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In PACA We Trust

USDA Celebrates the 25th Anniversary of the PACA Trust

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Pick up any piece of U.S. currency and you'll read the words, "In God We Trust," the official motto of the United States.

Talk to any produce merchant in the U.S. and it's more than likely that he or she will remark, "In PACA We Trust."

The initial engraving of our country's motto onto a minted coin largely came about as a result of increased religious sentiment during the Civil War. But in the modern world of buying and selling there is nothing more sacred than a dollar bill, and the establishment of the PACA Trust has supported a different kind of faith: one that allows growers and shippers of highly perishable fruit and veg-

etables to recover their assets from unscrupulous buyers or other receivers who abruptly go bankrupt or out of business.

🔑 In 1930, the Perishable Agricultural Commodities Act (PACA) was established to prevent unfair trading practices in the buying and selling of fresh and frozen fruits and vegetables in interstate and foreign commerce, and ensure that sellers get paid promptly.

During the Great Depression when farmers involved in long distance transactions weren't getting paid or their produce was flatly rejected without cause, the U.S. Congress stepped up and passed PACA. Nearly 80 years later, the Fruit and Vegetables Programs of the USDA's Agricultural Marketing Service (AMS) is still administering the law.

"The fruit and vegetable industry would not be anywhere close to what it is today without PACA," says Robert C. Keeney, administrator for AMS's Fruit and Vegetable Programs. "It's such a dynamic industry dealing in highly perishable commodities that can move quickly. The PACA has played an important role to ensure that parties are abiding by their contracts."

During the first 50 years of PACA's existence, a disturbing trend was gaining steam. Buyers were slow in paying their suppliers (and

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Key Elements

As PACA celebrates its 25th anniversary, it's important to remember the origins of this historic act and its impact on the produce industry.

- 🔑 PACA's creation by Congress in 1930.
- 🔑 Amending PACA to include a statutory trust provision in 1984.
- 🔑 Establishing the Dispute Resolution Corporation (DRC) in 1999.
- 🔑 Governance through the USDA's Agricultural Marketing Service.

To learn more about each key element, look for the 🔑 symbols throughout the article.

in some cases, stopped altogether), adversely affecting the survival of smaller producers.

In addition, buyers were granting liens on their inventories to lenders, which covered all proceeds and receivables from the sales of perishable fruits and vegetables, but left producers hanging. In cases of bankruptcy by buyers, lenders were highly leveraged in secured creditor positions, while sellers remained unsecured with little or no legal recourse to recoup damages.

🔑 On May 7, 1984, Congress responded to complaints from suppliers and amended PACA to include a statutory trust provision to increase credit security in the absence of timely payment for highly perishable fruits and vegetables.

The PACA Trust serves as a floating trust, allowing a PACA beneficiary

to take priority over other creditors, secured or unsecured, on the buyer's assets for the full amount of the claim. In laymen's terms, when a buyer goes belly up, the suppliers of the perishable commodities are able to recover nearly all of their assets, as opposed to maybe three to five cents on the dollar they would have otherwise received without the PACA Trust. In turn, a buyer becomes a seller, and the PACA Trust can then protect each transacting party.

Representatives from the fruit and vegetable industry have estimated that more than \$1 billion has been collected as a direct result of the PACA Trust provisions.

"The PACA Trust delivered on its promise to protect farmers," says Matt McNerney, executive vice president of the Western Growers Association and a PACA expert. "Every dollar that's preserved in the PACA Trust is being brought back to the farm so that they can battle another day. It makes the difference between them having a profitable year, or being around to continue to produce a food product for the American consumer."

🔑 PACA is now making its mark in foreign countries. In 1999, the Dispute Resolution Corporation (DRC) was established to create "fair and ethical trade in fresh produce in North America," accord-

ing to its web site. The nonprofit entity's members include the United States, Canada and Mexico.

According to McNerney, the DRC board chairman, Canada "took the PACA regulations and parachuted them in as the DRC regulations to have a North America-like tribunal." On its web site, DRC's mission is to "provide the North American produce trade with harmonized standards, procedures and services necessary to avoid and resolve commercial disputes in a timely, cost-effective manner."

🔑 It can be said that for nearly 80 years, PACA and provisions such as the Trust provision have worked seamlessly to temper the chaos in an informal or fast-paced e-business where farmers and shippers must quickly move that peach or strawberry, or as McNerney puts it, "sell or smell it."

Yes, it's a time-honored tradition to rub that lucky coin or squeeze that dollar bill, "In God We Trust." But in the fluid world of buying and selling highly perishable fruits and vegetables, all of that is trumped by a simple and profound axiom: "In PACA We Trust." 

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