Chapter 1 : The Perishable Agricultural Commodities Act (PACA)

The Perishable Agricultural Commodities Act (PACA) was enacted at the request of the fruit and vegetable industry to promote fair trade in the industry. PACA protects businesses dealing in fresh and frozen fruits and vegetables by establishing and enforcing a code of fair business practices and by helping companies resolve business disputes.

The primary purposes of the PACA are to prevent unfair and fraudulent conduct in the marketing and selling of perishable agricultural commodities and to facilitate the orderly flow of perishable agricultural commodities in interstate and foreign commerce. A full listing of the conduct that a commission merchant, dealer, or broker is prohibited from engaging in is set forth at 7 U. The injured person or persons may enforce such liability by bringing an action in federal district court or by filing a reparations proceeding against the commission merchant, dealer, or broker. The PACA sets forth several requirements and conditions associated with the licensing requirement including, but not limited to, standards governing the application for a license and the required fees; grounds on which the Secretary may refuse to issue a license; and the authority of the Secretary to withhold the issuance of a license pending an investigation of the applicant. Statutory Trust In , Congress amended the PACA to include a statutory trust for the benefit of unpaid sellers of perishable agricultural commodities. The PACA provides that [p]erishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such commission merchant, dealer, or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents. When a controversy arises as to which assets are part of the PACA trust, the buyer has the burden of establishing which assets, if any, are not subject to the PACA trust. The PACA beneficiary only has the burden of proving the amount of its claim and that a floating pool of assets exists into which the produce-related assets have been commingled. Because the buyer holds those assets for the benefit of the seller. An unpaid seller may preserve the benefits of the trust by providing a written notice to the commission merchant, broker, or dealer of intent to preserve such benefits. See also 7 C. The written notice must be given to the commission merchant, broker, or dealer within thirty calendar days i after expiration of the time prescribed by which payment must be made, as set forth in the regulations issued by the Secretary, ii after expiration of such other time by which payment must be made, as the parties have expressly agreed to in writing before entering into the transaction, or iii after the time the supplier, seller, or agent has received notice that the payment instrument promptly presented for payment has been dishonored. If this agreement extends the time for payment for more than thirty days, however, the seller cannot qualify for coverage under the trust. First, the bill or invoice statement must contain the terms of payment, and each party must maintain a copy of the agreement in its own records. Second, the face of the billing or invoice statement must contain the following statement: 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. 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. Reparations proceedings provide a remedy in addition to remedies available under applicable state laws or common law and are governed by the PACA Rules of Practice for Reparation Proceedings, 7 C. The informal complaint must provide a brief statement of the facts supporting the allegations against the commission merchant, dealer, or broker and must be filed within nine months from the date in which the violation occurred. After receiving all information and supporting evidence provided by the person filing the informal complaint, the Secretary must conduct an investigation. See also 7 U. If the informal complaint and the investigation seem to warrant such action, subject to certain exceptions, the Secretary in an effort to effect an amicable or informal adjustment of the matter, shall give written notice to the person complained against of the facts or conduct concerning which complaint is made, and shall afford such person an opportunity, within a reasonable time. If an amicable or informal settlement is not reached, the complaining party may file a formal complaint. The formal complaint must contain the information required for filing an informal complaint and a statement of the damages claimed. After the parties have properly responded to all claims and counterclaims, if any, the matter is assigned a docket number and scheduled for a hearing. If the Secretary determines that a violation has occurred, it must determine the amount of damages owed and enter an order stating the date by which the offender must pay those damages. Either party may appeal a reparation order to the district court in which the hearing was held within thirty days from the date the order was entered. Disciplinary proceedings under the PACA differ from reparations proceedings in that private parties do not bring disciplinary proceedings. Disciplinary proceedings are commenced, similar to reparations proceedings, by the filing of an informal complaint.

Chapter 2 : Perishable Agriculture Commodities - National Agricultural Law Center

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. e(c)).

