

Growers Legal Update

**Perishable Agricultural Commodities Act
(PACA) Overview**

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Perishable Agricultural Commodities Act

- The Law: 7 U.S.C. § 499 et seq.
 - Must have license to engage in produce marketing (producer optional)
 - Administrative complaint provision for unfair practices (as opposed to Court filing)
 - Establishes PACA Trust (1984) to ensure produce sellers are paid before other buyer creditors
 - PACA Trust Regulations: 7 U.S.C. § 499e(c)



The PACA Trust

- Purpose to give producer (Seller) priority over other creditors (secured and unsecured) of Buyer
- Buyer holds the produce receipts in trust for the Seller, who remains a PACA Trust beneficiary until Seller is paid in full.
- The PACA Trust assets include
 - the produce itself (limited shelf-life of course)
 - all proceeds from the sale of produce
 - all inventories derived from the produce (including processed products sold by Buyer)
 - all of Buyer's accounts receivable from the sale of the produce to third parties

PACA Trust Preservation Option 1 - License

- PACA License
 - Optional for Producer-Sellers
 - Required for buyers, shippers, etc.
- Benefits of License (invoice method)
 - Language on Invoice to preserve Trust rights
 - Once a buyer has ceased operations or filed bankruptcy, in many cases the time may have already lapsed to file a written PACA trust notice
 - Unless ordered by bankruptcy court
- Cost of License: \$995 (annual) (can purchase 3 consecutive years without annual renewal)
(www.ams.usda.gov/resources/paca-license-application)

PACA Trust Invoice Language

“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 (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.”

(make sure language is legible on all copies if using duplicate/triplicate etc. invoices)

PACA Trust Preservation Option 2 – Claim Notice

- Must prominently say: **“Notice of intent to preserve trust benefits”**
- Requirements:
 - Names and addresses of the trust beneficiary, seller-supplier, commission merchant, or agent and the debtor, as applicable
 - Date of the transaction, commodity description, invoice price, and terms of payment (e.g. contract, if applicable)
 - Date of receipt of notice that payment instrument has been dishonored (if applicable)
- The amount past due and unpaid

Trust Preservation Notice Timing

- **Filing of a notice of intent must be within 30 calendar days following failure to pay under the agreement payment terms.**
- Written contract or invoice terms for payment **cannot exceed 30 days** from the date of acceptance of the product
- Payment terms must be agreed between parties in writing before entering into the transaction.
- **Default PACA payment term (if no writing): overdue after 10 days**

Notice Timing Examples

- No contract (no terms): Notice to preserve must be received by Buyer within 40 days of transaction (default 10 day payment + 30 days)
- Contract Terms
 - 21 days = 51 days (21+30)
 - 30 days = 60 days (30+30)
 - 31+ days = No PACA protection *under notice method*

Recovery under PACA Trust

- Grower and Buyer may agree to a payment plan without waiving Grower's trust rights
- File suit in U.S. District Court (not state)
- Bankruptcy
 - Priority vs. non-priority
 - Filing Proof of Claim
 - Court Order on PACA claim procedures and deadlines
 - Must demonstrate how preserved trust benefits
 - Contracts, invoices, weigh tickets, etc.
- § 503(B)(9): 20 day "goods" recovery (not PACA)

THANKS FOR INVITING ME!

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