

## ***Feeding America in Crisis and Protecting Agribusiness***

As some celebrate the most expansive and expensive U.S. stimulus package in history, individuals and families across the country are left wondering (often in quarantined isolation): *is it enough?* For the agricultural/food industry, the answer is a resounding “No.” In a recent letter to U.S. Congressional and Senate leaders, the United Fresh Produce Association (comprised of “more than 1,500 companies” in the fresh produce supply chain) explained the situation:

“This [Novel Coronavirus Disease (COVID-19)] outbreak has had a seismic impact throughout the produce supply chain and is causing extreme uncertainty in the industry. For example, distributors serving schools and restaurants have seen this sector dry up almost overnight. The cruel reality is that these children and their families still need to be fed, and the fresh produce supply chain continues to have the capability and supply but lacks the flexibility and resources necessary to meet the needs of their communities. In addition, the growers who provide product to these distributors are being impacted by lack of payments from their customers causing uncertainty in the grower-shipper community.”

On March 25, 2020, the United States Department of Agriculture (USDA) offered some guidance (in the form of FAQs) on the limited flexibility holders of trust rights have under the Perishable Agricultural Commodities Act (PACA) to resolve certain payment issues. The USDA warned sellers against “unintentionally forfeit[ing] their status as a trust beneficiary when trying to work with a buyer who is unable to make full payment in accordance with original contract terms” and reminded us about those agreeing *up front* to “payment beyond the 30 days established in regulations would automatically lose their PACA trust rights.” Still, the USDA suggests sellers can “accept a partial payment or agree to a payment schedule *after the buyer has defaulted.*” (Emphasis added.) Concerning PACA filing deadlines, the USDA also confirmed: “Many of the filing deadlines that apply to actions under PACA are set by statute and regulation and cannot be waived.”

Recognizing how such inflexibility could hurt the entire produce supply chain, Western Growers (another established trade organization of growers and produce suppliers) recently wrote the USDA about what to adjust (and not adjust) during this critical time:

“While PACA has for decades served our members well in safeguarding them from credit risks and lost inventory, we fear the existing process may not be enough to withstand the unprecedented financial losses our growers stand to experience. As such, we request that USDA take action to guarantee the payment of all legitimate PACA Trust claims, to the extent these claims are not satisfied by the available PACA Trust assets. An overhaul of the existing bankruptcy process is not necessary; rather, in

the event a legitimate claim has gone through the process but remains unsatisfied, USDA would shore up any shortfall of PACA trust assets to meet 100% the amount of qualified receivables that are due to the claimant.”

Time will tell how governments respond to our agricultural community and help those already working at full capacity to feed America. Until then, as the USDA confirmed, there is limited flexibility to protect this supply chain under existing laws.



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