The primary purposes of the PACA are to prevent unfair and fraudulent conduct in the marketing and selling of these perishable agricultural commodities and to facilitate the orderly flow of these commodities in interstate and foreign commerce. This definition does not include perishable fruits and vegetables which have been manufactured into food of a different kind or character. The statute points to many unlawful situations which qualify as unfair conduct. A few of those unlawful practices are included here: Any commission merchant, dealer or broker who engages in or uses any unfair, unreasonable, discriminatory, or deceptive practice in connection with the weighing, counting, or determining the quantity of any perishable agricultural commodity received, bought, sold, shipped, or handled in interstate or foreign commerce. For any dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause any perishable agricultural commodity bought or sold or contracted to be bought, sold or consigned in interstate or foreign commerce by such dealer. For any commission merchant to discard, dump, or destroy without reasonable cause, any perishable agricultural commodity received by the commission merchant. For any commission merchant, dealer, or broker to make a misleading statement in connection with any transaction involving any perishable agricultural commodity for a fraudulent purpose. For any commission merchant to misrepresent the character, kind, grade, quantity, size, pack, weight, condition, degree of maturity, or State, country, or region of origin of any perishable agricultural commodity. For any commission merchant, dealer or broker to make, cause, or permit any change by way of substitution or otherwise to the contents of a load or lot of any perishable agricultural commodity without the consent of an inspector. Does not prohibit resorting and discarding inferior produce. The law requires all commission merchants, dealers, and brokers obtain a PACA license to operate a produce business. Fruit and vegetable buyers and sellers must follow the fair trading practices established by the PACA or possibly have their license suspended or revoked. Who needs a PACA license? Any person who buys or sells more than 2, pounds of fresh or frozen fruits and vegetables in any given day. Includes wholesalers, processors, truckers, grocery wholesalers, and food service firms. A person who negotiates the sale of fruits and vegetables on behalf of another person is required to be licensed on the first transaction. Statutory Trust Protection The PACA trust provisions give sellers of fresh and frozen fruits and vegetables priority status as a creditor if their buyers become insolvent or file for bankruptcy protection. A supplier becomes eligible to participate in the trust when it sells produce to a buyer. Buyers are required to maintain a statutory trust on fruits and vegetables received but not yet paid for. United States District Courts have jurisdiction over actions by trust beneficiaries and actions by the Secretary of Agriculture. How to preserve your trust rights? Give notice to the debtor on an invoice. Must have the following wording exactly as shown, on the face of the invoice: 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. 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. Notice must be given within 30 days from the date payment was due or from receiving notification that a timely submitted payment was dishonored. Terms for payment cannot exceed 30 days from the date of acceptance of the product. Payment terms other than PACA prompt payment terms usually 10 days must be agreed upon by the parties and to the transaction in writing before entering into the transaction. The informal complaint must provide a brief statement of facts supporting the allegations. If an amicable or informal settlement is not reached, the complaining party may file a formal complaint. Formal Complaint Must contain the information required for an informal complaint and a statement of the damages claimed. Appeals Either party may appeal a reparation order to the district court.

Chapter 3 : Perishable Agricultural Commodities Act Overview - National Agricultural Law Center

Perishable Agricultural Commodities Act (PACA) Agricultural and Food Law October 14, The Perishable Agricultural Commodities Act (PACA) is a federal law, enacted in at the request of the fruit and vegetable industry to promote fair trade.

