

# Highlights of the 1995 PACA Legislation

On November 15, 1995, President Clinton signed into law a bill which restructures and strengthens the Perishable Agricultural Commodities Act (PACA). The new law, Public Law 104-48, is entitled "The Perishable Agricultural Commodities Act Amendments of 1995." This pamphlet highlights the main points of the legislation.

## License Fees and Penalties

- The requirement for retailers and full-line grocery wholesalers to pay an annual fee will be phased out. However, both groups will remain subject to the law.
- Cost will shift to other licensees, and license fees will increase from \$400 to \$550 annually.

## Retailers' and Grocery Wholesalers' Fees

Applicable Dates	Annual Fee	Branch Fee*	Maximum Fee
November 15, 1995 to November 14, 1996	\$400	\$200	\$4,000
November 15, 1996 to November 14, 1997	\$300	\$150	\$3,000
November 15, 1997 to November 14, 1998 Year 4 - No fee	\$200	\$100	\$2,000

\*Retailers with more than nine outlets must pay a branch fee for each additional outlet.

- After November 14, 1998, retailers and grocery wholesalers will not be required to pay any annual renewal fee but will be required to maintain a license.
- Also after November 14, 1998, new retail and grocery wholesale businesses will be required to pay a one-time \$100 license processing fee.
- USDA will no longer go to Congress to increase license fees to fund the PACA program. After the 3-year phase-out period, if it appears that reserve funds will fall below 25 percent of the projected operating cost for the following year, USDA may set license fees through rule-making procedures.

- The penalty for operating without a license has been increased from \$500 to \$1,000. The daily penalty has been increased from \$25 to \$250. The fine for inadvertently operating without a license has been increased from \$25 to \$250.
- The late renewal fee was increased from \$5 to \$50.
- Anyone with license questions or needing assistance in applying for a license may call PACA's toll-free number, 1-800-495-PACA(7222).

## Trust Provisions

- Unpaid suppliers no longer have to send a copy of their trust notice to USDA.
- Licensees now have an alternative method of preserving their trust rights by giving notice to the debtor on the invoice. This alternative method is not available to unlicensed growers, who must continue to provide a separate trust notice to the buyer or agent.
- If the licensee uses the alternative method, the following wording, exactly as shown, must appear 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, 1930 (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.”
- Notification, either on the invoice or by separate mailing of the trust notice to the receiver, must still be given within 30 days from the date payment is past due.
- Terms for payment still cannot exceed 30 days to qualify for trust protection.
- Payment terms other than the PACA prompt payment terms, usually 10 days, must still be by written agreement.

## Dispute Resolution Proceedings

- While the temporary filing fees for FY 1995 and FY 1996 (\$60 for informal complaint and \$300 for formal complaint) were retained, they are now subject to rulemaking authority if USDA wishes to change the filing fees.
- The threshold for hearing reparation cases was increased from \$15,000 to \$30,000.

## **Misbranding**

- Licensees other than the first licensed handler will no longer be held accountable for misbranding violations if they did not know about the violation or lacked the ability to correct the violation.

## **Enforcement of Trade Practices**

- In addition to USDA's current authority to suspend or revoke a license for unfair trading practices, including slow payment, USDA now has the authority to impose monetary penalties.
- USDA is authorized to assess a monetary penalty of up to \$2,000 for each violative transaction.
- USDA must now have a written complaint before initiating an investigation into unfair trading practices, but the new law requires USDA to protect the identity of the person filing the complaint.
- When a firm is under investigation for a complaint of unfair practices, the new law outlines a procedure for informing businesses of the status of USDA's investigation.

## **Collateral Fees**

- The law defines "collateral fees" to be:

"Any promotional allowances, rebates, services or material fees paid or provided, directly or indirectly, in connection with the distribution or marketing of any perishable agricultural commodity."
- The new law clarifies that a collateral fee is lawful in and of itself.

## **Responsibly Connected**

- The new law clarifies that individuals held to be "responsibly connected" with a violating firm may demonstrate that they were only in a nominal position and not responsible for the violation.
- USDA is now authorized to extend the employment sanction against an individual found to have been unlawfully employed by a licensee.