

# CRS Report for Congress

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## The Perishable Agricultural Commodities Act (PACA)

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### Summary

The Perishable Agricultural Commodities Act (PACA) of 1930 was enacted to promote fair trading practices in the fruit and vegetables industry, and to ensure that sellers are paid, even if the buyers become bankrupt. PACA also provides procedures for resolving disputes outside the civil court system. The Fruit and Vegetable Dispute Resolution Corporation (DRC) which resolves trade disputes between fruit and vegetable companies doing business in the United States, Canada, and Mexico is based on PACA. The Agricultural Risk Protection Act of 2000 (P.L. 106-224, enacted in June 2000) provided \$30.5 million to PACA so that license fees would not need to be raised. In the wake of a bribery incident at the Hunts Point Wholesale Produce Market it also provided \$11.5 million to improve the Agricultural Marketing Service (AMS) inspection services and \$29 million to offset inspection fee increases.

### What is PACA?

The Perishable Agricultural Commodities Act (PACA) of 1930 was enacted to promote fair trading practices in the fruit and vegetable industry. Sellers must ship the quantity and quality of produce specified in their contracts, and buyers must accept shipments that meet contract specifications. PACA protections benefit not only growers who are generally sellers, but also a range of parties who are both buyers and sellers, including truckers, packers, processors, wholesalers, brokers, grocery wholesalers, and food service firms. It is generally agreed that fruit and vegetable traders in the produce industry need more protection than traders in other industries because the product is very perishable, and a one or two-day delay in marketing can mean the difference between profit and loss.<sup>1</sup> PACA also provides procedures for resolving disputes outside the civil court system, and establishes a trust consisting of a buyer's produce-related assets. If a buyer becomes bankrupt, produce suppliers that have preserved their trust rights can recover money owed to them before trust assets are made available to general creditors.

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<sup>1</sup> USDA/AMS, Fruit and Vegetable Division, PACA Fact Finder: 1. Web address: <http://www.ams.usda.gov/fv/paca.htm>

The law requires most buyers and sellers to have a PACA license in order to trade in fruits and vegetables.<sup>2</sup> A PACA license, which costs \$550 a year, provides a means of enforcement because it can be suspended or revoked if a buyer or seller is found to commit unfair trading practices. Such practices may include:

- rejecting without reasonable cause produce bought or contracted to be handled on consignment;
- failure to pay the agreed price of produce that complies with the contract terms or failure to pay promptly (within 10 days); and
- misbranding/mislabeled or misrepresentation of produce shipped in interstate commerce.

The U.S. Department of Agriculture's AMS administers PACA, and PACA activities in most years are funded by license and complaint filing fees (about \$7 million in FY2000), rather than by federal appropriations. However, in FY 2001, AMS received a one-time appropriation of \$30.5 million under the Agricultural Risk Protection Act of 2000 (P.L. 106-224) so that license fees would not need to be raised. USDA had proposed a PACA license fee increase in February 2000, but withdrew it in August after P.L. 106-224 became law in June.

## **PACA Developments**

### **PACA Amendments**

PACA was last amended in 1995 (Perishable Agricultural Commodities Act Amendments of 1995, P.L. 104-48) when the new law phased out annual license fees for retailers and full-line grocery wholesalers, increased annual fees for other licensees, and allowed licensees to protect their trust rights by giving notice to debtors on their invoices as an alternative to the traditional notification by mailing a trust notice to the buyer. Both kinds of notification must state that the seller intends to preserve trust benefits under the PACA.

### **Fruit and Vegetable Dispute Resolution Corporation (DRC)**

Because of the increased trade among the United States, Canada, and Mexico resulting in part from the North American Free Trade Agreement (NAFTA), a dispute resolution system for the produce trade was launched in 1999 by these countries. The system is based on PACA and is called the Fruit and Vegetable Dispute Resolution Corporation. Because the corporation is private no U.S. legislation was needed to

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<sup>2</sup> Growers are exempt from the license requirement as long as they sell only products that are of their own production. Retailers and frozen food brokers representing sellers are exempt until they purchase or negotiate sales worth \$230,000 or more of fruits and vegetables in a calendar year. Truckers and most restaurants are not required to be licensed. USDA/AMS, Fruit and Vegetable Division, PACA Fact Finder: 1.

establish it. The DRC offers protections similar to PACA's provisions, membership is voluntary, and individual companies pay a fee of \$535 annually. U.S. companies must pay this fee in addition to a PACA fee because the DRC covers trade disputes between the countries, while PACA will continue to address fair trade among U.S. companies only. According to press reports, there were 800 members of the DRC as of January 2001.

## Hunts Point Bribery Incident

A bribery scheme at the Hunts Point Wholesale Produce Market in Bronx, New York resulted in an estimated \$13.95 million to \$55.8 million in damages to growers and shippers.<sup>3</sup> A federal government investigation conducted between 1996 and 1999 (Operation Forbidden Fruit) culminated in the arrest of nine AMS fruit and vegetable inspectors and 15 wholesale company employees. The AMS inspectors were charged with accepting cash bribes in exchange for reducing the grade of the produce that they inspected, which then allowed the wholesale companies to pay amounts less than the invoice price to their suppliers. Of the 24 arrested, all 9 inspectors were convicted of the charges, and 14 of the 15 wholesalers' employees either have pleaded guilty to the charges or have been convicted. Those growers and shippers who were injured by the bribery scheme were permitted under the PACA (7 USC 499f and g) to file claims against the companies that were implicated. Congress acted to improve the AMS inspection system so that such incidents would not occur in the future when it enacted the Agricultural Risk Protection Act of 2000 (P.L. 106-224) in June 2000. Under this law Congress provided \$11.55 million for AMS inspection service improvements, including an Inspector Training Center, computer systems, and computer training, as well as \$29 million to offset inspection fee increases. Many in the industry felt that in addition to these provisions, Congress should provide restitution to the companies who were injured by the bribery scheme,<sup>4</sup> but no action was taken in the 106<sup>th</sup> Congress to do this.

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<sup>3</sup> U.S. Department of Agriculture. Agricultural Marketing Service. Report and Analysis of the Hunts Point Bribery Incident. July 26, 2000:7. Web address: <http://www.ams.usda.gov/fv/paca/huntspointprt.htm>

<sup>4</sup> U.S. Congress. House. Committee on Agriculture, Subcommittee on Livestock and Horticulture. Hearing; Illegal Activities at the Hunts Point Marketing Terminal. July 27, 2000: 24, 32.