted to take cognizance of the current inflationary affect on that standard.

At present for the smaller frozen food broker with a volume of frozen food products at the minimum the license is a burden. The result tends to discourage such brokers from selling frozen food products. This could hurt the smaller and regional frozen food packer in obtaining adequate sales representation. It also could make it more difficult for local distributors both wholesale and retail to obtain the variety of frozen food products their consumer customer would desire.

We want to emphasize again the statement made by our President Emeritus, Mr. Rogers, in which he pointed out the many reasons why frozen food brokers logically should not be covered under this Act in the first place. The processors for whom they act solely as sales agents are already licensed. Frozen food brokers are in this respect no different than the salaried sales people of the processors, who do not require such a license.

In closing we want to refer again to H.R. 9288, which relates to the PACA license fees. As we pointed out previously we believe Congress should set these fees, not the U.S.D.A. In regard to a fee increase, the U.S.D.A. presented income and expense projections. In their revised testimony on December 4, 1975 they stated that annual license fees of \$135.00 would enable them to operate through 1979 with a reserve fund of \$696,500.00.

Accordingly NFBA opposes a PACA license fee set in excess of \$135.00, for the period ahead. If in later years there is a need to revise this fee, U.S.D.A. should then be required to come back to Congress with proper documentation. This would provide Congress with the required oversight control which it alone should have, and periodically exercise.

Again Mr. Vigorito, we want to congratulate you and your associates on the Committee for your careful analysis of all of the factors as they relate to PACA. We are confident that your deliberations will result in fair and meaningful attention to the problems outlined.

Sincerely,

MARK M. SINGER,
President.

SUPPLEMENTAL STATEMENT OF DOYLE BURNS, EXECUTIVE DIRECTOR, THE NATIONAL POTATO COUNCIL, DENVER, COLO.

Since most of the testimony in the February 25th hearing which was in opposition to H.R. 10988 quoted freely from the previous testimony of Mr. Hedlund from U.S.D.A., we feel a closer examination of certain parts of that statement should be further analyzed.

The comments with regard to Section 2 are not in agreement with our understanding of that Section. It is our contention that only the fresh perishable potatoes sold to a freezer-processor should come under the Act. To require the finished product, namely frozen french fries, to come under the Act would be the same as putting potato chips or canned potatoes under the Act. It is not our desire to bring the frozen product under the Act, only the first transaction of fresh potatoes from grower to processor.

Under Section 4 of the Bill, the reparations complaint must have the name of the complainant. We have agreed to that as indicated in earlier testimony. Disciplinary complaints are different. This is where the anonymous complainant can help head off bankruptcies by limiting the licensee. As soon as he sees he is headed for bankruptcy he will take in as much product as he can get—even offering to pay higher prices.

In Section 5, the cost of this function has been exaggerated. There were 938 firms against whom complaints of slow pay were settled. Many and possibly most of these were settled with a telephone call or letter. No investigation was undertaken. If they were not investigated there would be no actual charge of violation, nor technically would there be a violation. Thus, you can readily see we are not talking about 938 inspections but probably no more than 100 to 300. Only the PAC Office could provide that figure. Secondly, the testimony chooses to disregard the language of Section 5. The amendment calls for an inspection, *not an audit*.

The inspection would be no more than an informal review of the licensee's accounts payable. The only determination that needs to be made is whether slow pay is being continued or not. That would take no more than one to three hours of time.

The key difference is an inspection as compared to a complete audit. Such audit would take 52 to 56 hours and cost \$1,000 per audit as compared to an inspection that might cost as much as \$50.

No consideration whatsoever was given to the possible reduction in the work load. It is certain there would be far fewer alleged violations if the violator knew his conviction would result in two years of accountability.

We honestly feel the cost of administration could be substantially reduced as soon as the PACA started using this new tool.

[Following is an attachment to Mr. Burns' statement:]

REXBURG, IDAHO, February 18, 1976.

Hon. EARL L. BUTZ,
*Secretary of Agriculture, United States Department of Agriculture, Administration
Building, Washington, D.C.*

DEAR MR. SECRETARY: I would like to express my appreciation to you for the opportunity you have afforded me to serve on the Perishable Agricultural Commodity Act Advisory Committee for the past three years. I am aware that my appointment came about as the result of the National Potato Council's efforts to get growers represented on this Advisory Group.

It was the feeling of the Council, and rightly so, that growers should have a voice in the decisions relating to the PAC Act.

However, after attending these meetings for three years I feel I cannot continue to serve. The manner in which the meetings are manipulated and the methods used to draw out committee recommendations indicate to me the Advisory Committee is a farce. It is something I feel I can no longer lend my name to. If it suits the pleasure of the PAC administrator, Committee recommendations are followed; if not, they are ignored.

It has been repeatedly demonstrated in the meetings I have attended that the PAC Office has no sympathy for the growers problems and even if they did have a desire to help, I don't see how anyone could expect a favorable recommendation from an Advisory Committee loaded with people from the broker and receiver end of the business.

I am fully aware that as a farmer I am not a licensee, but this should not mean I am some kind of second-class citizen. The purpose of the Act is to suppress unfair and fraudulent practices wherever they occur, and I feel farmers should have relief from their particular problems under the "Act" in a like manner as anyone else. It appears to me that the PAC Office is only interested in catering to the wishes of the licensees.

