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YOU CAN BE PROTECTED AGAINST BUYER BANKRUPTCIES UNDER PERISHABLE AGRICULTURAL COMMODITIES ACT (PACA) TRUST AMENDMENT

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Bankruptcies are one of the industry problems that brought about the amendment to the Perishable Agricultural Commodities Act (PACA) which provides some measure of financial protection to sellers of produce. The PACA Trust provisions have been in place since 1984. Since 1995 PACA licensees can preserve their rights for payment by stating the appropriate wording on the invoice. However, there still remains some confusion as to how members of the industry may enforce payment under the law. This article attempts to answer some of those questions. For more detailed information about how you can enforce payment under the PACA trust, you should contact your local PACA office.

What is the Perishable Agricultural Commodities Act (PACA)?

PACA was passed by Congress in 1930 and has since been amended many times. The Act establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in *interstate* and *foreign* commerce. It protects growers, shippers, distributors, retailers, and others who deal in those commodities by prohibiting unfair and fraudulent practices.

PACA considers a transaction to be involved in interstate commerce if the commodity, at any point in its movement, travels between one state and another. If this occurs, even if the parties to the transaction are in the same state, interstate commerce is said to have been established. However, the burden of proof rests on the seller if the buyer challenges this.

PACA is enforced through a licensing system. Almost everyone involved in the marketing of commercial quantities of fresh and frozen fruits and vegetables in interstate or foreign commerce must maintain a valid PACA license. Growers are exempt as long as they sell only products that they have grown. Retailers and frozen food brokers representing sellers are exempt until they purchase or act as an intermediary in making sales of \$230,000 or more worth of fruits and vegetables in a calendar year.

The PACA Trust Amendment

The PACA trust provision puts sellers of fresh and frozen fruits and vegetables in a priority position if their buyers become insolvent or file bankruptcy. Under the PACA trust provisions, a buyer must hold its produce-related assets for the benefit of unpaid produce suppliers who have preserved their *trust rights*. However, this is a “self-help” law, and sellers must act to protect their interests. It always remains necessary for you, the seller, to establish your individual rights to the trust assets by meeting specific *notification requirements*.

What Do You Need to Do to Meet *Notification Requirements* to Preserve Your Trust Rights?

If you are a PACA licensee, there are two methods for preserving your trust rights under the PACA:

- by a separate mailing of the trust notice to the buyer; or
- by giving notice to the debtor on the invoice. If the licensee uses this method, the following wording, *exactly as shown here*, must appear on the face of the invoice or other billing documents:

"The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

If you are not licensed by PACA and want to preserve your trust right, you must continue to provide a separate trust notice to the buyer or agent to show your intent to preserve trust benefits under PACA. The written notification of trust notice, either on the invoice or by separate mailing, must be given within 30 days from the date payment is due.

An agreement for payment within 30 days from receipt and acceptance of the goods should qualify for trust coverage. Any agreement for a time payment other than the PACA prompt-payment terms, usually 10 days, must be in writing. Any agreement for payment over 30 days would prevent the seller from any trust coverage. Sellers have 30 days after payment is due to file a notice to protect their trust.

How is Payment from Trust Assets Enforced?

The trust is a self-help tool that is separate and unrelated to filing a complaint under PACA. Trust beneficiaries may file in the U.S. District Court to enforce payment from the trust immediately following a buyer's failure to pay promptly. In cases where the debtor is bankrupt, trust beneficiaries should file their claims for payments with the bankruptcy court. USDA alerts the court of the existence of the PACA trust and the unpaid-trust notices which qualify the trust protection. Nonetheless, pursuing a trust action with the court does not impede you from pursuing a complaint under PACA.

Where Can You Get More Information?

You can visit the PACA web-site at <http://www.ams.usda.gov/fv/paca.htm>.

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