The main difference is obviously the creation of the so-called "paperless trust", or the ability of those shippers who hold a USDA license to have their invoices serve as the trust notice. If the supplier does not have a PACA license, the foreign or domestic supplier must preserve its trust rights the "old way" by sending a trust notice in addition to the invoice and, thus, the non-licensee cannot benefit from the Amendments in this regard. Therefore, in cases of bankruptcy or insolvency, the USDA will no longer acknowledge receipt of trust notices or provide an opinion as to the amount qualified for trust protection, for any trust notice received after November 15, In order to ensure compliance with the regulations governing the PACA trust, each invoice must contain the following language exactly as it appears in the statute: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5c of the Perishable Agricultural Commodities Act, 7 U. 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. No language other than this will be acceptable as complying with the statutory requirements. While the issue of "substantial compliance" ie: Accordingly, there is no need to risk non-compliance when the preferred language is set forth in the statute for all to use. Additionally, this language should be prominently displayed on the front of the invoice, preferably in bold large letters. In keeping with prior practice, each invoice should include sufficient detail to identify the transaction subject to the trust including: Because each invoice now serves as your trust notice, be sure to serve a copy of each invoice on the debtor within 30 days of either the payment due date or the date of receipt of notice of any check being dishonored. Merely including the term on your invoice does not satisfy this requirement. The agreed payment terms cannot exceed 30 days from the date of acceptance of the transaction for an F. If at all practical from a business perspective, you should consider revoking all prior "terms agreements" which allow debtors to pay beyond ten 10 days. This way, you can never be caught in one of two situations that can lead to a loss of your PACA trust rights: Under the USDA regulations, you can keep the "paper" saying 10 days and have oral agreements not to consider any invoice past due until the longer credit period has expired. This way, we can greatly reduce the chance of an inconsistency in your documents that may destroy your trust rights. The bottom line is credit terms of 10 days greatly reduces the amount of paperwork necessary to preserve your trust rights and, thereby, significantly improves your chances of a full recovery on any outstanding account balance. Under the "old way", the issue of whether the debtor actually received the trust notice led to a great deal of litigation and expense. This litigation occurred when a debtor alleged it did not receive a copy of the trust notice by mail or other means and where the creditor had no proof of delivery except the live testimony of company personnel. Although this has proven to be effective, please carefully evaluate the receivables nearing the thirty 30 day filing deadline. For these receivables, you should consider re-serving your invoice on the debtor using a method that you can prove the debtor received it. This will allow you to prove receipt through documents ie: In a perfect world, from a trust claim enforcement perspective, each and every invoice would be sent to the debtor in a way that we have a document which serves as the "proof of delivery. The trick in this regard is to not nullify the Amendments by replacing one paperwork-intensive administrative burden with another. The fax cover should clearly indicate the contents of the transmission by including language like: While it would be nice to have written proof of delivery and receipt on each late invoice, you need to decide how much follow-up can be done without needlessly increasing the office work load. In particular, we strongly advise a fax follow-up on questionable accounts ie: Also, it will help to reduce the chances of a damage dispute arising if you limit the time for such claims.