Mr. Secretary, I hope some changes can be made in the administration of this Act. If such changes are not forthcoming, it is my honest opinion we will eventually lose what could otherwise be a useful marketing tool for the entire fruit and vegetable industry. Changes have been proposed and are now before the Congress for consideration. These proposed changes have been attacked by the PAC Office with a vengeance for exceeding even that of the brokers and receivers. It is deplorable and my feeling at this point is one of disgust with the way it is being pursued. Perhaps I am wrong but I do not feel it is either proper or legal for the Administrator of PACA or PAC officials to take an active and aggressive position on pending legislation—beyond stating the Administration's position.

I have written this letter expressing my sincere feelings on the matter because I want to help. It is not my intent to hurt or discredit anyone but at the same time, I feel the need for changes over-rides all other considerations.

My association with the Secretary's Office has been rewarding. I personally feel you have done an outstanding job as Secretary. My best wishes for the future.

Sincerely,

BILL WEBSTER.

STATEMENT ON BEHALF OF POTATO CHIP INSTITUTE INTERNATIONAL

(By Melville Ehrlich, Counsel)

This statement is submitted on behalf of the Potato Chip Institute International (PCII) and its members. PCII is a non-profit trade association of potato chip manufacturers with its principal office at 26250 Euclid Avenue, Euclid, Ohio 44132. The members of PCII account for well over 90 percent of the domestic production of potato chips.

It should be noted at the outset that PCII is not a perennial objector to legislative or regulatory action. As a matter of fact, PCII supports the presently pending H.R. 9288, which proposes to increase fees paid by dealers, including PCII members, to keep the administration of the Perishable Agricultural Commodities Act (PACA) on a self-sustaining basis. We support it, that is, unless actions taken under H.R. 10988 affect it to the extent that it can become unnecessarily burdensome, as will be later pointed out.

But PCII on behalf of its members, vigorously and strongly opposes H.R. 10988. H.R. 10988 takes a giant step, but in the wrong direction—backward.

The whole trend of government today is for government in the sunshine, for open dealings, for governmental operations to be openly conducted in the light of day. But now comes H.R. 10988, taking a giant step in the direction of the nameless, faceless accuser, the secret complainant who refuses face to face confrontation.

Even today, Congress is turning the spotlight on the most secret operations of such government agencies as the FBI and the CIA, for the whole world to see. And these spotlighted operations are presumably in the public interest, so that no longer are even public interest operations shrouded in secrecy. But now come the proponents of H.R. 10988 and propose that an operation of private interest, not public interest, may be conducted in secrecy at the behest of a nameless, faceless, secret accuser.

Let us consider for a moment what the secret accusation permitted by H.R. 10988 really entails. A complaint may be made by an unwarrantedly disgruntled grower. But whether warranted or not, if an investigation is to be made of a secret complaint, obviously the investigation cannot be limited to the account of the secret complainant because that would immediately remove the cloak of secrecy with which the complainant has wrapped himself. To protect the identity of a nameless, faceless, secret accuser, the Secretary would, of necessity, have to undertake such a broad investigation of the dealer that the identity of the nameless, faceless, secret complainant would be hidden by the very magnitude of the investigation or examination. It can readily be foreseen and anticipated that in many instances a complete audit of a dealer may become necessary to protect the identity of the nameless, faceless, secret accuser.

We have made great progress in our legislative and regulatory operations since the ill-fated days of McCarthyism. But H.R. 10988 reincarnates the late unlamented nameless, faceless accuser.

In addition, although as already stated, we generally support H.R. 9288 to keep the administration of PACA on a self-sustaining basis, we cannot be so naive as to say that we support the increased costs to dealers even if they may be substantially increased by extensive investigations to protect the identity of a complainant shrouded in secrecy, particularly when the secrecy requires the investigation to be unusually abnormal and broad.

PCII must also take vigorous and strong objection to another provision of H.R. 10988. The bill provides that if a dealer, for example, has once been determined to have violated the provision for prompt payment, the Secretary shall (must) inspect the dealer's accounts, records and memorandums at least once every three months for a period of two years.

This is an incredible provision. It makes such examinations mandatory regardless of any complainant and even if each examination shows super-meticulous compliance. Has any thought been given to or estimate made of the cost of administering this provision? No such estimate has come to our attention. But what a number of mandatory examinations of such scope and frequency can mean, in terms of augmented PACA staff, staggers the imagination. And for what? What are really the benefits and to whom, from such a staff build-up?

As we have said, we support H.R. 9288 in general, but again we cannot endorse H.R. 9288 without limit on the size of the bureaucracy to be built up and charged to licensees. We do not have figures on the cost of administration of the provisions of H.R. 10988. Obviously, the costs will be tremendous. We trust that governmental agencies will advise this Subcommittee of the estimated costs for administration as compared to the benefits, if any, received by anyone.

The members of this Subcommittee are, of course, aware that the President has called for legislative and regulatory action to be examined in the light of cost against benefit. We urge this Subcommittee to consider this factor.

In summary, we oppose passage of H.R. 10988 for the reason that it revives the principle of the nameless, faceless accuser, shrouded in a cloak of secrecy, with no opportunity for face to face confrontation; for the reason that such a secret accusation can cause extensive and expensive administrative investigations, eventually to be paid for by the licensees; and for the reason that the mandatory minimum quarterly audits are completely unnecessary and extremely expensive, without corresponding benefits, and again at the expense of the licensee as now being proposed by H.R. 9288.









