

July 13, 2010

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

The organizations below, representing the vast majority of fresh produce grown, harvested, and distributed in the United States are pleased to submit comments regarding USDA's Proposed Rule suggesting amendments to the regulations under the Perishable Agricultural Commodities Act (PACA) for providing industry direction on maintaining trust protection under PACA.

As you know the trust rights are a critical tool for the fresh produce industry in assuring that produce and its contractual proceeds are used to pay produce suppliers. Congress decided the best way to accomplish this goal was to establish the PACA trust provision which provides that produce, as well as the products and money derived from sales, must be held in trust for the benefit of unpaid suppliers until full payment is made. However, 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.

Organizations and industry leaders have been in consultation amongst themselves and have sought counsel regarding the legal and practical implications of the proposed rule. Because of the extensive effects on business practices if the proposed rule is finalized, the undersigned organizations wish to ensure that the proposal and any modifications that may be sought are thoroughly vetted. We are concerned that the proposed regulation may adopt a post-default waiver rule at odds with the underlying purposes of trust provisions. In particular, we believe USDA may have issued a proposed a rule that includes a post-default waiver based on technicalities, which would be a result very similar to the rulings of the courts that this proposed rule is intended to correct.

For this reason we respectfully request that USDA extend the comment period for an additional 30 days to ensure that industry stakeholders can fully analyze this proposed rule and provide the Department with important guidance in developing a final regulation that directly and acceptably addresses this important PACA issue and can be effectively implemented by the industry. We also ask the Department to consider these comments as a "placeholder" for future more-detailed recommendations on implementation of the proposed rule being considered by USDA.

Thank you for your consideration.

United Fresh Produce Association
American Mushroom Institute
National Potato Council
National Watermelon Association
U.S. Apple Association
Northwest Horticultural Council
Western Growers Association

Fresh Produce Association of the Americas
California Citrus Mutual
California Grape & Tree Fruit League
California Strawberry Commission
Grower-Shipper of Central California
Florida Fruit and Vegetable Association
Florida Tomato Exchange
George Fruit and Vegetable Grower Association
Idaho Grower-Shipper Association
Idaho Potato Commission
New York Apple Association
Texas Produce Association
Texas Citrus Mutual