Along these lines, please consider including the following provisions on the face of your new invoices: Interest shall accrue on any past-due account balance at the rate of 1. No claims for credits or adjustments can be considered unless the problem is reported in writing to Seller within eight 8 hours of receipt of the product along with the written USDA inspection results. Sound Commodities, F. In that ruling a copy is enclosed , the Appeals Court stated "Congress wrote the statute broadly to include not only the value of commodities sold but also the expenses in connection with the sale of [Produce] when it drafted the statute. It did not limit the claim to [Produce] alone Many PACA lawyers will advise you to put these provisions on your invoices, then not ask for these "extras" in Court. If you put this language on your invoices, our firm will always fight to get your entire claim paid, not just a portion of it. The new amendments include a change in the unfair practices section to allow payment of collateral fees and expenses including promotional allowances, rebates, etc. However, the payments must be disclosed on invoices, etc. An informal or formal complaint is cheap and is usually a very effective way of getting a delinquent buyer to pay you, if that buyer is still concerned with its credit rating or license standing. However, the only satisfaction this procedure has to offer is the entry of a reparation award in your favor. This piece of paper tells the Debtor - "pay this amount within 30 days or your license will be suspended. Accordingly, this is a relatively passive action which only works if two essential factors are present - 1 the Debtor actually has all of the money he owes you in readily-available cash, and 2 he really cares if his license is suspended. By the time most Debtors are past due to a valued supplier, there is not enough cash to go around to pay all suppliers and some unpaid creditors like you need to be shorted or flat out ignored for the Debtor to make ends meet. In such circumstances, the Debtor views the potential loss of his license as secondary to keeping food on the table and a roof over his head. Once this happens, PACA will tell you there is nothing more they can do and that you are free to enforce your reparation award in federal court to recover the amounts to which they determined you are properly entitled. The problem is, by the time you get this far, the Debtor has likely burned through whatever cash he had, and sold or hidden whatever other assets he had, back on the date you first started the PACA action. Now you are faced with an uphill battle to recover these dissipated trust assets, if you can even find them. The other way of saying this is - why close the barn door after the horses have left? When the reason for the non-payment is insolvency, a PACA reparation order simply becomes another piece of paper telling the Debtor he owes you X amount of money. Your invoice already does that, but the Debtor is still not paying you. In cases of non-payment because of insolvency, the Debtor generally has some money - just not enough to go around. He will continue to pay the landlord, because he can lock him out. He will continue to pay his labor, because they will not work for long without a check. He will continue to pay the Bank on any loans because they can foreclose on all his assets and, invariably, he will continue to pay himself and his other "insiders" a full salary. The only way to stop this leakage or "dissipation" of the PACA trust assets to non-trust creditors, which the law requires to wait in line behind you, is to enforce your trust rights in court. By moving quickly, you can close the barn doors before the horses are gone. He suddenly becomes very interested in taking your telephone calls and in reaching a prompt resolution of your unpaid balance so he can get his accounts unfrozen. In addition, with some slight modifications to your invoices, the costs of this private enforcement action can be added to your PACA trust claim so the Debtor is forced to reimburse you for all the legal expenses. See Section IV above. To further assist you, we have enclosed a copy of both a sample payment term agreement and a sample revocation of existing agreements. In the event you decide terms of more than 10 days are a business necessity, be sure you have a written payment term agreement in the file for every customer. For obvious reasons, a counter-signed agreement is the best, but the key is to stay consistent. At a minimum, these fact disputes will give a judge reason to pause and likely direct the parties to fully research and brief the issues on both sides. In many situations, we are also able to identify a potential problem with sales documentation before it becomes a litigation problem, like when the Debtor or the competing creditors are seeking to disqualify your PACA trust claim. Should you have any questions regarding these recommendations, or if you have any specific questions on an issue relating to credit or collections, please do not hesitate to call. We would be happy to help at no charge for an initial consultation. We will be happy to lay out your options at no cost. We look forward to be being able to help you.

Chapter 4 : 7 U.S. Code Â§ a - Short title and definitions | US Law | LII / Legal Information Institute

The U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), is amending the regulations under the Perishable Agricultural Commodities Act (PACA or Act) to enhance clarity and improve the administration and enforcement of the PACA.

Chapter 5 : Perishable Agricultural Commodities Act of - Wikipedia

Peter E. Fisch and Mitchell L. Berg. While the Perishable Agricultural Commodities Act, (PACA), which was enacted to protect the interests of suppliers and sellers of perishable agricultural.

Chapter 6 : What is PACA? PACA Produce Laws and Agreements| Stokes Law Office

Perishable Agricultural Commodities Act (PACA) Overview. The Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. Â§Â§ at, was enacted in to regulate the marketing of perishable agricultural commodities in interstate and foreign commerce.

Chapter 7 : USDA Perishable Agricultural Commodities Act

The Perishable Agricultural Commodities Act - An Overview. The Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. Â§Â§ at, was enacted in to regulate the marketing of perishable agricultural commodities in interstate and foreign commerce. The primary purposes of the PACA are to prevent unfair and fraudulent conduct in the marketing and selling of perishable.

Chapter 8 : Perishable Agricultural Commodities Act (PACA) - eXtension

The Perishable Agricultural Commodities Act, (PACA) â€" Pub.L. (June 10,), as amended), codified as Chapter 20A (sections a through s) of Title 7 of the United States Code, is a United States law that authorizes the regulation of the buying and selling of fresh and frozen fruits and vegetables to prevent unfair trading practices and to assure that sellers will be paid promptly.

Chapter 9 : PACA | Keaton Law Firm

USDA Perishable Agricultural Commodities Act.