

PACA trust protection preserved with rule



Rebuking court decisions that eroded Perishable Agricultural Commodities Act trust protection for sellers of produce, a U.S. Department of Agriculture decision protects marketers trust even if they negotiate post-default payment agreements.

The new rule is in effect April 13, and allows a buyers and sellers to extend payment past 30 days. In fact, sellers are covered by PACA until they are paid.

“They made the changes that should have been made,” said Stephen McCarron, partner in McCarron & Diess, a Washington, D.C.-based law firm. “Now any post-default agreements do not waive or forfeit trust eligibility; that is what the industry needed and that was what the final rule said.”

The rule clarifies that produce sellers retain their trust rights until they are paid in full. McCarron said court decisions as far back as the late 1980s had ruled that any written or oral post-default agreement with a creditor — granting credit beyond the 30-day term specified in the law — voided the seller’s opportunity for PACA trust protection.

Court cases cite PACA regulations that define the maximum time for payment for a shipment to which a seller can agree and still qualify for trust coverage under the trust as 30 days after acceptance of the commodities. However, the USDA said in the final rule that the agency’s interpretation is that language addresses pre-transaction agreements only.

“We are extremely pleased that the PACA trust final rule issued by USDA has agreed with the industry comments and adopted important changes urged by United Fresh and our allied produce partners,” Robert Guenther, senior vice president of public policy for Washington, D.C.-based United Fresh Produce Association, said in a news release.

The USDA sought to correct the problem in June of 2010, but the proposed rule was complex and would have created more problems than it solved, McCarron said.

In the end, McCarron said the USDA dealt with the issue in a span of two years. “It was done fairly efficiently, given the way these things work,” he said.