
United Fresh Produce Association

PACA Trust Webinar

Welcome & Introductions

Participants

Robert Guenther, Senior VP, Public Policy

David Durkin, Olsson, Frank, & Weeda

Steve McCarron, McCarron & Diess

Webinar Overview

- I. Welcome and Introduction**
- II. History of PACA Trust**
- III. Analysis of the Proposed Rule**
- IV. Question and Answer Session**
- V. Industry Action Items**

Timeline

- Congress incorporates PACA Trust provision into law (1984)
- Courts have ruled to invalidate trust rights of unpaid creditors (1991 – 2007)
- USDA Fruit and Vegetable Industry Advisory Committee recommends USDA issue proposed regulations to address PACA Trust Provision (February 2009)
- USDA Issues Proposed Rule in Federal Register (June 2010)
- United Fresh organizes PACA Trust Working Group (June 2010)
- Industry ask for comment extension (July 2010)

History of PACA Trust

David Durkin, Olsson, Frank, & Weeda

The PACA Trust

- *Modeled on Packer Trust and Poultry Trust under Packers & Stockyards Act*
- *Established in 1984*
- *Policy Support Same Rationale as P&S Act*
- *PACA Amendments of 1995*

Operation of the PACA Trust

- *Unpaid supplier (PACA trust creditor/beneficiary) has trust rights until paid in full*
- *“Floating, nonsegregated” trust*
- *Covers perishables, products derived from perishables, and proceeds from the sale of perishables and products*

Protection of PACA Trust

- *Designed to be superior to secured credit claims*
- *PACA Trust Assets (perishables, products derived, and proceeds) are outside of the bankrupt estate in bankruptcy*
- *Trust claims satisfied before tax liens*

1995 Amendments

- **Compromise to save PACA Trust and disciplinary system**
- **Simplified assertion and perfection of trust claims**
 - **“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.”**

Analysis of Proposed Rule

Steve McCarron, McCarron & Diess

The Court Rulings

- *Post-Default Payment Agreements Extend Payment Terms and Waive Trust Rights*

The Problems with the Rulings

- *Contrary to the law and Congressional intent – supplier has trust rights until paid in full*
- *Even a simple telephone call about an overdue bill jeopardizes trust rights*
- *Forces suppliers to file lawsuits to get paid*
- *Turns every simple claim in a lawsuit into a legal battle over what the supplier did to collect the past due bill*

The Proposed Rule

- *Early 2009 – PACA Advisory Committee Meeting Requested PACA change the Regulations*
- *PACA issued proposed rule June 2010*
- *Only Certain “post default” agreements allow a supplier to retain trust rights*
- *Must be in Writing*
- *No Longer than 180 days*

The Proposed Rule

Text of Proposed Rule:

(3) If there is a default in payment as defined in Sec. 46.46(a)(3), the seller, supplier, or agent who has met the eligibility requirements of paragraphs (e)(1) and (2) of this section will not forfeit eligibility under the trust by agreeing in writing to a schedule for payment of the past due amount in any manner. The maximum time for payment of a past due amount to which a seller, supplier, or agent can agree, after a default, and still be eligible for benefits under the trust is 180 days from the default date, that is, the original payment due date of the transaction. The seller, supplier, or agent must cease all collections of past due amounts under a scheduled payment agreement if the buyer enters into bankruptcy or if the buyer is ordered to hold its inventory, accounts receivables and proceeds intact until a determination of trust interest in a civil action. The remaining unpaid amount under the scheduled payment agreement will continue to qualify for trust protection.

Problems with the Proposed Rule

- **Contrary to the law – only full payment ends a supplier's trust rights**
- **Enshrines a post-default waiver rule in the regulations**
- **Will result in more problems than currently exist**
- **Routine past due collection efforts jeopardize trust rights**
- **All claims in trust cases subject to extensive litigation about post-default collection efforts**
- **There are no problems with post-default agreements that require regulation**

The Rule that is Needed

- (3) If there is a default in payment as defined in Sec. 46.46(a)(3), the seller, supplier, or agent who has met the eligibility requirements of paragraphs (e)(1) and (2) of this section will not forfeit eligibility under the trust by agreeing to a schedule for payment of the past due amount in any manner.

The Rule that is Needed

- *Follows the Statute*
- *Simple and clear-cut*
- *Avoids all problems of court rulings and proposed rule*

Questions and Discussion

Industry Action Items

- **United Fresh and Allied Association are developing technical comments for USDA**
- **Industry members need to send in comments as well**
- **United Fresh has dedicated system through our *Grassroots Action Network* for industry members to submit comments**
- **Your comments count!!!!**

How to Submit Comment

Two ways:

**PACA Trust Post-Default Comments
AMS, F&V Programs
PACA Branch
1400 Independence Ave., SW
Room 2095-S Stop 0242
Washington, DC 20250-0242
Fax: 202-720-8868**

[United Fresh PACA Trust Webpage](#)

www.unitedfresh.org/newsviews/paca

Thank You!!!

**United Fresh Produce
Association**

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