

## Industry Draft Comments (Sample Letter)

PACA Trust Post-Default Comments  
Agricultural Marketing Service, Fruit and Vegetable Programs  
PACA Branch  
1400 Independence Avenue, SW  
Room 2095-S, Stop 0242  
Washington, DC 20250-0242

RE: Docket Number AMS-FV-09-0047 Perishable Agricultural Commodities Act: Impact on Post Default Agreements on Trust Protection Eligibility

To Whom It May Concern:

I run a produce company **[Please insert information about your company/business]**

The purpose of the trust provisions of the Perishable Agricultural Commodities Act (PACA) is to assure that produce and its proceeds are used to pay produce suppliers. Congress decided the best way to accomplish this goal was to establish a trust. In a trust relationship, the trustee must hold the trust property for the beneficiaries of the trust. Unfortunately, recent court rulings have held that post-default agreements extend payment terms beyond 30 days, and are outside of the terms of the PACA trust. After examining the proposed regulation, I believe the proposal does not address the recent court rulings for the following reasons:

1. Contrary to the law – only full payment ends a supplier’s trust rights
2. The regulation cements a post-default waiver rule in the regulations
3. The proposed regulation will result in more problems than currently exist
4. Routine past due collection efforts will jeopardize trust rights
5. All claims in trust cases would be subject to extensive litigation about post-default collection efforts

I respectfully request that you amend the proposed rule and strike the 180 day provision and that the regulation states that post-default agreements do not waive or forfeit a supplier’s properly preserved trust rights.

Thank you for considering these recommendations and comments.

Sincerely,